

AP/PPAS-POLS 4130 6.0 B Politics, Law and the Courts Fall /Winter 2024-2025

Course Information

Course Time & Days:

SEMINAR

Tuesdays 11:30 am to 2:30 pm

Class: YK Ross N 201

Course Instructor(s):

Prof. Radha Persaud (Fall Term)

Office: Rm. 362 A, York Hall, Glendon College Office Phone: 416-736-2100 Ext. 88595 (Glendon)

Email: rpersaud@glendon.yorku.ca

Office hours:

Mondays: 5:00-5:50 pm (or by appointment)

Prof. Ana Kapralos (Winter Term)

Email: akapralo@yorku.ca

Email to schedule.

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 constrains the legislative and executive branches of the government. In that regard, there will be a survey of actors and institutions that shape Canada's judicial process. Furthermore, greater attention will

be paid to judicial decision making, reference cases, the political impact of court decisions and advisory opinions, and the role of lawyers and judges within the judicial process. To understand the alleged process of the "judicialization of politics" and the "politicization of the judiciary", there will be extensive discussion on certain political and social battles that have reached the courts.

Course Learning Objectives

In the Fall:

Objects of this seminar include giving students a solid grounding in the history of constitutional adjudication in Canada and a good understanding of the institutional structures and relationships that enable --and determine-- the role of courts in shaping the operation of governments' political branches.

A further object of the seminar is to critically examine the judicial function from the perspectives of (a) whether judicial decision-making/advisory process in the general area of political and public law is based on intellectual process that is distinct from the calculations of ordinary politics; (b) whether methods of court adjudication contribute to the development of good government in Canada.

- the Supreme Court of Canada and federal-provincial relations
- the advisory role of the Supreme Court in intergovernmental relations and conflict resolution
- the implications for Canadian democracy of the Supreme Court's "political role"
- the limits of judicial advisory opinions/adjudication on the political/social life of Canada.
- identify and analyze the doctrines, principles, relationships and dynamics at work in meeting the challenges in producing government under the rule of law;
- use a comparative approach in illuminating the Canadian experience (Canada and U.S.);
- apply theory/doctrines/concepts to the judicial role;
- discuss and analyze landmark constitutional cases and their policy effects/impact on the other branches of government and society;
- critically discuss and analyze the virtues and limitations of the judicial role in political law;

- understand the judicial method as the third branch of government in the democratic polity;
- understand the degree of elasticity in the judicial method and the role of values and moral presuppositions in the formation of constitutional limits;
- understand the public policy role of the Supreme Court;
- understand the extent to which the Constitution is a document dedicated to developing a good state;

In the Winter:

- 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.

ONLINE -- ZOOM -- MOODLE

This course may require the use of online proctoring for examinations. The instructor may use an online proctoring service to deliver the exam(s), which would be administered through the Learning Management System (e.g. Moodle, Canvas, etc.). Students are required to have access to minimum technology requirements to complete examinations. If an online proctoring service is used, students will need to become familiar with it at least five days before exam(s). For technology requirements,

Frequently Asked Questions (FAQs) and details about the online proctoring service visit – [link to be added]. Students are required to share any IT accommodation needs with the instructor as soon as they are able.

Technical Requirements

Several platforms may be used in this course (e.g., Moodle, Canvas, Zoom, etc.) through which students will interact with the course materials, the course director / TA, as well as with one another. Please review the syllabus to determine how the class meets (in whole or in part), and how office hours and presentations will be conducted.

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 <u>Zoom Privacy and Security</u> 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.

Frequently Asked Questions | Moodle@York | York University

To view your grades, follow the steps below: Log in to Moodle@York, and click on the required course title that appears.; Click on Grades in 'Settings' block. The User report will be displayed. You may click on Overview report to view grades of all the courses you are enrolled in. To view grades for a specific assignment, follow the steps below: www.yorku.ca.

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 <u>Speedtest</u>, that can be run. If you need technical assistance, please consult the <u>University</u> <u>Information Technology (UIT) Student Services</u> web page. For more specific assistance, please write to <u>askit@yorku.ca</u>.

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 %
Mid-Term Exam	Oct 8, 2024	15%
Presentation		05%
Participation		05%
Research Paper (7 pages typed and double-spaced) **	Nov 26, 2024	25%
Total: Fall		50%

Course Evaluation WINTER TERM

Assessment	Due Date	Weight %	
Mid-Term Exam	TBA	20%	
Group Assignment	TBA	20%	
Participation and Weekly Reading Summaries (10 submissions)	Weekly – submitted before class.	10%	
Total: Fall		50%	

ASSESSMENT DESCRIPTIONS

CRITERIA FOR EVALUATION OF PARTICIPATION - FALL TERM

Grade	Discussion	Reading

00.4000/		
90-100%	Excellent: leads debates; offers	Has completed readings and is able
	analysis and comments; always has	to address questions formulated by
	ideas on theme of readings; takes	instructor, and pose new ones based
	care not to dominate; asks insightful	on the readings; Relates assigned
	questions.	material to other course material.
80%	Very Good: Usually has thoughtful	Has completed readings; is able to
	comments and questions; able and	integrate assigned material to other
	frequent contributor.	course material.
60%	Good: Has basic grasp of key	Has completed readings but does not
	concepts and ideas on the main	demonstrate critical analysis of
	theme of the reading; arguments are	readings in response to questions
	at times incomplete or poorly	posed by instructor. Rarely able to
	supported; rarely asks questions.	relate assigned material to other
		course material.
40%	Somewhat Poor: Remarks in class	Displays marginal familiarity with
	demonstrate poor or incomplete	assigned material; unable to
	understanding of concepts; seldom	knowledgably respond to questions
	contributes to discussions; often	posed by the instructor or others; is
	disagrees or disrupts discussions.	unable to relate assigned material to
		other course material.
20%	Poor: Speaks rarely or never;	Demonstrates little or no familiarity
	demonstrates no understanding into	with assigned material.
	key themes or topics.	

Please note that it is the obligation of every student to familiarize him/herself with the University's policy on academic integrity – Guidelines for avoiding Plagiarism. The School of Public Policy and Administration "considers breaches of the Senate Policy on Academic Honesty to be a serious matter" (see below). "The Policy on Academic Honesty is an affirmation and clarification for members of the University of the general obligation to maintain the highest standards of academic honesty. As a clear sense of academic honesty and responsibility is fundamental to good scholarship, the policy recognizes the general responsibility of all faculty members to foster acceptable standards of academic conduct and of the student to be mindful of and abide by such standards."

Assignment Submission: Proper academic performance depends on students doing their work not only well, but on time. Accordingly, assignments for this course must be received on the due date specified for the assignment. Assignments are to be handed in class.

Lateness Penalty: Assignments received later than the due date will be penalized. Exceptions to the lateness penalty for valid reasons such as illness, compassionate grounds, etc., may be entertained by the Course Instructor but will require supporting documentation (e.g., a medical 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., medical doctor's letter) may request accommodation from the Course Instructor, viz., allowed to write a make-up test. Further extensions or accommodation will require students to submit a formal petition to the Faculty.

ASSESSMENT DESCRIPTIONS

WINTER TERM ONLY

Class Participation and Weekly Reading Summaries (10% Winter 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 <u>must</u>: (1) sign the attendance sheet; <u>and</u> (2) submit a weekly reading summary, a one-page (12-point font, 1" margins, single spaced) from <u>one</u> 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. That is why it is so important to complete the weekly summary before class.

<u>Seminar Facilitation/Group Presentation (20% Winter Term)</u>

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 SALINET/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 (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:

- ✓ 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
А	8	80-89	Excellent
B+	7	75-79	Very Good
В	6	70-74	Good
C+	5	65-69	Competent
С	4	60-64	Fairly Competent

D+	3	55-59	Passing
D	2	50-54	Marginally Passing
Е	1	40-49	Marginally Failing
F	0	0-39	Failing

A+ Exceptional. Thorough knowledge of concepts and/or techniques and exceptional skill or great originality in the use of those concepts/techniques in satisfying the requirements of an assignment or course.

A Excellent. Thorough knowledge of concepts and/or techniques together with a high degree of skill and/or some elements of originality in satisfying the requirements of an assignment or course.

B+ Very Good. Thorough knowledge of concepts and/or techniques together with a fairly high degree of skill in the use of those concepts/techniques in satisfying the requirements of an assignment or course.

B Good. Good level of knowledge of concepts and/or techniques together with considerable skill in using them to satisfy the requirements of an assignment or course.

C+ Competent. Acceptable level of knowledge of concepts and/or techniques together with considerable skill in using them to satisfy the requirements of an assignment or course.

C Fairly Competent. Acceptable level of knowledge of concepts and/or techniques together with some skill in using them to satisfy the requirements of an assignment or course.

D+ **Passing**. Slightly better than minimal knowledge of required concepts and/or techniques together with some ability to use them in satisfying the requirements of an assignment or course.

D Barely Passing. Minimum knowledge of concepts and/or techniques needed to satisfy the requirements of an assignment or course.

E Marginally Failing.

F Failing.

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 Centrel

Course Schedule: Weekly Readings and Activities

Required Course Materials

Fall Term:

Gregory Tardi, The Theory and Practice of Political Law, Second Edition, Toronto: Carswell, 2016. (Paperback ISBN: 978-0-7798-7325-8)

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 TERM ONLY

Week/Module Dates	Readings and Activities	
Week 1 September 10	■ Introduction & Presentation Selection	
Week 2 September 17	 Lecture/class discussion on politics, law and the courtsthe judicial power in Canada's political, legal and constitutional cultures The Supreme Court of Canada's policy role and hence relevance to political science studies—institutionalism or neo-institutionalism 	
	THE SUPREME COURT AND FEDERALISM	
	■ Gregory Tardi, "Legality and Power: The Fundamental and Timeless Debate in Governing", The Theory and Practice of Political Law (Toronto: Carswell, 2016), Ch. 1	
Week 3 September 24	■ Gregory Tardi, "Historical Background: The Evolution of Scholarship", The Theory and Practice of Political Law (Toronto: Carswell, 2016), Ch. 2	
	■ Gregory Tardi, "Historical Background: The Milestone Instruments", The Theory and Practice of Political Law (Toronto: Carswell, 2016), Ch. 4	

Week 4 October 1	 Reference Re Secession of Quebec (1998) (in its entirety) Gregory Tardi, "Modern Background: Recent and Current Scholarship", The Theory and Practice of Political Law (Toronto: Carswell, 2016), Ch. 3
Week 5 October 8	 Gregory Tardi, "The Comprehensive Theory of Political Law", The Theory and Practice of Political Law (Toronto: Carswell, 2016), Ch. 7 Gregory Tardi, "The Modern Law, Policy and Politics Scene", The Theory and Practice of Political Law (Toronto: Carswell, 2016), Ch. 6 Mid-Term Test
Week 6 October 14	Reading Week October 12-18
Week 7 October 22	 The Patriation Reference (1981)—in its entirety Adam Dodek, "Courting Constitutional Danger: Constitutional Conventions and the Legacy of the Patriation Reference", Supreme Court Law Review (2011), 54 S.C.L.R. (2d)
Week 8 October 29	 Peter Russell, "The Supreme Court Decision: Bold Statecraft Based on Questionable Jurisprudence", The Court And The Constitution (Queen's University: Institute of Intergovernmental Relations, 1982) Gregory Tardi, "The Accountability to Law of Heads of State and Government: Practice", The Theory and Practice of Political Law (Toronto: Carswell, 2016), Ch. 12 Gregory Tardi, "The Practice of Political Law in the Legislative Branch", The Theory and Practice of Political Law (Toronto: Carswell, 2016), Ch. 8

Week 9 November 5	 Jean-Francois Gaudreault-DesBiens, "The "Principle of Federalism" and the Legacy of the Patriation and Quebec Veto References, Supreme Court Law Review (2011), 54 S.C.L.R. (2d) Peter Russell, "The Patriation and Quebec Veto References: The Supreme Court Wrestles with the Political Part of the Constitution", Supreme Court Law Review (2011), 54 S.C.L.R. (2d) Gregory Tardi, "The Accountability to Law of Heads of State and Government: Theory", The Theory and Practice of Political Law (Toronto: Carswell, 2016), Ch. 11
Week 10 November 12	 Radhakrishnan Persaud, "Resort to the Supreme Court through the Reference Procedure: Use of the Judicial Advisory Mechanism in Canadian Political Law", Journal of Parliamentary and Political Law (Toronto: Carswell, 2011) Gregory Tardi, "The Professional Focus of Political Law: Accountability to Law" (2016), The Theory and Practice of Political Law (Toronto: Carswell, 2016), Ch. 10
Week 11 November 19	 Gregory Tardi, "The Practice of Political Law in the Judicial Branch", The Theory and Practice of Political Law (Toronto: Carswell, 2016), Ch. 9 Gregory Tardi, "The Need for a Concept of Political Law", The Theory and Practice of Political Law (Toronto: Carswell, 2016), Ch. 14 Pierre Elliot Trudeau, "Fatal Tilt: Speaking Out About Sovereignty", Point of View (Toronto: Harper Collins, 1991)
Week 12 November 26	 "Political Accountabilty for Appointments to the Supreme Court of Canada" Dr. John D. Whyte (Prof. and Dean Emeritus of Queen's Law School). The Promise and Limits of Cooperative Federalism as a Constitutional Principle, Prof. Warren J. Newman (Draft Paper) Research Paper Due

Week 13 Dec 3	■ Gregory Tardi, "Patterns of Scenarios in Political Law", The Theory and Practice of Political Law (Toronto: Carswell, 2016), Ch. 13			
------------------	---	--	--	--

Course Schedule - WINTER TERM ONLY

Week/Module Dates	Readings and Activities	
	Introductions Overview of course and expectations Theoretical Frameworks (HEUSSEGGER CH 1, pg. 21-23; Georgis et al; Napoleon et al.)	
	Hausegger, Chapter 1, An Introduction to Politics, Law, and the Judicial Process	
	Additional Readings:	
Week 1 January 7	Keith E. Whittington, R. Daniel Kelemen, and Gregory A. Caldeira. (2011) Chapter 12: Overview of Law and Politics the Study of Law and Politics. The Oxford Handbook of Political Science. Edited by Robert E. Goodin, (MUST BE LOGGED IN TO YORK LIBRARY) https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199604456.001.0001/oxfordhb-9780199604456-e-012?print=pdf Georgis, Mariam, and Nicole V.T. Lugosi. "(Re)Inserting Race and Indigeneity in International Relations Theory: A Post-Colonial Approach." Global Change, Peace & Security 26, no. 1 (January 2, 2014): 71–83. https://doi.org/10.1080/14781158.2014.867845. Napoleon, Val, and Hadley Friedland. "An Inside Job: Engaging with Indigenous Legal Traditions through Stories." McGill Law Journal / Revue de Droit de McGill 61(4) (2016): 725–754.	

Courts, Law, Policy Making and Judicial Process

Hausegger, Chapter 2, The Structure of Canadian Courts

Canada Department of Justice. Research and Statistics Division. (2017) Spotlight on Gladue: Challenges, Experiences, and Possibilities in Canada's Criminal Justice System, https://www.justice.gc.ca/eng/rp-pr/jr/gladue/gladue.pdf

Additional Readings:

James Kelly and Michael Murphy, "Shaping the Constitutional Dialogue on Federalism: Canada's Supreme Court as Meta-Political Actor" (2005) 35:2 Publius 217-243.

http://www.jstor.org.ezproxy.library.yorku.ca/openurl?volume=3 5&date=2005&spage= 217&issn=00485950&issue=2&.

Week 2 January 14

Keith E. Whittington, R. Daniel Kelemen, and Gregory A. Caldeira. (2011) Overview of Law and Politics the Study of Law and Politics. The Oxford Handbook of Political Science. Edited by Robert E. Goodin,

https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199604456.001.0001/oxfordhb-9780199604456-e-012?print=pdf

Supplementary:

Department of Justice, *Canada's Court System* (Ottawa: Department of Justice Canada, (2015),

https://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/pdf/courten.pdf

Tribunals Ontario, Business Plan 20-21.

https://tribunalsontario.ca/documents/TO/TO 2020.21%20-%202022.23 Business Plan EN.html

Ontario Land Tribunal. (OLT Created Jan 2019). Annual Report 2019-20.

https://olt.gov.on.ca/wp-

content/uploads/2020/09/Tribunals_Ontario_2019-

2020 Annual Report EN.pdf

Week 3 January 21	The Current Landscape of Justice – Impacts and Responses to COVID19 Pandemic Richard Haigh and Bruce Preston. "The Court System in a Time of Crisis: COVID-19 and Issues in Court Administration." Osgoode Hall Law Journal 57.3 (2021): 869-904. https://digitalcommons.osgoode.yorku.ca/ohlj/vol57/iss3/11 Nagy, Rosemary. "The Truth and Reconciliation Commission of Canada: Genesis and Design." Canadian Journal of Law and Society 29 (2) (2014): 52-73. Organization for Security and Co-operation in Europe (OSCE). Office for Democratic Institutions and Human Rights (ODIHR). October 2020. The Functioning of Courts in the Covid-19 Pandemic – Primer. https://www.osce.org/files/f/documents/5/5/469170.pdf Canadian Bar Association (CBA). Feb 2021. No Turning Back: CBA Task Force Report on Justice Issues Arising from COVID-19. https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/Publications %20And%20Resources/2021/CBATaskForce.pdf	
Week 4 January 28	Judicial Process and Alternative Dispute Resolution Hausegger, Chapter 3, Judicial Process and Alternative Dispute Resolution Additional Readings: Carrie Menkel-Meadow, "From Legal Disputes to Conflict Resolution and Human Problem Solving: Legal Dispute Resolution in a Multidisciplinary Context" (2004) 54 J. Legal Educ. 7-29, https://www-jstor-org.ezproxy.library.yorku.ca/stable/pdf/42893832.pdf?refreqid=excelsior%3Ae72ecfed7ef1b4769a12f723a25abd58 Mauro Capelletti, "Alternative Dispute Resolution Process within the Framework of the World-Wide Access-to-Justice Movement" (1993) 56 Mod. L. Rev. 282-296, https://www-jstor-org.ezproxy.library.yorku.ca/stable/pdf/1096668.pdf?refreqid=excelsior%3A1af167560d8ec4a81847a83305b7ab66	

	Judicial Decision-Making and Influences	
Week 5 February 4	Hausegger, Chapter 4, Judicial Decision-Making	
	Additional Readings: Lee Epstein, Some Thoughts on the Study of Judicial	
	Behavior, 57 Wm. & Mary L. Rev. 2017 (2016),	
	https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=365 6&context=wmlr	
	Vuk Radmilovic, "Strategic Legitimacy Cultivation at the Supreme Court of Canada: Quebec Secession Reference and Beyond" (2010) 43:4 Canadian Journal of Political Science. 843-69. https://www-jstor-org.ezproxy.library.yorku.ca/stable/pdf/40983557.pdf?refreqid=excelsior%3Abb0b74ba7679a477b5d680d45135e064	
Week 6 February 11	Reading Week February 15-21	

Judicial Selection and Diversity

Hausegger, Canadian Courts, Chapter 5, Judicial Selection

Additional Readings:

Irwin Cotler, "The Supreme Court Appointment Process: Chronology, Context, and Reform" (2008) 58 U. N. B. Law J. 131-146, https://go-gale-

com.ezproxy.library.yorku.ca/ps/i.do?p=AONE&u=yorku_mai n&id=GALE%7CA183315159&v=2.1&it=r

Samreen Beg, and Lorne Sossin. "Diversity, Transparency and Inclusion in Canada's Judiciary." Debating Judicial Appointments in an Age of Diversity. 1st ed. Routledge, 2018. Chapter 7- 118–141. https://www-taylorfrancis-com.ezproxy.library.yorku.ca/books/edit/10.4324/9781315400 068/debating-judicial-appointments-age-diversity-graham-gee-erika-rackley

Week 7 February 18

Supplementary Readings:

Supreme Court of Canada Appointment Process – 2023. https://www.cmf.gc.ca/scc-csc/2023/index-eng.html

Ontario Justice Appointments Advisory Committee (JAAC). Ministry of the Attorney General. https://www.ontariocourts.ca/ocj/jaac/

Ontario Justice of the Peace Appointments Advisory Committee (JPAAC). Ministry of the Attorney General. https://www.ontariocourts.ca/ocj/jpaac/

Supreme Court of Canada Judicial Appointments. https://www.fja-cmf.gc.ca/scc-csc/2021/index-eng.html

	Judicial Independence and Accountability	Τ
	Judicial Independence and Accountability	
	Hausegger, Chapter 6, Judicial Independence and Accountability	
Week 8 February 25	Additional Readings:	
	The Honourable Mr. Justice Frank Iacobucci, "The Supreme Court of Canada: Its History, Powers and Responsibilities" (2002) 4 J. Appellate Practice & Process 27-40, https://go-gale-com.ezproxy.library.yorku.ca/ps/i.do?p=AONE&u=yorku_main&id=GALE%7CA90301876&v=2.1⁢=r	
	Peter McCormick, "New Questions about an Old Concept: The Supreme Court of Canada's Judicial Independence Decisions" (2004) 37:4 Can. J. Pol. Sci. 839-862, https://www-proquest-com.ezproxy.library.yorku.ca/docview/204609715/fulltextPDF/1110F045C32C4337PQ/1?accountid=15182	

Courts, Pressure Groups and Intervenors/Government

Courts and Reference Questions

Hausegger, Chapter 7, Actors in the Process: Interest Groups Hausegger, Chapter 8, Governments in Court

Additional Readings:

Benjamin R. D. Alarie; Andrew J. Green, "Interventions at the Supreme Court of Canada: Accuracy, Affiliation, and Acceptance," Osgoode Hall Law Journal 48, no. 3 & 4 (2010): 381-410, <a href="https://heinonline-org.ezproxy.library.yorku.ca/HOL/Page?handle=hein.journals/ohlj48&id=387&collection=journals&index="https://heinonline-org.ezproxy.library.yorku.ca/HOL/Page?handle=hein.journals/ohlj48&id=387&collection=journals&index="https://heinonline-org.ezproxy.library.yorku.ca/HOL/Page?handle=hein.journals/ohlj48&id=387&collection=journals&index="https://heinonline-org.ezproxy.library.yorku.ca/HOL/Page?handle=hein.journals/ohlj48&id=387&collection=journals&index="https://heinonline-org.ezproxy.library.yorku.ca/HOL/Page?handle=hein.journals/ohlj48&id=387&collection=journals&index="https://heinonline-org.ezproxy.library.yorku.ca/HOL/Page?handle=hein.journals/ohlj48&id=387&collection=journals&index="https://heinonline-org.ezproxy.library.yorku.ca/HOL/Page?handle=hein.journals/ohlj48&id=387&collection=journals/ohlj48&i

Week 9 March 4 lan Brodie, "Interest Group Litigation and the Embedded State: Canada's Court Challenges Program" (2001) 34:2 Can. J. Pol. Sci. 357-376,

http://www.jstor.org.ezproxy.library.yorku.ca/stable/3232699.

Matthew Hennigar, "Why Does the Federal Government Appeal to the Supreme Court of Canada in Charter of Rights Cases? A Strategic Explanation" (2007) 41:1 Law & Soc. Rev. 225-250, https://onlinelibrary-wiley-com.ezproxy.library.yorku.ca/doi/pdfdirect/10.1111/j.1540-5893.2007.00296.x

Mackin v. New Brunswick (Minister of

<u>Finance</u>)— that says the state does have limited liability when it enacts unconstitutional laws, see also decision July 2024

Criminal Justice

Hausegger, Chapter 9, Criminal Justice: Policy and Process

Ontario Community Justice Center Pilots

Additional Readings:

Tymchuk, Trevor. 2011. Ontario's Justice Centre Pilots: Uniquely Tailored to Specialized Needs and Community Justice Centres: An Innovative Community-Driven Justice Model for the Future.

https://hsjcc.on.ca/ontarios-justice-centre-pilots-uniquely-tailored-to-specialized-needs-and-community-justice-centres-an-innovative-community-driven-justice-model-for-the-future-2021-11-16/

Week 10 March 11

Cecillia, Brooke. "Cloaked Meaning and Moral Craftwork: Progress and Perpetual Problems in the News Coverage of Indigenous Peoples and Canada's Justice System." Canadian Journal of Communication 46(3) (2021): 587–612.

Palma Paciocco. "Trial Delay Caused by Discrete Systemwide Events: The Post-Jordan Era Meets the Age of COVID-19." Osgoode Hall Law Journal 57.3 (2021): 835-867 https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=3607&context=ohlj

Supplementary:

Brian J. Ostrom. (2020) National Centre for State Courts. Delivering Timely Justice in Criminal Cases: A National Picture.

https://ncsc.contentdm.oclc.org/digital/collection/criminal/id/3 21

Civil Justice: Procedures and Access Hausegger, Chapter 10, Civil Justice: Private Disputes, Public Consequences Additional Readings: Suzanne E. Chiodo. "Ontario Civil Justice Reform in the Wake of COVID-19: Inspired or Institutionalized?" Osgoode Hall Law Week 11 Journal 57.3 (2021): 801-833, https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?a March 18 rticle=3606&context=ohlj Trevor C. W. Farrow. Civil Justice, Privatization, and Democracy. University of Toronto [Ontario] Press, 2014, ch 3 (privatization of civil courts) and ch 6 (concerns with privatization of civil courts). Ebook. https://booksscholarsportalinfo.ezproxy.library.yorku.ca/en/read?id=/ebooks/ebooks3/utpr ess/2014-04-24/1/9781442663640#page=236

Innovations in Justice Theories of Transformation

Siddharth Peter de Souza, and Maximilian Spohr. 2020. Technology, Innovation and Access to Justice. Future Law Services. <u>Chapter 5</u> (The Future of Law: Technology, Innovation and Access to Justice in Legal Services Around the World). Edinburgh: Edinburgh University Press. http://search.ebscohost.com.ezproxy.library.yorku.ca/login.asp

http://search.ebscohost.com.ezproxy.library.yorku.ca/login.aspx?direct=true&db=nlebk&AN=2709240&site=ehost-live

Gauvin, F.-P. (2014). Understanding policy developments and choices through the "3-i" framework: Interests, Ideas, and Institutions. Montréal, Québec: National Collaborating Centre for Healthy Public Policy.

Murphy, M. (2008). Ideas, interests, and institutions: Explaining Irish social security policy. Dublin: Combat Poverty Agency. Retrieved from: http://www.combatpoverty.ie/publications/workingpapers/2008-08_WP_IdeasInterests
AndInstitutionsExplainingIrishSocialSecurity Policy.pdf

Week 12 March 25

M. P. Castro and T.A. Guimaraes. (2020), "Dimensions that influence the innovation process in justice organizations", Innovation & Management Review, Vol. 17 No. 2, pp. 215-

231. https://www.emerald.com/insight/content/doi/10.1108/INMR-10-2018-0075/full/html#abstract

Binz, C., Truffer, B. 2017. Global innovation systems - a conceptual framework for innovation dynamics in transnational contexts. Research Policy, 46(7), 1284-1298.

https://doi.org/10.1016/j.respol.2017.05.012.

Law Commission of Ontario Commissioned Report. June 2021. Artificial Intelligence Case Study: Probabilistic Genotyping DNA Tools in Canadian Criminal Courts. https://www.lco-cdo.org/wp-content/uploads/2021/06/AI-PG-Case-Study-Final-EN-June-2021-2.pdf

European Commission for the Efficiency of Justice (CEPEJ). (2020) Possible introduction of a mechanism for certifying

EXAMS (CLASSES END DEC APRIL 8-25	3)
Week 13 April 1 LAST CLASS.	
and the judiciary: Feas study-en-cepej-2020-1: Wallace, A., & Laster, In During COVID: Will Dig Journal for Court Admin https://www.iacajourna Supplementary Reading OECD/Eurostat (2018) Collecting, Reporting a Edition, The Measurem Innovation Activities, O Luxembourg. https://www.ilibrary.org/docserver/9en.pdf?expires=162923	K. (2021). Courts in Victoria, Australia, gital Innovation Stick? International nistration, 12(2), 9, I.org/articles/10.36745/ijca.389/# gs: , Oslo Manual 2018: Guidelines for and Using Data on Innovation, 4th nent of Scientific, Technological and ECD Publishing, Paris/Eurostat, www.oecd-

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/

YORK UNIVERSITY LIBRARIES IN THE CURRENT SITUATION

In response to the current situation York University Libraries (YUL) has significantly expanded ebook content, including:

• Over 13000 ebook titles from Cambridge University Press, providing electronic access to all titles available in the humanities and social sciences published 2017 or earlier.

• Almost 6000 ebook titles on the deGruyter platform, providing access to all titles across all subject areas published 2017-2020 from Columbia, Cornell, Harvard, Princeton, Rutgers, Stanford, University of California, University of Pennsylvania, and Yale university presses.

Additionally, many publishers have made select content available temporarily, these collections include:

JSTOR Books

44 publishers have agreed to make more than 30,000 books freely available to libraries through the JSTOR platform. Publishers include Yale University Press, Columbia University Press, and the African Books Collective.

Access is available until June 30, 2020.

Access here: https://ocul-

yor.primo.exlibrisgroup.com/permalink/01OCUL_YOR/q36jf8/alma991036232694805164

Bloomsbury Collections

Delivers online access to scholarly books from Bloomsbury's Academic division. Spanning the arts, humanities and social sciences, the site features the latest research publications from Bloomsbury, T&T Clark, The Arden Shakespeare and Hart Publishing, alongside scholarship from historic imprints Continuum, Berg and Bristol Classical Press.

Access available until May 31, 2020

Access here: http://ezproxy.library.yorku.ca/login?url=https://www.bloomsburycollections.com/

Flipster

Access digital magazines on your mobile device with Flipster, the digital magazine newsstand from EBSCO. Flipster provides access to over 1800 magazines. Instructors can link to over 150 Canadian titles including Maclean's, business magazines (Forbes, Businessweek, Bloomberg), Art and Architecture (ArtNews, Architecture Digest) and other class-related subjects. Most are unlimited users, while a few are 500 concurrent users. There are also magazines that could be used for professional development or just "getting your mind off of everything" browsing type titles as well.

Access is available until June 23, 2020

Access

here: https://search.ebscohost.com/login.aspxauthtype=ip,uid&custid=s2867684&groupid=trial&profile=eon&user=s2867684&password=tri@12020

If you require specific titles that are not included in these collections, please do not hesitate to contact me or write directly to the Content Development and Analysis Department at yul_cda@yorku.ca.

Additional Resources and Key Contacts (including requesting online films & videos):

- imagelib@yorku.ca to order films or inquire about online streaming of film and videos
- OER 101 for those faculty wishing to explore freely available online options for course textbooks/materials
- Creating permanent links to available online content: <u>Creating Permalinks to York Libraries'</u> Resources
- General inquiries: <u>library@yorku.ca</u>
- Library Reseach Guides (subject list) available here: https://researchguides.library.yorku.ca/?b=s
- Online/telephone Research Assistance for students information available here: https://www.library.yorku.ca/web/ask-services/

 YUL is also looking into providing online instruction videos and information literacy classes, but for now research and writing instruction are available through the online tutorial SPARK: https://spark.library.yorku.ca/

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 <u>SPARK's Academic Integrity module</u> 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 <u>Senate Policy on Academic Honesty</u>.

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 <u>Student Accessibility Services</u> 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 <u>Code of Student Rights and Responsibilities</u>, the <u>Senate Policy on Academic Honesty</u>, 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 <u>Disruptive and/or Harassing Behaviour in Academic Situations</u>, the <u>Student Conduct and Responsibilities</u>, and the <u>Code of Student Rights & Responsibilities</u>.

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 <u>Code of Student Rights and Responsibilities</u>. Please review and familiarize yourself with behaviours that support "netiquette" in virtual classrooms by consulting the <u>Guide to Netiquette</u> and <u>Student Guide to eLearning</u>.

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 <u>Guidelines on Access of Information and Protection of Privacy</u> and the <u>Freedom of Information and Protection of Privacy Act</u>. Access to online materials, including recordings or live meetings, is subject to York University's <u>Senate Policy on Computing and Information Technology Facilities</u>.

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 <u>YUBetter Together</u> 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.
- <u>Student Accessibility Services</u> are available for support and accessibility accommodation when required.
- <u>Student Counselling, Health & Wellbeing</u> offers workshops, resources, and counselling to support your academic success.

- <u>Peer-Assisted Study Sessions (PASS) Program</u> provides student study sessions for students to collaborate and enhance their understanding of course content in certain courses.
- <u>Student Numeracy Assistance Centre at Keele (SNACK)</u> supports students in courses involving math, stats, and Excel.
- <u>The Writing Centre</u> provides multiple avenues of writing-based support including drop-in sessions, one-to-one appointments, a Multilingual Studio, and an Accessibility Specialist.
- <u>ESL Open Learning Centre (OLC)</u> supports students with building proficiency in reading, writing, and speaking English.
- <u>Learning Skills Services</u> provides tips for time management, effective study and learning habits, keeping up with coursework, and other learning-related supports.
- <u>Learning Commons</u> 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 <u>Student Support & Resources</u>.