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Public Law I: The Constitution and the Courts in Canada

AP/PPAS 3135 3.0 M Public Law I – Winter 2027 IN PERSON

Course Information

Course Instructor: Danny O'Rourke-Dicarlo
E-mail: rourke@yorku.ca

Office Hours & Location: 025 McLaughlin College
Course Time, Day & Location: 11:30am Monday, Room N120

Land Acknowledgment

First Nations peoples have lived on this part of Turtle Island for millennia, stewarding the land, the water and all that contributes to life in this region. Today, the culture and presence of First Nations, Inuit and Métis peoples enrich the lands and people of this territory. More than two centuries ago, the Mississauga people welcomed settlers to this territory, providing sustenance and engaging in trade and commerce. Between 1781 and 1820, eight treaties were signed between the Crown and the Mississaugas of the Credit First Nation, who opened their territory to settlement. Today, York University's Keele Campus is located on Toronto Purchase Treaty, No. 13 lands and is situated on the traditional territory of the Huron-Wendat and Haudenosaunee.
Treaty history is foundational, and it is our collective responsibility to honour the land, as we honour and respect those who have gone before us, those who are here and those who have yet to come. We are grateful for the opportunity to be learning, working and thriving on this land, and we commit to learn the truth and be active in the process of reconciliation (York University Land Acknowledgment).

Course Overview

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 legal research in this context.

Course Learning Objectives

By the end of this course, students will be able to:

- Acquire a comprehensive knowledge of the distinctive features of the Canadian constitution and constitutional changes
- Gain a better understanding of federal division of power and the historical trajectory of Canadian federalism
- Gain a foundational understanding of judicial interpretation of the federal diction of power and the potential of federalism review to shape federal-provincial power dynamics.
- Gain an appreciation of the dynamics and complexity of the roles of the courts and federalism review in Canada
- Develop analytical and research skills that are essential to pursuing advanced studies in the field of public policy and administration

Course Format and Organization

- This is an in-person course. Classes meet on campus on Mondays at 11:30 a.m. in Room N120, and the course eClass site serves as the hub for readings, lecture materials, announcements, and the submission of assignments.
- The course will consist of on-campus lectures, interactive discussions of the readings, and occasional additional audio-visual material. The lecture takes place during the first part of class. During the second part of class there will be an opportunity for class discussion, which we call an 'informal tutorial.' The 'informal tutorial' is optional and no new material will be covered during that time.
- To best facilitate class discussion and participation, students are expected to complete 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

Assessment	Due Date	Weight %	Course Learning Outcome
Mid-Term Exam	Distributed Feb. 5 on eClass; due Feb. 12, 2027	35%	Explication and Evaluation
Case Summary/Brief	Mar. 29, 2027	30%	Close Reading
Final Exam	Scheduled by the Registrar during the Apr. 7–24, 2027 exam period	35%	Practical Application
	Total	100%	

Assessment Descriptions

- The written assignment for this course consists of a case summary on a chosen topic drawn from a list provided below. Topics that are not specified in the list will not be accepted. The essay assignment is worth 30% of the final grade.
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- A case summary is an extended descriptive analysis on a particular court case. The aim is to assess only a particular case was decided by the court. The case comment is both a descriptive and interpretative essay which focuses on specific court case but is not restricted to a simple exposition of its details.
- Organizational Structure of a Case Summary:
- Even though there is no established set of rules on how to write a case summary, the following suggestions might be useful;
- 1-Introduce the case (specifying your rationale behind selecting this case). Identify the problem or problems under review.
- 2-Outline the main legal issues and questions.
- 3-Survey the development of law in this particular area (case law referenced) and discuss the main issues raised in the case.
- 4-Summarize the judicial ruling on the case
- The expected length of this written assignment is roughly 5-7 pages. No extensions are allowed except under exceptional circumstances. Late papers will lose 2% of its grade for each day past due date.
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- <u>Suggested Court Cases</u>:

- 1. Westendorp v. The Queen, [1983] 1 S.C.R. 43 can be accessed at

- (This case involved a municipal-by law which prohibited standing in the street for the purpose of prostitution.)
- 2. Reference re Firearms Act (Can.), [2000] 1 S.C.R. 783 (This case involves the federal firearms legislation and the Canadian gun registry.)
- 3. Re Eskimos, [1939] 2 D.L.R. 417 (also reported: [1939] S.C.R. 104) (This old Supreme Court reference case dealt with the question of which level of government had constitutional responsibility for the Inuit—then called Eskimos.)
- 4. The Queen v. Hauser, 1979 CanLII 13 (S.C.C.)
- (This is one of two cases the Supreme Court heard concerning the constitutionality of the federal Narcotics Control Act.)
- 5. Capital Cities Comm. v. C.R.T.C., 1977 CanLII 12 (S.C.C.) (This case deals with the question of which level of government is responsible for regulating cable television.)
- 6. Rothmans, Benson & Hedges Inc. v. Saskatchewan, 2005 SCC 13, [2005] 1 S.C.R. 188 (A case involving a provincial government's attempt to regulate tobacco advertising.)

- 7. Reference re Employment Insurance Act (Can.), ss. 22 and 23, 2005 SCC 56, [2005] 2 S.C.R. 669 (A reference case where the federal maternity and parental benefits provided under Employment Insurance were challenged on division of powers grounds.)
- 8. Reference as to the Validity of Section 5(A) of the Dairy Industry Act, 1948 CanLII 2 (S.C.C.) (known as Margarine Reference)
- 9.Union Colliery Co.v. Bryden (1899)
- 10. Saumur v. City of Quebec (1953)
- 11. Reference Re Alberta Statutes (1938)
- 12. Switzman v. Elbling (1957)
- 13. Edwards v. Canada (1930)-- Persons Case
- 14. *Ontario Hydro v. Ontario*.(1993)
- 15. *R. v. Hydro-Quebec,* [1997]
- 16. R. v. Comeau, 2018 SCC 15 (A New Brunswick resident challenged a fine for bringing beer and liquor across the provincial border; the Court interpreted s. 121 of the Constitution Act, 1867 and the scope of free interprovincial trade.)
- 17. Reference re Genetic Non-Discrimination Act, 2020 SCC 17 (A reference on whether Parliament's prohibitions against compelled genetic testing and disclosure were a valid exercise of the federal criminal law power under s. 91(27).)
- 18. References re Greenhouse Gas Pollution Pricing Act, 2021 SCC 11 (A reference on whether the federal carbon-pricing scheme could be upheld as a matter of national concern under the peace, order and good government power.)
- 19. Murray-Hall v. Quebec (Attorney General), 2023 SCC 10 (A challenge to Quebec's prohibition on home cannabis cultivation, engaging the double aspect doctrine and the boundary between provincial powers and the federal criminal law power.)
- 20. Reference re Impact Assessment Act, 2023 SCC 23 (A reference on the constitutionality of the federal environmental impact assessment regime and the division of powers over environmental matters.)
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- 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	(marginally below 50%)	Marginally Failing
F	0	(below 50%)	Failing

How to Use Citations

Proper citation of sources is essential to academic integrity. All written assignments in this course must use a recognized citation format. Students may use McGill Guide, APA, or Chicago style, but must be consistent throughout their submission. Failure to properly cite sources may constitute a breach of academic honesty. The following resources are available to support research and citation:

- 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

Required readings: Peter Hogg *Constitutional Law of Canada,* Student Edition, available from the bookstore: $184.50 to $246.00 ***Pre-owned or online copies from 2017-2023 are perfectly suitable.*

There will be no course-pack for this course, but you can expect up to three additional readings each week, along with the appropriate sections of the textbook. Please note that this course requires extensive and dedicated reading of the course material.

Course Schedule

Week/Module Dates	Readings and Activities
1 – Jan. 4	***Introduction to the Course***
2 – Jan. 11	***Sources and Structure of Canadian Law***

	• Hogg Chapters 1, 2, 3 *Constitution Act 1867*, *Constitution Act 1982*		
3 – Jan. 18	***Canadian Constitutional Principles*** ● Hogg Chapters 5.1-4, 9.1-2, 12		
4 – Jan. 25	***The Canadian Court System*** ● Hogg Chapters 7, 8 *Ref. re. Remuneration of Judges*		
5 – Feb. 1	***Judicial Review*** ● Hogg Chapter 15.1-4, 15.9 *Edwards v. A.-G. Can.*		
6 – Feb. 8	***No formal lecture*: I will be available in class for a Mid-Term Q and A session beginning at 11:30am (Mid-Term due online via eClass by end of day, Feb. 12)**		
Reading Week	***Winter Reading Week (Feb. 13–19, including Family Day, Feb. 15) – no classes***		
7 – Feb. 22	**TBA**		
8 – Mar. 1	***POGG – Peace, Order and Good Government*** ● Hogg Chapter 17 ● *Russell v. The Queen* *Anti-Inflation Reference*		
9 – Mar. 8	***Criminal Law*** ● Hogg Chapter 18 ● *Margarine Reference* ● *RJR-MacDonald v. Canada*		
10 – Mar. 15	● ***8 -Trade and Commerce 9- Property and Civil Rights*** ● Hogg Chapter 20, 21 ● *Dominion Stores v. The Queen* *Manitoba Egg Reference*		
11 – Mar. 22	● ***8 -Trade and Commerce 9- Property and Civil Rights***		

	• Hogg Chapter 20, 21 • *Dominion Stores v. The Queen* *Manitoba Egg Reference*		
12 – Mar. 29	• ***Aboriginal Peoples*** • Hogg Chapter 28 *The Queen R v Van Der Peet*	**CASE SUMMARY DUE ONLINE**	

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.