

<b>COURSE:</b>	<b>LAWS 2502B – Law, State and Citizen</b>
<b>TERM:</b>	<b>Fall 2016</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: Wednesdays 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 D582</b> <b>Office Hrs: Wednesdays 12:00pm-2:00pm</b> <b>Telephone: 613.520.2600 x. 8028</b> <b>Email: Stacy.Douglas@carleton.ca</b>

---

### 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://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://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://carleton.ca/pmc/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://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://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://carleton.ca/law/current-students/>

## **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
	Teaching Assistant	
	Teaching Assistant	
	Teaching Assistant	

**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	30%	In lecture on 17 October
Quizzes	30%	Online, two throughout term
Final Essay	40%	In lecture on 5 December
<b>All components must be completed in order to receive a passing grade.</b>		

**First Writing Assignment (30%)**

The first writing assignment is a 1500-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 WEDNESDAY 19 OCTOBER

**Quizzes (30%)**

Students must complete **two of three possible online quizzes** throughout the term.

Quizzes will be made available to students via CU Learn on the following dates:

- Thursday 29 September at 9am until Thursday 6 October at 9am;
- Thursday 20 October at 9am until Thursday 27 October at 9am;
- Thursday 17 November at 9am until Thursday 24 November at 9am.

As indicated above, quizzes will be available for completion for ONE WEEK from Thursday at 9am until the following Thursday at 9am. Each quiz must be completed in 30 minutes (it cannot be stopped and restarted) and will be composed of 25 questions. Students will keep their top two quiz grades (you only need to do two, but may do three to improve your mark). Each quiz is worth 15%. **There will be no make-up quizzes.** It is up to you to avoid technical difficulties.

DUE: THROUGHOUT TERM (see above)

### **Final Essay (40%)**

The final writing assignment is a 2000-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 WEDNESDAY 7 DECEMBER

### **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/>

### **Late Policy**

Arriving late to lecture or seminar is not acceptable and will affect your participation mark. Likewise, late essays are 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.

## Evaluation

---

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

---

All referencing must be completed in McGill Legal Style. A complete guide is available at the library but a shorthand guide can be found here:

[https://library.carleton.ca/sites/default/files/help/writing-citing/uniform\\_legal\\_style.pdf](https://library.carleton.ca/sites/default/files/help/writing-citing/uniform_legal_style.pdf)

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.**

### LAWS 2502 Course Overview

Date	Week	Lecture
14 September	One	Whose Rights? Law, State, & Citizen in a Settler Society
21 September	Two	Introduction to the <i>Charter</i>
28 September	Three#	Appeals & the Rule of Law
5 October	Four	The <i>Charter</i> & Security Certificates
12 October	Five	Standing & Mootness
19 October	Six*#	Law & Politics
Reading Break	-----	-----
2 November	Seven	Law, State, & Citizen with Franz Kafka
9 November	Eight	Sex Workers & the <i>Charter</i> : The Bedford Case
16 November	Nine#	Colonialism & the <i>Charter</i>
23 November	Ten	Administrative Review: The Role of the Ontario Ombudsman
30 November	Eleven	Post-liberal Rights?
7 December	Twelve*	Final papers due

\*Indicates a week that an assignment is due.

# Indicates a week that a quiz will take place.

## Course Outline

---

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

---

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. (26 pages)

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?

Key Concepts:

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

**\*\*Activity #1\*\***

Students are asked to bring in an image (printed or on a device) that they feel tells us something about the relationship between law, state, and citizen. Be creative!



**WEEK TWO:  
INTRODUCTION TO THE CHARTER**  
(21 September)

---

Assigned Reading:

1. Monahan, Patrick J. and Byron Shaw (2014) “The Canadian Charter of Rights and Freedoms”. In: *Constitutional Law (Fourth Edition)*. Toronto: Irwin Law, 411-473. (62 pages)
2. Tamanaha, Brian (2008) “Liberalism”. In: *On the Rule of Law: History, Politics, Theory*. Cambridge: Cambridge University Press, 32-46. (14 pages)

Recommended Reading:

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

*Singh et al v. Minister of Employment and Immigration*, [1985] 1 SCR 177

Questions:

When was the *Charter* enacted?

How were individual rights protected before the *Charter*?

How has the *Charter* changed the landscape of Canadian law?

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

Key Concepts:

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

\*\*Writing Tip #1: Learning and Avoiding Common Mistakes\*\*

**WEEK THREE:  
CHARTER APPEALS AND THE RULE OF LAW**  
(28 September)

---

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. Held, David (2006) “Direct Democracy and the End of Politics”. In: *Models of Democracy* (3<sup>rd</sup> Edition). Cambridge: Polity, 96-122. (26 pages)
3. 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. (2 pages)

Recommended Reading:

*Roncarelli v. Duplessis* [1959] 1 SCR 121

*Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1

Tamanaha, Brian (2008) “The Dark Side Of The Relationship Between The Rule Of Law And Liberalism”. *NYU Journal of Law and Liberty*, Vol. 3, 516-547.

Questions:

What is a *Reference*?

According to this *Reference*, what does the rule of law include? Is our understanding of the rule of law in Canada limited to this *Reference*?

What is Marx’s critique of liberalism, according to David Held?

Key Concepts:

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

**\*\*Writing Tip #2: Learning How to Read...Again\*\***

**WEEK FOUR:  
THE CHARTER AND SECURITY CERTIFICATES**  
(5 October)

---

Assigned Reading:

1. *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37 (86 pages)
2. Forcese, Craig (2014) “Harkat Supreme Court Decision: Winners and Losers”. In: *National Security Law: Canadian Practice in International Perspective*. <http://craigforcese.squarespace.com/national-security-law-blog/2014/5/14/harkat-supreme-court-decision-winners-and-losers.html>. Accessed 1 December 2015.

Recommended Reading:

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

Razack, Sherene (2008) “‘Your client has a profile’: Race in the Security Hearing.” In: *Casting Out: The Eviction of Muslims from Western Law and Politics*. Toronto: University of Toronto Press, 25-58. (33 pages)

Questions:

What are the facts of the 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*

**\*\*Activity #2: Constructing a Thesis\*\***

Students are asked to bring in a thesis for Question #3 on their upcoming writing assignment. We will workshop these in class.

**WEEK FIVE:  
STANDING AND MOOTNESS**  
(12 October)

---

Assigned Reading:

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

Recommended Reading:

*Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45

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 #3: Editing Will Save Your Life\*\***

**WEEK SIX:  
LAW AND POLITICS**  
(19 October)

---

**\*\*\*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?

What might some rebuttals to his thesis be?

Key concepts:

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

**READING BREAK**

(24-28 October)

---

NO LECTURE

**WEEK SEVEN:  
LAW, STATE & CITIZEN WITH FRANZ KAFKA**  
(2 November)

---

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*

**\*\*Activity #3: Can't Get You Out of My Head\*\***

Is Josef K subject to the heavy hand of the law or does he subject HIMSELF to the law. In other words, is it his obedience to the law that keeps him tethered to its force? Come to class prepared to answer this question and defend your choice.

**WEEK EIGHT:  
SEX WORKERS AND THE CHARTER: BEDFORD CASE**  
(9 November)

---

Assigned Reading:

1. Weeks, Kathi (2011) "Mapping the Work Ethic". In: *The Problem with Work: Feminism, Marxism, Antiwork Politics, and Postwork Imaginaries*. Durham: Duke University Press, 37-77. (40 pages)

Recommended Reading:

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).

*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**  
(16 November)

---

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 (2014) “The Politics of Recognition in Colonial Contexts”. In: *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minneapolis: University of Minnesota, 25-49. (24 pages)

Recommended Reading:

*Attawapiskat First Nation v. Canada*, 2012 FC 948 (30 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 the “tension” that Milward discusses? Why is it a “tension”?

What is Coulthard’s thesis? Why might we be critical of it?

Key concepts:

*recognition - autonomy – colonialism – sovereignty*

\*\*Writing Tip #5: Sentence structure\*\*

**WEEK TEN:  
ADMINISTRATIVE REVIEW: THE ROLE OF THE ONTARIO  
OMBUDSMAN**  
(23 November)

---

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*

**\*\*Activity #4: Editing Introductions\*\***

Come to class today with a draft introduction, including a thesis and roadmap for your final essay. We will workshop your argument structure.

**WEEK ELEVEN:  
POST-LIBERAL RIGHTS?  
(30 November)**

---

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)

Parks, Debra (2003) "Baby Steps on the Way to a Grown Up Charter: Reflections on Twenty Years of Social and Economic Rights Litigation". *University of New Brunswick Law Journal* 52, 279-298. (19 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*

**\*\*Activity #5: Learning from Mistakes\*\***

Students are to bring their marked First Writing Assignment with them to class. We will go over these and make a list of individualized common mistakes. We will also reflect on feedback received the week before – have you taken it into consideration? Do you have a sound argument? A strong thesis? Convincing and well-researched evidence?

**WEEK TWELVE:**  
**FINAL CLASS**  
(7 December)

---

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