

Course Outline

COURSE:	LAWS 2005 C - Public Law	
PREREQUISITES:	Either LAWS 1000 [1] 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	
TERM:	Fall/Winter 2007 - 2008	
CLASS:	Day & Time: Tuesdays at 6:05p.m. to 8:55p.m. Room: Southam Hall Room 306	
INSTRUCTOR:	Patrick Murphy	
CONTACT:	Office:	C476 Loeb Building
	Office Hrs:	Tuesdays from 5:00p.m. to 6:00p.m.
	Telephone:	613-244-2374
	Email:	pmurphy@beament.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 & CONTENT:

Public law – the law concerning the Canadian state and its relation to society – 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 citizens in relation to the state are all rooted in public law.

This course provides an introduction to Canadian public law with a special emphasis on the relationship between courts, other branches of government, and individuals/groups within society. In the first term, we will be looking at law and the role of the state, and at the Canadian Constitution with an emphasis on the federal system and its interpretation, change and reform. In the second term, we will focus on theories of the state, on the administrative process and administrative law, the *Canadian Charter of Rights and Freedoms* and fundamental human rights, as well as some aspects of public international law.

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

REQUIRED READING:

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

First term: The LAWS 2005 first term sourcebook: David W. Elliott, ed., *Introduction to Public Law: Sourcebook*, 7th ed. (North York, Captus Press, 2007) (earlier editions are outdated);

Second term: The readings indicated in the LAWS 2005 second term sourcebook: David W. Elliott, ed., *Introduction to Public Law: Readings on the State, the Administrative Process, and Basic Values*, 6th ed. (North York: Captus Press, 2007) (earlier editions are outdated).

OPTIONAL READINGS:

You are encouraged to read some of the following optional readings to gain a more in depth understanding of topics that are of particular interest to you: LAWS 2005 reserved readings in the main library; readings in the Sourcebook's bibliography; sources cited in the footnotes and endnotes of both sourcebooks; and readings listed in this course outline.

Some additional optional readings may be recommended during the course. Some are available (under LAWS 2005) for purchase in the Carleton University Bookstore; however no reading designated as "optional" need be purchased.

The following texts which include some of the optional readings for this course are available on reserve:

- Roger Gibbins, *Conflict and Unity*, 3d ed. (Scarborough: Nelson Canada, 1994)
- Janet Hiebert, *Charter Conflicts: What is Parliament's Role?* (Montreal: McGill Queen's Press, 2002)
- Peter W. Hogg, *Constitutional Law of Canada* (Scarborough: Carswell, 2003)
- Paul Howe & Peter H. Russell, eds., *Judicial Power and Canadian Democracy* (Montreal: McGill-Queen's Press, 2001)
- David Jones & Anne S. de Villars, *Principles of Administrative Law*, 3rd ed. (Scarborough: Carswell, 1999)
- Bayard Reesor, *The Canadian Constitution in Historical Perspective* (Scarborough: Prentice Hall, 1992)
- Kent Roach, *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue* (Toronto: Irwin Law, 2001)
- Peter H. Russell et al, *Federalism and the Charter: Leading Constitutional Decisions* (Ottawa: Carleton University Press, 1989)
- Craig Forcese and A. Freeman, *The Laws of Government: The Legal Foundations of Canadian Democracy* (2005)

EVALUATION PROCEDURES:**A. 45% Fall Exam**

(December 2007 – on first term's material – essay, short answer and/or multiple choice questions)

B. 10% Participation

(Students will be required to participate regularly in class discussions)

C. 45% Final Exam

(April 2008 – on second term's material– essay, short answer and/or multiple choice questions)

Students must complete all components of the evaluation scheme in order to obtain a passing grade. For exam purposes, you are only responsible for what is included in the "required" readings and everything discussed in the lectures. Final exam deferrals are not possible unless a student has performed satisfactorily in the course and has missed no more than three classes.

LECTURE AND READING SCHEDULE: FIRST TERM

Elliott I: David W. Elliott, ed., *Introduction to Public Law: Sourcebook*, 7th ed. (North York, Captus Press, 2007)

Elliott II: David W. Elliott, ed., *Introduction to Public Law: Readings on the State, the Administrative Process, and Basic Values*, 6th ed.

1. Sept. 11 Introduction: Law and Public Law

Overview of course and discussion of basic concepts: law, public law, the state, the interrelationship between law and politics, etc.

Required Reading: Elliott I, ch. 1

2. Sept. 18 The Constitution

Nature, functions, sources; 'representative' & 'responsible' government; liberal/constitutional democracy; constitutional evolution; a first look at the *Quebec Secession Reference* and its underlying principles (federalism, democracy, constitutionalism and the rule of law, respect for minority groups)

Required Reading: Elliott I, ch. 2

[Optional reading: Hogg, chs 1, 2, 3 & 5.7 (a-c); You will find excerpts of from the *Quebec Secession Reference* in Elliott I and the whole text can be found on the internet at:

http://www.lexum.umontreal.ca/csc-scc/cgibin/disp.pl/en/pub/1998/vol2/html/1998scr2_0217.html

3. Sept. 25 The Constitution Act, 1867

Overview: 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; other principles of our Constitution

Required Reading: Elliott I, ch. 3

[Optional reading: Hogg ch. 5]

4. Oct. 2 The Relationship Between the Legislative and Executive Branches of Government

Required Reading: Elliott I, ch. 8

5. Oct. 9 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 of judicial decision-making; active vs. restrained forms of judicial intervention; the separation of powers between the judiciary and the other branches of government; checks and balances; and judicial independence

Required Reading: Elliott I, ch. 4

[Optional reading: Hogg, chs 7 & 8]

6. Oct 16 The Courts' Impact on Canadian Federalism: The Judicial Committee of the Privy Council (JCPC)

The Judicial Committee of the Privy Council (JCPC): key early decisions, later decisions, general assessment.

Required Reading: Elliott I, chs 5 & 6

7. Oct. 23 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 Supreme Court of Canada 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. 7

8. Oct. 30 The Road to Constitutional Reform: Patriation of the Constitution, *Constitution Act, 1982, Canadian Charter of Rights and Freedoms*

The Patriation of the Constitution, the adoption of amending procedures, a first look at the *Charter*.

Required Reading: Elliott I, chs 9 & 10 (with more of a focus on ch.9)

[Optional reading: Hogg ch. 3.5 (a,b) & ch. 4]

9. Nov. 6 *Constitution Act, 1982 (including Charter) (cont'd)*

Required Reading: Elliott I, chs 9 & 10 (with more of a focus on ch.10)

[Optional reading: see previous class]

10. Nov. 13 Exam Preparation Class & Formal and Informal Constitutional Changes

Provincial equality, provincial asymmetries, and special attention to the position of Aboriginal Peoples

Required Reading: Elliott I, ch. 11

11. Nov. 20 Secession, Unity, and the Future: Is there a right to secession?

From the Quebec referendum to the *Secession Reference* to the *Clarity Act*; Aboriginal people in Quebec and the secession project.

Required Reading: Elliott I, ch. 12 especially paragraphs 82, 96, and 139 of the *Quebec Secession Reference* (excerpts in Elliott I and full text online: http://www.lexum.umontreal.ca/csc-scc/en/pub/1998/vol2/html/1998scr2_0217.html)

[Optional reading: Hogg ch. 5.7]

12. Nov. 27 Review Class

LECTURE AND READING SCHEDULE: SECOND TERM

13. 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, c. 1

14. Jan.15 Administrative Law, Structure and Action: Non-Judicial and Judicial Control

What is administrative law? What is its relationship to constitutional law (including the *Charter*)? Statutory delegation of governmental powers, etc.

Required Reading: Elliott II, ch. 2 & 3 (with more of a focus on ch. 2)

15. Jan. 22 Administrative Law, Structure and Action: Non-Judicial and Judicial Control (cont'd)

Required Reading: Elliott II, ch. 2 & 3 (with more of a focus on ch. 3)

16. 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, chs 4 & 5

17. 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

18. 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

[Optional reading: Hiebert ch.2]

19. Feb. 19 WINTER BREAK – NO CLASS

19. Feb. 26 Scope and 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. 8

[Optional Reading: Hiebert ch. 9]

20. Mar. 4 The Relationship Between Courts and Legislative Institutions Under the *Charter*

What is the best way of conceiving of the interaction of judicial and legislative institutions under the *Charter*: the legalization of politics? the protection of fundamental rights? a dialogue over the scope and application of *Charter* rights?

Required Reading: Elliott II, chs.7 & 8

[Optional reading: Hiebert ch. 3, Roach ch. 15]

21. Mar.11 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

22. Mar. 18 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

23. Mar. 26 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

[Optional reading: Hogg ch. 27]

24. Apr. 1 Public International Law and Review

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