

# Public Law I: The Constitution and the Courts in Canada

AP/PPAS 3135 3.00 M

Mondays 11:30 CLH 110

Course Director: Soren Frederiksen

email: [sdfred@yorku.ca](mailto:sdfred@yorku.ca)

office: McLaughlin College 138

## **Course Description**

This course examines the courts and their place in the development of Canadian federalism. Using the courts and the process of judicial review as the centre of our analysis, we will consider the roles of lawyers and judges and the relationship between law, politics, and public policy. In doing so, students will become familiar with the Canadian court structure, the process of judicial review, and Canadian constitutional law as it applies to Canadian federalism. Students will also learn to analyse statutory and case law so as to understand its legal meaning as well as learn to do limited legal research in this context.

## **Format**

This course consists of weekly lectures. In some classes these will be followed by a discussion session during which we will be taking a more interactive approach.

The course is centered around a single written project (the case brief) that will be explained as we work through the course.

You are expected to have read all required material prior to the lectures and discussion sessions. While I am not grading participation in this course directly, my experience is that your active participation will greatly improve your grade in this course since the exam questions will relate to our class discussions.

## **Readings**

There will be no course-pack for this course, but most weeks you need to read one or more cases in addition to reading from the textbook. These cases will be available via eClass *or* you will be expected to look them up on the CanLii.org database. We will discuss how to do this in class. You are responsible for knowing all cases mentioned on the reading list for the exam, but the expectation is that you will focus on one when preparing for class.

The textbook for this class is:

Monahan, P., Shaw, B., Ryan, P., Canada. (2017). *Constitutional law* (Fifth edition.) Irwin Law.

This book is available from the bookstore and used copies should be available from the usual sources as it has been out for a number of years. It is also available electronically through the library.

## **eClass**

Use of eClass is mandatory for this course as you will need it to access the readings.

## **Evaluation**

30% – Case Brief (written assignment, due via eClass on our final class)

30% – Midterm Exam (take-home via eClass, class 7)

40% – Exam (scheduled during the exam period)

## **Learning Outcomes**

- Understand and know basic Canadian constitutional principles
- Understand and know the constitutional history of Canadian federalism
- Understand and make legal arguments
- Understand the legal process and how cases reach the Supreme Court of Canada
- Critically evaluate constitutional law decisions and arguments
- Build Basic legal research skills
- Develop third-year appropriate writing skills
- Build law and case reading skills

## **Written Assignments**

There one written assignment in this course, the case brief. The assignment specifics will be discussed in class and available on eClass as the course progresses.

There are two exams in the course. The first will be written during our class time on eClass. The second will be during a set exam time during the exam period, also on eClass.

## **Academic Honesty**

It is expected that all students know and understand basic academic honesty rules. If you need a refresher, please review: <https://spark.library.yorku.ca/academic-integrity-what-is-academic-integrity/> . In addition, we will be discussing citation requirements during class. Any concerns over academic integrity will be dealt with according to the Senate Policy.

Please note that all written work for this course (both exams and the paper) will be submitted via Turnitin.

Here are a few specific academic honesty concerns to keep in mind as helpfully compiled by the Associate Dean Academic, with my commentary on how they apply to this course:

## Artificial Intelligence (AI) Apps

According to York's Senate Policy on Academic Honesty, using AI apps such as such as ChatGPT, GPT-3, DALL-E, among others to complete academic work without your instructor's knowledge or permission, is considered to be a breach of academic honesty. More specifically, using text-generating tools (such as ChatGPT) would be considered to be cheating (Senate Policy, section 2.1.1) and using image- generating tools (such as DALL-E) would be considered to be plagiarism (Senate Policy, section 2.1.3). You may find that certain instructors will allow the use of these tools for certain assessments, yet others will not allow their use. If you're not sure whether using an AI app for your academic work is acceptable, it is recommended that you:

- Carefully review the guidelines for your assessments
- Check for any messages from your instructor on eClass
- Ask your instructor or TA if they are permitting the use of these tools

Additionally, you are encouraged to keep all of your research notes and draft versions of your work. You may be asked to present these if it is suspected that an AI app was used to help complete your work. These drafts can be used to show how this work developed, and to provide evidence that the work is your own.

In this class, **do not use these tools**. In principle they could be used for research if you use that information to then do your own reading of the source documents and writing, but when they are applied to Canadian legal issues, they almost always provide answers that sound reasonable but are subtly incorrect in ways that are obvious to any grader. They provide no information that you couldn't get just as easily from legitimate sources. Wikipedia, for example, would usually be more helpful. Don't waste your time with them.

## Group Messaging Tools

Group messaging platforms, such as Discord or WhatsApp, can be helpful tools that connect students and support learning. However, such tools can lead to academic honesty violations when students share or use answers to homework tasks, quizzes, tests, or exams, or when students collaborate on individual assignments. According to York's Senate Policy on Academic Honesty these behaviours may lead to a penalty. Moderators of these groups are required to clearly communicate the group's purpose and to remind students of the expectations for academic honesty. Being a member of such a group is not a breach of academic honesty or any other university policy. However, if you witness academically dishonest behaviour, it is strongly recommended that you leave the group. If you are unsure whether the behaviour is a violation of academic honesty, check with your TA or instructor.

In this course, I'd encourage to use these tools **except during the exams, where their use constitutes cheating**.

## Homework Help Sites

According to homework sites (such as Chegg), their services are intended to support students' understanding of course material. Despite this, cheating occurs on tests and exams when

students post their test or exam questions to these sites during the assessment in order to obtain answers from one of their experts. Using the answers provided is a breach of academic honesty, according to York's Senate Policy on Academic Honesty. If you're struggling with course material, understanding expectations, or in any other way, reach out to your instructor or TA instead of relying on homework help sites to acquire assessment answers. For authorized resources and sources of help at York, please visit: <https://www.yorku.ca/unit/vpacad/academic-integrity/student-resources>.

## Unauthorized Collaboration

Unauthorized collaboration occurs when students work together on assessments without their instructor's permission. This can include working together to solve homework problems, comparing their homework, test or exam answers, collaborating to complete assignments, or having someone else write or revise an assignment. Sometimes collaborating on assessments with other students is acceptable, yet at other times, individual effort is required. This can vary by course, instructor, or assessment. Even when it comes to group assignments, individual work may be required at different stages. Note: even if collaboration on an assessment is permitted, it is never acceptable copy someone else's work or allow them to copy yours.

In this course **collaboration on the exams is not permitted**. Collaboration on the written assignment is fine as long as your final paper is **written by you**. Note that I will be using Turnitin for all written submissions, which is good at detecting this sort of thing.

## Contract Cheating

Contract cheating occurs when a third party completes a student's work, and the student then submits that work as their own. Third parties can include: freelance academic writers or tutors, online essay writing companies, friends, classmates, or even family members. Contract cheating is considered to be a serious type of academic dishonesty that carries severe penalties. Besides penalties imposed by the university, contracting a third party to complete academic work carries the additional risks of identity theft and blackmail. If you are unsure whether a certain resource is a legitimate source of help, check with your TA or instructor. For authorized resources and sources of help at York, please visit: <https://www.yorku.ca/unit/vpacad/academic-integrity/student-resources/>. As well, for detailed information about expectations for academic honesty, please refer to York's Senate Policy on Academic Honesty.

## Plagiarism

Plagiarism is defined as misusing another person's published or unpublished work by presenting their ideas, writing or other intellectual property as one's own without proper acknowledgement (Senate Policy on Academic Honesty, section 2.1.3.). There are a number of acts that are considered to be plagiarism, for example:

- copying content word-for-word from a source without proper citation;
- paraphrasing from a source without proper citation; submitting work you have already
- submitted for another course without the instructor's approval;
- rewording someone else's work which you submit as your own;
- a third party complete work in whole then submitting it as one's own (also known as

- contract cheating).

Although plagiarism is often thought to involve words and ideas, it can also involve drawings, paintings, photographs, programming code, statistics, presentations, musical scores, among other types of content. Even if the act of plagiarism was unintentional, you can still receive a penalty. To avoid plagiarism, keep good track of any outside sources you use, and ensure that you cite sources properly. For more help on how to avoid plagiarism, contact the Library, Writing Centre, or your instructor or TA.

In this course we will be dealing mostly with legal content. In the legal world words or ideas that come from courts or academics are highly valued. Properly citing them does not diminish what you are doing or writing, it makes it stronger and more persuasive. Cite early and cite often. If you're unsure, cite!

## **Citation Style**

We will be using APA citation style in this course. For Canadian legal citation, APA incorporates Canadian Legal Citation style, which is the standard for citing legal materials in Canada. I will be providing some suggestions about easy ways to make sure you cite cases properly during our lecture discussions. I assume most students are familiar with APA citation style. If not, please consult the Library's citation page here: <https://www.library.yorku.ca/web/research-learn/citing-your-work-academic-integrity/>

## **Reading List (subject to change, see eClass for updates)**

Lecture	Discussion
<p><b>Lecture 1</b></p> <p><i>Introduction to the Course</i></p>	
<p><b>Lecture 2</b></p> <p><i>Sources and Structure of Canadian Law</i></p> <p>Monahan et al chapters 1 and 2</p> <p>Familiarize yourself with: <i>Constitution Act 1867, Constitution Act 1982</i> (p. 537 in Monahan et al)</p>	<ul style="list-style-type: none"> <li>● <i>Introducing the Case Brief assignment</i></li> </ul>
<p><b>Lecture 3</b></p> <p><i>Canadian Constitutional Principles</i></p> <p>Monahan et al chapter 3</p>	<ul style="list-style-type: none"> <li>● <i>Legal Research I: Using Legal Treatises</i></li> <li>● <i>Learning to Read Canadian Case Law</i></li> </ul>

<p>“The Rise of Court Government in Canada” Donald Savoie</p>	
<p><b>Lecture 4</b></p> <p><i>The Canadian Court System</i></p> <p>Monahan et al chapter 4</p> <p><i>Ref. re. Remuneration of Judges</i></p>	<ul style="list-style-type: none"> <li>● <i>Making Legal Arguments I: Arguing for the Parties</i></li> </ul>
<p><b>Lecture 5</b></p> <p><i>Judicial Review</i></p> <p>Monahan et al chapter 7</p> <p><i>Edwards v. A.-G. Can.</i></p>	<ul style="list-style-type: none"> <li>● <i>Making Legal Arguments II: Judicial Decisions</i></li> </ul>
<p><b>Lecture 6</b></p> <p><i>POGG – Peace, Order and Good Government</i></p> <p>Monahan et al chapter 8</p> <p>Read one of the following cases:</p> <ul style="list-style-type: none"> <li>● <i>Russell v. The Queen</i></li> <li>● <i>Toronto Electric Commission v. Snider</i></li> <li>● <i>National Temperance Act Reference</i></li> <li>● <i>The Queen v. Crown Zellerbach</i></li> <li>● <i>Anti-Inflation Reference</i></li> </ul>	<ul style="list-style-type: none"> <li>● <i>Legal Research II: Finding Caselaw with canlii.org</i></li> </ul>
<p><b>Study Break</b></p>	
<p><b>Lecture 7</b></p> <p><i>No Lecture – Midterm Exam via eClass during class time</i></p>	
<p><b>Lecture 8</b></p>	

<p><b><i>Criminal Law</i></b></p> <p>Monahan et al chapter 11</p> <p>Read one of the following cases:</p> <ul style="list-style-type: none"> <li>• <i>Margarine Reference</i></li> <li>• <i>RJR-MacDonald v. Canada</i></li> <li>• <i>Westendorp v. The Queen</i></li> </ul>	
<p><b>Lecture 9</b></p> <p><b><i>Trade and Commerce, Property and Civil Rights</i></b></p> <p>Monahan et al chapter 9 and 10</p> <p>Read one of the following cases:</p> <ul style="list-style-type: none"> <li>• <i>Citizens' Insurance v. Parsons</i></li> <li>• <i>Dominion Stores v. The Queen</i></li> <li>• <i>Toronto Electric Commission v. Snider (from lecture 6)</i></li> <li>• <i>Manitoba Egg Reference</i></li> </ul> <p><i>Midterm exam returned</i></p>	
<p><b>Lecture 10</b></p> <p><b><i>Transportation and Communication</i></b></p> <p>Monahan et al chapter 12</p> <p>Read one of the following cases:</p> <ul style="list-style-type: none"> <li>• <i>Aerial Navigation</i></li> <li>• <i>Alberta Telephone</i></li> <li>• <i>Capital City Communications</i></li> </ul>	
<p><b>Lecture 11</b></p> <p><b><i>Aboriginal Peoples</i></b></p> <p>Monahan et al chapter 15</p>	

<p>Skim the following case:</p> <p><i>Delgamuukw v. The Queen</i></p>	
<p><b>Lecture 12</b></p> <p><b><i>Amendment Procedure and Constitutional Reform</i></b></p> <p>Monahan et al chapters 5 and 6</p> <p><i>Succession Reference</i></p> <p><b><i>Wrap-up and Exam Review</i></b></p> <p>Monahan et al chapter 16</p> <p><b><i>Case Brief Due</i></b></p>	

### ***Grading, Assignment Submission, Lateness Penalties and Missed Tests***

**Grading:** The grading scheme for the course conforms to the 9-point grading system used in undergraduate programs at York (e.g., A+ = 9, A = 8, B+ = 7, C+ = 5, etc.). Assignments and tests will bear either a letter grade designation or a corresponding number grade (e.g. A+ = 90 to 100, A = 80 to 90, B+ = 75 to 79, etc.) For a full description of York grading system see the York University Undergraduate Calendar.

**Assignment Submission:** Assignments for this course must be received before the due date and time specified for the assignment via moodle. Email or paper submissions will not be accepted.

**Lateness Penalty:** Assignments received later than the due date will be penalized at the rate of 2.5% daily, including weekends. Exceptions to the lateness penalty for valid reasons such as illness, compassionate grounds, etc., may be entertained by the Course Director, but will require supporting documentation (e.g., a doctor’s letter).

**Missed Tests:** Students with a documented reason for missing a course test, such as illness, compassionate grounds, etc., which is confirmed by supporting documentation (e.g., doctor’s letter) may request accommodation from the Course Instructor. Further extensions or accommodation will require students to submit a formal petition to the Faculty.

### ***Important Additional Information***

All students are expected to familiarize themselves with the following information, available on the Senate Committee on Curriculum & Academic Standards webpage  
[http://www.yorku.ca/secretariat/senate\\_cte\\_main\\_pages/ccas.htm](http://www.yorku.ca/secretariat/senate_cte_main_pages/ccas.htm):

- York’s Academic Honesty Policy and Procedures/Academic Integrity Website  
<http://www.yorku.ca/secretariat/policies/document.php?document=69>



- Ethics Review Process for research involving human participants  
<http://www.yorku.ca/secretariat/policies/document.php?document=94>
- Course requirement accommodation for students with disabilities, including physical, medical, systemic, learning and psychiatric disabilities  
<http://www.yorku.ca/secretariat/policies/document.php?document=68>
- Student Conduct Standards  
<http://www.yorku.ca/secretariat/policies/document.php?document=107>
- Religious Observance Accommodation  
<https://w2prod.sis.yorku.ca/Apps/WebObjects/cdm.woa/wa/regobs>