

Course Outline

COURSE:	LAWS 2502 B	
TERM:	Winter 2013	
PREREQUISITES:	1.0 credit from LAWS 1000 [1.0], PAMP 1000 [1.0], PSCI 1001, PSCI 1100, and PSCI 1200.	
CLASS:	Day & Time:	Thursday 14:35-17:25
	Room:	Please check with Carleton Central for current room location
INSTRUCTOR:	Stacy Douglas	
CONTACT:	Office:	Loeb D 496
	Office Hrs:	Monday 12:00-14:00
	Telephone:	613-520-2600 x. 8028
	Email:	Stacy_Douglas@carleton.ca

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.carleton.ca/equity/>

COURSE DESCRIPTION

This course will give students an introduction to the Canadian Charter of Rights and Freedoms, as well as the deeply political questions it occasions. As a class we will ask critical questions about the persistent tension between individual rights and national security, the ideal relationship between government and governed, rights and their ability (or lack thereof) to confront legacies of colonialism, and the compatibility of democracy with the liberal idea of the rule of law. Students can expect to emerge from this class with a solid understanding and critical analysis of: the contents of the Charter, the role of judicial review, the difference between civil and socio-economic rights, as well as the function of tribunals and ombudsmen in the execution of administrative law.

TEACHING TEAM

Name	Role	Email
Professor Stacy Douglas	Professor	Stacy_Douglas@carleton.ca
Alexandra Dodge	Teaching Assistant	AlexandraDodge@cmail.carleton.ca
Marsha Ellis	Teaching Assistant	MarshaEllis@cmail.carleton.ca
Claire Whalen	Teaching Assistant	ClaireWhalen@cmail.carleton.ca

REQUIRED TEXTS (Available at: Octopus Books, 116 Third Ave., 613-233-2589)

1. Course Pack
2. Kafka, Franz (1995) *The Trial*. New York: Schocken Books.

SUPPLEMENTARY TEXTS

Elliott, D.W. (2007) *Introduction to Public Law: Readings on the State, the Administrative Process and Basic Values*, 6th ed. Ottawa: Captus Press.

Battiste, Marie and J. Youngblood Henderson (2000). *Protecting Indigenous Knowledge: A Global Challenge*. Saskatoon: Purich Press.

Bannerji, Himani (2000) *The Dark Side of the Nation: Essays on Multiculturalism, Nationalism, and Gender*. Toronto: Canadian Scholars Press.

Borrows, John (2002) *Recovering Canada: The Resurgence of Indigenous Law*. Toronto: University of Toronto Press.

Hutchinson, Allan C. (1995) *Waiting for Coraf: A Critique of Law and Rights*. Toronto: University of Toronto Press.

Lawrence, Bonita (2012) *Fractured Homeland: Federal Recognition and Algonquin Identity in Ontario*. Vancouver: UBC Press.

Monaghan, Patrick J. (2006) *Constitutional Law (Third Edition)*. Toronto: Irwin Law.

Pavlich, George (2011) *Law and Society Redefined*. Oxford: Oxford University Press, 152-170.

Razack, Sherene (Ed) (2002) *Race, Space, and the Law: Unmapping a White Settler Society*. Toronto: Between the Lines.

Turner, Dale (2006) *This is Not A Peace Pipe: Towards a Critical Indigenous Philosophy*. Toronto: University of Toronto Press.

EVALUATION

Assignment	Weight	Due Date
First Writing Assignment	25%	14 February 2013
Quiz	10%	On CU Learn the week of 11 March 2013
Library Tutorial	10%	21 March 2013
Final Writing Assignment	30%	10 April 2013
Seminar Participation	25%	Weekly
All components must be completed in order to get a passing grade.		

First Writing Assignment (25%)

The first writing assignment will be made available to students on 31 January 2013. It is a 1500 word assignment that is due two weeks later. As for all assignments in the course, appropriate academic style, including referencing, is mandatory (see below). Please follow the instructions on the assignment.

DUE: AT THE BEGINNING OF SEMINAR ON 14 FEBRUARY 2013

Quiz (10%)

There will be a quiz made available to students on CU Learn. It will be available for students to complete beginning at 9am on 11 March 2013. Once you begin the quiz you will have 30 minutes to complete it. The quiz will no longer be available to you after 5pm on Friday 15 March. Each student will be assigned their own individual quiz. Therefore, no two quizzes will be the same. Any students who attempt to cheat will be appropriately disciplined.

DUE: NO LATER THAN 5PM ON 15 MARCH 2013

Library Tutorial (10%)

On 21 March there will be no lecture. Rather, students are required to attend a library tutorial. Failure to attend and complete the accompanying assignment will result in a mark of zero. Details about the tutorial and assignment will be given in lecture.

DUE: IN LIBRARY TUTORIAL THE WEEK OF 18 MARCH

Final Writing Assignment (30%)

The final writing assignment will be made available to students on 11 March. It is a 2000 word assignment that is due on Wednesday 10 April, the last day of classes. Your TA will inform you of how to submit your assignment. As for all assignments in the course, appropriate academic style, including referencing, is mandatory (see below). Please follow the instructions on the assignment.

DUE: 10 APRIL 2013

Seminar Participation (25%)

Seminars are vital to your success in the course. Your mark will reflect your attendance (12%), as well as your informed and respectful participation in seminar (13%).

Late Policy

Arriving late to lecture or seminar is not acceptable and will affect your participation mark. Likewise, late essays are also not acceptable and will be penalized by 3% per day beyond the deadline. If you have extenuating circumstances, talk to your seminar leader. Be prepared to show appropriate documentation to validate your claim.

Writing Evaluation

Your written assignments will be marked based on the following criteria:

Style

Has the author taken care to ensure appropriate formatting, grammar, word count, and referencing?

Structure

Has the author laid out a clear and effective argument for their reader? In particular, did the author begin with a clear introduction and overview of their supporting points, and use signposting throughout? Did the author pre-empt counter arguments and incorporate these into their essay structure effectively?

Content

Has the author understood the material and conveyed it effectively to their reader? Have they supported their interpretations with page references and (if stipulated) appropriate secondary sources?

Critical Analysis

Has the author understood the material, communicated it clearly, and ALSO used their critical reading and writing skills to analyze it? A demonstrated depth of critical analysis will be key for achieving high marks on essays.

Referencing

The Department of Law and Legal Studies recommends that you follow the Legal Style set out here:

http://www1.carleton.ca/law/ccms/wp-content/ccms-files/legal_style_sheet.pdf

However, if you prefer another referencing style you may use it provided that you are consistent throughout and the style is academically recognized (e.g. Harvard, MLA, Chicago, etc...). If you are unsure about the proper format of a particular referencing style, please consult a referencing style guide from the library.

The Academic Writing Centre and Writing Tutorial Services provide student assistance with the learning of academic writing. Please contact them in advance and make use of their services:

<http://www.carleton.ca/wts/>

Tips for avoiding plagiarism:

- Give yourself enough time to work on your assignment so you are not tempted to copy text from other sources.
- If you are having difficulty with your topic, visit your TA or the professor during their scheduled office hours at least two weeks before the essay is due.
- Take notes carefully so that you include specific sources and page numbers. Be sure to clearly identify which ideas are your own and which come from your sources.
- Reference as you write, rather than leaving all the referencing to the end. Even if you just use shorthand as you write (i.e. note the author's last name and page number), you can then go back and do the formatting later. But it is always better to reference as you go – it will save you time in the long run and you are less likely to forget something.
- Consult a referencing guide! If you are unsure about referencing format or procedure, check a referencing style guide.

For more help see www.library.carleton.ca/howdoi/citing.html.

Remember: Using another person's work without acknowledgment, or using work in a way that may mislead or deceive your reader is plagiarism. It doesn't matter whether you deliberately intended to deceive or not; it still counts as plagiarism and is subject to the university's policies and penalties on academic misconduct. Plagiarism is not only dishonest, but it undermines the integrity of academic scholarship and is not acceptable.

CU LEARN

Our course will also utilize the 'CU Learn' learning management system. Here you will find electronic copies of the course syllabus, announcements, as well as relevant links and articles. **All students are required to check into the course online regularly (i.e., at least twice a week) for updates and announcements.**

If you are having problems using the site please visit the Educational Development Centre's website for support:

<http://www1.carleton.ca/lmssupport/students/>

LAWS 2502 Course Overview		
Date		Lecture
10 January	Week One	Whose Rights? Law, State, and Citizen in a Settler Society
17 January	Week Two	Introduction to the Charter
24 January	Week Three	Judicial Review
31 January	Week Four	The Charter and Security Certificates
7 February	Week Five	Post-liberal Rights Frameworks?
14 February	Week Six*	Review
21 February	-----	-----
28 February	Week Seven	Law, State, and Citizen Revisited
7 March	Week Eight	Jurisdiction and Standing
14 March	Week Nine*	Judicial Review II*
21 March	Week Ten*	LIBRARY TUTORIAL
28 March	Week Eleven	The Role of Tribunals
4 April	Week Twelve	The Role of Ombudsmen
10 April	<i>No lectures or seminars*</i>	-----

*Indicates a week that an assignment is due that week.

Seminar Outline

**WEEK ONE:
WHOSE RIGHTS? LAW, STATE, & CITIZEN IN A SETTLER SOCIETY**
(10 January)

Task:

Everyone is asked to bring an image that represents the relationship between law, state, and citizen with them to class. Be prepared to discuss what you have brought and why with the class. This will count towards your overall participation mark.

Questions:

What does 'law' mean? 'State'? 'Citizen'? What is the relation between these three terms, if any?

What is settler-colonialism? Why does it matter to the study of public law?

What does nationalism have to do with law?

What is the Notwithstanding Clause? When was it last invoked?

Key Concepts:

Charter – settler-colonialism – nationalism – Notwithstanding Clause – the rule of law

**WEEK TWO:
INTRODUCTION TO THE CHARTER**
(17 January)

Assigned Readings:

1. Monaghan, Patrick J. (2006) The Canadian Charter of Rights and Freedoms. In: *Constitutional Law (Third Edition)*. Toronto: Irwin Law, 385-438. (53 pages).

Questions:

When was the Charter enacted?

How were individual rights protected *before* the Charter?

How has the Charter changed the landscape of Canadian law?

Key Concepts:

Charter of Rights and Freedoms – sovereignty – restraining arbitrary power – liberalism – the rule of law

**WEEK THREE:
JUDICIAL REVIEW I**
(24 January)

Assigned Readings:

1. *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177. (75 pages).

Questions:

What are the facts of the case?

What role does 'status' play in this case? What about 'utilitarianism'?

Key Concepts:

Section 7 – fundamental justice – sovereignty – fairness – utilitarianism – Bill of Rights – status – the rule of law – liberalism

Writing Tip #1: Referencing
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**WEEK FOUR:
THE CHARTER AND SECURITY CERTIFICATES**
(31 January)

Assigned Readings:

1. *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 S.C.R. 350. (88 pages).

Questions:

What are the facts of the case?

What is the 'tension' that C.J. McLachlin speaks about in her judgment?

What role does 'national security' play in this case?

Does an investment in 'national security' conflict with the promises of individual liberty set out by the Charter?

Who is Mohammad Mahjoub?

Key Concepts:

Section 7, 9, 10 – national security – terrorism – sovereignty – liberalism – the rule of law – the state of exception

**WEEK FIVE:
POST-LIBERAL RIGHTS FRAMEWORKS?**
(7 February)

Assigned Reading:

1. Hutchinson, Allan C. (1995) Indeterminately Speaking: From Axiom to Action. In: *Waiting for Coraf: A Critique of Law and Rights*. Toronto: University of Toronto Press, 28-56. (28 pages).

Questions:

What is Hutchinson's critique of the Charter?

What cases does he use to make this critique?

What are socio-economic rights? How do they differ to civil political rights?

What insights can we glean from the 1996 *Constitution of the Republic of South Africa*?

Key Concepts:

liberalism – corporate interest – privatization – neoliberalism – civil political rights vs. socio-economic rights – justiciability

Writing Tip #2: Sentence structure
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**WEEK SIX:
REVIEW LECTURE: WHAT'S WRONG WITH RIGHTS?
(14 February)**

FIRST ASSIGNMENT DUE IN SEMINAR, NO ASSIGNED READING

**UNIVERSITY CLOSED
(18-22 February)**

NO CLASSES

**WEEK SEVEN:
LAW, STATE & CITIZEN REVISITED**
(28 February)

Assigned Reading:

1. Kafka, Franz (1995) *The Trial*. New York: Schocken Books. (312 pages).

Questions:

Where is the law in this novel? What does it look like?

What does the law do to Joseph K.?

What does this novel tell us about the relationship between the government and the governed?

Key concepts:

civilizational discourse – biopolitical vs. sovereign power – Kafkaesque

**WEEK EIGHT:
JURISDICTION AND STANDING**
(7 March)

Assigned Readings:

1. *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342. (30 pages).

Questions:

What are the facts of the case?

Why was Borowski's claim found to be moot?

What are the central cases relied on in this judgment?

Key concepts:

Standing – mootness – jurisdiction

****Writing Tip #3: Constructing a Thesis****

**WEEK NINE:
JUDICIAL REVIEW II**
(14 March)

****QUIZZES ARE AVAILABLE ON CU LEARN THIS WEEK. THEY MUST BE COMPLETED BY FRIDAY
15 MARCH AT 5PM****

Assigned Reading:

1. *Attawapiskat First Nation v. Canada*, 2012 FC 948. (30 pages).

Questions:

What are the facts of the case?

What are the misconceptions about the case addressed in the judgment? Why are these relevant to the judgment?

Key concepts:

autonomy – colonialism – sovereignty

****Writing Tip #4: The Importance of an Introduction****

**WEEK TEN:
LIBRARY TUTORIAL**
(21 March)

No lectures this week. Students must attend their assigned library tutorial and complete the accompanying assignment. Failure to do so will result in a mark of zero.

**WEEK ELEVEN:
THE ROLE OF TRIBUNALS**
(28 March)

Assigned Reading:

1. *R. v. Conway*, 2010 SCC 22, [2010] 1 S.C.R. 765. (56 pages).

Questions:

What is the significance of the case?

What is the significance of the court's presentation and endorsement of 'three distinct constitutional streams'?

Key concepts:

Section 24(1) – charter remedies – administrative tribunals – competent jurisdiction – Conway Test

**WEEK TWELVE:
THE ROLE OF OMBUDSMEN**
(4 April)

Assigned Readings:

1. Marin, André (2010) Ombudsman's Remarks and Executive Summary. In: Caught in the Act: Investigation into the Ministry of Community Safety and Correctional Services' conduct in relation to Ontario Regulation 233/10 under the *Public Works Protection Act*. *Ombudsman Report*, 1-13. (13 pages).
2. Pavlich, George (2011) Contested Sovereignties, Violence, and Law. In: *Law and Society Redefined*. Oxford: Oxford University Press, 152-170. (18 pages).

Questions:

What does Ombudsman Marin identify as the problem in his report?

How does he suggest it can be approached?

What is the significance of the Ombudsman?

What might George Pavlich say about the role of the Ombudsman?

Key concepts:

Checks and balances – police – protest – democracy – sovereignty

LAST DAY OF CLASSES
(10 April)

***NO LECTURES OR SEMINARS.
FINAL ASSIGNMENTS ARE DUE TO YOUR TA***