

Course Outline

COURSE:	LAWS 3500A - Constitutional Law
TERM:	Fall 2021
PREREQUISITES:	LAWS 2501 or PSCI 2003.and 0.5 credit in LAWS at the 2000 level
CLASS:	Day & Time: Mondays, 6:05 – 8:55 p.m.
	Room: Please check Carleton Central for current Class Schedule. The course will be delivered in person.
INSTRUCTOR:	Roger Rickwood, Ph.D., LL.M., LL.B.
CONTACT:	Office:
	Office Hrs: I can speak to students immediately after the class outside the classroom as long as social distance is maintained. Otherwise, I will have office hours by appointment via Zoom or you may contact me by telephone from 3:30-5:00 p.m. on Mondays.
	Telephone: 613-712-2811
	Email: rogerrickwood@cunet.carleton.ca

CALENDAR COURSE DESCRIPTION

An investigation of the Canadian constitution. Sovereignty, the nature and units of executive, legislative, and judicial power in Canada as interpreted by the courts. The distribution of powers under the Canadian constitution, including an investigation of contemporary problems of federalism. Problems of judicial review.

COURSE DESCRIPTION**OVERALL COURSE INVESTIGATIVE ROUTE MAP**

LAWS 3500 is an advanced constitutional law course. You are expected to have completed the prerequisite courses of either LAWS 2501 – Law, State and the Constitution or PSCI 2003 – Canadian Political Institutions to have a basic understanding of the Canadian constitutional system. The course builds on the basic elements of written and unwritten Canadian constitutional law as set out in LAWS 2501 and PSCI 2003. Using this underlying framework, this course focuses on fundamental legal principles that guide the interpretation and application of constitutional provisions. LAWS 3500 uses cases to explain the Canadian

Constitution by looking at decisions of the Judicial Committee of the Privy Council (U.K.), the Supreme Court of Canada, and the various courts and tribunals below. Not all constitutional court decisions or lack of them can be explained by legal factors, so economic, political, and sociological factors also must be used to explain change or lack of it.

Our investigation is divided into two parts. The first part covers most of the Chapters from 1 to 13 and chapter 26 in Macklem's *Canadian Constitutional Law, 5th edition*. We will examine the sources and nature of the Constitution, the concept of federalism, the division of powers, the division of legislative powers and the evolution of procedures to amend the constitution and establish Canadian sovereignty from Britain. In the second part, we will cover most of chapters from 14 to 26 in Macklem's text. We will explore the rights and freedoms protected by the common law, organic statutes, the *Canadian Charter Rights and Freedoms*, the *Rights of the Aboriginal Peoples of Canada* in Part II, section 35 of the *Constitution Act, 1982*, the *Constitution Act, 1867*, and international treaties and conventions.

We will investigate legal, administrative and political remedies that can be used to promote and defend government actions and individual and group rights.

The Macklem text is supplemented by the Dodek text, *The Canadian Constitution*. It contains an easily accessible copy of the *Constitution Acts 1867* and *1982* so you can read sections referenced in the Macklem text. There is also in Dodek a short glossary of legal terms.

DEFINITION AND PURPOSE OF CONSTITUTIONAL LAW AS USED IN THIS COURSE

"LAWS 3500 – Constitutional Law" is about describing, understanding and explaining the relationships between the building blocks of politics and law and their impact on political life. This web of relationships between politics and law in the Canadian political community constitutes the form of our Canadian political regime and sets out the underlying political principles that provide the legitimate basis for our form of government. These underlying political principles provide a set of rules that authoritatively establish both the structure and the fundamental operational codes by which we govern our country. These political institutions and interconnecting relationships have an inner logic that ties them all together to form a coherent whole that has a core continuity over time despite conflicts and incremental and peripheral changes. Political scientists and lawyers call this set of authoritative structural rules and fundamental operational codes a constitution, regardless of whether it is written or unwritten or a combination of both. In modern times, political power inside a constitutional political regime consists of three types: **legislative, executive and judicial**. Some political philosophers have argued that the institutions performing these powers should ideally operate separately and independently from each other. However, the reality is that such institutions in a stable democratic state are always linked together and the issue is not separation but reasonable synchronization and a degree of individual autonomy.

This course describes the evolution of the Canadian constitutional regime from 1867 noting the changing relative power of the executive, legislative and judicial actors and seeks to

demonstrate that the courts have grown to exert great political power in the governance of this country, especially when politicians will not act or cannot act, such as on the issue of abortion. Interest groups have developed to utilize these new 1982 review mechanisms to use the courts to challenge government policies and laws to the extent that some commentators declare that we have “judicialized politics” and deprived political majorities in Parliament and the Legislatures of their democratic right to govern. We will assess the legitimacy of these claims and note existing limitations on judicial power. Courts still show deference to parliamentary supremacy in deciding constitutional issues because courts generally know their limitations as non-elected officials with limited operational government expertise. However, they do strike down under s.52 and s.24(1) federal and provincial legislation. You will have the opportunity to explore such contested issues in case studies and presentations. Serious questions of judicial accountability persist and the course will explore various reforms that might change the balance.

GENERAL INSTRUCTIONAL GOALS AND UNDERSTANDINGS

LAWS 3500 – Constitutional Law has three instructional goals:

- a) To understand written and unwritten provisions and processes of the Canadian Constitution in the context of the Canadian political regime;
- b) To understand that the Constitution is based on the four general principles of federalism: democracy; constitutionalism, rule of law; protection of minorities;
- c) To understand that Canada is a federal state; a constitutional monarchy; has responsible and representative government; rule of law and judicial review; guarantees of individual and group rights; A constitutional amendment process

Take note of how the terms the “Canadian Constitution” and the “Constitution of Canada” are used in this course. Before 1982, these two terms were largely coterminous. Since 1982 the term the “Canadian Constitution” has come to refer to the written and unwritten portions of the law governing the operation of the Canadian constitutional process, i.e. royal prerogatives, black letter statutes, court decisions and unwritten informal political conventions viewed as binding on all political actors. The term the “Constitution of Canada” has been more narrowly defined by the SCC as to what is considered written legal constitutional (i.e. enforceable by a court) law as set out in s.52 and s.24(1) of the *Constitution Act, 1982* in black letter law statutes, regulations, royal prerogatives and court decisions. However, the terms are frequently intermixed.

LEARNED COURSE OUTCOMES

By the course’s end, students, applying the above knowledge sets, techniques and methodologies, will:

1. Understand the concept of public law and where constitutional law fits within the legal field.
2. Understand the purposes of a constitution and where the Canadian Constitution fits within a universal classification of types of constitutions.
3. Be able to describe and explain the functions of the basic institutions, conventions and processes of the Constitution and their interrelationships in the context of the Canadian political regime.
4. Be able to describe, understand and explain the evolution of the Canadian constitutional system from historical, legal, political, economic and sociological perspectives.
5. Be able, as a citizen or policy analyst, to analyse complex law and constitutional problems and issues from a variety of philosophical and theoretical perspectives and identify optional solutions as well as justify and prioritize recommended choices.
6. Master the technical skills of legal case briefing and analysis
7. Understand the legal and political complexities and difficulties of engaging in constitutional reform within the Canadian state and be able to advocate for critical and necessary changes.

REQUIRED TEXTS AND MATERIALS (including all material posted on Brightspace)

Macklem, Patrick, *et al*, *Canadian Constitutional Law*, 5th edition (Toronto: Emond Publishing, 2017), hardback, ISBN 978-1-55239-655-1F (Available at Carleton University Bookstore). There are 4 chapters: chapters 12, 13, 24 and 26 on line at <http://emond.ca/canadian-constitutional-law-5th-edition.html> . The text is available as an Ebook for one year at the same website.

Dodek, Adam, *The Canadian Constitution*, 2nd edition, (Toronto: Dundurn Press, 2016), paperback ISBN 10-145973503X (Available at Carleton University Bookstore) Ebook available from Publisher.

Canadian Bill of Rights, RSC 1985 Appendix III, on line at Justice Canada website at <http://laws.justice.gc.ca/eng/acts/C-12.3/>

Royal Proclamation of 1763 (UK), at Justice Canada website at <https://www.collectionscanada.gc.ca/publications/002/015002-2010-e.html>

United Nations Declaration on the Rights of Indigenous Peoples, U.N.G.A. resolution, October 2007 on UN site at <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

United Nations Declaration of Rights of Indigenous Peoples Act, S.C., 2021, c.14 (6 June, 2021 Royal Assent) at <https://laws-lois.justice.gc.ca/eng/acts/u-2.2/index.html>

Required Case for Case Commentary (Due 4th October, 2021)

Henrietta Muir Edwards v. Canada (A.G.) (the “Person’s” case), [1930] 1 D.L.R.98 (J.C.P.C:18

October 1929), [1930] A.C. 124 (J.C.P.C.). The J.C.P.C. decision written by Lord Sankey and overturned the unanimous S.C.C. decision. The case had been referred to the S.C.C. by Governor in Council, October 19, 1927. See *Reference re: Meaning of the Word "Persons" in s.24 of the BNA Act*, [1928] S.C.R. 276 – In Macklem text at pages 37-45.

RECOMMENDED BACKGROUND TEXT

Monahan and Byron Shaw, *The Canadian Constitution* 4th edition (Toronto: Irwin Law Inc., 2015), paper. The book contains Constitution Acts 1867 and 1982 at p.539ff.

COURSE FORMAT

- Lectures and in-class discussions, simulations, case studies, group presentations, readings, role playing
- Three hours a week
- In-class registration taken

EVALUATION

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

Case Commentary & Analysis of <i>Edwards Canada (A.G.) (Person's case)</i>	15% - Due. 4 th October, 2021 (2% per calendar day penalty for submissions after due date)
Mid-term Exam	25% - 18 th October, 2021 – 50% quiz and 50% Essay – To be posted on Brightspace. To be emailed to the instructor by 11:59 p.m. on the 18 th October
Group Presentation (7 slots)	20% - During weeks 6-12
Final examination	30%- (TBA in examination period 12-23 December, 2021) To be posted on Brightspace. To be emailed to instructor on the exam date.
Class/lecture participation	10%

LATE PENALTIES AND REQUESTS FOR EXTENSIONS – SUBJECT TO ALL UNIVERSITY REGULATIONS

There will be a penalty of 2 per cent per calendar day for late Case Commentary.

The granting of extensions is determined by the instructor who will confirm whether an

extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>. An extension will be granted for medical and compassionate reasons. Being too busy, working, going on vacation, etc. are not reasons for granting an extension.

Extensions for longer than 7 days will normally not be granted. In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

DESCRIPTION OF EVALUATION COMPONENTS

Attendance & Class Participation (Total course mark value 10%)

Student attendance will be taken by oral roll call at every class. Your participation mark is based in part on attendance and in part on active participation in class discussions. Explanation of your absence for medical and compassionate reasons will be considered in adjusting the registration record. Excuses that you did not know there is a roll call registration will not be accepted. ATTENDING AN IN-CLASS EXAM WILL NOT BE CONSIDERED ATTENDANCE FOR PURPOSES OF THE PARTICIPATION MARK.

Case Commentary – Due October 4th, 2021 (Total course mark value 15%)

Students are required to produce a case commentary on *Henrietta Muir Edwards v. Canada (A.G.)* (The “Persons” case). **This should be in hard copy**, 5 to 10 pages double-spaced, following the Case Analysis Guidelines (on Brightspace). Marks will be discounted if formal submission requirements are not met. This means a title page, table of contents, page numbers and a bibliography. These pages are not included in the 5-10 pages of text) There is a penalty of 2% per calendar day for late submissions.

Group Presentations (Total course mark value 20%)

“In class” presentations will be done by groups of students in the classes after the mid-term test using concepts and specific cases or groups of cases set out in the texts. Presentations will normally be done based on the specific reading topics for the selected week. However, this can be modified to focus on some more specific subject. Presentations can also be done on specific organizations that are active in constitutional advocacy.

The same mark will be given for all members of a group. Students failing to attend their group presentation must present appropriate documentation for their absence.

There are 7 presentation days on days 6 to 12 and dates and topics are assigned on a first come basis. If you do not know anybody in the class, I will assign you to a group or help you form one. Teams should be composed of 3-4 members.

Students requiring computerized equipment and other audio-visual materials for their presentations should notify the instructor in advance. The groups are to provide the instructor within 48 hours with an electronic copy of their power points and, if you so choose, an *aide memoire*. The instructor will post these on Brightspace. **Key content points in presentations will be tested on in the Final Exam.** **Failure to provide the instructor with the electronic copy of the power points means no grade will**

be entered for the members of the group. An *aide memoire* would be appreciated, but not mandatory. Presentations should be at least 30 minutes long. If there are extra presenters in a group, it will need to be longer. Marks are awarded on content (60%), presentation style (20%) and engagement (20%) of the other students in discussions, simulations or game exercises (Jeopardy, Who Wants to Be a Millionaire etc.). A schedule of presentations will be drawn up on a first-come first-served basis. So identify your topic and the members of your group in writing to the instructor as soon as possible. Students are free to handout sample illustrative materials to assist their student colleagues to understand content and processes. Students can use formats, such as panel discussions, news and talk shows, tribunal and court case proceedings, simulations and debates as well as videos from You Tube and Media outlets. The whole time of a group presentation cannot be used up in a game show format activity or activities. The use of stage props and costumes can sometimes enhance class presentations. Respect for participant viewpoints different from your own and use of limited preambles to questions is encouraged.

SCHEDULE

Sept. 6 Statutory Holiday – Labour Day – University closed

Sept. 8 Fall term begins.

Sept. 13 **Introduction and Overview**

Week 1

i) Welcome activities

ii) Course outline & Evaluation Scheme

iii) Definition and Purposes of a Constitution

iv) Sources and Elements of the Canadian Constitution

v) Judicial Review and Constitutional Interpretation

**vi) Explanation of Case Commentary on *Edwards v. Canada (1929)*(JCP) –
Due 4th October, 2021**

- Lecture one notes posted on Brightspace

-Macklem, Chapters 1 & 2

-Dodek, Chapters 1 & 2

-*Henrietta Muir Edwards v. Canada (AG)(1929)*(JCPC) in Macklem pp. 37-45

-R. Rickwood, "Case Analysis Writing Guidelines: Briefing the Facts, Analysing Issues, Laws, Reasons and Decision-making involved and offering Opinion(s) on Significance. (on Brightspace – LAWS 3500)

Sept. 20

Week 2

Overview - Structure of the *British North America Act, 1867*, Early Canadian Federalism

-Macklem, Chapter 3, 4 & 5

-Dodek, Chapter 3

-Greene & Rickwood, "Highlights of the Canadian Constitution"

-Power Points on political conventions on Brightspace

Sept. 22

LAST DAY TO REGISTER/CHANGE COURSES OR SECTIONS

- Sept. 27
Week 3 **Economic Regulation, Depression, Growth of Canadian Autonomy, the Birth of Co-operative Federalism and Peace, Order and Good Government since the 1930s**
- Macklem, Chapters 6, 8 & 9
 - Dodek, Chapters 4 & 5
- Oct. 4
Week 4 **Origins, Structure and Specific Aspects of the *Canada Act 1982 (UK)***
- Macklem, Chapter 7 and the on-line chapter 26 at <http://emond.ca/canadian-constitutional-law-5th-edition.html>
 - Dodek, Chapter 6
 - Constitution Act, 1982* – on Brightspace
 - Constitutional Amendment Diagram – on Brightspace
- Case Commentary on Edwards DUE 4th October, 2021 in hard copy in class – 2% penalty per day thereafter.**
- Oct. 11 **Thanksgiving Statutory Holiday – University closed – No classes – No office hours**
- Oct. 18**
Week 5 **MID-TERM EXAM** – Take-Home – Open Book – Will be posted on Brightspace the morning of the 18th October. To be emailed to the instructor by 11:59 p.m. on the 18th October.
50% quiz & 50% essay
Value: 25%
Based on all materials, lectures and discussions since September 13
- Oct. 25-29 **FALL BREAK – NO CLASSES – NO OFFICE HOURS**
- Nov. 1
Week 6 **“The Rights of the Aboriginal Peoples of Canada” and the Constitution**
- United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C.2021, Ch. 14 (6 June 2021, Royal Assent)
 - Macklem, Chapter 14 at: <https://laws-lois.justice.gc.ca/eng/acts/u-2.2/index.html>
 - United Nations Declaration on the Rights of Indigenous Peoples*, U.N.G.A. resolution, October 2007 on UN site at: <https://laws-lois.justice.gc.ca/eng/acts/u-2.2/index.html>
- CLASS PRESENTATION**
- Nov. 8 **Final Exam Schedule posted on-line**

- Nov. 8 **The Impact of the *Charter* and the Challenge of Multiculturalism**
 Week 7
 -Macklem, Chapters, 15, 16, 17, 18 & 25
 -Oakes test under S.1 *CCRF* – on Brightspace
 -R. Rickwood – note on constitutional interpretation – on Brightspace

CLASS PRESENTATION

- Nov. 12 **LAST DATE TO REQUEST FORMAL EXAM ACCOMMODATIONS FOR December EXAMINATIONS TO THE PAUL MENTON CENTRE.**

- Nov. 15 **Canadian Charter of Rights and Freedoms**
 Week 8
 -Fundamental Freedoms (s.2)
 -Democratic Rights (ss.3, 4 & 5)
 -Mobility Rights (s.6)
 -Macklem, Chapter 19 (Freedom of Religion) – *CCRF* – s. 2(a)
 Chapter 20 (Freedom of Expression) – *CCRF* – s. 2(b)
 Chapter 21 (Freedom of Association) – *CCRF* s. 2(d)
 -*Constitution Act 1982* – On
 -Democratic rights – handout
 -Mobility rights – handout
 -*R. v. Sauve* (SCC) - handout

CLASS PRESENTATION

- Nov. 22 **Charter and Legal Rights – Sections 7-14**
 Week 9
 -Macklem, Chapter 22

CLASS PRESENTATION

- Nov. 29 **Charter and S.15 Equality Rights**
 Week 10
 -Macklem, Chapter 23

CLASS PRESENTATION

- Dec. 6 **Charter and Language Rights – s. 16 to 23**
 Week 11
 -Macklem, Chapter 24, (on line at <http://emond.ca/downloads/constitutional5-24-online.pdf>)

CLASS PRESENTATION

- Dec. 10 **This is a FRIDAY class to replace the class missed for Thanksgiving:**
 Week 12 **Addressing the Democratic Deficit in the House of Commons, Senate and the**

Courts by Amending the Constitution and by Political Change and Litigation

-Macklem, Chapters 12, 13 & 26 – on line at:

<http://emond.ca/downloads/constitutional524-online.pdf>

Final Exam Overview**CLASS PRESENTATION**

Dec. 10 **FALL TERM ENDS**

LAST DAY FOR ACADEMIC WITHDRAWAL FROM FALL TERM COURSE

Dec. 12-23 **FINAL EXAM – TBA – Value 30% - 50% Quiz & 50% essay – Based on all material from 1st November, 2021**
To be posted on Brightspace. Due on the exam date. To be emailed to the instructor by 11:59 p.m. on that date.

**Dec. 25-31 University Closed
and Jan. 1**

Jan. 21-23, 28-30 **FALL TERM DEFERRED FINAL EXAMINATIONS TO BE HELD**

COVID-19 PREVENTION MEASURES

All members of the Carleton community are required to follow COVID-19 prevention measures and all mandatory public health requirements (e.g. wearing a mask, physical distancing, hand hygiene, respiratory and cough etiquette) and [mandatory self-screening](#) prior to coming to campus daily.

If you feel ill or exhibit COVID-19 symptoms while on campus or in class, please leave campus immediately, self-isolate, and complete the mandatory [symptom reporting tool](#). For purposes of contact tracing, attendance will be taken in all classes and labs. Participants can check in using posted QR codes through the cuScreen platform where provided. Students who do not have a smartphone will be required to complete a paper process as indicated on the [COVID-19 website](#).

All members of the Carleton community are required to follow guidelines regarding safe movement and seating on campus (e.g. directional arrows, designated entrances and exits, designated seats that maintain physical distancing). In order to avoid congestion, allow all previous occupants to fully vacate a classroom before entering. No food or drinks are permitted in any classrooms or labs.

For the most recent information about Carleton's COVID-19 response and required measures, please see the [University's COVID-19 webpage](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca

Please note that failure to comply with University policies and mandatory public health requirements, and endangering the safety of others are considered misconduct under the [Student Rights and Responsibilities Policy](#). Failure to comply with Carleton's COVID-19 procedures may lead to supplementary action involving Campus Safety and/or Student Affairs.

ACADEMIC ACCOMMODATIONS

Academic Accommodation

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 accommodation regarding a formally-scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

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 [click here](#).

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).

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and where survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/equity/sexual-assault-support-services>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation will be provided to students who compete or perform at the national or international level. 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: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

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: <https://carleton.ca/registrar/academic-integrity/>.

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For more information on academic accommodation, please visit:

<https://students.carleton.ca/services/accommodation/>.

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: <https://carleton.ca/law/student-experience-resources/>