

Course Outline

COURSE:	LAWS 4309A
PREREQUISITES:	Fourth-year Honours standing, LAWS 3305, LAWS 3503 or LAWS 3509.
TERM:	Fall/Winter 2007
CLASS: Day & Time:	Mondays, 18:05 – 20:55 p.m.
Room:	206 Tory Building
INSTRUCTOR:	Mr. Jeffrey H. McCully, Barrister & Solicitor
CONTACT: Office:	C476 Loeb Building
Office Hrs:	By Appointment Only
Telephone:	613-761-0462, During Business Hours
Email:	jeffrey.mccully@gmail.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>.

A historical and contemporary analysis of legal responses of Canadian governments to dissent, political opposition and insurrection. Includes the trial of political offences (treason, sedition, riot), national security measures (*War Measures Act, Emergencies Act, Official Secrets Act*), and other special powers (police, labour, immigration, parliamentary privilege, to list a few).

This most topical course examines the legal responses of various Canadian governments to activities ranging from popular protest and political opposition to insurrection, rebellion, terrorism and war. These responses to real and perceived state security concerns have included the criminal trial of political offences (e.g., treason, sedition), proceedings flowing from separate national security measures (*War Measures Act, Official Secrets Act*), and the exercise of related powers (e.g., security branch operations). They reveal important legal and political themes in the experiences of Canadians. Current issues are examined from this context, including the responsibilities and accountability of the RCMP, CSIS, CSE and the new anti-terrorism and public safety measures. The historical and current tensions in Canada between liberties and the rule of law on one hand and the effective preservation of order and public safety in the face of increasing terrorist threats, in an increasingly shrinking world, are highlighted. A review of the implications of the omnibus *Anti-Terrorism Act* (Bill C-36), passed in December of 2001, will be made.

Course Assessment

15% - In-Class Test (Two hours, closed book, short answer)

20% - Seminar Presentation (based on your essay topic, approximately 20 minutes)

15% - Class Participation

50% - Research Essay (Due Dec 3rd, 2007 15-20 pages; topic to be selected by Oct. 15th)

You have some leeway with your papers. You may write a standard essay or you may present it in the form of a briefing memorandum to a government decision-maker. All papers must comply with the University's Academic Regulations.

Topic Schedule and Readings:

All the required readings are found in the Law 4309 (51.439) Coursepack, and “Between Crime and War: Terrorism, Democracy and the Constitution”, Special Issue of the National Journal of Constitutional Law 14.1, Prof. Errol P. Mendes and Debra M. McAllister, eds., both of which are available at the University Bookstore. Additional topical, required readings will be those brought to the seminar by Mr. McCully.

September 10:

Legal Dimensions of Security Crises: An Overview of Canadian Experiences and Recent Responses to Security Attacks in the United States

Read:

- a) Grace and Leys
- b) McNaught
- c) Cotler, “Terrorism, Security and Rights: The Dilemma of Democracies” in NJCL

September 17:

The Classic Political Offences of Treason and Seditious

Read:

- a) Greenwood and Wright
- b) Greenwood
- c) Sections 46-55, 59-69 of the Canadian Criminal Code
- d) Law Reform Commission of Canada Working Paper 49

September 24:

Criminal Law and Labour Repression: Criminal Conspiracy, Section 98

- a) Tucker
- b) Kehler and Esau
- c) MacGillivray
- d) Petryshyn
- e) Section 98 (rep.), 465-7 of the Canadian Criminal Code

October 1:

Modern National Security Measures: The War Measures Act and Official Secrets Act (now, Security of Information Act)

- a) Greenwood
- b) Berger
- c) Order-in-Council P.C. 411 (1946)
- d) The War Measures Act, ss. 1-3
- e) The Official Secrets Act, ss. 3-4
- f) Mendes, “Between Crime and War: Terrorism, Democracy and the Constitution” in NJCL

October 8: NO CLASSES – STATUTORY HOLIDAY**October 15:**

Current Measures and Controversies 1: Reforming the War Measures Act and Security Agency Operations

**** NOTE – ESSAY/PRESENTATION TOPICS ARE DUE THIS WEEK ****

- a) Friedland (overview)
- b) The Emergencies Act
- c) Mandel
- d) The Canadian Security Intelligence Act
- e) Atkey
- f) Franks
- g) “In Flux but not in Crisis”

October 22:***Presentation Schedule Distributed***

Current Measures and Controversies 2: Protest and the Prevention of Terrorism

Read:

- a) Pue
- b) Boulden
- c) Orders-in-Council affecting the Communications Security Establishment
- d) The Anti-Terrorism Act
- e) Weinrib
- f) Cohen, "Safeguards in and Justification for Canada's New *Anti-Terrorism Act* in NJCL
- g) Mia, Terrorizing the Rule of Law: Implications of the *Anti-Terrorism Act* in NJCL

October 29:***In-Class Test***

- a) Stuart, "The Anti-Terrorism Bill C-36", in NJCL

November 5, 12, 19, 26:

Student Seminar Presentations

December 3

****RESEARCH ESSAYS ARE DUE****

Remaining Seminar Presentations

Important Administrative Notes

Failure to complete any portion of the required evaluation will result in an F grade. A deferred essay may be written upon application to and approval from the Registrar's office. Late essays will be marked down on half letter grade (e.g., B to B-) for each day submitted after the due date. Essays must be word processed and submitted in hard copy (hand-written papers, computer files or email attachments will not be accepted). Please retain a photocopy or secure file copy of the submitted essay. Essays must be submitted to me on the due date. The Department of Law assumes no responsibility for essays that are submitted in an irregular manner. Graded essays may be picked up from the Law Office (C473 Loeb Building) during regular office hours or returned by post (if enclosed with a stamped, self-addressed envelope). Law office hours are 8:30 a.m.-12:00 p.m. and 1:00 -4:30 p.m., Monday to Friday.

All assignments must be original and prior approval must be obtained from me if it is intended to submit work that has been previously, or is currently, submitted for credit in another course. Please note carefully the University regulations on plagiarism and academic offences.

The paper must be individually prepared and well researched, with proper citation, including footnotes or endnotes and bibliography. When citing from Supreme Court of Canada decisions, please cite the page number in all pre-1995 decisions and the paragraph number in post-1995 decisions. Note that Internet versions of pre-1995 judgements were edited by the LexUM team at the University of Montreal, clearly showing the page numbers of the Supreme Court Reports.

Extensions: Expect that extensions will only be granted for (i) disabling illness, verified by a medical certificate, or (ii) death in the family.

Note Page 44, 2.5 b) Deferred Final Examinations, Paragraph 2: "...The granting of a deferral also requires that the student has performed satisfactorily in the course according to the evaluation scheme established in the Course Outline, excluding the final examination for which deferral privileges are requested. Reasons for denial of a deferral may include, among other conditions, a failure to (i) achieve a minimum score in the course before the final examination; (ii) attend a minimum number of classes; (iii) successfully complete a specific task (e.g., term

paper, critical report, group project...); ...or (vi) meet other reasonable conditions of successful performance....”