

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

COURSE:	LAWS 2502B
TERM:	Winter 2015
PREREQUISITES:	1.0 credit from LAWS 1000 [1.0], PAMP 1000 [1.0], PSCI 1001, PSCI 1100 and PSCI 1200.
CLASS:	Day & Time: Wednesdays 11:35am-2:25pm
	Room: Check Carleton Central for the latest information
INSTRUCTOR:	Stacy Douglas
CONTACT:	Office: Loeb D496
	Office Hrs: Wednesday 3:00-4:00pm and Friday 12:00-1:00pm
	Telephone: 613.520.2600 x. 8028
	Email: Stacy.Douglas@carleton.ca

Academic Accommodations

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/>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at:

<http://www.carleton.ca/studentaffairs/academic-integrity/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures.

Please review these documents to ensure that your practices meet our Department's expectations.

<http://www.carleton.ca/law/student-resources/department-policies/>

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
Stacy Douglas	Professor	Stacy.Douglas@carleton.ca
Meghan Johnston	Teaching Assistant	Meghan.Johnston@carleton.ca
Joshua Hruschka	Teaching Assistant	JoshHruschka@cmail.carleton.ca
Gabriel Paquette Allard	Teaching Assistant	gabrielpaquetteallar@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

Assignment	Weight	Due Date
First Writing Assignment	20%	In lecture on 11 February
Quiz	15%	In lecture on 18 March
Group Project	25%	Five in-class activities & group presentation
Final Essay	30%	In lecture on 1 April
Participation	10%	Five in-class activities & group presentation
All components must be completed in order to receive a passing grade.		

First Writing Assignment (20%)

The first writing assignment is a 2000 word assignment that is due in lecture. 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 11 FEBRUARY

Quiz (15%)

There will be a quiz given in lecture based on all of the content in the course up to AND INCLUDING that date. Students can expect to have 30 minutes to complete 30 questions. Any students that attempt to cheat will be appropriately disciplined.

DUE: IN LECTURE ON 18 MARCH

Group Project (25%)

You will be put into groups of 5 and asked to build a physical, interactive model that represents “the rule of law” as you have reflected on it throughout the twelve weeks of the course. You will be given 5 one-hour slots during the lecture period to work on this assignment, each with clear outcomes that must be submitted to your TA. These outcomes will be marked based on your collective:

- ability to work together as a group;
- successful completion of the task at hand;
- demonstrated understanding of the course content;
- creative input into the task

Top marks will go to groups that excel in all of these realms. Finally, your project will also be graded based on the successful, professional, well-thought through, and practical presentation of your working model on the last day of class.

One mark will be awarded to everyone in the group. This kind of group work and group assessment, while difficult, is pivotal to careers in government, law, the non-profit, as well as the private sector. As such, I encourage everyone to take a positive and responsible attitude towards this project.

DUE: THROUGHOUT TERM & IN LECTURE ON 1 APRIL

Final Essay (30%)

The final writing assignment is a 2500 word assignment due in lecture. 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 1 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 to receive marks. High participation grades will only be given to students that consistently arrive: on time, well prepared, ready to speak and listen to their colleagues, and able to make insightful and practical contributions.

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, you must speak with Professor Douglas in advance of the deadline. Be prepared to show appropriate documentation to validate your claim.

Grading

The following percentage equivalents apply to all final grades at Carleton:

A+	90-100	B+	77-79	C+	67-69	D+	57-59
A	85-89	B	73-76	C	63-66	D	53-56
A-	80-84	B-	70-72	C-	60-62	D-	50-52
						F	0-49

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

Style

Has the author taken care in their formatting, grammar, attention to word count, and appropriate referencing? Where appropriate, have they attempted to infuse their work with creative flourish?

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? Is it a convincing argument overall?

Content

Has the author understood the material and conveyed it effectively to their reader? Have they supported their interpretations with page references and other academic sources?

Research

Has the author demonstrated a thoughtful and meticulous approach to their research? Have they been intellectually honest about their sources by seeking out primary material and bolstering their interpretation with appropriate secondary sources?

Critical Analysis

Has the author been able to understand the material, communicate about it clearly, **and** use their critical reading and writing skills to analyze the material? A demonstrated depth of critical analysis will be key for achieving high marks on essays.

Referencing

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

<http://www.library.carleton.ca/help/canadian-guide-uniform-legal-citation>

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/sasc/writing-tutorial-service/>

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 <http://www.plagiarism.org/citing-sources/whats-a-citation>.

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.

ALL CASES WILL BE REPORTED DIRECTLY TO THE DEAN.

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/lmsupport/students/>

LAWS 2502C Course Overview

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

*Indicates a week that an assignment is due.

Indicates a week with an in-class hour for your group project.

Course Outline

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

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.

Recommended Reading:

Mackey, Eva (2002) *Settling Differences: Managing and Representing People and Land in the Canadian National Project*. In: *The House of Difference: Cultural Politics and National Identity in Canada*. Toronto: University of Toronto Press, 23-49.

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**
(14 January)

Assigned Reading:

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

Recommended Reading:

Dodek, Adam (2013) “Glossary” and “Short History of the Canadian Constitution”. In: *The Canadian Constitution*. Toronto: Dundurn, 13-34. (21 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

GROUP MEETING #1

**WEEK THREE:
CHARTER APPEALS AND THE RULE OF LAW**
(21 January)

Assigned Reading:

1. “Analysis of the Constitutional Principles”. In: *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, 247-263. (16 pages).
2. Slayton, Phillip (2011) “Justice is in the Details”. In: *Canadian Lawyer*. <http://www.canadianlawyermag.com/3700/Justice-is-in-the-details.html>. Accessed 1 October 2014.

Recommended Reading:

Roncarelli v. Duplessis [1959] 1 SCR 121

Questions:

What is a Reference?

According to this 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**
(28 January)

Assigned Reading:

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

Recommended Reading:

Canada (Citizenship and Immigration) v. Harkat, 2014 SCC 37

Questions:

What are the facts of the case?

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

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*

GROUP MEETING #2

**WEEK FIVE:
STANDING AND MOOTNESS**
(4 February)

Assigned Reading:

1. *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342. (27 pages).

Recommended Reading:

Stone, Christopher D. (2010) “Should Trees Have Standing? Towards Legal Rights for Natural Objects”. In: *Should Trees Have Standing: Law, Morality, and the Environment*. Oxford: Oxford University Press, 1-32. (31 pages).

Questions:

What are the facts of the case?

Why was Borowski’s claim found to be moot?

Key concepts:

Standing – mootness – jurisdiction – public interest standing

****Writing Tip #2: Sentence structure****

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

FIRST ASSIGNMENT DUE IN LECTURE

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).

Recommended Reading:

Smith, David E. (2007) "The State of the Commons". In: *The People's House of Commons: Theories of Democracy in Contention*. Toronto: University of Toronto Press, 3-18. (15 pages).

Questions:

What is Russell's main thesis? Why is it significant?

Who is Edgar Schmidt? Why is he relevant?

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

Key concepts:

democracy – centralization – politics vs. law – double punishment

READING BREAK
(16-20 February)

NO LECTURE

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

Assigned Reading:

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

Recommended Reading:

Foucault, Michel (1977) “Docile Bodies”. In: *Discipline and Punish: The Birth of the Prison*. New York: Vintage, 135-169. (34 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

GROUP MEETING #3

**WEEK EIGHT:
SEX WORKERS AND THE CHARTER: BEDFORD CASE**
(4 March)

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).

Recommended Reading:

Canada (Attorney General) v. Bedford, [2013] SCC 72. (67 pages).

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

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

**WEEK NINE:
COLONIALISM AND THE CHARTER**
(11 March)

Assigned Reading:

1. Coulthard, Glen (2014) “Introduction: Subjects of Empire”. In: *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minneapolis: University of Minnesota, 1-24. (24 pages).

Other Recommended Reading:

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

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).

Palmater, Pamela D. (2011) “Legislated Identity: Control, Division, and Assimilation”. In: *Beyond Blood: Rethinking Indigenous Identity*. Saskatoon: Purich Press, 28-54. (26 pages).

Questions:

What is Coulthard's thesis?

Can anti-colonial critiques align with Marxist critiques? How, or how not?

Why might we be critical of Coulthard's thesis?

Key concepts:

recognition - autonomy – colonialism – sovereignty

GROUP MEETING #4

**WEEK TEN:
POST-LIBERAL RIGHTS
(18 March)**

QUIZ TAKES PLACE IN LECTURE THIS WEEK

Assigned Reading:

1. *Tanudjaja v. Canada (Attorney General)*, 2014 (37 pages).

Recommended Reading:

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:

Is there a right to housing in Canada?

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

What is Hutchinson's critique of the Charter? What cases does he use to make this critique?

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 #3: Constructing a Thesis****

**WEEK ELEVEN:
ADMINISTRATIVE REVIEW: THE ROLE OF THE ONTARIO
OMBUDSMAN
(25 March)**

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).

Recommended Reading:

Schmitt, Carl (1985) Chapters One and Two. In: *Political Theology: Four Chapters on the Concept of Sovereignty*. Chicago: University of Chicago Press, 5-35. (30 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 redressed?

Key concepts:

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

GROUP MEETING #5

**WEEK TWELVE:
PRESENTATIONS**
(1 April)

FINAL ASSIGNMENT DUE IN LECTURE

DEMONSTRATION OF GROUP PROJECTS IN LECTURE