

PSCI 363: Canadian Constitutional Law

Winter, 2014

PHY 150 - Mondays, 11:30am-2:20pm

Instructor: Dr. Emmett Macfarlane

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Office Location: Hagey Hall 350

Office Hours: Thurs. 10am-12pm, HH 350

Contact Policy: Email is likely the best way to get in touch with the professor or your TA outside of usually scheduled office hours. A few things to remember when emailing:

- **Please use your official UW email account.** To ensure your privacy, your professor/TA will not reply to emails sent from a non-UW account (such as Gmail, Hotmail, Yahoo, Sympatico, etc.).
- Please address your email to the professor or TA appropriately (i.e. 'Dr. Macfarlane', 'Professor', Inas, etc.).
- Please remember to sign your email with a first and last name.
- Please allow 24-48 hours for a response to your email.
- Please note that your professor and TA generally do not answer emails after 4:00pm on weekdays or on weekends (4:00pm Friday to 9:00am Monday).
- **Email should be used for brief questions that can be answered quickly.** If you want to discuss course material, assignments, or another matter in greater detail, please see the professor or TA during his or her office hours or make an appointment to meet at some other time convenient for both

Teaching Assistants:

Inas Ettayebi

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Office Hours: Tues. 11am-12pm, HH 346

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 LS 101.

University Regulations:

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, <http://www.adm.uwaterloo.ca/infosec/Policies/policy71.htm>.

These two websites are particularly helpful:

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

[Academic Integrity Office \(uWaterloo\): http://uwaterloo.ca/academicintegrity/](http://uwaterloo.ca/academicintegrity/)

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, <http://www.adm.uwaterloo.ca/infosec/Policies/policy70.htm>.

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, <http://www.adm.uwaterloo.ca/infosec/Policies/policy72.htm>.

Accommodation for Students with Disabilities:

Note for students with disabilities: The AccessAbility 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 AccessAbility at the beginning of each academic term.

Academic/Personal Counselling:

Life at university can sometimes have unexpected challenges. If you find yourself feeling overwhelmed, anxious, stressed, or have other personal or academic issues that are affecting how you are managing your workload, please see counselling services offered at U Waterloo. You do not need to divulge personal information to me, you can simply talk to a counselor and he or she can

advise your professors whether or not you require accommodation vis-à-vis extensions, etc.. Visit the following website for more information: [Counselling Services https://uwaterloo.ca/student-success/academic-and-life-wellness-services](https://uwaterloo.ca/student-success/academic-and-life-wellness-services).

Format:

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

Texts:

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).

Highly recommended: Adam Dodek, *The Canadian Constitution* (Dundern, 2013). (Available at the bookstore).

Course Requirements, Expectations, and Standards:

Assignments:

Reading Summary and Discussion Questions (15%):

Students will submit a 200 word summary (a short, single-spaced paragraph) of one of the readings for each week, with three sophisticated discussion questions that reflect the student has carefully read the article/case. A total of 8 such assignments must be submitted during the term (if they wish, students can submit one for each week in which readings are assigned and have their 8 highest marks counted). **Each assignment is due IN CLASS that day the reading is assigned.**

Midterm (20%):

The midterm will cover all of the course material (readings and lectures) through Week 6.

Final exam (20%):

The final exam will cover all of the course material (readings and lectures) from Week 8 to Week 11.

Critical Analysis (15%):

Students will write a critical analysis of 3 pages (double spaced, standard font size and margins) on one (or more) 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) provide a convincing line of reasoning. **The critical analysis is due IN CLASS during the week for which the reading was assigned.**

Book Review (30%):

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. A separate assignment sheet will be handed out in class. **Due IN CLASS March 27 (Week 11).**-

Extra Credit/Make-up Work:

Unlike high school, it is rare that a university-level course would allow for make-up work to help improve a grade. There is no extra credit or make-up work offered in PSCI 363. The requirements of the course are set out at the beginning and students are expected to work hard and well in order to earn marks. It should also be stated that students don't start off with an "A" and lose marks on assignments. Everyone hands in their assignments and the assumption is that marks are earned – that is, you go from a zero up to the assessed value of the work as evaluated by the professors or tutorial assistants.

It should also be clear that at the post-secondary level, it is expected that everyone will work hard. "Working hard" on your assignments does not mean you have earned or deserve a high grade if key elements of the assignment are missing. I will not entertain appeals of grades on the basis that you "worked hard" on it and therefore deserve more marks.

Other Course Policies:

Course Website

The course outline, detailed assignments, class announcements, etc. will be available on the course website on LEARN . If you have questions about when assignments are due, late policies, sickness accommodation, etc., your first source of information is the course outline. Users can login to LEARN via: [Learn http://learn.uwaterloo.ca/](http://learn.uwaterloo.ca/). Use your WatIAM/Quest username and password.

Class Attendance and Participation

The professor will not be taking attendance at lecture but attending lectures is crucial if you are hoping to do well in the course. If you are sick or must be away from class, find a friend from whom you can borrow notes. While lecture slides MAY be posted on the class website, there is no obligation on the professor to do so, nor will she be supplying any of her lecture notes to the class.

Late Penalties

All late assignments will be penalized 5% a day (including weekends). A waiver of this penalty will only be considered in the event of an officially documented extenuating circumstance (this does NOT include a note from your mother). See “Extension Policy” below. Late assignments can be placed in the professor’s drop box in the Department of Political Science. This is cleared out daily.

Final Submission Date for Assignments

The final submission date for assignments is one week (7 days) after their due date (with the imposition of late penalties). The instructor WILL NOT accept the assignment for grading after one week has passed without a documented extenuating circumstance. If an extenuating circumstance may prevent you from submitting an assignment by its submission date, please contact the professor at the earliest possible convenience and be prepared to provide him or her with official documentation concerning your situation.

Extension Policy for Assignments

All requests for assignment extensions must be directed to your instructor. Your TA does not have the authority to grant extensions.

The professor will only consider granting an extension in the event of an officially documented extenuating circumstance (that is, serious personal illness, critical personal or family crisis, etc.). If a situation arises that may prevent you from completing an assignment, contact the professor as early as possible, ideally before the assignment is due.

The UW Verification of Illness Form can be found at: [Health Services
www.healthservices.uwaterloo.ca/Health_Services/verification.html](http://www.healthservices.uwaterloo.ca/Health_Services/verification.html). Please note that midterms will not be deferred. Instead, the final exam will be re-weighted appropriately.

***Computer Problems**

Students are expected to back up their written work and lecture notes (on a USB stick, by emailing them to yourself, by printing them out, by saving them on an app like DropBox, etc.). Extensions will NOT be granted for computer-related issues. Furthermore, students will be responsible for finding replacement lecture notes where they fail to back-up their files.

Grade Appeals

If you are concerned that your assignment was not graded fairly, you should first meet with the TA who marked your work.

To request a review of your assignment from your TA and, later, your professor if required, you must provide a 1 page explanation as to why you think your assignment was improperly graded (i.e. what do you think you did that should have been given more weight?). The explanation, the original assignment, and a clean copy of the assignment should be submitted to your tutorial leader no later than 3 weeks after the assignment was **made available for return**. If you are unsatisfied after consulting and discussing the matter with your TA, the assignment will be passed on to the Professor for final grading.

NOTE: Students must take responsibility for picking up their marked work in a timely manner. No appeals will be considered more than 3 weeks after the assignment/exam was made available for return. *Grades may be either raised, stay the same, or lowered on appeal.* Students who wish to appeal an examination grade should follow the same procedure noted above for assignments.

Schedule:

WEEK 1 – Jan. 6: Introduction

WEEK 2 – Jan. 13: Canada’s Constitutional Development

Readings:

- Robert C. Vipond, “1787 and 1867: The Federal Principle and Canadian Confederation Reconsidered,” *Canadian Journal of Political Science* (1989) 22(1): 3-25.
- 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. 20: Amending the Constitution/Constitutional Conventions

Readings:

- Fabien Gelinias and Leonid Sirota, “Constitutional Conventions and Senate Reform,” *Revue quebecoise de droit constitutionnel* (2013) 5: 1-17.
- 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. 27: Judicial Decision-Making

Readings:

- Beverley McLachlin, “Courts, Legislatures and Executives in the Post-Charter Era,” *Policy Options* (June 1999): 41-7.

- Bertha Wilson, “We Didn’t Volunteer,” *Policy Options* (April 1999): 8-11.
- Christopher P. Manfredi, “Judicial Power and the Charter: Three Myths and a Political Analysis,” *Supreme Court Law Review* (2001) 14: 331-9.
- Grant A. Huscroft, “‘Thank God We’re Here’: Judicial Exclusivity in Charter Interpretation and Its Consequences,” *Supreme Court Law Review* (2004) 25: 241-67.

WEEK 5 – Feb. 3: Federalism

Reading:

- 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. 10: Aboriginal and Treaty Rights

Readings:

- Case: *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.
- 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.

*****READING WEEK*****

WEEK 7 – Feb 24: QUIZ 1

WEEK 8 – Mar 3: The Charter of Rights and Freedoms / Section 2: Fundamental Freedoms

Readings:

- Janet Hiebert, “Parliamentary Bills of Rights: An Alternative Model?” *The Modern Law Review*. (2006) 69(1): 7-28.
- 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 9 – Mar. 10: Section 15: Equality Rights / Section 3: Voting Rights

Readings:

- Case: *R. v. N.S.*, 2012 SCC 72.

- Beverley Baines, "Equality's Nemesis?" 5 *Journal of Law and Equality* 2006, pg. 57-80.

WEEK 10 – Mar. 17: Section 7: Life, Liberty and Security of the Person

Readings:

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

WEEK 11 – Mar. 24: Charter Dialogue

Readings:

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

WEEK 12 – Mar. 31: QUIZ 2 / Conclusions