

LAWS 1003.05 FUNDAMENTALS OF PUBLIC LAW

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Office Hours (First Term): Thursdays 1:30 – 2:30, or by appointment.

COURSE DESCRIPTION

This class provides students with an understanding of the constitutional and administrative structures of Canadian law and government. An emphasis is placed on developing the skills required of lawyers whose public law work may range from appearances before administrative tribunals, to giving advice on the formulation and articulation of policy. Primary among the emphasized skills is the ability to work with and interpret constitutional, statutory and regulatory texts. A perspective on the administrative model of decision making will also be developed. As a necessary background for the development of these skills and for the general study of law, this class introduces students to the Canadian governmental and constitutional system. Students will explore the legislative process, statutory interpretation, and the administrative system using human rights legislation as a model. Further, students will develop an understanding of the analytical framework of the *Canadian Charter of Rights and Freedoms*, through the study of the interpretation and development of equality rights.

REQUIRED MATERIALS

1. Documents Supplement, Fundamentals of Public Law (red cover, campus bookstore -- or purchase 2nd hand version from 08-09)
2. Fundamentals of Public Law, Course Materials
Volume I is required for Term 1 (orange cover, available in the campus bookstore)
Volume II is required for Term 2 (orange cover, available in the campus bookstore)
3. *Canadian Human Rights Act*, provided courtesy of the Canadian Human Rights Commission (distributed in class)

CLASSES

Two 1½ hour classes per week (minus Thanksgiving, Remembrance Day, and Munroe Day) for 12 weeks in the fall term and 9 weeks in the spring term.

Fall term: Mondays 2:00pm – 3:30pm (room 304) & Wednesdays 1:00pm – 2:30pm (room 204).

Winter term: Tuesdays 1:00pm – 2:30pm (room 105) & Fridays 10:00am – 11:30am (room 304).

EVALUATION

1. 30% failsafe **closed book** exam in December (i.e. it counts for 30% of your final grade if it helps you and not at all if it does not help you)
2. Final exam in the spring, worth either 100% or 70%, depending on whether it is higher than the December mark.
The final exam will consist of two parts:
 - a) a 30% take-home component, to be written in March; and
 - b) a 70% sit-down component (**closed book**), to be written in the regular exam period in April.

EXPECTATIONS FOR THE FIRST CLASS: (Monday, September 14)

1. Read “Course objectives” (just after title page in Volume I)
2. Read chapter 1, Section A, “The Development of Human Rights Legislation”, pp. 1-9
(up to and including: *Christie v. York*)

3. Also, please prepare a brief bio containing the following information: your name, where you lived before coming to law school, your studies prior to law school, why you came to law school (“I’d exhausted all other options” is perfectly appropriate) and something interesting about yourself or important to you (*e.g.*, you are a dedicated rose gardener / soccer player / former UN Peacekeeper / municipal counsellor / alien abductee. . .).

OTHER IMPORTANT INFORMATION:

FORMAT OF THE DECEMBER AND APRIL EXAMS

The December exam, and the sit-down component of the April exam, will utilize a program to enable completion of the exam on computer. Students are generally expected to use their own laptop, but Law Library Computer Lab computers will be available. The distribution of the examination will be in the traditional way - by hard copy, and the exam will be invigilated at the Law School during the assigned exam time slot. The computer program (accessible to both MACs and PCs) will lock the computer out of everything except the word processing program (courier font) necessary to complete the exam. The program automatically backs up frequently. The submission of your answers at the end of the exam is done electronically. Detailed further instructions will be provided well in advance of the exam.

Any student not wishing to complete these exams on computer has the right to complete the exams in hand-writing in Dalhousie exam booklets.

PLAGIARISM POLICIES

All students in this course must read

- the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the plagiarism.dal.ca website, and
- the Law School policy on plagiarism, as set out in the law school regulations (available in hard copy from the Associate Dean's office and online at http://law.dal.ca/Current_Students/Course_Selection_Materials/Regulations_Handbook/Plagiarism_Policy/index.php)

Any paper or assignment submitted by a student at Dalhousie Law School may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.

ACCOMMODATION

Students with Special Needs/Requests for Accommodation

Professor Pothier is the faculty advisor to students with disabilities. Students wishing to discuss in-class accommodation or in-class study assistance needs should see Professor Pothier.

Students seeking special accommodation with regard to any aspect of course evaluation (including exam deferrals and extensions to deadlines) must make an application to the Studies Committee. Academic regulations require such requests to be made as soon possible and, in any event, no later than the date on which the exam is to be written or the

paper or other assignment is to be submitted. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information about requests for accommodation and about the Studies Committee process.

Pandemic H1N1 Influenza Advisory in relation to Academic Continuity

In the event of an escalation of the pandemic H1N1 influenza virus, the University may need to authorize Academic Units to change elements of class schedules and/or evaluation plans as outlined in course syllabi. Any change is intended to support the primary goal of reducing the risk of spreading a pandemic influenza among students, faculty and staff.

Although it is difficult to predict the severity of the pandemic, the University is committed to minimizing the impact on student's academic progress. Therefore, every effort will be made to provide students with options for continued learning and for continued fair evaluations.

Changes may include but are not limited to:

- Adjustments to course assignments;
- Changes to the dates of exams;
- Arrangements for alternative evaluations for students affected by H1N1 influenza virus;
- Adjustments to work terms;
- Modification of marks awarded for participation;
- Adjustments to attendance policies.

Any alternative plan made in individual courses may be superseded by University-wide or Government measures to reduce the spread of the pandemic H1N1 influenza virus.

**Fundamentals of Public Law
2009-10
Section B (Wildeman)
Tentative Term 1 Readings**

- All Readings refer to Volume I of the course materials (2009-10), except for those specifically referencing the *Canadian Human Rights Act*.

- Reference to the Supplementary Materials will be made on an *ad hoc* basis this term; I will advise you as to whether you need to bring them for an upcoming class.

Chapter I – Introduction to Human Rights and Legal Interpretation

Sept. 14: “Course Description / Objectives” (just before the Table of Contents), and Chapter I.A, pp. 1-9.

Sept 16: I.A, pp. 9-16 and ss. 1-15 of the *Canadian Human Rights Act (CHRA)*. Skim the rest of the Act to get a sense of its overall structure and Parts.

Chapter II - The Canadian Constitutional and Legal System

Sept. 21: Introduction & II.A: Federalism (pp. 41-71)

***Sept. 23: Joint Class – 11:30am-1:00pm room 105**
Professor Wildeman lectures on:
II.C: The Executive and the Development of Responsible Government (pp.88-114)

Sept. 28: II.B: The Legislative Process (pp.72-87); II.D: The Judiciary – to end of *Arsenault-Cameron* (pp. 134-148) * *Note this is out of order: Professor Mackay lectures on judicial appointments (pp.115-133) next class*

***Sept. 30: Joint Class – 11:30am-1:00pm room 105**
Professor MacKay lectures on:
II.D: The Judiciary – to end of Nedelsky reading (pp. 115-133)

Oct. 5: II.D: The Judiciary – to Chart at end (pp. 149-180).

Chapter III – Human Rights Commissions as a Response to Discrimination

***Oct. 7: Joint Class – 11:30am-1:00pm room 105**
Professor Llewellyn lectures on:
Introduction to end of Vizkelty reading (pp. 181-199)

***Fri Oct. 9** Recommended Special lecture: Professor Jacob Ziegel (U of T Law):
"WHY WE SHOULD ALL CARE ABOUT THE NEED FOR MERIT BASED SYSTEMS OF JUDICIAL APPOINTMENTS IN CANADA"
(Room 105, 12-1 p.m.)

Oct 12: **No Class** (Thanksgiving)

Oct. 14: CHRC Annual Report 2006 to end of chapter (pp.200-226);
ALSO READ CHRA, Parts II and III.

Chapter IV – Interpreting and Applying the Law: Human Rights Case Studies

Oct. 19: Introduction and IV.A: Approaches to Interpretation, to end of *Rizzo Shoes* (pp. 227-258)

Oct. 21: IV.A: “Note: The Bonnie Robichaud case chronology” to end of *Mossop* (pp.258-282); **ALSO Prepare Problem at p.291**

- Oct. 26: IV.B: “Disability” as an Exercise in Interpretation (pp. 292-321)
- Oct. 28: IV.C: “Sex” and “Sex/Race” as Exercises in Interpretation – to end of Colleen Sheppard reading (pp. 322-358)
- Nov. 2: IV.C (to end of *Baylis-Flannery*) & IV.D: “Services Offered to the Public” as an Exercise in Interpretation (pp.358-386)

Chapter V – Evolving Responses to Discrimination

- Nov. 4: Introduction and V.A: Characterizing and Justifying Discriminatory Practices, to end of Renaud (387-411)
- Nov. 9: V.A continued: *Meiorin & Grismer* cases (pp. 411-437)
- Nov. 11: **No Class** (University closed)
- Nov. 16: V.A continued: *McGill University Health Centre* to Problems (pp.437-456) **Prepare Problems at pp.455-56**
- Nov. 18: V.B: Systemic Discrimination, Affirmative Action, and Remedies (pp.457-483) [If needed: continue discussion of Problems]
- Nov. 23: V.B. to end of section (483-492); V.C: Issues in the Duty to Accommodate (493-502)

Chapter VI – The Role and Function of Administration

- Nov. 25: Introduction & VI.A: Executive Intervention: Elaborating the Law (pp.503-523) **Prepare Problems at pp. 522-23**
- Nov. 30: catch-up class (will cancel if not required)
- Nov. 30: Special Class 11:30am-1:00pm.** We will have Joy Noonan and Larry Steinberg as guest speakers in **Room 105**. They will speak to and probably beyond the readings in **VI.B: The Role of Human Rights Commissions and Tribunals, to end of NS Reg. 221/91 (pp.524-554).** Please also have in mind our earlier discussion of administrative changes made by the CHRC and of legislative changes made in British Columbia and Ontario.
- Dec. 2 Follow-up from guest lecture on VI.B: The Role of Human Rights Commissions and Tribunals, to end of NS Reg. 221/91 (pp.524-554). Plus: *Blencoe* case (pp.554-564) & Chapter I.B pp.16-40 (on the “Mark Steyn Affair”).
- Dec. 7: Review
- Dec. 11: Exam**