

## Course Outline

**COURSE:** LAWS 2501B - Law, State and Constitution

**TERM:** Winter 2018

**PREREQUISITES:** Prerequisite(s): LAWS 1000 [1.0] or, PAPM 1000 [1.0] or, PSCI 1000 [1.0] (No longer offered) or, PSCI 1001 and PSCI 1002 (no longer offered), or PSCI 1100 and PSCI 1200.

**CLASS:** **Day & Time:** Friday – 8:35-11:35 a.m.  
**Room:** Please check with Carleton Central for current room location

**INSTRUCTOR:** Dr. Roger R. Rickwood, LL.M., LL.B.  
(CONTRACT)

**CONTACT:** **Office:** B442 Loeb – Contract Instructors’ Office  
**Office Hrs:** Wednesdays - 3:00-5:30 p.m. or by appointment  
**Telephone:** 613-520-2600  
**Email:** rickwood@cunet.carleton.ca OR rogerrrickwood@aol.com

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**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](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/>

**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.

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

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

**Student Services:** The Centre for Student Academic Support (CSAS) is a centralized collection of learning support services designed to help students achieve their goals and improve their learning both inside and outside the classroom. CSAS offers academic assistance with course content, academic writing and skills development. Visit CSAS on the 4<sup>th</sup> floor of MacOdrum Library or online at [carleton.ca/csas](http://carleton.ca/csas)

***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/>

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**OFFICIAL COURSE DESCRIPTION**

Law relating to the state, society and the constitution, with a focus on the historical framework, federalism, and constitutional reform in Canada.

**EXPANDED COURSE DESCRIPTION**

The course examines the law relating to the state and the Constitution, focusing on the historical framework, federalism and constitutional reform in Canada. The course examines the development of the Canadian state from its origins within the British and French empires, examining the growth of constitutionalism as a democratic control mechanism on state action. Canada has had various constitutional frameworks, beginning in colonial times, through to the *British North America Act of 1867*, until the latest formulation of the Canadian Constitution in 1982. The Canadian Constitution is a combination of written legal constitutional instruments, styled the Constitution of Canada, and of informal constitutional conventions around the Westminster model of responsible government. The constitutional documents and the underlying forces responsible for their creation, interpretation, and application will be examined. The role played by early decisions by the JCPC and the SCC in bringing about constitutional change will be focused on as well as more recent SCC decisions since it became Canada's highest appeal court and since the inception of the *Constitution Act, 1982*. Disputes over executive accountability, the rights of individuals and groups, and the division of powers between the federal and provincial governments have been the subject of continuous political negotiations and litigation since Canada achieved internal self-government in 1867 and independence in 1931. Recent and current proposals for constitutional reform will be canvassed and evaluated

**GENERAL INSTRUCTIONAL GOALS AND OBJECTIVES**

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**LAWS 2501B (Law, State and the Constitution) has three instructional goals and objectives:**

- a) To understand written and unwritten provisions and processes of the Constitution of Canada in the context of the Canadian political regime;
- b) To understand the Constitution is based on the four general principles of federalism; democracy; constitutionalism and rule of law; protection of minorities; and
- 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

**REQUIRED TEXTS**

Tom Bateman, Janet Hebert, Rainer Knopf & Peter Russell, eds., *The Courts and the Constitution - Leading Cases*, 2nd edition (Toronto: Emond Montgomery, 2017) paper, ISBN: 978-77255-178-5. (Available at CU Bookstore).Introductory readings before Bateman chapters are required reading not just the case.

Monaghan, Patrick, Byron Shaw, Padriac Ryan, *Constitutional Law*, 5th Edition (Toronto: Irwin Law, 2017), paper, ISBN: 978-1-55221-441-1 . (Available at CU Bookstore)

Milanovic, Nick, ed., *Introduction to Public Law: Readings on Law, State and the Constitution* (Toronto: Captus Press, Inc., 2015), paper, ISBN: 978-1-55322-300-9. .(Available at CU Bookstore)

Additional materials to be distributed in class or posted on cuLearn site for Laws 2501B

### **Required Documents and Instruments**

Highlights of the Canadian Constitution – posted on cuLearn

Law and Legal Studies Department, Legal Style Guide as posted on Departmental Home Page and on cuLearn.

*Universal Declaration of Human Rights (UN General Assembly Resolution 1948)* On line at  
<http://www.un.org/en/universal-declaration-human-rights/index.html>

*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>

*Constitution of Canada* on cuLearn

*Canadian Bill of Rights S.C. 1960* <http://laws.justice.gc.ca/eng/acts/C-12.3/>

Constitutional Amendments Procedure Diagram ( Handout)

### **Supplementary Texts (Not required but useful for reference)**

Dodek, Adam. *The Canadian Constitution*, (Toronto: Dundurn Press, 2013). Also available from U of O bookstore, in Chapters, and from the publisher. Both paper and eBook versions are available. The book contains an easily accessible copy of the *Constitution Acts, 1867 and 1982* and summaries of important cases suitable for use in presentations and in doing a case analysis. The book contains a glossary of legal terms.

Hogg, Peter, *Constitutional Law of Canada*, Student edition 2016 (Toronto: Carswell, 2016) - Very technical contents. On reserve CU Library.

### **EVALUATION**

Mid-Term (closed book)	30% (MC & T/F Quiz plus Essay-1 out of 5 choices) – February 16 – 2 hours)
Case Briefing	20% (Constitution case appeal briefing) - Due March 23
Class Participation	10% Mandatory registration sign-in at each class
Final Exam (closed book)	40% (MC & T/F Quiz plus Essay-1 out of 5 choices) – During official final exam period – 3 hours
Total	100%

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.

**Final exam period is April 14-26, 2018**

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

ALL STUDENTS are required to sign the register 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 sign-in registration will not be accepted. ATTENDING AN IN-CLASS EXAM WILL NOT BE CONSIDERED ATTENDANCE FOR PURPOSES OF THE PARTICIPATION MARK.

### **The Constitutional Case Briefing Report (Total course value 20%)**

There will be a late penalty of 2 percent per day and no case briefing report will be accepted after April 2, 2018. Citation Style Guide on cuLearn site and Department home page.

The Constitutional Case Briefing Report must be submitted in hard copy or the mark will be zero. Electronic versions will be accepted only for the purpose of confirming you have met the due date. These will not be printed off. The hard copy must then be submitted at the next class or in the drop box of the Law Department office on the 4<sup>th</sup> floor of Loeb. The case briefing writing requirements will be handed out in class on March 9, 2018 and to CuLearn.

### **SCHEDULE**

#### **Jan. 12 – Class 1 - Introduction to the Course; Course Outline & Evaluation**

##### **Elements of Public Law, the State and the Constitution, Purposes of a Constitution and Definitions of Key Working Concepts**

*Magna Carta 1215; Bill of Rights 1689; Act of Settlement 1701; Treaty of Paris 1763; Act of Union 1840, Quebec Act 1774; Constitutional Act 1791*

- Milanovic, ch. 1 & 2
- Monahan, ch.1 & 2
- *Universal Declaration of Human Rights* - <http://www.un.org/en/universal-declaration-human-rights/index.html>
- *Royal Proclamation of 1763* - <https://www.collectionscanada.gc.ca/publications/002/015002-2010-e.html>

#### **Jan. 19 LAST DAY TO REGISTER/CHANGE COURSES**

#### **Jan. 19 – Class 2 - Origins and Structure of the Constitution Act 1867 – Division of powers Government Branches & Roles - Macdonald's Vision vs Cartier's vision**

- Milanovic, chs. 3 & 4
- Monahan, chs.3 & 4
- Highlights of the Constitution (on cuLearn) (handout)

#### **Jan. 26 – Class 3(A) - Parliament and Executive Authority and Constitutional Change**

- Milanovic, pp. 180-206 of ch.8

##### **Reference Re Senate Reform under BNA Act, 1949 (handout) (SCC) (Trudeau Sr.)**

**Class 3(B) - The “Person’s” case 1930** *Henrietta Muir Edwards v. Canada (A.G.)* [1930] 1 D.L.R.98 (J.C.P.C:18 October 1929), [1930] A.C. 124 (J.C.P.C.). See Milanovic (Con), pp. 69-74 for an abbreviated version with commentary by David W. Elliott. The J.C.P.C. decision written by Lord Sankey overturned unanimous S.C.C. decision referred to 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

-Bateman, Part Two (13) Person's Case (JCPC)(1930)

**Class 3(C) - Pre-Charter Rights and Freedoms** - Alberta Press, Roncarelli, Drybones and Lavell and **Canadian Bill of Rights**

- Bateman, Part 4 (A) 25-26
- *Canadian Bill of Rights* – on cuLearn

**Jan. 31 LAST DATE TO DROP COURSE WITHOUT FINANCIAL PENALTY**

**Feb. 2 – Class 4(A)** - **Judiciary, Limited Judicial Review, Early “Colonial” Federalism and Division of Powers** Role of the JCPC and new SCC and *Colonial Laws Validity Act 1865*

- Milanovic, chs. 4 & pp. 198-206 of ch.5
- Bateman – Introductory essay
- Monahan, ch. 7

**Class 4(B) - Privy Council, Provincial Rights and Classic Federalism**

- Bateman, Part 2, Section A (1)(2)(3)(4)

**Feb. 9 – Class 5 - Canadian Independence by Statute of Westminster 1931, Impact on Dominion and Provincial Governments, Privy Council and SCC after 1949 in Changing from Classical to Co-operative Federalism**

- Bateman , Part 1(A)(5)(6)(7) and Part1B(8)(9)(10)(11)(12)(13)
- Milanovic, chs. 6 and 7
- Monahan, chs. 8 & 9

- **Mid Term Exam Review**

**Feb. 16 - Class 6 - MID-TERM EXAM – In Class - Closed Book - 2 hours - worth 30% of total course grade – quiz plus essay of equal value - 30 MC & true/false quiz questions plus one essay out of five options**

**Feb. 16 April Exam Schedule available online.**

**Feb. 19 - Statutory Holiday – University closed**

**Feb. 19-23 WINTER BREAK – NO CLASS – NO OFFICE HOURS**

**Mar. 2 - Class 7 - Pierre Trudeau’s Vision and the Constitution Act 1982: Origins, Basic Structures and Constitutional Amendments** - *Reference Re: Patriation* case to SCC (1981)

- Milanovic, Ch..9
- Bateman, Part 2(14) Patriation Reference Case
- Monahan chs. 5 and 13
- Constitutional Amendment Procedures under CA, 1982 Diagram (handout)

**Mar. 9 Final Date to Apply for Final Exam at Paul Menton Centre**

**Mar. 9 - Class 8 - Special Aspects of the Constitution Act, 1982 and Expanded Judicial Review**

- Bateman, Part 4 (G) Language Rights (46) (47)

- Milanovic, ch. 10
- Monahan, ch. 13
- Bateman, Role of S.1, Part 4(D)(33) and Remedies in Part 4(H)(48)(49) for Appeal Case Briefing to A.G. (Canada)
- Bateman, Part 4(F) Equality Rights (44)(45) (*Laws; Andrews; M. v. H. and Kapp*).

**- CONSTITUTIONAL CASE HANDED OUT WITH WRITING REQUIREMENTS -  
DUE MARCH 23**

- **Constitutional Validity of Solitary Confinement under CCRF ss. 7 and 12**
- **Projected date for return of mid term test**

**Mar. 16 - Class 9 - Rights and Freedoms in the *Charter* era**

- Monahan, ch.11 & pp. 458-461 of ch.13
- Bateman, Part 4 (B) (27)(31); Part 4 (C)(32); Part 4 (E)(38)(39)(40)(41)(42)(43)

**Mar. 23 - Class 10 - Aboriginal Rights and Self-Government: The Journey from King George III to *Henry Daniels* 2016 SCC 12 and *Khunaxa First Nation* 2017 SCC 54**

- Royal Proclamation of 1763 - <https://www.collectionscanada.gc.ca/publications/002/015002-2010-e.html>
- Part I, Constitution Act 1982, CCRF, S.25, Part II Constitution Act 1982: Constitution Act 1867, ss. 91(24) & S.109 allowing federal Indian Act and Indian interest in provincial land
- Report of the Royal Commission on Aboriginal Peoples on Self-Government (handout)
- UN Declaration of the Rights of Aboriginal People - <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>
- Milanovic, Ch. 11, Section b
- Monahan, ch.14
- Bateman, Part 3 (18)(19)(20)(21)(23)(24)

**CONSTITUTIONAL CASE BRIEFING DUE TODAY MARCH 23, 2018. PENALTIES BEGIN MARCH 24 AND NO PAPER WILL BE ACCEPTED AFTER APRIL 2, 2018**

**Mar. 30 STATUTORY HOLIDAY - University closed - To replace this missed class, our final class will be held on WEDNESDAY, April 11**

**Apr. 6 - Class 11 - Formal & Informal Constitutional Change After Failures of Meech, Charlottetown Accords and Unilateral Harper Government Initiatives**

- Milanovic, ch. 11
- Bateman, Part 2 (16)(17) References on Senate Reform (2014) & SCC Act (2016)

**Apr. 11 - Class 12 - (N.B. THIS IS A WEDNESDAY CLASS)  
Constitutional Struggle for Unity and Diversity vs. Threat of Secession**

- Milanovic, ch.12
- Monahan, chs. 6 & 15
- Bateman, Part 2(15) - Reference Re: Secession of Quebec (SCC) case (1998)
- Clarity Act (S.C.) on Quebec secession process and Rest of Canada (ROC)
- <http://laws.justice.gc.ca/eng/acts/C-31.8/FullText.html>

**Course Overview and Final Examination Review**

**April 11 Last day of fall/winter and winter-term classes.**

- Classes follow a Friday schedule
- Last day for academic withdrawal from winter term course.

- Last day for handing in term work and the last day that can be specified by a course instructor as a due date for term work for fall/winter and winter-term courses.
- **Last Day to Withdraw from Course without grade being assigned.**

**Apr. 12-13 - No class – No exams**

**Apr. 14-26 - Exam Period - Final Exam TBA in Formal Examination Period according to on-line Schedule posted on Feb. 16 by Registrar. No final exam will be deferred without Registrar approval. No earlier exam date will be granted without Registrar approval.**

Final exam will be 3 hour closed book exam based on materials since mid-term. It is closed book. It will consist of a quiz and an essay portion Each part equals 50% of exam grade. The quiz will consist of 30 questions and the essay part will consist of one essay out of at least five options.

**May 18-29 Deferred Exam Period**

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