

## Course Outline

**COURSE:** LAWS 2005B – INTRODUCTION TO PUBLIC LAW

**PREREQUISITES:** LAWS 1000 (Law 51.100) or an Introduction to Political Science PSCI 1000 or the combination of PSCI 1001 and PSCI 1002, or second year status or higher in the Bachelor of Public Affairs and Policy Management Program.

**TERM:** Fall/Winter 2007-08

**CLASS: Day & Time:** Wednesdays, 08:35-11:25

**Room:** 516 Southam Hall

**INSTRUCTOR:** Mr. Jeffrey H. McCully, Barrister & Solicitor

**CONTACT:** **Office:** C476 Loeb  
**Office Hrs:** By Appointment Only  
**Telephone:** 613-761-0420, during business hours  
**Email:** jeffrey.mccully@gmail.com

Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or ITV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is November 9, 2007 for December examinations and March 14, 2008 for April examinations. With regard to accommodations for religious obligations and pregnancy, please see <http://www.carleton.ca/law/accommodations.htm>.

**Course Objectives and Content**

This topical course examines the law concerning the Canadian state and its relation to society. A more essential course in law or public affairs will be difficult to find. Public law plays an increasingly significant role in our society. Moreover, it is a role that is already very broad and is expanding all of the time. Public law courses used to focus almost exclusively on legislative assemblies, cabinet ministers and Senates (chambers of “sober second thought”). Courts were the ‘referees’ of competing or multi-jurisdictional legislative decisions only. Now, a more realistic approach is to highlight the powerful role of the lawyers and the courts and the importance of the entrenched Charter of Rights, and the powers that flow from it. The “Americanization of politics” is a coined phrase and will be examined.

This course will provide an introduction and an underpinning to Canadian public law, with focus on issues of reform and of the role of the courts. We will examine the “legalization of politics”, the role of administrative law in the context of the expression of the liberal democratic state, constitutional reform and the fundamental rights and freedoms entrenched in our constitution. We will examine equality rights, aboriginal rights and claims, various legal rights and the political system itself.

In the **first term**, we will look at law and the state, examining basic constitutional law concepts, particularly the federal system, its interpretation, change and suggestions for reform. The political, legal and constitutional aspects of the Quebec secession question will be analyzed in light of the Supreme Court of Canada’s *Quebec Secession Reference* decision. We also examine various group rights, like aboriginal rights and public international law.

In the **second term**, we will focus on theories of the state, on administrative law and process and on basic rights. We will also delve more deeply into the *Canadian Charter of rights and Freedoms* and the legal-political controversies surrounding the interpretation and impact of the Charter. (This area provides fertile ground for essays).

This analysis will include an appreciation of the expanded role of the courts under the Charter, leading to a debate about the policy-making role of the courts. How are the courts involved? As a normative enquiry, how should the judges and the courts be involved?

### ***Class Format***

The classes will consist of lectures principally, although class discussion of issues is strongly encouraged.

### ***Course Assessment***

**5% - Participation** (Participate in class discussion; relate topical, relevant information)

**25% - In-Class Test** (Two hour, closed book, essay, short answer)

**30% - Paper** (covering one of the constitutional law topics outlined below; approximately 2600 words or 10-12 word-processed pages; due **Wednesday, March 12, 2008**)

**40% - Final Examination** (covers both terms, but with great emphasis on Term 2; essay, short answer and multiple choice format)

### ***Required Readings***

The required readings are the two Laws 2005 Sourcebooks. These will be available in the Bookstore.

**First Term:** The LAWS 2005 first term sourcebook: David Elliott, ed., *Introduction to Public Law: Sourcebook*, 6<sup>th</sup> edition (North York, Captus Press, 2003) (earlier editions are now outdated).

**Second Term:** The LAWS 2005 second term sourcebook: David Elliott, ed., *Introduction to Public Law: Readings on the State, the Administrative Process and Basic Values*, 6<sup>th</sup> edition (North York, Captus Press, 2002) (earlier editions are outdated) and;

### ***Optional Readings***

See the readings in the Sourcebooks' bibliographies, footnotes and endnotes of both sourcebooks. I will also suggest topical readings.

**I will often bring in handouts to illustrate relevant issues. The content of these handouts is examinable.**

### ***Topic Schedule***

Required readings are found in the Law 2005 (51.205) Coursepack, comprising two books above, which are available at the University Bookstore. The topics are keyed to the headings in the Outline and Table of Contents at the beginning of each of the two LAWS 2005 Sourcebooks.

Other required readings may be assigned, such as the aforementioned handouts or particularly relevant and interesting readings that may become available during the term.

### **First Term**

<b>September 12</b>	Law and Public Law
<b>September 19</b>	The Constitution
<b>September 26</b>	Constitution Act, 1867
<b>October 3</b>	The Judiciary
<b>October 10</b>	Key Early Decisions

October 17	Judicial Committee: Later Decisions and General Assessment
October 24	POGG, Trade and Commerce and other Powers: The Modern Era
October 31	The Legislature, the Executive and Executive Power
November 7	The <i>Constitution Act, 1982: Prologue</i> and General Aspects
November 14	The <i>Constitution Act, 1982: Specific Aspects</i>
November 21	Formal and Informal Constitutional Changes
November 28	Formal and Informal Constitutional Changes continued Secession, Unity and the Future

### Second Term

January 9	Law, State, Social Goals and Techniques
January 16	Administrative Law, Structure and Action
January 23	Non-Judicial and Judicial Control **** <b>NOTE: Deadline for Essay Selection</b> ****
January 30	Judicial Review and Procedural Control
February 6	Substantive Review
February 13	SECOND TERM MIDTERM
February 20	<b>Winter Break – No Classes</b>
February 27	Theory, Problems and Reform
March 5	Basic Values and their Protection
March 12	Scope and Interpretation of the Charter <b>**Research Essays are due**</b>
March 19	Fundamental Freedoms and Fundamental Justice
March 26	Equality
April 2	Group rights, Collective Bargaining and Aboriginal Rights
April 9	<b>REVIEW</b>

### Important Administrative Notes

Failure to complete any portion of the required evaluation will result in an F grade. A deferred essay may be written upon application to and approval from the Registrar's office. Late essays will be marked down on half letter grade (e.g., B to B-) for each day submitted after the due date. Essays must be word processed and submitted in hard copy (hand-written papers, computer files or email attachments will not be accepted). Please retain a

photocopy or secure file copy of the submitted essay. Essays must be submitted to me on the due date. The Department of Law assumes no responsibility for essays that are submitted in an irregular manner.

Graded essays may be picked up from class, from the Law Office (C473 Loeb) during regular hours or returned by post (if enclosed with a stamped, self-addressed envelope).

All assignments must be original and prior approval must be obtained from me if it is intended to submit work that has been previously, or is currently, submitted for credit in another course. (It is highly unlikely to get such approval). Please note carefully the University regulations on plagiarism and academic offences. Please note the Department of Law's Legal Style Sheet for Term Papers.

The paper must be individually prepared and well researched, with proper citation, including footnotes or endnotes and bibliography. When citing from Supreme Court of Canada decisions, please cite the page number in all pre-1995 decisions and the paragraph number in post-1995 decisions. Note that Internet versions of pre-1995 judgements were edited by the LexUM team at the University of Montreal, clearly showing the page numbers of the Supreme Court Reports.

Extensions: Expect that extensions will only be granted for (i) disabling illness, verified by a medical certificate, or (ii) death in the family.

Note Page 44, 2.5 b) Deferred Final Examinations, Paragraph 2: "...The granting of a deferral also requires that the student has performed satisfactorily in the course according to the evaluation scheme established in the Course Outline, excluding the final examination for which deferral privileges are requested. Reasons for denial of a deferral may include, among other conditions, a failure to (i) achieve a minimum score in the course before the final examination; (ii) attend a minimum number of classes; (iii) successfully complete a specific task (e.g., term paper, critical report, group project...); ...or (vi) meet other reasonable conditions of successful performance...."

### **Course Paper**

The paper is a central element of this course. All students should familiarize themselves with the paper and electronic resources at the MacOdrum Library, with the reference collection at the Department of Law's Law Resource Centre at D494 Loeb, with QuickLaw and other electronic databases and with other research resources of the Internet. If you require additional help with research or writing skills, do not hesitate to contact the Writing Tutorial Service at 520-2600, ext. 6632.

For the content of your paper, the following qualities are important:

- (a) good organization and use of sources;
- (b) comprehensive and up-to-date treatment of the subject-matter;
- (c) originality;
- (d) accuracy in grammar and law;
- (e) reasoned analysis (both sides of an issue, comparisons, assessments, logic);
- (f) clarity.

### **Possible Topics:**

Please choose one of the following topics for your paper:

- 1) Highlighting Supreme Court of Canada decisions studied in this course, compare and critically assess the main arguments in one of the following books: F.L. Morton and R. Knopff, *The Charter Revolution and the Court Party* (Peterborough: Broadview Press, 2000); and Robert Ivan Martin, *The Most Dangerous Branch. How the Supreme Court of Canada Has Undermined Our law and Our Democracy* (McGill-Queen's University Press, 2003).

- 2) Write a comment on one of the following decisions, addressing all of these questions: i) What was the Court asked and what did it decide? ii) What impact has the decision had on subsequent caselaw? iii) What are the implications of the decision in regard to the three kinds of judicial activism discussed in Chapter 4 of your Casebook? –
- a) *Suresh v Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. 1 (About administrative law fairness, boundaries between different areas of judicial control, civil rights, public security, related issues).
  - b) *Lavoie v Canada* [2002] S.C.J. No. 24 (About the Charter, equality, citizenship and related issues)
  - c) *R. v. Joshua Bernard (N.B.) (30005) and R. v. Stephen Frederick Marshall, et. al. (N.S.) (30063)*. (Concerning treaty rights, aboriginal title, logging rights on Crown lands, decided in July, 2005).
- 3) Another Supreme Court of Canada decision, involving the *Canadian Charter of Rights and Freedoms*, provided it is pre-cleared by me by the topic selection deadline at the latest. Remember that I must have time to review the case first.