

**MCMASTER UNIVERSITY**  
**PUBLIC LAW**  
Political Science 3NN6  
Course Outline

***Instructor***

Greg Flynn  
[flynngl@mcmaster.ca](mailto:flynngl@mcmaster.ca)

Office: KTH 543  
Wednesdays, Thursdays 9:30 – 11:30

***Class Meetings***

Wednesday      8:30 - 9:30  
Friday            10:30 - 11:30  
Tutorials            TBD

Building: DSB/AB 102

***I. Introduction***

The course will explore the principles governing the exercise of legislative and judicial decision-making power by public authorities in Canada and its impact on citizens. It will examine the historical, philosophical and theoretical aspects underlying constitutions, the rule of law and an independent judiciary as a base to an extensive investigation of the development, interpretation and evolution of the Canadian Constitution. This preliminary focus will set the stage for a more intensive review of the major contemporary issues in Canadian public law including: the division of powers and federalism; attempts to amend the constitution; the role of the Courts, judicial interpretation of the Constitution (and the Charter of Rights and Freedoms in particular) and judicial activism; delegated authority and administrative tribunals; and recent challenges to the Constitution.

***II. Objectives***

The course is intended to give students a greater understanding of the interaction between politics, the courts and the law and to provide insight into some of the legal and political limitations faced by governments in attempting to make public policy in Canada.

By the end of the course, it is anticipated that students will be able to describe the structure of the levels of government in Canada, the constituent elements of the Canadian Constitution and the key legal and political rights set out in the Charter of Rights and Freedoms. They will be able to explain the functioning of the judicial and quasi-judicial administrative processes in the country and recognize what level of Court or tribunal is appropriate for adjudication of a particular issue. Students will be able to analyze current political and public policy issues from a legal and civil rights perspective and apply the knowledge they have gained to generate arguments on either side of an issue and appraise the validity and legitimacy of arguments advanced in public by politicians and the media. Students should also be able to present arguments and case summaries in written and/or oral format in a brief, clear and concise manner supported by evidence and theory.

Given the complexity of some of the issues and the expectations of students, it is anticipated that an introductory class in political science with some knowledge of the structure of the government of Canada would be appropriate.

### ***III. Required Texts***

Students will find the following texts and readings to be of assistance in preparing for and understanding class materials. The texts are available at the McMaster University bookstore until December 2009.

Elliott, David W. Introduction to Public Law: Sourcebook, 7<sup>th</sup> ed. Captus Press, 2007  
Elliott, David W. Introduction to Public Law: Readings on the State, the Administrative Process and Basic Values, 6<sup>th</sup> ed. Captus Press, 2007.

In addition, students will be referred to specific Supreme Court of Canada decisions that deal with particular subject matters of importance. Students will be given the appropriate case citation and the cases are available at the following:

Supreme Court of Canada decisions are available at <http://csc.lexum.umontreal.ca/en/>.  
The decisions of all other Canadian superior courts are available at <http://www.canlii.ca/>.

Class time will be devoted, in part, to discussing the specific cases and readings. In order to further discussions, students should conduct assigned readings prior to class.

### ***IV. Class Schedule***

Sept. 11, 2009	Pick-Up Course Outline
Sept. 16, 2009.	Introduction – What is Public Law <i>Sourcebook – Chapter 1</i>
Sept. 23, 2009	Theoretical Underpinnings of the Democratic State <i>Readings – Chapter 1</i>
Sept. 30, 2009	The Legislative and Executive Branches <i>Sourcebook – Chapter 8</i> <i>Readings – Chapter 3, pages 50-52</i>
Oct. 07, 2009	The Judiciary, Judicial Review and the Rule of Law <i>Readings – Chapter 3, pages 52-70, and Chapter 6</i> <i>Sourcebook – Chapter 4</i>
Oct. 14, 2009	The Constitution – Sources <i>Sourcebook – Chapters 2 and 3</i> <b><i>ASSIGNMENT #1 DUE – OCTOBER 16, 2009</i></b>

- Oct. 21, 2009      The Impact of the Judicial Committee of the Privy Council  
*Sourcebook – Chapter 5*
- Oct. 28, 2009      POGG and Trade and Commerce - Post JCPC  
*Sourcebook – Chapter 6, pages 116-142*
- Nov. 04, 2009      Federalism and the Criminal Law Power  
*Sourcebook – Chapter 6, pages 142-150 and Chapter 7*
- Nov. 11, 2009      Constitutional Challenges  
*Sourcebook – Chapters 9, 10 and 11*
- Nov. 18, 2009      The Charter – Scope, Application and Section 1  
*Readings – Chapters 7, 8 and 9, page 176*  
*Sourcebook – Chapter 10, pages 240-244*
- Nov. 25, 2009      Section 2(b) Freedom of Expression  
*Readings – Chapter 9, pages 183-190*  
**ASSIGNMENT #2 DUE – NOVEMBER 27, 2009**
- Dec. 02, 2009      Freedom of Expression continued  
Exam Review

**MID-SESSION EXAMINATION AND END OF TERM BREAK**

- Jan. 06, 2010      Section 2(a) - Freedom of Religion  
*Readings – Chapter 9, pages 177-182*
- Jan. 13, 2010      Section 7 - Life, Liberty and Security of the Person  
*Readings – Chapter 9, pages 190-206*
- Jan. 20, 2010      LLSP and Section 15 – Equality Rights  
*Readings – Chapter 10*
- Jan. 27, 2010      Section 15 – Equality Rights continued  
**ASSIGNMENT #3 DUE – JANUARY 29, 2010**
- Feb. 03, 2010      Section 8 – Search and Seizure  
*Cases to be Assigned*
- Feb. 10, 2010      Sections 10 and 11 – Legal Rights  
*Cases to be Assigned*
- Feb. 17, 2010      **READING WEEK – NO CLASS**

Feb. 24, 2010	Administrative Law – Procedural Protections <i>Readings – Chapters 2 and 4</i>
Mar. 03, 2010	Administrative Law – Substantive Review <i>Readings – Chapter 5</i>
Mar. 10, 2010	Administrative Law and Challenges to the Constitution <i>Readings – Chapter 11, pages 237-241</i> <b>ASSIGNMENT #4 DUE – MARCH 12, 2010</b>
Mar. 17, 2010	Challenges – Aboriginal Affairs <i>Readings – Chapter 11, pages 241-256</i> <i>Sourcebook – Chapter 10, pages 194-196</i>
Mar. 24, 2010	Challenges – Racism and Gender Equality <i>Cases to be Assigned</i>
Mar. 31, 2010	Challenges – Terrorism and Public International Law <i>Readings – Chapter 12</i>
Apr. 07, 2010	Conclusions and Exam Review

### ***V. Teaching Methods***

The class is scheduled for three one-hour sessions per week.

Two hours of each week will be conducted in an interactive lecture format by the instructor with students having the opportunity to ask questions concerning the information being provided to them. In addition to lectures by the instructor, guest lectures by lawyers involved in areas of law that involve constitutional litigation may be presented on specific issues.

The third hour of each week will consist of a tutorial session to be used for more informal guided discussions by teaching assistants concerning course materials and will review hypothetical facts and cases to reinforce and apply lecture material. This time period will also be available in the second term of the course as a mock Supreme Court session for students to present their oral arguments to their TAs (see evaluation methods below) concerning Charter of Rights and Freedoms and administrative law issues.

In addition to formal class time, students are invited to meet with the instructor and/or their TAs during regular office hours or by appointment to discuss course content or any other concerns.

## ***VI. Evaluation***

The following evaluations will determine the grade received by students.

- |    |                              |     |
|----|------------------------------|-----|
| 1. | Case Decisions               | 30% |
| 2. | Mid-Session Examination      | 30% |
| 3. | Research Paper/Oral Argument | 40% |
|    | <b>OR</b>                    |     |
|    | Final Examination            | 40% |

Assignments should be provided to the instructor or their TA, either in class or during office hours. As a last resort, assignments can be submitted to the box outside of the political science office. Assignments will not be accepted by the Department of Political Science Office staff or that are slipped under the instructor's or any other door. Papers received by e-mail or fax will not be accepted without the prior express permission of the instructor on each assignment.

Arrangements may be made for students with special needs. Please contact the Office for Ability and Access and the instructor to make the arrangements as soon as possible.

### ***Late Policy***

Students should make all reasonable attempts to submit papers on the due date. In the event that a legitimate extension is required, students should speak to the instructor in advance of the due date to make the appropriate arrangements for such an extension. Requests for an extension submitted by e-mail or to a TA will not be considered – you must speak to the instructor in person.

Examinations and/or assignments related to other courses do not constitute or qualify as exceptional circumstances or legitimate excuses.

Late papers will be penalized at the rate of three percentage points per working day for each day of delay, up to a maximum of one week. After one week, the instructor may refuse to accept any late assignments in the absence of proper medical certification justifying an inability to fulfill academic requirements on a prolonged basis. Papers accepted after one week of lateness will be deducted by one full letter grade per each week of lateness.

### ***Academic Dishonesty***

Academic dishonesty consists of misrepresentation by deception or by other fraudulent means and can result in serious consequences, e.g. the grade of zero on an assignment, loss of credit with a notation on the transcript (notation reads: “Grade of F assigned for academic dishonesty”) and/or suspension or expulsion from the university.

It is your responsibility to understand what constitutes academic dishonesty. For information on the various kinds of academic dishonesty please refer to the Academic Integrity Policy, specifically Appendix 3, located at:

[http://www.mcmaster.ca/senate/academic/ac\\_integrity.htm](http://www.mcmaster.ca/senate/academic/ac_integrity.htm)

The following illustrates only three forms of academic dishonesty:

1. Plagiarism, e.g. the submission of work that is not one's own or for which other credit has been obtained.
2. Improper collaboration in group work.
3. Copying or using unauthorized aids in tests and examinations.

## ***VII. Assignments***

### **1. Case Decisions - Various**

**30%**

Students will be required to submit three maximum two (2) page papers based on a Supreme Court of Canada case dealing with the development of the Supreme Court, a Charter of Rights and Freedoms issue and/or an administrative law decision. Students will be asked write a judicial decision of their own concerning a hypothetical set of facts with an application of the appropriate law.

Students may submit up to four assignments in total to be graded (the last summary will be optional) with only three highest assignments accounting for grading purposes.

It is anticipated that the series of assignments will provide students with an opportunity to learn to write both critically and concisely. The first assignment will provide strong feedback to students on their assignment and what is anticipated for future assignments.

Students will be provided with the details of each particular assignment during class one week prior to the assignment being due.

### **2. Midterm examination – December 2009**

**20%**

The mid-term exam, designed to be written in two hours, will be based on all materials covered in the lectures and assigned readings. The format will consist of both a short answer/identification component and a judicial decision essay style question.

The exam will reinforce the materials the students have learned and provide a good summary of the broad course themes prior to delving into more specific materials in the second term.

### **3. Research Paper and Oral Argument**

**50%**

Students will write a research paper of 12 to 15 pages (double-spaced, one inch margins and a 12 point font) concerning an issue of civil and/or political rights in Canada and corresponding with an issue of contemporary relevance to Canadian federal or provincial politics. In addition, students will participate in a mock Supreme Court session in which the student will present a 10 minute argument in tutorial on an issue of contemporary relevance to Canadian politics and the Charter of Rights and Freedoms.

The assignment will be analytical in nature and require empirical research on the law and facts concerning an issue or problem faced or being faced by a government in Canada and what considerations must be given by legislators to the possible solutions given the need to balance competing claims under the Charter of Rights and Freedoms.

Students will be given a broad range of topics to pursue and the assignment is intended to provide students with the opportunity to explore many of the elements learned during the course and apply it to an area of their own particular interest.

Further instructions and a list of topics will be provided to students at the beginning of the second term.

The due date of the final research paper will be at 4:30 on the date of the final examination as determined by the Registrar's Office.

**OR**

### **3. Final examination – April 2010**

**50%**

The final exam will be based on all materials covered in the lectures and assigned readings throughout the year, although it will be more heavily weighted to the second term material. As with the mid-term exam, the format will consist of both a short answer/identification component and a judicial decision essay style questions.

The exam will provide an overall summary of the course for students and an opportunity to apply the material they have learned over the course of the year.

The instructor and university reserve the right to modify elements of the course during the term. The university may change the dates and deadlines for any or all courses in extreme circumstances. If either type of modification becomes necessary, reasonable notice and communication with the students will be given with explanation and the opportunity to comment on changes. It is the responsibility of the student to check his/her McMaster email and course websites weekly during the term and to note any changes.