*The Canadian Judicial System*

The University of Toronto Scarborough

– Fall 2014

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**Lecture: Tues. 9-11**

Location: **MW 140**

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**Course Description**

The overall objective of the course is for students to acquire an understanding of the judicial system in Canada, including the institutions (both formal and informal) that govern legal decision-making and to introduce students to various legal theories through which lenses, respectively, judicial decision-makers reach conclusions and what might be said about those conclusions.

Students will be introduced to the fundamental principles and framework upon which law as a system is based, including the origins and workings of the common law system, the Canadian court system, and regulatory or administrative tribunals.

**Required Text**

**\* Hausegger, Lori, Hennigar, Matthew and Troy Riddell. 2015. Canadian Courts, Law Politics and Process. 2nd ed. Oxford University Press. (for purchase in bookstore).**

**All other required readings will be provided via the course website**

**Learning Outcomes**

1. To comprehend basic elements of the common law system, such as the nature of precedent;
2. To comprehend contending legal theories that judicial decision-makers bring to bear on their judgments, to assess these theories and to apply insights developed about these theories to an analysis of various *ratio decidendi* (reasons for particular judicial decisions);
3. To comprehend the structure of the legal system and the relationship *between* courts in Canada;
4. To analyze key issues associated with the legal system such the judicial-appointments process, and the policy-making role of the courts;
5. To analyze and summarize reading material in order to identify key points and arguments;
6. To acquire scholarly research skills and familiarity with relevant scholarly sources;
7. To apply key concepts and knowledge of material to specific fact scenarios;
8. To evaluate and defend particular positions with reference to key concepts and facts.

**Assessment**

|  |  |  |
| --- | --- | --- |
| ASSIGNMENT | VALUE | DUE DATE |
| 7 Reading Quizzes | 35% | Various times throughout the term |
| Citation/Research Exercise | 5% | Oct. 7th |
| Critical Analysis | 10% | Oct. 21st |
| Essay Outline with annotated bibliography | 10% | Nov. 11th  |
| Argumentative Essay | 20% | Nov. 25th (last class) |
| Exam | 20% | Final Exam Period (Dec. 5-19) |

**Assignment Details**

Please see separate assignment sheet for details

# **Course Logistics and Policies**

**Please ensure that you know and abide by all the requirements contained in this outline. Ignorance of such will not be considered a reasonable ground for any dispensation.**

**Accommodation**

If you require accommodation owing to a disability (this includes both physical and mental health issues), then please be referred to Access*Ability* Services.

http://www.utsc.utoronto.ca/~ability/

If you require accommodation (such as an extension or make-up exam) for any other reason (short-term medical (ie., less than 7 days), religious observance, compassionate grounds) you must approach the instructor. While appeals are possible in some cases, normally the instructor's discretion in this matter is decisive. Please note that you should make every reasonable effort to complete all assignments so as to hand-them in at the prescribed time. Please also note that flexibility has already been built-into the construction of many of the assignment deadlines. If you still require an accommodation, however, please do the following:

**1. Short-Term Medical Reasons (less than 7 days)**

If you are too sick to attend lecture and thus to hand-in an assignment or you miss a reading quiz as a result, you will be required to do the following: contact me as soon as you realize that you will not be able to attend class. I will respond ASAP. Any student who misses a reading quiz as a result of an illness will be required to make up that quiz at a prescribed time during the term. Please note, I will not normally require documentation for the first accommodation request owing to short-term illness. (I ask that you not abuse this. You are expected to attend class whenever able.). However, I will require complete documentation for any subsequent request.

**2. Non-Medical Reasons**

Notify the instructor as soon as you are aware of the conflict! Ordinarily, the longer you wait, the less likely your request is to be granted.

Please note that except for exceptional circumstances, work schedules will not normally be the basis for an accommodation. While I appreciate that it is unfortunate, perhaps even unfair, that some students must maintain paid employment while others are not so required, part of managing your life means being able to juggle certain kinds of responsibilities. Again, I have constructed the syllabus in such a way so as to respect the juggling act that many students are required to perform.

Please note that if you are feeling distressed, depressed or overwhelmed you should first be referred to the campus Health and Wellness Centre.

http://www.utsc.utoronto.ca/~wellness/

**Correspondence**

Please feel free to correspond with me outside of office hours, at the above email address. Please be sure that you use only a valid 'utoronto' email address when doing so.

Announcements such as a class cancellation due to illness, or an unanticipated change in the readings schedule etc… will be posted on the Blackboard course website. It is advised that you check the website prior to class and on a regular basis in order to receive any pertinent information in a timely manner.

**Maintaining a Respectful Learning Environment**

Meaningful discussions will likely result in disagreements between contending parties. Please try to contend with others’ opinions in a mature and respectful manner and listen to them fully before responding. Please do not talk over other people, interrupt, or hold side conversations.

##  **Laptops, Cellphones, and Other Technology**

Students are welcome to use laptops in class *only* for purposes related to the course at hand, that is, to view materials on the course website and/or to take notes. They are not, however, permitted to surf the Internet, check email, send messages or otherwise use devices that may disrupt the classroom environment. This is not a question of paternalism, but of respect as it is very distracting to the instructor. (Believe me, it is easy to tell from the front of the room who is and who is not paying attention.) Furthermore, **studies reveal** that the use of devices for other than educational purposes is distracting to students **around** you (so, no it is not just 'your business') and that note-taking by hand (yes, with a pen and paper) is a **superior** means of both **comprehending and retaining** relevant information. (In other words, if you take notes the old-fashioned way you will be smarter). You heard it here first!

Cellphones must be turned off (not switched to vibrate) in class and may not be used during class time. Exceptions are permitted for urgent situations (e.g., health or other urgent matters). You are asked to notify the instructor in advance if you are experiencing such exigent circumstances.

Absolutely no digital (video or audio) recording of the lectures is permitted, except for the private use of recordings for students with disabilities. Persons requiring such accommodation are asked to confidentially notify the instructor in advance of class.

##  **Submission of Written Work**

All written assignments (save the exam) are due in lecture. Students may hand them in *before* lecture begins, or as soon as lecture *ends*. Students are not permitted to hand them in *during* the lecture. If you are late for lecture, please take a seat quickly and quietly and hold onto your assignment until lecture has finished.

All assignments must be presented in hard copy by the student herself/himself. Students may **not** drop off or pick up assignments for other students, except owing to exceptional circumstances and with the **prior approval** of the instructor.

\*In an effort to allow students the flexibility they need in order to co-ordinate assignments for this class with their other course work, all deadlines for written work (save that of the final exam and reading quizzes) are subject to a one week ‘extension.’ What this means is that **you** are expected to manage your work schedule appropriately, so that you can hand in all your course work on time. Since only you know what assignments you have due and when, you have the opportunity of submitting your work on **either** the day that I assign as the deadline, **or** the following lecture one week later. If you choose to take the ‘extension’ you do not need to inform me. Be advised, however, that after the second ‘deadline’ has passed, **no papers will be accepted** and students who have submitted no assignment will receive a “zero” for that assignment. The professor **may** accept late submissions that are owing to **serious and unforeseeable** mitigating circumstances (and no, a computer failure does not count as unforeseeable given how easily work can be ‘backed up’) as per the accommodation policy outlined above.

**ACADEMIC INTEGRITY MATTERS**

**Plagiarism**

Plagiarism is an intentional act of academic dishonesty and intellectual theft. “Flagrant plagiarism” occurs when complete portions of one or more written texts are copied, but no quotation marks are used to indicate that the words have been borrowed even if a citation of the source has been included. “Disguised plagiarism” happens when the original text is “disguised” by changing only a few words, even if a citation is included. Whether flagrant or disguised, plagiarism is a serious academic offence. The texts and materials (including web-based materials) borrowed from others must be acknowledged. The acknowledgment must include quotation marks around the material used, and a notation giving **specific** source information. Other examples of academic dishonesty include handing-in substantially the same material for two different classes without permission, or aiding other students to engage in academic dishonesty by doing portions of their work for them.

Please visit the following:

http://www.utsc.utoronto.ca/~vpdean/academic\_integrity.html

http://www.utsc.utoronto.ca/~vpdean/student\_faq.html

The best ways to avoid plagiarism are:

1) To be certain about what it is (if you don't know, ask)

2) To be certain about why it cheats both yourself and those around you who have not employed dishonest methods

3) To engage in effective time-management from the beginning of term.

If you are feeling confused about class material do not wait until a week before an assignment is due. Rather, come and see me, right away. Students who become overwhelmed are more likely to compromise academic honesty. I am required to report any instances whereby I suspect plagiarism. And a finding of guilt can be met with grave and long-lasting consequences.

**Class Schedule and Required Readings**

**Week 1**

**Sept. 2nd**

**Overview of the course**: introductions, orientation to method and purpose, and explanation of assignments**.**

**Week 2**

**Sept. 9th**

**What is law? Introduction to the Nature of Law and Judging**

**Required Reading:**

* Hausegger et. al. *The Courts*, Chapter 1.
* Gerald Gall, *The Canadian Legal System*, 5th ed. (Toronto: Thomson Carswell, 2004) Chap. I (pps. 3-19).

**Week 3**

**Sept. 16th**

**Structure of the Courts**

**Required Reading:**

* Hausegger et. al. The *Courts*, chapter 2.

**Week 4**

**Sept. 23rd**

**Statutory Interpretation**

**Required Reading:**

* Sullivan, Ruth. 2006. Statutory Interpretation in Canada. The Legacy of Elmer Driedger.

Found here:

 http://www.judcom.nsw.gov.au/publications/education-monographs- 1/monograph4/06\_sullivan.pdf (pps. 108-125 only).

* Hall, Geoff R. 1998. "Statutory Interpretation in the Supreme Court of Canada." *Advocates Quarterly* 21, (pps. 41-65 only).

Found here:

http://www.mccarthy.ca/pubs/Statutory\_Interpretation\_Triumph.pdf

**Week 5**

**Sept. 30th**

**Research Workshop**

**Required Reading:**

* Henderson, Eric. 2009. *The Active Reader*, chapter 4. Oxford University Press **(pps. 154-188 only).**

**Week 6**

**Oct. 7th**

**Administrative Law**

**Required Reading:**

* Daly, Paul. 2012. "Dunsmuir's Flaws Exposed: Recent Decisions on Standard of Review." 58:2 *McGill LJ*: 483-506.
* *Baker v. Canada (Minister of Citizenship and Immigration*) [1999] 2 SCR 817 **(paras. 21-76 only).**

**Citation/Research Exercise due today!**

**Week 7:**

**Oct. 15th FALL READING WEEK. NO CLASSES HELD.**

**Week 8**

**Oct. 21st**

**Judicial Decision-Making**

**Required Reading:**

* Hausegger et. al. *The* *Courts*, chapter 4.

**Critical Review due today**

**Week 9**

**Oct. 28th**

**Judicial Independence**

**Required Reading:**

* Hausegger et. al. *The Courts*, Chapter 6. (pps. 172-196) and (pps. 205-209).
* *Valente v. the Queen.* [1985] 2 SCR 673 (paras. 24-52, only).

**Week 10**

**Nov. 4th**

**Judicial Appointments: If it ain't Broke...?**

**Required Reading:**

* Hausegger, Lori, Hennigar, Matthew and Troy Riddell. 2013. "Does Patronage Matter? Connecting Influences on Judicial Appointments with Judicial Decision Making." *CJPS* 46 (3).
* Knopff, Rainer. 2008. The Politics of Reforming Judicial Appointments. 58 *UNBLJ: 44-51.*
* Greene, Ian. 2008. Democracy, Judicial Independence, and Judicial Selection for Federally Appointed Judges. 58 *UNBLJ: 105-11.*

**Week 11**

**Nov. 11th**

**Courts and Policy: The Third Branch of Government**

**Required Reading:**

* Hausegger et. al. *The Courts*, Chapter 11.

**Outline with Annotated bibliography due today!**

**Week 12**

**Nov. 18th**

**Criminal Justice or It's not Like it is on TV...**

**Required Reading:**

* Hausegger et. al. *The Courts,* Chapter 9.

**Week 13**

**Nov. 25th**

**Accessing Democratic Accountability**

**Required Reading:**

* Greene, Ian. 2005. *The Courts*. Chapter 5. Canadian Democratic Audit Series. UBC Press.

**Analytic Essay due today!**