

Course Outline

COURSE:	LAWS 2005 B – Public Law
TERM:	Fall 2008/09
PREREQUISITES:	either LAWS 1000 [1.0] or PSCI 1000 [1.0], 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.
CLASS:	Day & Time: Thursday, 2:35 – 5:25
	Room: Tory Building 208
INSTRUCTOR:	Professor Zoran Oklopčic
CONTACT:	Office: Loeb D483
	Office Hrs: M 3:30 – 5:30
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"Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities for a formal evaluation of disability-related needs. Registered PMC students are required to contact the centre, 613-520-6608, every term to ensure that I receive your letter of accommodation, no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by November 7, 2008, for December examinations, and March 6, 2009, for April examinations." With regard to accommodations for religious obligations and pregnancy, please see http://www.carleton.ca/pmc/students/accom_policy.html

COURSE DESCRIPTION

Public law is the backbone of every legal system. It affects us on a daily basis. Decisions concerning the allocation of government responsibilities for social programs, procedural rights and protections in administrative contexts, and the fundamental rights of the citizens in relation to the state are all rooted in public law.

The aim of the course is to enable you to become familiar with the public law of Canada and develop a solid base for your more specific academic and professional pursuits in the years to follow.

In the first term we will outline the evolution and framework of the constitutional governance in Canada. We will look into how the Constitution organizes political power through its territorial division and functional separation. In the second term we will look at how Canadian public law affects the lives of individuals, social groups, and society as a whole. We will examine the basic mechanism of public law's influence: the courts. Particular attention will be given to the *Canadian Charter of Rights and Freedoms* and the jurisprudence it has generated. Finally, we will tackle the interface of Canadian public law with public international law through the lens of *Quebec Secession Reference*.

The course depends on student engagement and interaction. Questions and discussion on specific points are welcomed and encouraged. In order to reap maximum benefits from the course material and class discussions students will be expected to have read the required material before each class.

REQUIRED TEXTS

The required readings are the two LAWS 2005 sourcebooks. They are available in the Carleton University Bookstore. Other required readings may be assigned during the year.

First term: David W. Elliott, ed., Introduction to Public Law: Sourcebook, 7th edition (North York, Captus Press, 2007) [earlier editions are outdated].

Second term: David W. Elliott, ed., Introduction to Public Law: Readings on the State, the Administrative Process and Basic Values, 6th, edition (North York, Captus Press, 2007) [earlier editions are outdated].

SUPPLEMENTARY TEXTS (on Reserve)

You are encouraged to explore the readings in the Sourcebooks' bibliography, sources cited in footnotes and endnotes, and the readings listed below.

Peter H. Russell, *Constitutional Odyssey: Can Canadians become a sovereign people?*, 3rd ed. (Toronto: University of Toronto Press, 2004)

Patrick Macklem, *Indigenous difference and the Constitution of Canada*, (Toronto: University of Toronto Press, 2004)

Peter W. Hogg, *Constitutional Law of Canada* (Scarborough, Ont. : Thomson Carswell, c2006.)

For an excellent glossary of Canadian constitutional terms see:

<http://www.law.ualberta.ca/centres/ccs/keywords.php>

Another excellent internet resource: Stanford Encyclopedia of Philosophy.

See for example, "Constitutionalism", <http://plato.stanford.edu/entries/constitutionalism/>

OR

"Federalism", <http://plato.stanford.edu/entries/federalism/>

EVALUATION

- A. 45 % Fall Exam**
(December 2008 – on first term's material: multiple choice questions, short answer questions, and essay)
- B. 10% Class Participation**
(Students will be required to participate regularly in class discussions)
- C. 45% Final Exam**
(April 2009 – on second term's material: multiple choice questions, short answer questions, and essay)

SCHEDULE**First Term**

- 1. Sept. 4 Overview of the course. Introduction: What is public law?**
Overview of course and discussion of basic concepts: law, public law, the state, the relationship between law and state
Required reading: Elliott I, Ch. 1
- 2. Sept. 11 The Constitution**
Nature, functions, sources; 'representative' and 'responsible' government; liberal/constitutional democracy; constitutional evolution. A first look at the *Quebec Secession Reference*
Required reading: Elliott I, Ch.
[Optional reading: the text of the *Secession Reference*:
<http://csc.lexum.umontreal.ca/en/1998/1998rcs2-217/1998rcs2-217.html>]
- 3. Sept. 18 The Constitution Act, 1867**
The structure and content of the Constitution Act 1867 in the context of the political and socioeconomic problems of confederation; federalism and the division of powers; centralization vs. decentralization.
Required reading: Elliott I, Ch. 3

- 4. Sept. 25 **The Relationship Between the Legislative and Executive Branches of Government****

The functions of legislature and executive. A look into House of Commons procedure and practice; electoral reform; executive authority.
Required reading: Elliott I, Ch. 8
- 5. Oct. 2 **The Judiciary****

A first look at the court structure and judicial functions in Canada – including two forms of judicial review: judicial review of legislation and judicial review of administrative action; the nature and of judicial decision-making; active vs. restrained forms of judicial intervention; the separation of powers between judiciary and the other branches of government; checks and balances and judicial independence.
Required reading: Elliott I, Ch. 4
- 6. Oct 9 **The Courts' Impact on Canadian Federalism: The Judicial Committee of the Privy Council (JCPC)****

What is JCPC? Key early decisions, later decisions and general assessment.
Required reading: Elliott I, Ch.5
- 7. Oct. 16 **The Courts' Impact on Canadian Federalism in the Modern Era: The Supreme Court of Canada****

A focus on peace order and good government (POGG), trade and commerce and other powers in the modern era. An evaluation of whether the SCC has taken a different approach from that taken by the JCPC since it replaced it as Canada's highest constitutional court.
Required reading: Elliott I, Ch. 6
- 8. Oct. 23 **Developments in Canadian Federalism****

The concepts of "watertight compartments" and "shared responsibility"; "federal-provincial financial agreements"; the constitution and the health care.
Required reading: Elliott, Ch. 7
- 9. Oct. 30 **Constitutional Change in Canada: The Patriation****

The political developments leading to the patriation of the constitution; the adoption of the amending procedures, a first look at the *Charter*.
Required reading: Elliott I, Ch. 9
- 10. Nov 6 **Overview of the Constitution Act, 1982****

A more detailed look at the Charter, aboriginal provisions and amending procedures.
Required reading: Elliott I, Ch. 10
- 11. Nov 13 **Constitutional Change in Canada II: Formal and Informal Changes****

The role of political culture, the failures of Meech Lake and Charlottetown accords; 1995 referendum.
Required reading: Elliott I, Ch.11
- 12. Nov 20 **Secession, Unity and the Future: Is there a right to secession?****

An overview of the secessionist political mobilization in Canada up to 1995; a detailed exploration of the reasoning in the *Quebec Secession Reference*; "duty to negotiate in good faith", what does it entail?; the role of international law in the secession of Quebec.
Required reading: Elliott I, Ch. 12
- 13. Nov 27 **Review Class****

Second Term

1. Jan. 8 **Law, State and Social Goals and Techniques**
A more detailed development of some of the themes raised in the introductory session of the 1st term.
Required reading: Elliott II, Ch. 1
2. Jan 15 **Administrative Law, Structure and Action: Non-judicial and Judicial Control**
What is administrative law? What is its relationship to constitutional law? Overview of statutory delegation of governmental powers, etc.
Required reading: Elliott II, Ch. 2 and 3 (with more of a focus on 2)
3. Jan 22 **Administrative Law, Structure and Action: Non-Judicial and Judicial Control (cont'd)**
Required reading: Elliott II, Ch. 2 and 3 (with more of a focus on 3)
4. Jan 29 **Judicial Review and Procedural Control; Substantive Review**
Overview of two forms of judicial review of administrative action: procedural and substantive review.
Required reading: Elliott II, Ch. 4 &5
5. Feb 5 **Theory, Problems and Reform**
Administrative law reform: state goals, reform priorities, role of courts and the rule of law in relation to administrative decision-making.
Required reading: Elliott II, Ch. 6
6. Feb 12 **Basic Values and Their Protection.**
An examination of the tensions between democratic values and the judicial protection of constitutional rights.
Required reading: Elliott II, Ch. 7 and Ch. 8
- Feb 19 **WINTER BREAK – NO CLASS**
7. Feb 26 **Scope and the Impact of the Charter**
Scope and interpretation of Charter rights, the justification of rights infringements under section 1. and the Charter's override ('notwithstanding') clause (section 33.)
Required reading: Elliott II, Ch. 7 and Ch. 8
8. Mar 5 **Fundamental Freedoms and Fundamental Justice**
The Charter's fundamental freedoms (freedom of expression, religion, conscience, and association) and legal rights (life, liberty and security of the person).
Required reading: Elliott II, Ch. 9
9. Mar 12 **Equality Rights**
The shifting interpretation of Charter equality rights. To what extent can the Charter protect or guarantee equality? What forms of inequalities are the Charter's provisions most suited to address
Required reading: Elliott II, Ch. 10
10. Mar 19 **Group Rights: Collective Bargaining and Aboriginal Rights**
Group rights under the Charter: What is meant by group rights? How well does the Charter protect them?
Required Reading: Elliott II, Ch. 11.
11. Mar 26 **Public International Law**
Conclusion of discussion of group rights with a focus on labour-related rights (e.g. collective bargaining., right to strike) and aboriginal rights.
Required Reading: Elliott II, Ch. 12.
12. Apr 2 **Review class**