

AP/PPAS-POLS 4130 6.0 E Politics, Law and the Courts Fall /Winter 2022-2023

Course Information

Course Instructor(s): Danny O'Rourke-
Dicarlo (Fall Term) Ana Kapralos
(Winter Term)

E-mail: rourke@yorku.ca

Office Hours & Location: 025
McLaughlin College
Course Time & Days: 7pm-10pm
Monday
Seminar Room: VH 2000

Land Acknowledgment

York University recognizes that many Indigenous Nations have longstanding relationships with the territories upon which York University campuses are located that precede the establishment of York University. York University acknowledges its presence on the traditional territory of many Indigenous Nations. The area known as Tkaronto has been care taken by the Anishinabek Nation, the Haudenosaunee Confederacy, and the Huron-Wendat. It is now home to many First Nation, Inuit, and Métis communities. We acknowledge the current treaty holders, the Mississaugas of the Credit First Nation. This territory is subject of the Dish with One Spoon Wampum Belt Covenant, an agreement to peaceably share and care for the Great Lakes region ([LA&PS Land Acknowledgement](#)).

Course Overview

Course Description

This course is designed to explore and analyze the interplay of politics, law and the courts in Canada. In order to achieve this overriding objective, the focus will be on the relationship between law, judicial decision-making and political processes. The course analyses how the adjudicative power of the courts constraints the legislative and executive branches of the government. In that regard, there will be survey of actors and institutions that shape Canada's judicial process. Furthermore, greater attention will be paid to judicial decision making, the political impact of court decisions, and the role of lawyers and judges within the judicial process. To understand the alleged process of judicialization of politics and politicization of judiciary, there will be extensive discussion on certain political and social battles that have reached the courts.

Course Learning Objectives

At the end of the course, students will be able to:

- acquire a comprehensive understanding of the hierarchy of court system in Canada;
- acquire a substantial knowledge on the administration of justice in Canada;
- critically appraise the basic structure and processes of the judicial system, judicial nominations and judicial decision making;
- comprehend the interplay of judicial decisional making and political processes; and
- appreciate the limits of judicial review.

Course Format and Organization

This course will be run as an in-class/on-campus seminar. In addition to introducing and guiding discussion of the weekly assigned topics, the instructor will serve as a resource person in clarifying issues. Students will be assigned specific readings and are required to make presentations. Students are expected to read all required readings for each class and are prepared to make comments on presentation and readings (see instructions on participation and presentations below). In addition, students are to monitor media events that may be relevant to the weekly themes.

In order to facilitate class discussion and participation, students are expected to read the assigned readings beforehand.

Technical Requirements

Several platforms will be used in this course (e.g., eClass, Zoom, etc.) through which students will interact with the course materials, the course director, as well as with one another.

Using Zoom

Students shall note the following:

- Zoom is hosted on servers in the United States and Canada. Recordings done since May 1, 2022 are stored in Canada. For more information, please refer to the notes on [Zoom Privacy and Security](#) provided by Information Security at York.
- If you have privacy concerns about your data, provide only your first name or a nickname when you join a session.

- The system is configured in a way that all participants are automatically notified when a session is being recorded. In other words, a session cannot be recorded without you knowing about it.

Here are some useful links for student computing information, resources, and help:

- [Student Guide to eClass](#)
- [Zoom@YorkU Best Practices](#)
- [Zoom@YorkU User Reference Guide](#)
- [University Information Technology \(UIT\) Student Services](#)
- [Student Guide to eLearning at York University](#)

To determine Internet connection and speed, there are online tests, such as [Speedtest](#), that can be run. If you need technical assistance, please consult the [University Information Technology \(UIT\) Student Services](#) web page. For more specific assistance, please write to askit@yorku.ca.

Course Communication Plan and Office Hours

- The Course Director will communicate with students via eClass and emails/
- Students can communicate with one another (e.g., in discussion forums on eClass)
- Office hours by appointment

Course Evaluation FALL TERM

Assessment	Due Date	Weight %	Course Learning Outcome
Fall Mid-Term Exam	TBA	15%	Explication and Evaluation
Group Assignment	TBA	15%	Thematic Reading/Explication
Final Fall Exam	TBA	15%	Practical Application
Participation		5%	
Fall Total:		50%	

Assessment Descriptions FALL TERM ONLY

Class Participation and Weekly Reading Summaries (5% Fall Term)

Given that this course will be run on a seminar format, it is absolutely imperative that students complete all required readings, attend each and every class, and participate through regular and meaningful contributions to class discussions. With this in mind, regular attendance will be taken and **10%** of your grade will be based on your attendance record, class participation, and submission of weekly reading summaries over the course of the term.

In order to be marked as present for a class, students **must**: (1) sign the attendance sheet; **and** (2) submit a weekly reading summary, a one-page (12-point font, 1" margins, single spaced) from **one of the additional readings**. No cover page. These weekly summaries will be submitted electronically via e-class each week before each class and will be graded as Pass/Fail. If you demonstrate thoughtful engagement with the readings, you will pass. In the case of absences due to medical conditions or illness, it is your responsibility to notify the instructor in advance, to provide appropriate documentation, and to supply weekly summaries for all missed seminars upon your return to class. Regular attendance is necessary *but not sufficient* to constitute class participation. **A weekly summary is not required the week you present.**

Beyond attendance, your grade will also be based on your participation. This includes regular, meaningful and collegial contributions to class and group discussions, the ability to demonstrate a strong grasp of the required readings, course concepts, ideas, and themes. It is expected that you will complete readings before class and come to class prepared to engage in the seminar discussions.

Seminar Facilitation/Presentation (15% Fall Term)

This is an advanced seminar and in groups of two (or three, depending on class size), each student will be responsible for leading one seminar on **two** of the weekly **additional readings**. Groups will be randomly assigned and confirmed in the first week's class.

The objective is to encourage critical and analytical engagement with the readings, to make connections between the readings and other relevant and current issues, and to develop your seminar facilitation and communication skills.

This is NOT a traditional presentation. Your job is to *facilitate* an extended seminar discussion about the readings. The key to leading a successful seminar is to come up

with interesting, creative and original ways to encourage, engage and guide your fellow students in 'unpacking' and discussing the readings. **YOU ARE NOT REQUIRED TO COVER ALL ASPECTS OF THE ADDITIONAL READINGS, ONLY THE MOST SALIENT/SIGNIFICANT ARGUMENTS AND/OR THEMES.**

➤ **Critical Analysis**

To read an article critically means that you are not simply reading it to glean facts about a topic but rather you are reading it with a view to examining the way the author has understood, argued and presented the topic. Critical analysis does not simply mean 'criticism' (i.e. pointing out something that is negative or lacking in the reading). It involves unpacking and evaluating: the article's central questions/arguments; the conceptual/theoretical tools that the author uses to make sense of the topic of the article; its socio-political implications; and its overall strengths and weaknesses.

➤ **One Discussion Questions Posted on E-class**

Seminar leaders will post one (1) question to the "Discussion Board" area on the E-class page *one week* ahead of their seminar to help the class prepare for the seminar discussion of the readings. Discussion questions should aim to encourage **critical and analytical thinking** about the readings.

Discussion questions will not work if they simply require a yes or no answer or the simple retrieval of a fact from a reading. Instead, questions can focus on, among other aspects, the nature and quality of the empirical evidence in the reading, the elements and consistency of the argument, methodological issues raised by the reading, theoretical issues raised by the reading, key concepts used in the reading, the ways in which the reading sheds light on course concepts, comparisons with other course readings. The two advance questions that you come up with are intended as *a starting point* to guide the students' thinking as they read the articles to help prepare them for the seminar that you have planned.

➤ **Creative and Interesting Facilitation Strategies**

In addition to the two questions posted on E-class one week in advance of the seminar date, seminar leaders need to think carefully and creatively about how to facilitate and guide class discussion in these directions. This may include drawing from your advance questions, posing follow-up questions, individual or group exercises, and making use of other creative and interesting resources such as relevant media stories, law or policy documents, games, graphics, audio and visual cues and exercises, photography etc.

➤ **Seminar Moderation**

In addition to facilitation, seminar leaders are responsible for moderating class discussion. This may include: calling on participants to give their thoughts about a discussion question or issue; planning and administering individual or group exercises or using other creative pedagogical tools to stimulate critical thinking and class discussion; keeping an eye on the time (**30-45 minutes max.**) and bringing discussion of a particular question or issue to a close in order to move on to another question or

issue; ensuring that the discussion stays focused, relevant and on track. This is where the development of an agenda will keep your group to your time.

Other Points to Note about the Seminar Facilitation:

- **Distribution of one page plan.** On the day of your seminar, before class begins, you will provide the class with a one-page outline/plan of your seminar posted on E-class under each weekly theme, in the Group Class Presentation box.
- **Begin with *brief* introduction to the readings.** You are expected to begin with a brief introduction to the readings that identifies the main arguments and key points ***in your own words***. Try to make this as engaging as possible by not simply reading from a prepared text.
- **Prepare a Power Point Presentation** that illustrates the main-points of the articles under review and draws connections with broader course concepts and themes. You will provide this to classmates before class, posted on E-class, under the week's theme, in the Group Class Presentation box.
- **This is a joint assignment.** The seminar must be approached as a cooperative, team effort at every stage:
 - Students must work *together* to plan and organize all parts of the seminar.
 - Seminar leaders need to read and think carefully about assigned readings.
 - Seminar leaders should work together to unpack the readings and identify what points of analysis will be important to address in the seminar.
 - Seminar leaders need to collaborate in order to design and plan creative, interesting and original strategies to guide the seminar discussion in desired directions.
 - Seminar leaders must demonstrate that they have read and thought carefully about *both* of the required readings and that you have both been actively engaged in the planning and preparation of all parts of the seminar.
- **Seminar evaluation.** Seminars will be evaluated according to:
 - The quality of the advance and follow-up discussion questions (e.g. Were they provided in time? Were they thoughtfully constructed to engage students in critical thinking about the readings; Did they effectively provoke critical discussion; Were they relevant to the course?);
 - The quality of the oral introduction/power-points to the readings (e.g. Was it presented in an engaging manner? Did it accurately capture the main arguments of the article? Was it logical, well organized and concise? Was it presented without directly reading from text?);
 - The quality of the critical analysis of the articles; identification and engagement with key arguments, concepts, findings, conclusions, methods, evidence (internal); consideration of connections between the articles and links made with course themes, and relates to current events in the media.

- The creativity, planning and effectiveness of the seminar facilitation strategies and moderation;
- The preparation, organization and format of the seminar. This includes the demonstrated degree of collaboration between the seminar leaders in the preparation and planning of the seminar, evidence that both seminar leaders were familiar with both readings and had thought together about how they relate/compare, the planning and timing of the different parts of the seminar, coming up with innovative strategies and exercises to stimulate discussion and critical thinking.

Checklist:

- ✓ **(at least) 4 weeks prior:** Start reading and preparing with your partner, if possible
- ✓ **1 week prior:** Post the finalized two questions on E-class, if possible
- ✓ **Day of:**
 - Before class, post your brief summary of seminar plan and group class presentation under weekly topic box on E-class.
 - During class, lead amazing facilitation with creative and engaging pedagogical tools
 - After class, submit presentation on E-class under Assignments box.

Submitting Assignments

All assignments will be submitted digitally to eClass.

Grading

The grading scheme for this course conforms to the 9-point system used in undergraduate programs at York University. For a full description of the York grading system, visit the York University [Academic Calendar](#).

GRADE	GRADE POINT	PERCENT RANGE	DESCRIPTION
A+	9	90-100	Exceptional
A	8	80-89	Excellent
B+	7	75-79	Very Good
B	6	70-74	Good
C+	5	65-69	Competent
C	4	60-64	Fairly Competent
D+	3	55-59	Passing

D	2	50-54	Marginally Passing
E	1	40-49	Marginally Failing
F	0	0-39	Failing

[If your course does not use this grading system, please replace the above text with a full description.]

How to Use Citations

[Provide citation expectations in the course assignments and links to appropriate citation references and guidelines. Explain why citation practices are important, and how they support academic integrity by linking information back to an identifiable source. Specify what kinds of citation format students should use and list available resources to support research and citation. For example:

- [SPARK Student Papers & Academic Research Kit](#)
- [Chicago Style Overview](#), YorkU Libraries
- [MLA Style Overview](#), YorkU Libraries
- [APA Style Overview](#), YorkU Libraries
- [Drop-in Research Support](#), YorkU Libraries
- [Writing Centre](#)

Course Schedule: Weekly Readings and Activities

Required Course Materials

Fall Term:

Roach, Kent. 2016. *The Supreme Court on Trial: judicial activism or democratic dialogue*. Toronto: Irwin Law.

Winter Term:

Lori Hausegger, Matthew Hennigar, Troy Riddell. 2015. *Canadian Courts: Law, Politics, and Process*. Second Edition. Toronto: Oxford University Press.

(e-book will be posted on e-class for one free week for your reference and available for purchase after the free access)

Course Schedule FALL ONLY

Week/Module Dates	Readings and Activities		
Week 1 Sept12	<i>Introduction to the Course</i>		
Week 2 Sept 19	Philosophy, Law and Politics (Presentation Dates Assigned) Miro Cerar. 2009. The Relationship Between Law and Politics. Annual Survey of International & Comparative Law: Vol. 15: Iss. 1, Article 3. https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1126&context=annlsurvey		
Week 3 Sept 26	Judicial Review and Judicial Activism Roach, ch 1, ch2 Smith Jennifer. The Origins of Judicial Review in Canada. Canadian Journal of Political Science / Revue canadienne de science politique, Vol.16, No. 1 (Mar., 1983), pp. 115-134		
Week 4 Oct 3	Judicial Activism Before and After the Charter (Presentations begin) Roach, ch 3, ch4, ch 5 Sanjeev, Anand. The Truth About Canadian Judicial Activism. Constitutional Forum, Volume 15, Number 2, 2006		
Week 5	<i>Reading Week</i>		
Week 6 Oct 17	Dimensions of Judicial Activism Roach, ch 6, ch7 Kmiec Keenan. 2004. The Origins and Current Meanings of Judicial Activism. California Law Review, 92, 1441-1477		

<p>Week 7 Oct 24</p>	<p>Limits of Public Law Adjudication (Mid Term Circulated): Roach, ch 8, ch9</p> <p>Peter Russell. (1994). Canadian Constraints on Judicialization from Without. <i>International Political Science Review</i>, 15:2, pp 165-175.</p>		
<p>Week 8 Oct 31</p>	<p>Mid-Term Discussion</p>		
<p>Week 9 Nov 7</p>	<p>Critiques of Judicial Review (Mid Term Due In Class)</p> <p>Hunt, Stacie, "The Judicialization of Politics in Canada and the United States" (2013). Honors Projects. 39. https://scholarworks.bgsu.edu/honor_sprojects/3</p>		
<p>Week 10 Nov 14</p>	<p>Dialogue Between Courts and Legislatures (two presentations) Roach, ch 10</p> <p>Peter Hogg and Allison Russell. "The Charter Dialogue between Courts and the Legislatures." <i>Osgood Hall Law Journal</i>. 35:1 (1997).</p> <p>Andrew Petter. Taking Dialogue Theory Much Too Seriously 2007 .pp.187-199 https://pdfs.semanticscholar.org/09e6/27bbc156865f3a0a348bd41ce75727a905fd.pdf</p>		
<p>Week 11 Nov 21</p>	<p>Beyond Judicial Activism Roach, ch 11, ch 12</p> <p>Richard A. Epstein, "Beyond Judicial Activism and Restraint," 1 <i>Georgetown Journal of Law and Public Policy</i> 85 (2002)</p>		

Week 12

Nov 28

Judicial activism and democratic dialogue/ Democratic dialogue in theory and Practice: A Response to Critics. (Two presentations): Dec 6

Roach, ch 15,

Monahan, Patrick J. "Judicial Review and Democracy: A Theory of Judicial Review." UBC Law Review 21.1 (1987): 87-164

Peter Hogg [Charter Dialogue Revisited: Or "Much Ado About Metaphors"](https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1254&context=ohlj) 2007
<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1254&context=ohlj>

Web Resources:

Supreme Court of Canada homepage:

<https://www.scc-csc.ca/home-accueil/index-eng.aspx>

Reported Decisions of the Supreme Court 1983 to Present:

<https://www.scc-csc.ca/case-dossier/index-eng.aspx>

Canadian Legal information Institute (a search engine for reported court cases in all Canadian jurisdictions). <https://www.canlii.org/en/>

Course Policies

All students are expected to familiarize themselves with the following information:

- [Student Rights & Responsibilities](#)
- [Academic Accommodation for Students with Disabilities](#)

Please also review the following course policies:

Academic Integrity

In this course, we strive to maintain academic honesty to the highest extent possible. Please familiarize yourself with the meaning of academic integrity by completing [SPARK's Academic Integrity module](#) at the beginning of the course. Breaches of academic honesty range from cheating to plagiarism (i.e., the improper crediting of another's work, the representation of another's ideas as your own, etc.). All instances of academic dishonesty in this course will be reported to the appropriate University authorities and can be punishable according to the [Senate Policy on Academic Honesty](#).

Accessibility

While all individuals are expected to satisfy the requirements of their program of study and to aspire to achieve excellence, the University recognizes that persons with disabilities may require reasonable accommodation to enable them to perform at their best. The University encourages students with disabilities to register with [Student Accessibility Services](#) to discuss their accommodation needs as early as possible in the term to establish the recommended academic accommodations that will be communicated to Course Directors through their Letter of Accommodation (LOA).

Please let your instructor know as early as possible in the term if you anticipate requiring academic accommodation so that we can discuss how to consider your accommodation needs within the context of this course. Sufficient notice is needed so that reasonable steps for accommodation can be discussed. Accommodations for tests/exams normally require three (3) weeks (or 21 days) before the scheduled test/exam to arrange.

Religious Observance Accommodation

York University is committed to respecting the religious beliefs and practices of all members of the community, and making reasonable and appropriate [accommodations to adherents for observances of special significance](#). Should any of the dates specified in this syllabus for course examinations, tests, or deadlines conflict with a date of religious significance, please contact the instructor within the first three (3) weeks of class. If the date falls within the formal examination periods, you must complete and submit a [Religious Accommodation for Examination Form](#) at least three (3) weeks before the start of the exam period.

Intellectual Property

Course materials are designed for use as part of this particular course at York University and are the intellectual property of the instructor unless otherwise stated. Third-party copyrighted materials (such as book chapters, journal articles, music, videos, etc.) have either been licensed for use in this course or fall under an exception or limitation in Canadian copyright law. Students may not publish, post on an Internet site, sell, or otherwise distribute any course materials or work without the instructor's express permission. Course materials should only be used by students enrolled in this course.

Copying this material for distribution (e.g., uploading material to a commercial third-party website) may lead to a charge of misconduct according to York's [Code of Student Rights and Responsibilities](#), the [Senate Policy on Academic Honesty](#), and/or legal consequences for copyright violations.

Student Conduct in the Learning Environment

York University is committed to fostering teaching and learning environments that are free of disruptive and/or harassing behaviour, are physically safe, and conducive to effective teaching and learning. Students and instructors are expected to maintain a professional relationship characterized by courtesy, civility, and mutual respect and to refrain from actions disruptive to such a relationship. Individuals who fail to adhere to such standards and who violate University or public law may be subject to disciplinary action by the University.

For more information, see the policies on [Disruptive and/or Harassing Behaviour in Academic Situations](#), the [Student Conduct and Responsibilities](#), and the [Code of Student Rights & Responsibilities](#).

Netiquette for eClass and Online Learning

Students and instructors have a joint responsibility to create and maintain a welcoming and inclusive learning environment. All students are expected to conduct themselves in accordance with the [Code of Student Rights and Responsibilities](#). Please review and familiarize yourself with behaviours that support “netiquette” in virtual classrooms by consulting the [Guide to Netiquette](#) and [Student Guide to eLearning](#).

Student Notice of Recording for Online Teaching and Learning

Activities for this course involve recording, in partial fulfillment of the course learning outcomes. Images, audio, text/chat messaging that have been recorded may be used and/or made available by the University to students enrolled in the course and those supporting the course for the purpose of materials review, for assessment, etc. Recordings will be managed according to the University’s Common Record Schedule and will be securely destroyed when no longer needed by the University. Your personal information is protected in accordance with York University’s [Guidelines on Access of Information and Protection of Privacy](#) and the [Freedom of Information and Protection of Privacy Act](#). Access to online materials, including recordings or live meetings, is subject to York University’s [Senate Policy on Computing and Information Technology Facilities](#).

The University will use reasonable means to protect the security and confidentiality of the recorded information, but cannot provide a guarantee of such due to factors beyond the University’s control, such as recordings being forwarded, copied, intercepted, circulated, disclosed, or stored without the University’s knowledge or permission, or the introduction of malware into computer system which could potentially damage or disrupt the computer, networks, and security settings. The

University is not responsible for connectivity/technical difficulties or loss of data associated with your hardware, software, or Internet connection.

By engaging in course activities that involve recording, you are consenting to the use of your appearance, image, text/chat messaging, and voice and/or likeness in the manner and under the conditions specified herein. In the case of a live stream recording, if you choose not to have your image or audio recorded, you may disable the audio and video functionality. If you choose to participate using a pseudonym instead of your real name, you must disclose the pseudonym to your instructor in advance to facilitate class participation.

You are not permitted to disclose the link to/URL of an event or an event session recording or copies of recording to anyone, for any reason. Recordings are available only to authorized individuals who have been directly provided the above instructions/link for their use. Recordings for personal use, required to facilitate your learning and preparation of personal course/lecture notes, may not be shared with others without the permission of the instructor or event coordinator, and may not be published, posted, linked to, or otherwise made available online, including on social media feeds, even if those feeds are private.

Health and Safety

All York students and instructors share responsibility for the safety and well-being of the community while on York's campuses. Please continue to check [YUBetter Together](#) for the latest information on health and safety.

Student Support and Resources

To help you succeed academically, York University offers a wide range of resources and services. Everything from writing workshops and peer mentorship to wellness support and career guidance is available to fulfill our LA&PS students' needs. Explore the links below to access these on-campus resources:

- [Academic Advising](#) is available to provide students support and guidance in making academic decisions and goals.
- [Student Accessibility Services](#) are available for support and accessibility accommodation when required.
- [Student Counselling, Health & Wellbeing](#) offers workshops, resources, and counselling to support your academic success.
- [Peer-Assisted Study Sessions \(PASS\) Program](#) provides student study sessions for students to collaborate and enhance their understanding of course content in certain courses.

- [Student Numeracy Assistance Centre at Keele \(SNACK\)](#) supports students in courses involving math, stats, and Excel.
- [The Writing Centre](#) provides multiple avenues of writing-based support including drop-in sessions, one-to-one appointments, a Multilingual Studio, and an Accessibility Specialist.
- [ESL Open Learning Centre \(OLC\)](#) supports students with building proficiency in reading, writing, and speaking English.
- [Learning Skills Services](#) provides tips for time management, effective study and learning habits, keeping up with coursework, and other learning-related supports.
- [Learning Commons](#) provides links to supports for time management, writing, study skills, preparing for exams, and other learning-related resources.
- [Roadmap to Student Success](#) provides students with timely and targeted resources to help them achieve academic, personal, and professional success.
- [Office of Student Community Relations \(OSCR\)](#) is responsible for administering the [Code of Student Rights & Responsibilities](#) and provides critical incident support.
- [goSAFE](#) is staffed by York students and can accompany York community members to and from any on-campus location, such as the Village Shuttle pick-up hub, parking lots, bus stops, or residences.

For a full list of academic, wellness, and campus resources visit [Student Support & Resources](#).