



## JS GS 881 - Constitutional Law

	UNIVERSITY OF REGINA CAMPUS	UNIVERSITY OF SASKATCHEWAN CAMPUS
<b>INSTRUCTOR:</b>	Robert Hawkins	
<b>PHONE:</b>	306-789-2888	
<b>E-MAIL:</b>	robert.hawkins@uregina.ca	
<b>OFFICE HOURS:</b>	None during COVID - Call or email	
<b>OFFICE LOCATION:</b>	None during COVID – Call or email	
<b>TERM:</b>	Winter 2021	
<b>ROOM:</b>	All classes on Zoom; Exam by email	
<b>DATE AND TIME:</b>	Sat Jan 23, 9-Noon; Tues Feb 16 thru Sat Feb 20, 9am-4:15pm; Exam Sun Feb 21, 1-4 pm	

### CALENDAR DESCRIPTION

This course will help students develop the critical skills necessary to examine Canada's constitution including Canada's institutions, the division of powers, the rights of Indigenous Peoples, and the Charter of Rights and Freedoms.

### LEARNING OUTCOMES - Students will:

- develop an understanding of workings of the basic Canadian constitution,
- examine the different interpretive approaches to the constitution,
- study underlying constitutional principles such as democracy, federalism, rule of law, minority rights, judicial independence, judicial review, etc.,
- learn how division of powers operates in the Canadian federal system,
- learn how the Charter of Rights protects individual freedoms,
- learn of the rights of Indigenous peoples such as duty to consult and,
- develop an understanding of how constitutional litigation is conducted.

**Important - Email addresses:** Students will **not** be allowed to continue in this course unless they have a 'uregina' or 'usask' email address by 5:00 pm **Thursday January 21, 2021.**

## REQUIRED READINGS:

The Constitution of Canada is at: <https://laws-lois.justice.gc.ca/eng/const/>

There is **no required text** for this course. Texts in constitutional law tend to be voluminous. If students have the interest and time, they can consult Monahan, Patrick J., Shaw, Byron and Ryan, Padraic, *Constitutional Law*, 5<sup>th</sup> ed., Irwin Law Inc., 2017, and in particular the following chapters: 1 – Introduction; 4 – *The Constitution Act, 1867: Federalism and Judicial Power*; 7 – the Courts and Canadian Federalism: From Watertight Compartments to Shared Responsibility; 9 – Trade and Commerce; 10 – Property and Civil Rights in the Province, 11 – Criminal Law; 13 – *The Canadian Charter of Rights and Freedoms: Structure and Application*; 14 – Rights and Freedoms of the *Charter*; & 15 – Indigenous Peoples and the Canadian Constitution.

**Required readings** for each of the classes are set out below in the class outline. These readings consist one decision of the Supreme Court of Canada per class that sets out the law that will be covered in the class. All cases are on line at the Can Law website, <https://www.canlii.org/en/>, and the specific URLs are provided below.

## COURSE COMPONENTS AND FORMAT

All classes will be conducted on zoom. There will be an introductory class on Saturday January 23 from 9:00 a.m. to Noon. This class has two purposes. The first is to organize the student participation in the course as explained below. The second is to introduce the basic building blocks of the Canadian constitution.

From Tuesday February 16 through Saturday February 22, the course will be delivered as a ‘block’ course. In the morning there will be an interactive seminar covering the topics of the constitution set out below. Afternoons will be devoted to the student moots when an actual constitutional case will be argued in a mock supreme court appellate hearing. Students will be placed in teams the size of which will depend on the number of students in the course. One student team will argue one side of the appeal. A different student team will argue the other side of the appeal. The class will act as judges.

Students will be placed on teams and their case assigned during the class on January 23. As mentioned, the assigned students are arguing the case in a higher appellate court. One team of students will argue the appellant's position (the position attacking the judgment appealed from). The other team will argue the respondent's position (the position defending the judgment being appealed from). In one of the mock appeals, there will be three teams appealing and one team responding.

The reasons for decision from the lower court in the case being appealed will give a flavor of the arguments on both sides of the issue. They will also provide links to the relevant precedents. For the most part that is all of the research that will be required. The reasons being appealed from will deal with non-constitutional issues as well as the constitutional issues. Students in this course need only focus on the constitutional issues.

The student appellants and the respondents must prepare a legal brief for the appellate court, known as a factum, prior to the presentation of their oral argument before the court. At the class on January 23, when student teams are assigned their case and their roles as appellant and respondent, they will have **until noon** on Friday February 12, 2021 (three weeks) to prepare their factum and hand it in, by email, in word format, to the Professor at [robert.hawkins@uregina.ca](mailto:robert.hawkins@uregina.ca). The professor will then distribute the factum to the other side so that both sides can prepare their oral argument for their moot court during the block class.

On January 23, a sample factum will be distributed, by email, for students to follow. There will be a strict page limit on factums. Failure to hand in the factum **on time** will result in an **'F' grade** in the course because to the need to distribute the factum to the other side.

## **GRADING**

There are three components in the course, the factum, the oral argument before the mock Supreme Court, and the exam. Each component is worth one-third of the final grade. A team mark will be assigned for the factum. An individual mark will be assigned for the oral argument and for the exam.

The exam will be written on Sunday February 21, 2021 from 1 – 4 pm. It will a one question, three-hour, open book exam with a strict word limit of 750 words. It must be answered in point form. It is to be returned by email in word format on or before the 4 pm deadline to [robert.hawkins@uregina.ca](mailto:robert.hawkins@uregina.ca) in word format.

The graded factum will be returned after the moot. The prof will provide feedback, but not grades, on the oral moot. Graded exams will not be returned. These rules are necessary to prevent students from calculating their final course grades prior to those final grades being released by the university. University rules require that only the university can release final grades.

The grading system for course components will be an Honors, Pass, Fail system. Numeric final grades will be assigned as follows:

3 Honours (i.e. an Honours in each of the three course components) = 88%

2 Honours, 1 Pass (i.e. Honors in two components, Pass in one) = 86%

1 Honours, 2 Pass (i.e. Honours in one component, Pass in two) = 84%

3 Pass (i.e. Pass in all three components) = 82%

An 'F' in any component will take the mark below 82%

An 'F' in the factum component due to failure to meet the submission deadline will, as noted above, result in a failing grade in the course.

## **COURSE OUTLINE (Subject to Revision)**

### ***Saturday January 23, 2021, 9 am to Noon: Class 1***

**Lecture:** The Basics - This class will organize the course, assign students to moot teams, topics and roles. Instructions will be given on writing the moot brief/factum. The basic elements of the constitution will be reviewed.

### **Reading:**

Forsey, Eugene A., *How Canadians Govern Themselves*. Ottawa: Library of Parliament.  
[https://lop.parl.ca/About/Parliament/senatoreugeneforsey/book/chapter\\_1-e.html](https://lop.parl.ca/About/Parliament/senatoreugeneforsey/book/chapter_1-e.html)

**Tuesday February 16, 2021: Class 2 – Division of Power Theory**

Lecture: Division of Powers Theory

Readings: Reference re Environmental Management Act, 2019 BCCA 181  
<https://www.canlii.org/en/bc/bcca/doc/2019/2019bcca181/2019bcca181.html>

Two brief commentaries:

<https://business.financialpost.com/commodities/energy/supreme-court-dismisses-b-c-s-appeal-in-trans-mountain-pipeline-case>

<https://www.lexology.com/library/detail.aspx?g=53b18623-d531-4b71-bc97-75326a50f92d>

Moot: Reference re [Genetic Non-Discrimination Act](#), 2020 SCC 17  
<https://www.canlii.org/en/ca/scc/doc/2020/2020scc17/2020scc17.html>

**Wednesday February 17, 2021: Class 3 – Heads of Power**

Lecture: POGG (s. 91, preamble), Criminal (s. 91(27)), Trade and Commerce (s. 91(2)), Property and Civil Rights (92(13)), Local Matters (92(16))

Reading: Reference re Pan-Canadian Securities Regulation

<https://www.canlii.org/en/ca/scc/doc/2018/2018scc48/2018scc48.html>

Moot: Reference re Greenhouse Gas Pollution Pricing Act, 2019 SKCA 40 (CanLII)

<https://www.canlii.org/en/sk/skca/doc/2019/2019skca40/2019skca40.html>

Reference re Greenhouse Gas Pollution Pricing Act, 2019 ONCA 544 (CanLII)

<https://www.canlii.org/en/on/onca/doc/2019/2019onca544/2019onca544.html>

Reference re Greenhouse Gas Pollution Pricing Act, 2020 ABCA 74 (CanLII)

<https://www.canlii.org/en/ab/abca/doc/2020/2020abca74/2020abca74.html>

Brief commentary on 3 Moot cases:

<https://www.cbc.ca/news/canada/saskatchewan/sask-carbon-tax-supreme-court-1.5475718>

***Thursday February 18, 2021: Class 4 – Charter***

Lecture: s. 2 - Fundamental Freedoms – Expression; Religion; Association

Reading: Mounted Police Association of Ont. v. Canada (A-G), 2015 SCC 1

<https://www.canlii.org/en/ca/scc/doc/2015/2015scc1/2015scc1.html>

Moot: Dubois v Saskatchewan, 2018 SKQB 241 (CanLII)

<https://www.canlii.org/en/sk/skqb/doc/2018/2018skqb241/2018skqb241.html>

Saskatchewan v Durocher, 2020 SKQB 224 (CanLII)

<https://www.canlii.org/en/sk/skqb/doc/2020/2020skqb224/2020skqb224.html>

***Friday February 19, 2021: Class 5 – Charter***

Lecture: s. 7 - Life, Liberty and Security of the Person; s. 15 - Equality

Reading: Canada (AG) v. PHS Community Services (Insite), 2011 SCC 44 (CanLII)

<https://www.canlii.org/en/ca/scc/doc/2011/2011scc44/2011scc44.html>

Moot: Hospital Drugs Problem – To be distributed

***Saturday February 20, 2021: Class 6 – Indigenous Rights***

Lecture: Duty to Consult

Reading: Haida Nation v. British Columbia (Minister of Forests) (SCC, 26 July 2017)

<https://www.canlii.org/en/ca/scc/doc/2004/2004scc73/2004scc73.html>

Moot: Clyde River (Hamlet) v. Petroleum Geo-Services

<https://www.canlii.org/en/ca/scc/doc/2017/2017scc40/2017scc40.html>

Hamlet of Clyde River (FCA, 17 August 2015)

<https://www.canlii.org/en/ca/scc/doc/2017/2017scc40/2017scc40.html#related>

**Sunday February 21, 2021: Exam – 1 pm to 4 pm**

### **STUDENTS WITH SPECIAL NEEDS**

Any student with a disability, injury or illness who feels they may need academic accommodation should discuss this with the course instructor after contacting the Centre for Student Accessibility, <https://www.uregina.ca/student/accessibility>, at 306-585-4631

### **STUDENTS EXPERIENCING STRESS**

Students in this course who are experiencing stress can seek assistance from the Counselling Services, or call (306) 585-4491. Additional information is available here: (<https://drive.google.com/open?id=0B4t76lIdFvaidV92VVRrdmNnZG8>).

### **OTHER SUPPORTS FOR STUDENTS**

- Sexual Violence, <https://www.uregina.ca/sexual-violence/>
- UofR Student Success Centre, <https://www.uregina.ca/student/ssc/>
- UofR Aboriginal Student Centre, <https://www.uregina.ca/student/asc/>
- UR International, <https://www.uregina.ca/international/>
- JSGS (UofR) Student Handbook, [https://www.schoolofpublicpolicy.sk.ca/documents/other/2016-17\\_JSGS%20handbook\\_UofR-](https://www.schoolofpublicpolicy.sk.ca/documents/other/2016-17_JSGS%20handbook_UofR-)
- Being a Not-Rich Student <https://docs.google.com/document/d/1Ou-AelCrAg6soUJVbiviKAGBGF276w-UBlw-eMigwOA/edit>

**ACADEMIC INTEGRITY AND CONDUCT**

Following the principles of academic integrity and conduct as laid out in the University of Regina's Graduate Calendar is vital to your success. These are at [http://www.uregina.ca/gradstudies/calendar/policy\\_univ.shtml#conduct](http://www.uregina.ca/gradstudies/calendar/policy_univ.shtml#conduct). Ensuring that your work is your own and reflects both your own ideas and those of others incorporated in your work is important. Ensuring that you acknowledge the ideas, words, and phrases of others that you use is a vital part of the scholarly endeavour. If you have any questions at all about academic integrity in general or about specific issues, contact your course instructor and to discuss your questions.