



Department of Policy Studies

POLITICAL SCIENCE 2243-001 • TUTORIAL SECTIONS 401, 402, 403
LAW, POLITICS AND THE JUDICIAL PROCESS

Professor:

Office:

Voice mail: • Email:

Web site:

Office Hours:

Course Description

This 6-credit course examines the form and functions of a principal institution of the Canadian state, namely, the judiciary. Canada's judiciary fulfills two basic purposes: i) *adjudication*, which includes interpreting the law, applying the law to settle disputes, and rendering judgments based on the law; and ii) *judicial review*, wherein the courts have the authority to overturn legislation that is inconsistent with the provisions of the Constitution. In addition, the judiciary carries out what political scientists refer to as a *guardianship* role, i.e., as an ostensibly impartial and independent 'referee' of politics and political processes. This role is especially important in a country with a federal structure like Canada, where political authority is constitutionally divided between the national and provincial governments.

Our primary constitutional focus is on the Charter of Rights and Freedoms, and consequently, the central – at times controversial – role of the judiciary in clarifying its legal meaning. The Charter-judiciary relationship has exerted considerable influence upon Canada's legal, political, cultural, and social character. In this course, we seek to understand this complex relationship by examining a number of legal judgments that have helped to define the Canadian constitution. We also organize and participate in our own Moot Court Exercise as the 'Ultra Supreme Court of Canada', and argue an actual Supreme Court judgment at The Court of Queen's Bench

Required Texts (available for purchase at the Book Store)

- 1) Lori Hausegger, Matthew Hennigar, and Troy Riddell, *Canadian Courts: Law, Politics, and Process*. Oxford University Press, 2009.
- 2) **PLSC 2243 Casebook**. This casebook is for tutorials; it is a compilation of leading Supreme Court of Canada judgments (in a white cover).

Recommended Text (copy on Reserve)

Heather MacIvor, *Canadian Politics and Government in the Charter Era*. Thomson-Nelson, 2005.

Also at the Reserve Desk in the Library

Assorted articles are in binders on Reserve in the Library.

Course Organization • 4 Parts

i) Lectures

Lectures for this course serve three principal objectives: first, to introduce you to the constitutional parameters of Canadian government institutions and processes; second, to acquaint you with Canada's written constitutional documents, in particular, the Charter of Rights and Freedoms; and third, to examine the scope and impact of judicial review.

Lectures are presented in Power Point format. Students *must* attend lectures, as the Power Point slides provide only part of the total lecture material.

ii) Moot Court Exercise: preparations, structure and roles

Our Moot Court Exercise – an 'appeal' of an actual Supreme Court of Canada decision performed by our 'Ultra Supreme Court of Canada' – is a highlight of the course. This exercise takes place in either late November or early December at the Court of Queen's Bench in the Calgary Courts Centre.

This semester's case for moot is **R. v. XXX**. This judgment is available for downloading and printing from my web site link. **N.B.: everyone must have their own copy of this judgment. N.B. part deux: Start reading through this case as soon as possible.**

We begin our formal preparations for Moot Court in October. The moot is organized with the cooperation of the Calgary offices of Bennett Jones, LLP. Several Bennett Jones lawyers will assist us in our preparation. We meet with the lawyers twice during November: the first time at the law firm, and the second time at 'practice moot' held in our lecture room. Please prepare your personal schedules accordingly, as attendance at both of these functions is mandatory for all.

- ▶ **As this class has 60 or so students, there will be two separate moot court groups/exercises.**
- ▶ **Note: Preparation for the Moot is where the fifth hour of this course kicks in.**
- ▶ **Moot prep "labs" are held on Wednesday, 4 – 4:50 PM during the moot period.**
- ▶ **Time permitting, included during moot prep will be the indelicate, nay, raffish 'How to Write Real Good' lessons.**

Roles for the Moot: The student Ultra Supreme Court has a minimum of nine **justices** for *each* moot exercise (remember: there are 2 separate moot groups), accompanied by a Justice of the Alberta Court of Queen's Bench, who will sit as Chief Justice. Other students will take on the role of **lawyers** for both parties in the case, i.e., for the Appellant and Respondent, each with **senior** and **junior counsel**, as well as **interveners**. (Interveners are legal counsel not involved directly in the actual dispute, but who nonetheless are permitted by the court to participate.) Other students will assume the role of **journalists** covering the case. Each moot will also require one **clerk of the court** to assist with the proceedings. Finally, a number of students will take on the role of **researchers/alternate justices**.

These roles will be explained and assigned in the second half of the semester. **You will be asked to list your preferences for moot roles in late September or early October. I will make the final decision as to who fills what role after the moot roles list has been completed.**

Our formal Moot Court Exercise ends with a celebratory *post mortem*, featuring complimentary OvaltineTM, Milk-BoneTM biscuits, and pre-moistened towelettes.

- ▶ **All written assignments for the moot are due 1 week to the day after the Moot Court Exercise, and will be submitted to me no later than 4:30 PM that day.**
- ▶ **LATE SUBMISSIONS WILL BE PENALIZED AT THE RATE OF A 2 PERCENT DEDUCTION PER DAY.**



Friendly reminder: you will be very, very busy during moot time, so please...

iii) Tutorials and Case Presentations (T/R, 4 -4:50 PM; W 3 – 3:50 PM in EA 1030)

There are three separate tutorial sections. Consult your own timetable to determine the appropriate tutorial (401, 402, or 403) for which you have registered. **Please note that attendance is taken at every tutorial.**

In tutorials, each student is required to prepare and present one analysis of a Supreme Court judgment (see your PLSC 2243 Casebook). This presentation includes a concise summary of the facts and issues surrounding the case, as well as providing clear evidence that you understand its meaning, significance, reasoning, logic, and any comparative inconsistencies

N.B.: each presentation is an individual, NOT a group, assignment.

Your tutorial presentation must be in Power Point format. In addition, each student will send an e-copy of their Power Point to make available to the entire class. The e-copies will be posted. The sign-up for presentations takes place during the second week of classes. Please note that all students are to read the particular judgment presented for each week.

iv) Final Examination

Held during the December Final Examination period, set by the Registrar.

PLEASE NOTE:

- ❗ **FAILURE TO FINISH AND/OR SUBMIT ANY PLSC 2243 ASSIGNMENT WILL RESULT IN A GRADE OF 'F' FOR THE COURSE.**
- ❗ **POOR LECTURE, TUTORIAL, AND/OR MOOT PREP ATTENDANCE WILL RESULT IN A SIGNIFICANT REDUCTION OF YOUR COURSE GRADE.**

Educational/Learning Outcomes for this course

1. Communication
 - Interpret and evaluate meaning in a variety of texts and media.
 - Detect nuances of (in) written, oral and non-verbal messages.
 - ▶ How this outcome is facilitated in PLSC 2243: 1) grading your presentations, your research, your performance at Moot Court, and examinations.
2. Thinking
 - Creative thinking: imaginative/innovative thinking.
 - Critical thinking.
 - Reflective thinking: reflecting on assumptions and reframing perspectives.
 - Challenging assumptions.
 - Decision-making.
 - Articulating a process or an argument.
 - Being open to diverse points of view.
 - ▶ How this outcome is facilitated in PLSC 2243: 1) evaluating your arguments in your presentation, your research, and your role in the Moot Court exercise; for e.g. have you considered other possible approaches/options? How might you tackle the issues differently? Can you explain your position clearly and concisely? Are colleagues' assessments of your work valuable?; 2) (re)introducing you to political science and legal scholarship, e.g. hypothesis testing, principles of argument, valid premises, viable theories, legal arguments; 3)

encouraging critical approaches to course material; 4) how to reason in the manner of judges, lawyers, researchers, journalists; 5) respecting differences of opinion and defending your own.

3. Information Retrieval and Evaluation

- Identify relevant information sources.
- Generate search strategies necessary to complete an information search.
- Organize information in a relevant fashion to assess completeness.
- Evaluate the quality of information.
- Acknowledge sources of information.
- Utilize a recognized format for acknowledgement.
- ▶ *How this outcome is facilitated in PLSC 2243:* 1) *using proper formats for organizing and citing your sources; synthesizing and incorporating research materials; comprehension of material; 2) how to conduct research with so many options available: textbooks, journals, magazines, videos, newspapers, computers/internet; 3) using Power Point for tutorial case presentations.*

Political Science and PLSC 2243 Outcomes

- Developing analytical skills with respect to: ideas, media, texts, institutions, processes, polls (if utilized).
- Putting your analytical skills to use in producing a research product – how to conduct research and write a judgment, brief, or article; how to read a case; how to present a case.
- Informing you of the critical relationship between politics and the judiciary.
- Helping to develop skills in: research, writing, presentation/articulation, argumentation and critique, scholarly interpretation, legal arguments, examination taking.
- Promoting clarity in political values and concepts; examples include the rule of law, power, authority, legitimacy, sovereignty, rights, obligations, liberty, coercion, dissent.
- ▶ *How these outcomes are facilitated in PLSC 2243:* 1) *lectures and class discussions; comprehending the assigned readings; written examinations and verbal testing (i.e., in class discussions) for knowledge of important concepts, basic principles, concepts and ideas; 2) exploring the choices and limits to politics, courts, and constitutional law.*

PLSC 2243 Grade Distribution

- | | |
|--------------------------|---|
| • Tutorial attendance | 5% |
| • Midterm exam | 20% (Tuesday, October 13, in class) |
| • Case summary/analysis | 10% (during the tutorials, T, W, & R) |
| • Moot court/assignments | 40% (assignments due 1 week after Moot Court) |
| • Final exam | 25% (scheduled in December by the Registrar) |



Grade Scale

Grade	Range	Description
A+	95-100	Excellent – superior performance, showing comprehensive understanding of the subject matter.
A	85-94	
A-	80-84	
B+	77-79	Good – clearly above average performance with knowledge of the subject matter generally complete.
B	73-76	
B-	70-72	
C+	67-69	Satisfactory – basic understanding of the subject matter.
C	63-66	
C-	60-62	
D+	55-59	Minimum pass – marginal performance, generally insufficient preparation for subsequent courses in same subject area.
D	50-54	
F	0-49	Fail – unsatisfactory performance and/or failure to complete assignments.

Academic Regulations and Responsibilities

Last day to withdraw from the course with a grade of 'W' is November 26, 2009. Students are advised to consult the Mount Royal Calendar for academic regulations, and the *Code of Student Conduct* handbook for student rights and responsibilities. Students should be aware that the principle of intellectual honesty is upheld scrupulously.

Violating this principle, for example, by committing plagiarism, is considered a serious offence and will result in a failing grade for the course and possible expulsion from Mount Royal.

See: <http://www.mtroyal.ca/codeofstudentconduct>

and

<http://library.mtroyal.ca/files/help/Guide%20to%20Avoiding%20Plagiarism.pdf>

Lecture and Topic Schedule

1. Please note that, while the topics listed in the syllabus are based *roughly* on semester weeks, some topics will take several lectures or more to address completely.
2. The 'Required text' is Hausegger, Hennigar, and Riddell. The 'Recommended text' is Maclvor.
3. Remember to access the 'Reserve reading' collection for this course; check out the Library stacks and periodicals, as well. Access the Library's website for other resources, too.

► **PART I: INTRODUCTION TO THE CONCEPTS AND THE INSTITUTIONS**

TOPIC 1

Introduction and orientation; key concepts – law, justice, rights, the rule of law.

Required text reading: Ch. 1.

Recommended reading: Introduction & Ch. 1.

TOPIC 2

The structure of the courts.

Required text reading: Ch. 2.

TOPIC 3

Common Law, Civil Code, Conventions.

Required text reading: Chs. 9-10.

Reserve reading: Ian Greene, 'The Administration of Justice'.

TOPIC 4

The Canadian judiciary: decision-making, selection, recruitment, access.

Required text reading: Chs. 3-6.

Recommended text reading: Ch. 3.

TOPIC 5

Government and the courts: reference cases, federalism (division of powers), etc.

Required text reading: Chs. 8 & 11.

Recommended text reading: Chs. 4, 5, 7.

TOPIC 6

The Canadian Constitution: The 1867 and 1982 Constitution Acts.

Recommended text reading: Ch. 2.

► **PART II: THE CHARTER OF RIGHTS AND FREEDOMS**

TOPIC 7

Examining the Charter, Part 1.

Recommended text reading: Chs. 6, 8-9.

TOPIC 8

Examining the Charter, Part 2.

Recommended text reading: Chs. 10-11.

TOPIC 9

Examining the Charter, Part 3.

Recommended text reading: Chs. 12-13.

► PART III: MOOT COURT PREPARATION: 'LABS', PRACTICE, AND THE MOOT EXERCISE

- Moot prep classes are on Wednesdays, 4 -4:50 PM, starting in early or mid-October.
- Visit to the law firm 'TBA' later in the semester (likely late October or early November).
- Practice moot dates are also 'TBA', likely early or mid-November.
- Moot exercise at the Calgary Courts Centre is usually held on the last Thursday of classes.

E-etiquette in class

Phones, iPods, power tools, kitchen appliances, etc. must be turned off during class. Laptops permitted only if you're following the lecture material. That means NO YouTube videos and the like. NO texting, Twitter, Facebook, MySpace, etc., either.

"To do two things at once is to do neither." - Publilius Syrus, 1st Century, BC

Tutorials (PLSC 2243 Casebook)

► YOU WILL CHOOSE ONE OF THE FOLLOWING JUDGMENTS BELOW TO PRESENT IN TUTORIAL

These presentations begin in Week 2 and are held in tutorial each week during classes.

1. The Queen v. Big M Drug Mart
2. Reference Re: B.C. Motor Vehicle Act
3. A.G.-Québec v. Que. Protestant School Board *and* Ford/Devine
4. The Queen v. Therens
5. Schachter v. Canada
6. The Queen v. Oakes
7. Operation Dismantle Inc. v. The Queen
8. The Queen v. Crown Zellerbach
9. Morgentaler, et. al. v. The Queen
10. Daigle v. Tremblay
11. Law Society B.C. v. Andrews
12. The Queen v. Keegstra



PLSC 2243 Policies & Expectations

- Any requests for late submissions or deferrals will normally be refused; in the rare event that such a request is accepted, it must be accompanied by legitimate documentation.
- All students must make themselves available for the entire final exam period in December. So, don't plan to be away between December 11 – 22.
- Regular, consistent attendance, cooperation and participation in all components of the course expected of all students.
- Those with poor attendance records will be penalized in the calculation of the final grade.
- If you are having difficulties with the course material, its concepts, requirements, etc., **do come and speak with me**. Don't leave your problems unattended.
- Activities for the Moot Court Exercise require both individual initiative and teamwork. Those whose efforts are deemed unsatisfactory in either requirement will be reassigned to a different moot role.