

# PSCI 363: Canadian Constitutional Law

Winter, 2013

MC 4042, Tuesdays 2:30-5:20 p.m.

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**Professor:** Emmett Macfarlane

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**Office Location:** Hagey Hall 350

**Office Hours:** Tues. 1:00-2:20 p.m. or by appointment

**Course Description:** This course will examine the Canadian Constitution from a political and legal perspective. Students will explore the different components of the country's constitution and its development, and learn how its meaning has evolved and how courts - particularly the Supreme Court - have interpreted its various provisions in light of new issues and controversies. Students will investigate how the judicial role in constitutional interpretation works and what implications that role has for governance and democracy. The course will examine Canadian jurisprudence pertaining to the division of powers, Aboriginal and treaty rights, and the Charter of Rights and Freedoms. Students will be able to critically analyze key questions, concepts and cases in constitutional law.

**Pre-Requisites:** PSCI 260 or PSCI 260A/B

**Format:** Although classes will consist primarily of lectures, student participation and discussion of key issues, course readings and cases will be an important component.

**Course Readings:** There is no textbook purchase required for this course. Students are expected to obtain all of the readings and cases through the course LEARN site (readings will also be available through the library system and cases are available online). All of the readings listed in the syllabus are required. Students will also choose one of two books for a book review assignment (discussed below).

## University Regulations:

### Cross-listed course:

Please note that a cross-listed course will count in all respective averages no matter under which rubric it has been taken. For example, a PHIL/PSCI cross-list will count in a Philosophy major average, even if the course was taken under the Political Science rubric.

### Academic Integrity:

**Academic Integrity:** In order to maintain a culture of academic integrity, members of the University of Waterloo are expected to promote honesty, trust, fairness, respect and responsibility.

**Discipline:** A student is expected to know what constitutes academic integrity, to avoid committing academic offences, and to take responsibility for his/her actions. A student who is unsure whether an action constitutes an offence, or who needs help in learning how to avoid offences (e.g., plagiarism, cheating) or about “rules” for group work/collaboration should seek guidance from the course professor, academic advisor, or the Undergraduate Associate Dean. When misconduct has been found to have occurred, disciplinary penalties will be imposed under Policy 71 – Student Discipline. For information on categories of offenses and types of penalties, students should refer to Policy 71 - Student Discipline, [Student Discipline http://uwaterloo.ca/secretariat/policies-procedures-guidelines/policy-71](http://uwaterloo.ca/secretariat/policies-procedures-guidelines/policy-71).

**Grievance:** A student who believes that a decision affecting some aspect of his/her university life has been unfair or unreasonable may have grounds for initiating a grievance. Read Policy 70 - Student Petitions and Grievances, Section 4, [Student Petitions http://uwaterloo.ca/secretariat/policies-procedures-guidelines/policy-70](http://uwaterloo.ca/secretariat/policies-procedures-guidelines/policy-70). In addition, consult [Student Grievances http://arts.uwaterloo.ca/student-grievances-faculty-arts-processes](http://arts.uwaterloo.ca/student-grievances-faculty-arts-processes) for the Faculty of Arts’ grievance processes.

**Appeals:** A student may appeal the finding and/or penalty in a decision made under Policy 70 - Student Petitions and Grievances (other than regarding a petition) or Policy 71 - Student Discipline if a ground for an appeal can be established. Read Policy 72 - Student Appeals, [Student Appeals http://uwaterloo.ca/secretariat/policies-procedures-guidelines/policy-72](http://uwaterloo.ca/secretariat/policies-procedures-guidelines/policy-72).

**Academic Integrity website (Arts):** [Academic Responsibility http://arts.uwaterloo.ca/arts/ugrad/academic\\_responsibility.html](http://arts.uwaterloo.ca/arts/ugrad/academic_responsibility.html)

**Academic Integrity Office (uWaterloo):** [Academic Integrity http://uwaterloo.ca/academic-integrity/](http://uwaterloo.ca/academic-integrity/)

## **Accommodation for Students with Disabilities:**

**Note for students with disabilities:** The AccessAbility Services (AS) Office, located in Needles Hall, Room 1132, collaborates with all academic departments to arrange appropriate accommodations for students with disabilities without compromising the academic integrity of the curriculum. If you require academic accommodations to lessen the impact of your disability, please register with the AS Office at the beginning of each academic term.

## **Course Requirements:**

Quizzes: There will be two in-class quizzes. The first quiz will be on February 26 (Week 8) and the second on April 2 (Week 13). Quizzes will cover all of the course material (readings and lectures), but Quiz #2 will not be cumulative: Quiz #1 will cover Weeks 2-6 and Quiz #2 Weeks 9-12.

Critical Analysis: Students will write a critical analysis of 3 pages on one of the readings from Weeks 3 or 4. The critical analysis should examine and assess the major findings or arguments of the reading(s) and evaluate whether the author(s) succeed in his or her goals. The critical analysis is due IN CLASS during the week for which the reading was assigned.

Book Review: Students will be expected to write a book review analyzing one of the following books:

- Dennis Baker, *Not Quite Supreme: The Courts and Coordinate Constitutional Interpretation*. (McGill-Queen's University Press, 2010)
- Emmett Macfarlane, *Governing from the Bench: The Supreme Court of Canada and the Judicial Role*. (UBC Press, 2013).

Both books are available at the university bookstore (note: the Macfarlane book is a new release, and paper copies are currently available in hard cover only. For a less expensive alternative, an electronic copy is available for download via Google Play at [play.google.com](http://play.google.com)). A separate assignment sheet will be handed out in class. Due IN CLASS March 26 (Week 12).

## **Course Requirements:**

Critical Analysis – 20%

Quiz #1 – 20%

Quiz #2 – 20%

Book Review – 40%

\*Late assignments will be subject to a penalty of 5% per day (this includes weekend days). Extensions will be granted for documented medical or emergency situations only.

## Course Outline:

### WEEK 1 (Jan. 8): Introduction

### WEEK 2 (Jan. 15): Lecture - Canada's Constitutional Development

#### Readings

- o Robert C. Vipond, "1787 and 1867: The Federal Principle and Canadian Confederation Reconsidered," *Canadian Journal of Political Science* (1989) 22(1): 3-25.
- o Peter H. Russell, "The Political Purposes of the Canadian Charter of Rights and Freedoms," *The Canadian Bar Review*. (1983) 61: 30-54.

### WEEK 3 (Jan. 22): Lecture - Amending the Constitution / Constitutional Conventions

#### Readings

- o Carissima Mathen, "'The question calls for an answer, and I propose to answer it': The *Patriation Reference* as Constitutional Method," *Supreme Court Law Review* (2011) 54: 143-66.
- o Adam Dodek, "Courting Constitutional Danger: Constitutional Conventions and the Legacy of the *Patriation Reference*," *Supreme Court Law Review* (2011) 54: 117-42.

### WEEK 4 (Jan. 29): Lecture - Judicial Decision-Making

#### Readings

- o Sujit Choudhry and Claire E. Hunter, "Measuring Judicial Activism on the Supreme Court of Canada: A Comment on *Newfoundland v. NAPE*," *McGill Law Journal* (2003) 48: 525-562.
- o Christopher P. Manfredi and James B. Kelly, "Misrepresenting the Supreme Court's Record? A Comment on Sujit Choudhry and Claire E. Hunter, 'Measuring Judicial Activism on the Supreme Court of Canada'," *McGill Law Journal* (2004) 49: 741-764.
- o Sujit Choudhry and Claire E. Hunter, "Continuing the Conversation: A Reply to Manfredi and Kelly," *McGill Law Journal* (2004) 49: 765-778.

### WEEK 5 (Feb. 5): Lecture - Federalism

#### Reading

- o Wade K. Wright, "Facilitating Intergovernmental Dialogue: Judicial Review of the Division of Powers in the Supreme Court of Canada," *Supreme Court Law Review*. (2010) 51: 625-93.

**WEEK 6 (Feb. 12): Lecture - Aboriginal and Treaty Rights**

***Readings***

- o Case: *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.
- o James (Sa'ke'j) Youngblood Henderson, "Constitutional Vision and Judicial Commitment: Aboriginal and Treaty Rights in Canada," *Australian Indigenous Law Review*. (2010) 14(2): 24-48.

**WEEK 7 (Feb. 19): READING WEEK**

**WEEK 8 (Feb. 26): QUIZ 1**

**WEEK 9 (March 5): Lecture - The Charter of Rights and Freedoms / Section 2: Fundamental Freedoms**

***Readings***

- o Janet Hiebert, "Parliamentary Bills of Rights: An Alternative Model?" *The Modern Law Review*. (2006) 69(1): 7-28.
- o Brian Langille, "The Freedom of Association Mess: How We Got into It and How We Can Get out of It," *McGill Law Review*. (2009) 54: 177-212.

**WEEK 10 (March 12): Lecture - Section 15: Equality Rights / Section 3: Voting Rights**

***Readings***

- o Case: *R. v. N.S.*, 2012 SCC 72.
- o Beverley Baines, "Equality's Nemesis?" 5 *Journal of Law and Equality* 2006, pg. 57-80.

**WEEK 11 (March 19): Lecture - Section 7: Life, Liberty and Security of the Person**

***Readings***

- o Case: *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, [2004] 3 S.C.R. 657, 2004 SCC 78.
- o Case: *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519, 2002 SCC 68.

**WEEK 12      (March 26): Lecture - Charter Dialogue**

***Readings***

- o Case: *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519
- o Case: *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791, 2005 SCC 35

**WEEK 13      (Apr. 2): QUIZ 2 / Conclusions**