

The Canadian Constitution

Prerequisite: 6 Lower Division credit hours

Strongly Recommended: POL-221

Instructor Contacts: Office: AQ 6034, Tel: 778-782-3043, email: ahheard@sfu.ca

Description:

This course will explore a variety of issues relating to the Canadian constitution. The nature of constitutional conventions will be analyzed, as well as specific matters regulated by them. A review of the main components and principles of the formal Constitution will be followed by analyses of specific dilemmas of constitutional interpretation and change. Topics will include specific issues in the division of powers between the federal and provincial governments, aboriginal issues, constitutional amendment, judicial power, and the Charter of Rights.

Course Organization:

There will be a four-hour lecture per week for the first half of term. Beginning Mar 3, there will be a two-hour lecture to start and a two-hour tutorial based on student presentations in the second half.

Required Texts:

Patrick J. Monahan, Constitutional Law (Third Edition)

Books on Reserve:

A. Heard, Canadian Constitutional Conventions JL 65 1991 H4

P.W. Hogg, Constitutional Law of Canada JL 183 H62 2007

Course Evaluation:

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|------------|-----|--------------|-----|
| Term Paper | 40% | Presentation | 10% |
| Midterm | 10% | Attendance | 5% |
| Final Exam | 35% | | |

Essays are due April 7 in class. LATE PAPERS WILL NOT BE ACCEPTED. Students are required to submit their essays to Turnitin.com in order to get credit for the assignment.

A TWO Hour Final Exam will be held Thursday, April 14 at 12 noon.

Students must attend class. 5 points are for attendance. You may miss one class, but each subsequent absence will result in 1 point being deducted from the attendance points.

Visit the Class website: <http://www.sfu.ca/~ahheard/324>

- lecture notes, web research resources and more

CLASS SCHEDULE

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| Jan 6 | Organizational Meeting |
| Readings: None | |
| Jan 13 | Constitutional History |
| Readings: Heard, "Canada's Independence" (available online) and Monahan, Chapters 1 & 2 | |
| Jan 20 | Content of the Constitution & Division of Powers |
| Readings: Monahan, pages 53-114 & "The Constitution Acts, 1867-1982" | |
| Jan 27 | Legal Research and Judicial Reasoning |
| Readings: Monahan, pages 114-126 Hogg, Ch. 15 | |
| Feb 3 | TBA Class may be cancelled |
| Readings: None | |
| Feb 10 | Division of Powers –Delegation, POGG Power & Criminal Law |
| Readings: Monahan Chs. 7, 8 & 11 | |
| Feb 17 | NO CLASSES – Spring Break |
| Readings: None | |
| Feb 24 | MID-TERM TEST ...plus: Constitutional Amendment |
| Readings: Hogg: Chapter 4 | |
| Mar 3 | Division of Powers - Trade & Commerce and Transportation |
| Readings: Monahan Chs. 9, 10 & 12 | |
| Mar 10 | Constitutional Conventions |
| Readings: Heard, Chapters 1, 2 & 3 Student Presentations Start | |
| Mar 17 | The Courts |
| Readings: Monahan, Chapter 4, section D (pages129-144) | |
| Mar 24 | Legislative Protection of Rights |
| Readings: Hogg, Chapters 34 & 35 | |
| Mar 31 | The Charter of Rights |
| Readings: Monahan, Chapter 13 | |
| Apr 7 | Aboriginal Rights – Essays Due |
| Readings: Monahan, Chapter 14 | |

Essay topics:

The range of topics that may be covered in this class, and from which students may choose to do their papers and presentations, include:

- 1) Prerogative Powers of the Governors
- 2) Reservation and Disallowance of Provincial Legislation
- 3) Peace, Order, and Good Government
- 4) The Federal Spending Power
- 5) Provincial Competence in International Relations
- 6) International Trade (NAFTA, GATT, MAI etc.) and the Provinces
- 7) Provincial Criminal Competence
- 8) Border Collection of Provincial Sales Taxes
- 9) Jurisdiction Over Natural Resources
- 10) Jurisdiction over gambling
- 11) Parliamentary Privileges
- 12) The Prorogation and/or Dissolution of Parliament
- 13) Fixed Election Date Legislation
- 14) Problems with Implementing Senate Elections
- 15) The Constitutional Amendment Process
- 16) Appointments to the Supreme Court of Canada
- 17) Judicial Independence
- 18) The Removal of Judges - on what grounds and by whom?
- 19) Constitutional issues in the Anti-terrorism Act
- 20) Aboriginal Self-Government
- 21) Quebec Separation
- 22) Arctic Sovereignty
- 23) The Settlement of Boundaries Issues - St Pierre et Miquelon, Nfld & Nova Scotia, the waters between Canada and Greenland, the status of the Northwest Passage, etc
- 24) The Future of the Monarchy
- 25) Emergency Measures and the Constitution
- 26) Constitutional Issues with Inter-Provincial Agreements
- 27) Issues in Canadian Sovereignty (foreign laws applying to companies doing business in Canada, or foreign laws applying to Canadian businesses)
- 28) Extra-Territorial Reach of Provincial Legislation
- 29) The Power of Expropriation
- 30) The Rule of Law
- 31) National Securities Regulator to Govern Stocks etc
- 32) Problems with the constitutional division of responsibilities over: environment, transportation, health care
- 32) Citizenship – Is Dual Citizenship an Oxymoron?
- 34) Limits of the Charter's Application to Courts and Legislatures
- 35) The Debate Over the Charter's Application to Private Disputes
- 36) Examine a Specific Right in the Charter of Rights: freedom of expression, equality, etc
- 37) Section One Limitations to Charter Rights
- 38) Section 33 - The Notwithstanding Clause
- 39) Judicial Activism vs. Judicial Restraint
- 40) Constitutionality of the Current Electoral System
- 41) Choose a case before the Supreme Court of Canada or a provincial Court of Appeal and give your 'judgement'.

The body of the essay should be about 4,500 words (roughly 15 double-spaced pages of text). Essays are due in class April 7. LATE PAPERS WILL NOT BE ACCEPTED. A significant range of sources (10 minimum) should

be used as the research basis for the essay. A paper that does not refer to the minimum number of sources in the body of the essay will FAIL.

Students are required to submit their essays to Turnitin.com in order to get credit for the assignment.

Students are reminded that proper credit must be given to other authors' work. When another author's words are used they must be identified as quotations, by using quotation marks or indented quotations. The use of another author's particular ideas must also be credited in a note. All work submitted for this class must be the student's original work done for this class.

Students are bound by the University's Code of Academic Honesty and the Academic Dishonesty and Misconduct Procedures.

AN IMPORTANT REMINDER:

Plagiarism involves using another author's words without attribution or otherwise presenting another person's work as one's own. It is a fraudulent and serious academic offence that will result in a severe academic penalty. Also, close paraphrasing of another author's work & self-plagiarism, including submitting the same, or substantively the same, work for academic evaluation more than once, are unacceptable practices that will result in a severe academic penalty.

The university policies on academic honesty are available at <http://www.sfu.ca/policies/teaching/t10-02.htm> and <http://www.sfu.ca/policies/teaching/t10-03.htm>. The Department of Political Science's interpretation of this policy can be found at http://www.sfu.ca/politics/undergrad/ug_misc.html, and is available in hard copy format outside our General Office. All students are responsible for familiarising themselves with these policies.

A helpful SFU Library tutorial on plagiarism is at <http://www.lib.sfu.ca/researchhelp/tutorials/interactive/plagiarism/tutorial/introduction.htm>

The DOs and DON'Ts of AVOIDING PLAGIARISM

Do not:

- submit an entire paper or part(s) of a paper or papers that has been written or researched by any other person(s);
- submit a paper as an assignment that has been bought from another person or from a 'paper mill' or essay service;
- submit a paper or other written assignment that has been submitted at another time or for a different course by yourself or any other student or former student;
- submit material that has been downloaded from a website, without acknowledging (using appropriate citation style) that you have done so;
- take someone else's idea(s) and represent it/them as your own;
- copy any text verbatim, or with only slight variation from the original text, without using quotation marks and documenting the source with proper citation style;
- do not closely paraphrase another's material; either paraphrase completely in your own words, or cite as a direct quotation using quotation marks (in either case, give full credit and details regarding authorship and location of the original material);

Do:

- learn how to cite material properly (there are many good guides on this, including the departmental one);
- use a recognized citation style (eg. APA, MLA, Chicago), according to instructions given by the course instructor, and be consistent in the use of the style throughout any single piece of written work;
- carefully read and make sure you understand the university's policy on academic honesty;
- ask the instructor of this course or other faculty members if you have any questions about plagiarism.

GUIDELINES FOR ORAL PRESENTATIONS

The presentation is an opportunity to develop public-speaking skills. The presentation is intended as an introduction to issues that will set up class discussion in the period that follows.

Strive for a talk that is delivered mainly in an ad-libbed conversational manner, using notes to organize and guide your talk. Presentations should NOT simply be read straight from a text, and certainly not straight out of an essay.

Try to engage the interest of your classmates in the topic – why it is important and what the controversies are.

Use the presentation as an opportunity to work out the major conceptual issues you want to analyze in your essay.

Presenters are *strongly* encouraged to use PowerPoint, web pages, overheads, handouts, or the blackboard to enliven their presentations. Maximum time is 10 minutes.

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The Department of Political Science's interpretation of this policy can be found at http://www.sfu.ca/politics/undergrad/ug_misc.html,

and is available in hard copy format outside our General Office. All students are responsible for familiarising themselves with these policies.

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- carefully read and make sure you understand the university's policy on academic honesty;
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Do not:

- submit an entire paper or part(s) of a paper or papers that has been written or researched by any other person(s);
- submit a paper as an assignment that has been bought from another person or from a 'paper mill' or essay service;
- submit a paper or other written assignment that has been submitted at another time or for a different course by yourself or any other student or former student;
- submit material that has been downloaded from a website, without acknowledging (using appropriate citation style) that you have done so;
- take someone else's idea(s) and represent it/them as your own;
- copy any text verbatim, or with only slight variation from the original text, without using quotation marks and documenting the source with proper citation style;
- do not closely paraphrase another's material; either paraphrase completely in your own words, or cite as a direct quotation using quotation marks (in either case, give full credit and details regarding authorship and location of the original material);