

**UNIVERSITY OF TORONTO**  
**DEPARTMENT OF POLITICAL SCIENCE – FALL 2020**  
**POL2103H1F / POL 491H1F**  
**CANADIAN JUDICIAL POLITICS**

Professor: Andrew McDougall

Place: UC256 or Online

Time: Monday 2-4

Office Hour: Monday 4-5 in Sidney Smith Room 3124

or by appointment

## **I. Introduction**

This course will take an advanced look at the major theoretical and political debates in Canadian judicial politics. In the first half, the course will focus on institutions, and examine in-depth the controversies surrounding the proper relationship between the courts and the political branches, the basis of judicial independence, legal reasoning, and differing views on the appropriate method for the selection of judges. In the latter half, the class will engage with the central debates in contemporary Canadian public law, such as the role of secularism in a multicultural society, Indigenous law and politics, and collaborative federalism. The class will also explore the value, if any, of the “public/private law” distinction. Assessment will be based on participation as well as a term paper exploring a major debate in Canadian judicial politics.

## **II. Contact Policy and Office Hours**

I am available at my email address of [andrew.mcdougall@utoronto.ca](mailto:andrew.mcdougall@utoronto.ca). My office hours will be in the hour after class or by appointment. You can always call me during business hours at 416-432-3813.

## **III. Assignments**

1. **Participation (20%)**: As a graduate seminar, attendance and participation in this class is essential. As such you will be expected to come to class each week and make meaningful submissions and contributions to the class. Assessment will be made on the overall contributions that you make to the class over the year as well as your attendance.
2. **Presentation (20%)** All students are expected to offer a 20 minute presentation on one (or if desired, perhaps more than one) of the readings. This presentation should not be a

simple summary, rather the presentation should identify the major themes of the piece, strengths and weaknesses of the work, questions that it raises, and the student's own thoughts and reflections on the article. The presentation should end with a question for the class to discuss.

3. **Book Review (5-7 pages, 25%). Monday, October 19 , 2020 at 11:59 P.M. to Turnitin.** The first assignment is a 5-7 page book review on a book that is relevant to the study of Canadian law & politics. The assignment is attached. There is a suggested list of books from which you can choose from on that list, but it is not exhaustive. Feel free to choose another book so long as you email me the one you would like to do. For a good example of a book review, check out a recent copy of the *Canadian Journal of Political Science*.

The review will be due on Turnitin. If you ever run into technical difficulties doing so, just email me the review before the deadline.

The papers should be double spaced in Times New Roman font, with one inch margins. The papers should have a coversheet and page numbers beginning on the first page of writing (i.e. the cover does not count.) All citations should be in the Chicago "author-date" parenthesis style or Chicago style footnotes (NOTE: PAGE NUMBERS ARE REQUIRED IN THE CITATIONS!) If you are unable to submit a piece of work in a timely manner, you are required to submit adequate medical documentation or otherwise seek an extension at the earliest time possible. Failure to hand in either of the written assignments will result in a 5% daily penalty, including weekends. If an extension is granted note the fact on the cover and attach the documentation to the back of the paper when you hand it in. Appeals: If you disagree with the grade, please wait 24 hours and then email me your reasons in a one page summary explaining what grade you think you deserve, and why.

4. **Major Essay (10-12 pages, 35%) Monday, December 7, 2020 at 11:59 P.M. to Turnitin.** This assignment asks you to research and write an essay on an issue in Canadian public law, either on one of the approved topics or on a topic of your choosing (with permission from the instructor.) A list of approved questions is attached.

The assignment will be due on Turnitin, just like the book review. The papers should be double spaced in Times New Roman font, with one inch margins. The papers should have a coversheet and page numbers beginning on the first page of writing (i.e. the cover does not count.) All citations should be in the Chicago "author-date" parenthesis style or Chicago style footnotes (NOTE: PAGE NUMBERS ARE REQUIRED IN THE CITATIONS!) If you are unable to submit a piece of work in a timely manner, you are required to submit adequate medical documentation or otherwise seek an extension at the earliest time possible. Failure to hand in either of the written assignments will result in a 5% daily penalty, including weekends. If an extension is granted note the fact on the cover and attach the documentation to the back of the paper when you hand it in. Appeals: If you disagree with the grade, please wait 24 hours and then email me your reasons in a one page summary explaining what grade you think you deserve, and why.

## IV. Plagiarism

Plagiarism is a serious academic offense. Students at this level should already have a thorough understanding of what is meant by the term “plagiarism” and the meaning of “academic integrity” more generally. Students should review the University’s policies and resources on the matter which can be found on its website, and in particular the sheet “How Not to Plagiarize” located at <http://www.writing.utoronto.ca/advice/using-sources/how-not-to-plagiarize>.

As the University Handbook on Student Rights and Responsibilities points out:

Honesty and fairness are considered fundamental values shared by students, staff and faculty at the University of Toronto. The University’s policies and procedures that deal with cases of cheating, plagiarism and other forms of academic misconduct, are designed to protect the integrity of the institution and to maintain a community where competition is fair. As a result, U of T treats cases of academic misconduct very seriously. If it has been alleged that you committed an academic offense, you will find that the allegation is dealt with formally and seriously, and that the penalties can be severe if it is determined that you did cheat. All of the policies and procedures surrounding academic offences are dealt within one policy: The Code of Behaviour on Academic Matters (the ‘Code’). This booklet on Academic Integrity is intended to supplement the Code, but not to take its place as the official document on these matters. Nor does this booklet take the place of legal counsel. The full text of the Code of Behaviour on Academic Matters can be found in your Faculty Calendar or online at [www.utoronto.ca/govcncl/pap/policies/behaveac.html](http://www.utoronto.ca/govcncl/pap/policies/behaveac.html)... **Ignorance of the rules does not excuse cheating or plagiarism.**

All instances of academic misconduct will be forwarded to the University for further review and discipline. For more information, please visit the website of the Center for Teaching Support and Innovation at the University of Toronto: [Academic Integrity at the University of Toronto](#). If you have any questions about what constitutes plagiarism, please do not hesitate to ask me. For your benefit, however, here is just one example of an academic offence:

- A student who includes word-for-word a sentence or a part of a sentence from a source, and although they cite the source as a reference at the end of the sentence and in the bibliography, they do not include the relevant passage within quotation marks. This is an example of plagiarism (see The Code) because it claims somebody else’s writing as your own. Changing a few words in a sentence does not solve this problem. If the writing is from a source, and not from you, it belongs in quotation marks (i.e., “ ”).

Normally, students will be required to submit their course essays to Turnitin.com for a review of textual similarity and detection of possible plagiarism. In doing so, students will allow their essays to be included as source documents in the Turnitin.com reference database, where they will be used solely for the purpose of detecting plagiarism. The terms that apply to the University's use of the Turnitin.com service are described on the Turnitin.com web site.

## V. Accessibility

Classes at the University of Toronto are meant to be welcoming environments for students of all abilities. Should you require assistance, please contact the University of Toronto's Accessibility Services at <http://www.accessibility.utoronto.ca/>.

## VI. Readings

There is an assigned textbook for this class, *Canadian Courts: Law Practice and Process*, second ed., by Lori Hausegger, Mathew Hennigar, and Troy Riddell. (Don Mills: Oxford, 2014). It is referred to below as "HHR" and available at the bookstore. All of the other readings from this class are available online as noted, through the University of Toronto Library system ("UTL") or on Quercus. If you can't access them let me know.

## VII. Class Schedule

### **PART I Substantive Debates Around Canadian Judicial Institutions**

#### **September 14, 2020 – Overview: Canada, the Courts, the Ideas**

This class will serve as an introduction to the course and the major themes. The readings will concentrate on the court structure in Canada and some of the debates that will shape the semester. Time will be spent exploring the constitutional basis of the judiciary in Canada, its major functions, and the differences, if any between "public" and "private" law. We will also review ideas such as the meaning of constitutional conventions, the common law, and judicial review.

HHR chs. 1-3

#### **September 21, 2020 – The Classics: Dialogue theory, *Charter*-Proofing, Judicial Activism & the Court Party.**

This class will focus on some the major literature that has been relevant to the field up until now. This includes work done on "*Charter*-proofing," the fear of rising judicial activism after the advent of the Charter, and the concept of legislative-judicial "dialogue."

Roach, Kent. 2016. "The Supreme Court on Trial" in *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue?* Revised edition. Toronto: Irwin Law. Pp. 1-14 Quercus.

Hogg, Peter and Alisson Bushell. 1997. "The Charter Dialogue between Courts and Legislatures (or perhaps the *Charter of Rights* is not such a bad thing after all)." *Osgood Hall Law Journal*. 35(1): 75-124. UTL.

Macfarlane, Emmett. 2012. "Dialogue or Compliance? Measuring Legislatures Policy Responses to Court Rulings on Rights." *International Political Science Review*. 34(1): 39-56. UTL.

Hiebert, Janet. 2018. "The Charter's Influence on Legislation: Political Strategizing About Risk." Presidential Address to the Canadian Political Science Association Annual Meeting. *Canadian Journal of Political Science* 51(4): Pg. 727-747. UTL.

### **September 28, 2020 – Political Dimensions to the Court's Work: Public Interest Litigation, SLAPPS & the Reference Procedure.**

We often here the claim that the Charter "politicized the judiciary and judicialized politics." While perhaps true on some level, it is also true that the Court has been dealing with "political" questions long before the Charter came along. We will review some aspects of this, such as public interest litigation, intervenors, "Strategic Lawsuits Against Public Participation" (SLAPPS), and the reference procedure.

HHR chapters 7 and 8, pg. 312-316.

Morton, FL and Rainer Knopff. 2000. "Chapter 3: The Court Party" in *The Charter Revolution and the Court Party*. Peterborough: Broadview. Quercus.

Kate Puddister. 2019. "Chapter 1: Origins and Implications of the Reference Power." In *Seeking the Court's Advice: The Canadian Reference Power*. Vancouver and Toronto: UBC Press. Quercus.

*Reference re: Secession of Quebec* [1998] 2 SCR 217. Headnote + Paras. 1- 31. Online.

*Reference re: Same Sex Marriage*. [2004] 3 SCR 698. Headnote + Paras 61-72. Online.

### **October 5, 2020 – The Supreme Court of Canada: Does it have a Legitimacy Problem?**

A perennial, major debate about the Supreme Court of Canada surrounds the appointment of the judges, which many claim are illegitimate given the lack of scrutiny of the process. How true is this? What is the appointment process for the Supreme Court, does it need work, and does the Supreme Court of Canada suffer from a legitimacy problem?

HHR ch. 5

Canada. Judicial Affairs Canada. 2019. "Supreme Court of Canada Appointment Process 2019." Online: <https://www.fja-cmf.gc.ca/scc-csc/2019/index-eng.html> (Note – Read the whole thing – flip through the requirements.

Canada. Judicial Affairs Canada. 2019. “The Application for a Supreme Court Seat by Mr. Justice Malcolm Rowe.” Online: <https://www.fja.gc.ca/scc-csc/2016-MalcolmRowe/nominee-candidat-eng.html>

Gibson, James L, Gregory A Caldeira & Vanessa A Baird. (1999) “On the Legitimacy of National High Courts” 92:2 *American Political Science Review* 343. UTL

Crandall, Erin and Andrea Lawlor. 2019. *Measuring Attitudes Towards the Supreme Court of Canada*. CPSA Conference Paper. UBC, Vancouver, BC. Quercus

## **October 12, 2020 – THANKSGIVING**

### **October 19, 2020 – From “Mega” to “Mini:” The evolving Canadian Constitution [BOOK REVIEW DUE]**

The focus on this class is exploring how and why the Canadian Constitution appears to have stabilized after the “mega-constitutional era.” Whereas during the latter half of the 20<sup>th</sup> century constitutional reform, amendment, executive federalism and referenda were very much in style, this appears to have died by 1995. What happened?

Peter Russell. 2004. “Introduction: The Question of our Time.” & “Ch 2 The Sovereignty of the People.” In *Constitutional Odyssey: Can Canadians Become a Sovereign People?* 3<sup>rd</sup> ed. Toronto: UTP. Pp. 1-11. Quercus.

Thomas, David. 1997. “Introduction + The World of Abeyances.” In *Whistling Past the Graveyard: Constitutional Abeyances, Quebec, and the Future of Canada*. Toronto: Oxford. Quercus.

Schertzer, Robert. 2016. “Introduction.” In *Judicial Role in a Diverse Federation: Lessons from the Supreme Court of Canada*. Toronto: Oxford. Pp. 1-24. Quercus.

### OPTIONAL

McDougall, Andrew. “Chapter 1: The Puzzle and its Context.” DRAFT. Quercus.

## **PART II Substantive Debates in Canadian Public Law**

### **October 26, 2020 – The Pandemic, the Constitution, and the End of the World**

The pandemic of 2020 represents the largest health, social, political, and economic crisis in Canada possibly since World War II. Many of the legal and constitutional implications are only now coming into view. This class will focus on some of the most important areas, in particular the legality of restrictions on internal mobility. The pandemic also offers a rare opportunity to consider questions surrounding Continuity of Government (“COG”) in an emergency, a topic largely dormant since the Cold War.

*Kimberly v. Newfoundland and Labrador*: Factum of the CCLA: <https://ccla.org/cclanewsites/wp-content/uploads/2020/06/NL-Travel-Ban-Factum.pdf>

*Kimberly v. Newfoundland and Labrador*: Factum of the Government of Newfoundland and Labrador: <https://ccla.org/cclanewsites/wp-content/uploads/2020/07/Brief-of-the-First-and-Second-Respondents.pdf>

McDougall, Andrew. 2020. "Continuity of Constitutional Government during a Pandemic: Considering the Concept in Canada's Emergency Management Act." *Canadian Journal of Political Science*. 53:2. Pp. 293-98. Online. <https://www.cambridge.org/core/journals/canadian-journal-of-political-science-revue-canadienne-de-science-politique/article/continuity-of-constitutional-government-during-a-pandemic-considering-the-concept-in-canadas-emergency-management-act/E4F24ECAA43F8B115726DB0DA759727F>

Graff, Garrett M. 2017. "Chapter 18: The Days After." *Raven Rock: The Story of the US Government's Plan to Save Itself*. New York and Toronto: Simon and Shuster. Pp. 366-386. Quercus.

### **November 2, 2020 – Reconciliation: What Does it Mean, and Where are we Going?**

For at least 15 years, the discussion between settler society and Canada's Indigenous peoples has focused on the concept of "reconciliation." This was given added urgency with the election of the federal Liberals in 2015 who made it a political priority, and the Missing and Murdered Indigenous Women Inquiry that was established in 2016. But what does "reconciliation" mean, and what is the current state of Indigenous-settler relations?

Russell, Peter. 2017. "Introduction." In *Canada's Odyssey: A Country Based on Incomplete Conquests*. Toronto UTP. Pp. 1-19. Quercus

McCrossan, Michael. 2018. "Contrasting Visions of Indigenous Rights, Recognition, and Territory: Assessing Crown Policy in the Context of Reconciliation and Historic Obligations." In *Policy Change, Courts and the Canadian Constitution*. Ed. Emmett Macfarlane. Toronto: UTP. Quercus.

Walters, Mark. 2008. "The Jurisprudence of Reconciliation: Aboriginal Rights in Canada." In *The Politics of Reconciliation in Multicultural Societies*. London and New York: Oxford. Pp. 165-191. Quercus.

Milward, David. 2019. "Chapter 9: Freeing Inherent Aboriginal Rights from the Past." in *The Canadian Constitution in Transition*. Toronto: UTP. Quercus.

### **November 9, 2020 – READING WEEK, NO CLASS**

### **November 16, 2020 – Reasonable Accommodations: What is Going on in Quebec?**

After many years of heated debate in Quebec on the subject of “reasonable accommodations” in Quebec, the newly elected CAQ government has finally passed so-called “Bill 21,” which precludes the wearing of ostentatious religious garb when giving or receiving public services. This class will explore the origins of the debate and the implications of the new law.

Zubrzycki, Geneviève. 2016. “Chapter 5: Nationalism, Secularism, and Cultural Heritage.” In *Beheading the Saint: Nationalism, Religion, and Secularism in Quebec*. Chicago: University of Chicago Press. Quercus.

Dufresne, Yannick, Anja Kilibarda, André Blais, and Alexis Bibeau. 2018. “Religiosity or Racism? The Basis of Opposition to Religious Accommodation in Quebec.” *Nations and Nationalism*. 25(2): Pp. 673-696. UTL.

*Ichak Nourel Hak et al. v. The Attorney General of Quebec*. No 500-7. Application for Judicial Review (Declaration of Invalidity) and Application for an Interim Stay. Quercus & Online through the CCLA website.

Webber, Grégoire, Eric Mendelsohn & Robert Leckey. 2019. “Invoking the Notwithstanding Clause, As Quebec has Done with Bill 21, Does Not Shield a law From Being Reviewed by a Court for Violating Rights.” *Policy Options*. 10 May 2019. Online: <https://policyoptions.irpp.org/magazines/may-2019/faulty-wisdom-notwithstanding-clause/>

### **November 23, 2020 – Climate Change and the Constitution**

This class will take a deep dive into one area of the constitution that has exploded onto the radar in the past two years: the laws surrounding the country’s ability to regulate climate change. Several legal questions will be explored: First, is the federal government’s carbon tax unconstitutional? Secondly, can one province, namely BC, block Alberta from getting its oil to the coast? And can Alberta “turn off the taps?”

*Reference Re: The Greenhouse Gas Pollution Pricing Act 2019 SKCA 40 (Canlii)*. Paras 1-210 (Ignore the dissent). Online: [https://www.canlii.org/en/sk/skca/doc/2019/2019skca40/2019skca40.html?searchUrlHash=AAAAQAqZ3JJZW5ob3VzZSBnYXMgcG9sbHV0aW9uIHByaWNpbmcmcVmZXJlbnNlAAAAAAE&resultIndex=7#\\_Toc7761863](https://www.canlii.org/en/sk/skca/doc/2019/2019skca40/2019skca40.html?searchUrlHash=AAAAQAqZ3JJZW5ob3VzZSBnYXMgcG9sbHV0aW9uIHByaWNpbmcmcVmZXJlbnNlAAAAAAE&resultIndex=7#_Toc7761863)

*Constitution Act, 1867*. Section 92A ss 1-6. Online.

Monahan, Patrick J, Byron Shaw and Padraic Ryan. “Chapter 9: Trade and Commerce.” In *Constitutional Law* (2017). 5<sup>th</sup> ed. Note: Only pp. 266-310. Quercus

### **November 30, 2020 – Abortion: The Molten Core of Social Conservatism**

Although this issue has remained quiet in Canadian politics for much of the past 30 years, it is never far from the surface and that quiescence is itself an interesting puzzle. What is the current



status of abortion rights in the country, why is there so little visible controversy around them at the elite level in Canada, and is it really true that there are “no laws” around abortion as is commonly believed?

Johnstone, Rachael, and Emmett Macfarlane. 2017. “Public Policy, Rights, and Abortion Access in Canada.” *International Journal of Canadian Studies*. (51): 97-120. UTL.

Ackerman, Katerina. 2012. “‘Not in the Atlantic Provinces:’ The Abortion Debate in New Brunswick, 1980-87.” *Acadiensis* 41(1): 75-101. UTL.

Malloy, Jonathan, PEJ Thomas and J. Sabin. 2017. “Chapter 3: Abortion Politics and Federal Parties” in *Religion and Canadian Party Politics*. Vancouver: UBC Press. UTL.

### **December 7, 2020 – Judicial impact – Do the courts really matter? [ESSAY DUE]**

This class will examine the literature of “judicial impact,” or the ability of judges to effect social and policy change. How do courts change public policies? Are they always effective? If not what are the limits? And do we overestimate courts as agents of social change?

HHR Chapter 11.

Whyte, John D. 2012. “The Charter at 30: A Reflection.” *Review of Constitutional Studies*. 17(1). 1-13. UTL.

Vanhala, Lisa, and Jaqui Kingham. 2018. *Literature Review on the Use and Impact of Litigation*. London: Public Law Project. <https://lankellychase.org.uk/wp-content/uploads/2018/05/Public-Law-Project-Literature-review-on-the-use-and-impact-of-litigation.pdf>

Rosenberg, Gerald. 2004. “Substituting Symbol for Substance: What did *Brown* Really Accomplish?” *PS: Political Science and Politics* 37:205-9. UTL.

McCann, M. 2006. “Law and Social Movements: Contemporary Perspectives.” *Annual Review of Law and Social Science*. 2:17-38. UTL

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**BOOK REVIEW ASSIGNMENT**

The first assignment is a 5-7 page book review on a book that is relevant to the study of Canadian law & politics. Below you will find a list of *suggested* books from which you can choose but it is not exhaustive – the possibilities are endless, and this is simply to get you started. Indeed, some of these are on the syllabus. Feel free to choose another book so long as you email me the one you would like to do first.

The book must be academic, from a reputable scholar doing empirical research on law & politics in Canada or is a work of legal/political theory that is connected to Canada. An academic biography of a judicial figure, like some suggested below, would also count. Other works, like memoirs, autobiographies, or polemics, should not be chosen. (For example, former Chief Justice Beverly McLaughlin has written a well-reviewed legal thriller, "[Full Disclosure](#)," about a fictional young lawyer from Alberta trying her first case that, according to Amazon, "hits close to home" and is a "searing look at what justice means in the courts - and on the streets." While I am sure that it is a gripping read, it would not be acceptable to review for this class. Nor would her memoir, "[Truth be Told: My Journey through Life and the Law](#)," for that matter, although it also got rave reviews from the Bar. But I encourage you to read both on your own time.)

For a good example of an academic book review, check out a recent copy of the *Canadian Journal of Political Science*. The review should outline the central thesis or argument of the book, relevant methods, findings, and your view on the overall effectiveness of the piece, in the structure that *you* deem most suitable given the word limit. Assessment will be based on my qualitative judgement regarding the presence of these elements, as well as the overall clarity of the prose, style, and coherence of your argument, with reasons justifying the assigned grade and not another possible grade.

Appeals: If you disagree with the grade, please wait 24 hours and then email me your reasons in a one page summary explaining what grade you think you deserve, and why.

The review will be due on Turnitin on **October 19, 2020 at 11:59pm**. If you ever run into technical difficulties handing it in, just email me the review before the deadline.

The review should be double spaced in Times New Roman font, with one inch margins. The papers should have a coversheet and page numbers beginning on the first page of writing (i.e. the cover does not count.) All citations should be in the Chicago "author-date" parenthesis style or Chicago style footnotes (NOTE: PAGE NUMBERS ARE REQUIRED IN THE CITATIONS!) If you are unable to submit a piece of work in a timely manner, you are required to submit adequate medical documentation or otherwise seek an extension at the earliest time possible.

Failure to hand in either of the written assignments will result in a 5% daily penalty, including weekends. If an extension is granted note the fact on the cover and attach the documentation to the back of the paper when you hand it in.

~SUGGESTED BOOKS~

Baker, Denis. 2010. *Not Quite Supreme : The Courts and Coordinate Constitutional Interpretation*. Montreal & Kingston: McGill-Queen's University Press.

Borrows, John, and Michael Coyle, eds. 2017. *The Right Relationship : Reimagining the Implementation of Historical Treaties*. Toronto: University of Toronto Press.

Brooks, Kim. 2010. *Justice Bertha Wilson: One Woman's Difference* Vancouver: UBC Press.

Carens, Joseph H. 2000. *Citizens Plus: Aboriginal Peoples and the Canadian State*. Vancouver: UBC Press.

Daved, Muttart. 2007. *The Empirical Gap in Jurisprudence: A Comprehensive Study of the Supreme Court of Canada*. Toronto: University of Toronto Press.

Greene, Ian. 2006. *The Courts*. Vancouver: UBC Press.

Heard, Andrew. 2014. *Canadian Constitutional Conventions : The Marriage of Law and Politics*. Second edition. Toronto: Oxford.

Hiebert, Janet. 2002. *Charter Conflicts : What Is Parliament's Role?* Montreal: McGill-Queen's Press - MQUP.

Hirschl, Ran. 2007. *Towards Juristocracy : The Origins and Consequences of the New Constitutionalism*. Cambridge: Harvard University Press.

Kaplan, William. 2009. *Canadian Maverick: The Life and Times of Ivan C. Rand*. Toronto: Osgoode Society for Canadian Legal History, University of Toronto Press.

Knopff, Rainer, and F. L. Morton, eds. 2000. *The Charter Revolution and the Court Party*. Peterborough, Ont: Broadview Press.

Macfarlane, Emmett. 2013. *Governing from the Bench : The Supreme Court of Canada and the Judicial Role*. Vancouver: UBC Press.

MacMillan, C. Michael. 1998. *The Practice of Language Rights in Canada*. University of Toronto Press.

McCormick, Peter. 2000. *Supreme at Last: The Evolution of the Supreme Court of Canada* Toronto: James Lorimer & Company.

Morton, F. L., and Dave Snow, eds. 2018. *Law, Politics, and the Judicial Process in Canada*. 4th ed. Calgary: University of Calgary.

Puddister, Kate. 2019. *Seeking the Court's Advice : The Politics of the Canadian Reference Power*. Vancouver: UBC Press.

Roach, Kent. 1999. *Due Process and Victims' Rights : The New Law and Politics of Criminal Justice*. Toronto:

Roach, Kent. 2001. *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue*. Toronto: Irwin law.

Russell, Peter H. 2004. *Constitutional Odyssey: Can Canadians Become a Sovereign People?* 3rd. Toronto: University of Toronto Press.

———. 2017. *Canada's Odyssey: A Country Based on Incomplete Conquests*. Toronto: University of Toronto Press.

Saywell, John T. 2004. *The Lawmakers: Judicial Power and the Shaping of Canadian Federalism*. Toronto: University of Toronto Press.

Schertzer, Robert. 2016. *The Judicial Role in a Diverse Federation: Lessons from the Supreme Court of Canada*. Toronto: University of Toronto Press.

Smith, David E. 2013. *Invisible Crown: The First Principle of Canadian Government*. Toronto: UTP.

Snow, Dave. 2018. *Assisted Reproduction Policy in Canada : Framing, Federalism, and Failure*. Toronto ; Buffalo ; London: University of Toronto Press.

Songer, Donald R. 2008. *The Transformation of the Supreme Court of Canada: An Empirical Examination* Toronto: University of Toronto Press.

———. et al. 2012. *Law, Ideology, and Collegiality: Judicial Behaviour in the Supreme Court of Canada* Montréal: McGill-Queen's University Press.

Strayer, Barry L. 1968. *Judicial Review of Legislation in Canada*. Toronto: University of Toronto Press.

Thomas, David M. 1997. *Whistling Past the Graveyard: Constitutional Abeyances, Quebec and the Future of Canada*. Toronto: Oxford University Press.

Wetstein, Matthew E & C L Ostberg. 2017. *Value Change in the Supreme Court of Canada* Toronto: University of Toronto Press.

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**ESSAY ASSIGNMENT**

Pick one of the essay topics below and write a research paper of around 10-12 pages. It will be due on the last day of class. The essay will be due on Turnitin. If you ever run into technical difficulties doing so, just email me the review before the deadline. If you want to choose another topic, that is OK so long as you clear it with me first.

The assignment will be due on Turnitin, just like the book review. The papers should be double spaced in Times New Roman font, with one inch margins. The papers should have a coversheet and page numbers beginning on the first page of writing (i.e. the cover does not count.) All citations should be in the Chicago “author-date” parenthesis style or Chicago style footnotes (NOTE: PAGE NUMBERS ARE REQUIRED IN THE CITATIONS!) If you are unable to submit a piece of work in a timely manner, you are required to submit adequate medical documentation or otherwise seek an extension at the earliest time possible. Failure to hand in either of the written assignments will result in a 5% daily penalty, including weekends. If an extension is granted note the fact on the cover and attach the documentation to the back of the paper when you hand it in.

- Write a paper comparing the Canadian and American processes of judicial selection for their respective Supreme Courts. What are the major concerns in the literature, which process do you prefer, and why?
- There is a perennial concern with “access to justice” in Ontario – namely, that it is too expensive for most people to pay for the legal representation that they need. Write a paper on the scope of the issue in the province, and present your thoughts on the best solution to the problem (hint – it should go beyond just saying “more funding is needed...”).
- Write a literature review on the scholarship surrounding the notwithstanding clause beginning from the year 2000 to now. What are the central themes and debates in the literature? Has it evolved over time, and if so, how? What are the directions for future research?
- The objective of “reconciliation” has framed the contemporary relationship between settler society and Canada’s Indigenous peoples. Write an essay explaining your understanding of the term “reconciliation” and, based on your research, how might it be successfully achieved constitutionally?

- Recently Quebec has introduced Bill 21, which seeks to enforce “religious neutrality” in state institutions. Explain the background and scope of Bill 21, the legal problems and justifications for this effort, and present an argument for why you do or do not support what Quebec is doing.
- Civil forfeiture is a growing issue in Canadian law. Research the status of this program in Ontario, outline the arguments both for and against using it, and take a position on whether or not you feel this program is justifiable.
- Are the provincial restrictions on internal mobility that have been introduced in 2020 constitutional and justifiable? Write a paper explaining your position and the arguments that surround this debate in a time of pandemic.
- Choose a different topic with permission.