

**Carleton University****Department of Law and Legal  
Studies****Course Outline**

<b>COURSE:</b>	<b>LAWS 2502B</b>
<b>TERM:</b>	<b>Winter 2014</b>
<b>PREREQUISITES:</b>	<b>1.0 credit from LAWS 1000 [1.0], PAPM 1000 [1.0], PSCI 1001, PSCI 1100 and PSCI 1200.</b>
<b>CLASS:</b>	<b>Day &amp; Time: Friday 2:35pm-5:25pm</b>
	<b>Room: Check Carleton Central for the latest information</b>
<b>INSTRUCTOR:</b>	<b>Stacy Douglas</b>
<b>CONTACT:</b>	<b>Office: Loeb D496</b>
	<b>Office Hrs: Wednesday 3:00-4:00pm</b>
	<b>Telephone: 613.520.2600 x. 8028</b>
	<b>Email: Stacy_Douglas@carleton.ca</b>

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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](mailto: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/>

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**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 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 critical analysis of: the contents of the Charter, emerging decisions from the Supreme Court, the role of judicial review, the difference between civil and socio-economic rights, as well as the function of 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
Sarah Katz-Lavigne	Teaching Assistant	SarahKatzLavigne@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.

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

Held, David (2006) *Models of Democracy (Third Edition)*. Stanford: Stanford University 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.

**EVALUATION**

<b>Assignment</b>	<b>Weight</b>	<b>Due Date</b>
First Writing Assignment	30%	In lecture on 14 February
Quiz	15%	On CU Learn the week of 17 March
Library Tutorial	10%	Lecture: 7 March, Due: 14 March
Final Essay	35%	In lecture on 4 April
Participation	10%	Five in-class activities
<b>All components must be completed in order to receive a passing grade.</b>		

**First Writing Assignment (30%)**

The first writing assignment will be made available to students on 31 January. 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: IN LECTURE ON 14 FEBRUARY 2014

**Quiz (15%)**

There will be a quiz made available to students on CU Learn. It will be available for students to complete beginning at 9am on Monday 17 March. 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 21 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 21 MARCH

**Library Tutorial (10%)**

On Friday 7 March you will be given a library tutorial in lecture. Attendance is mandatory. Failure to attend and complete the accompanying assignment will result in a mark of zero. Following the lecture you will be asked to complete a short assignment due the following week in class. Details about the tutorial and corresponding assignment will be given in lecture.

DUE: IN LECTURE ON 14 MARCH

**Final Essay (35%)**

The final writing assignment will be made available to you on 7 March. It is a 2000 word assignment that is due in lecture on Friday 4 April. As for all assignments in the course, appropriate academic style, including referencing, is mandatory (see below). Please follow the instructions on the assignment.

DUE: IN LECTURE ON 4 APRIL

**Participation (10%)**

Participation is vital to your success in this course. There will be scheduled activities during the lecture period that you are required to attend and participate in, in order to receive participation marks.

**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 assigned teaching assistant. Be prepared to show appropriate documentation to validate your claim.

## **Writing Evaluation**

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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 analyse it? A demonstrated depth of critical analysis will be key for achieving high marks on essays.

## **Referencing**

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

[http://www1.carleton.ca/law/ccms/wp-content/ccms-files/legal\\_style\\_sheet.pdf](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/howdoin/citing.html](http://www.library.carleton.ca/howdoin/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**

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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/>

<b>LAWS 2502C Course Overview</b>		
<b>Date</b>	<b>Week</b>	<b>Lecture</b>
10 January	One	Whose Rights? Law, State, and Citizen in a Settler Society
17 January	Two#	Introduction to the Charter
24 January	Three	Appeals and the Rule of Law
31 January	Four#	The Charter and Security Certificates
7 February	Five	Standing and Mootness
14 February	Six*	Law and Politics
Reading Break	-----	-----
28 February	Seven#	Law, State, and Citizen with Franz Kafka
7 March	Eight*	Library Tutorial
14 March	Nine*	Post-liberal Rights
21 March	Ten*#	Colonialism and the Charter
28 March	Eleven#	Administrative Review: The Role of the Ontario Ombudsman
4 April	Twelve*	Sex Workers and the Charter: The Bedford Case

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

# Indicates a week that there will be an in-class activity.

## **Seminar Outline**

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

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Assigned Reading:

1. *The Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

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)

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Assigned Reading:

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:  
CHARTER APPEALS AND THE RULE OF LAW**  
(24 January)

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Assigned Reading:

1. “Analysis of the Constitutional Principles”. In: Reference re Secession of Quebec, [1998] 2 S.C.R. 217, 247-263. (16 pages).

Other Recommended Reading:

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

Questions:

What is a Reference?

What does the rule of law include?

Is our understanding of the rule of law limited to this Reference?

Key Concepts:

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

\*\*Writing Tip #1: Referencing\*\*

**WEEK FOUR:  
THE CHARTER AND SECURITY CERTIFICATES**  
(31 January)

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Assigned Reading:

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:  
STANDING AND MOOTNESS**  
(7 February)

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Assigned Reading:

1. *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342. (27 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 #2: Sentence structure\*\***

**WEEK SIX:  
LAW AND POLITICS**  
(14 February)

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**\*\*\*FIRST ASSIGNMENT DUE IN LECTURE\*\*\***

**We will have a guest lecturer, Mr. Deepan Budlakoti, in for part of this class.**

Assigned Reading:

1. Russell, Peter H. (2009) "The Charter and Canadian Democracy". In: *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*. Eds. James B. Kelly and Christopher P. Manfredi. Toronto: UBC Press, 287-306. (19 pages).

Questions:

What is Russell's main thesis?

Who is Deepan Budlakoti? What are the facts of his case?

Key concepts:

*democracy – centralization – politics vs. law – double punishment*

**READING BREAK**  
(14-21 February)

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NO LECTURE

**WEEK SEVEN:  
LAW, STATE & CITIZEN WITH FRANZ KAFKA**  
(28 February)

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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?

Is this a novel about totalitarianism?

Key concepts:

*civilizational discourse – sovereign vs. disciplinary power – Kafkaesque – liberalism*

**WEEK EIGHT:  
LIBRARY TUTORIAL**  
(7 March)

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*Students must attend lecture and complete the accompanying assignment.  
Failure to complete both tasks will result in a mark of zero.*

**WEEK NINE:  
POST-LIBERAL RIGHTS**  
(14 March)

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\*LIBRARY TUTORIAL ASSIGNMENT DUE IN LECTURE\*

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*

<b>**Writing Tip #3: Constructing a Thesis**</b>
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**WEEK TEN:  
COLONIALISM AND THE CHARTER**  
(21 March)

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**\*QUIZZES ARE AVAILABLE ON CU LEARN THIS WEEK. THEY OPEN AT 9AM ON MONDAY 10 MARCH AND MUST BE COMPLETED BY 5PM ON FRIDAY 14 MARCH\***

Assigned Reading:

1. Milward, David (2012) "Addressing the Tension". In: *Aboriginal Justice and the Charter: Realizing A Culturally Sensitive Interpretation of Legal Rights*. Toronto: UBC Press, 49-61. (12 pages).
2. Coulthard, Glen (2007) "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada". *Contemporary Political Theory*, 6, 437-460. (23 pages).

Other Recommended Reading:

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

Questions:

What is Milward's thesis?

What is Coulthard's thesis?

What, if anything, do they agree on? Disagree on?

What is judicial review?

What are the facts of the *Attawapiskat* case?

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

Key concepts:

*recognition - autonomy – colonialism – sovereignty*

**Writing Tip #4: The Importance of an Introduction**
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**WEEK ELEVEN:  
ADMINISTRATIVE REVIEW: THE ROLE OF THE ONTARIO  
OMBUDSMAN**  
(28 March)

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Assigned Reading:

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*, 1-32 (32 pages).

Questions:

What is the role of the Ombudsman?

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

How does he suggest it can be approached?

Key concepts:

*Checks and balances – police – protest – democracy – sovereignty - jurisdiction*

**WEEK TWELVE:  
SEX WORKERS AND THE CHARTER: BEDFORD CASE**  
(4 April)

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\*\*\*FINAL ASSIGNMENT DUE IN LECTURE\*\*\*

**We will have a guest lecturer, Mr. David Hugill, in for part of this class.**

Assigned Reading:

1. Brock, Deborah (1998) Sexual Regulation and Sex Work. In: *Making Work, Making Trouble: Prostitution as a Social Problem*. Toronto: University of Toronto Press, 3-24. (21 pages).

Other Recommended Reading:

*Canada (Attorney General) v. Bedford*, [2013] SCC 72

Questions:

What does Brock mean when she says that prostitution is a ‘social problem’?

What was the decision in Bedford? Why?

Key concepts:

*sex work – Section 7 – autonomy – labour – freedom from harm*