

**Laws 2062 / 5 Credit Hours / Constitutional Law Syllabus**  
Fall 2018

**Course time and location:** Tuesdays & Thursdays, 1:30-3:50 PM, Weldon 104

**Instructor:** Naiomi Metallic

**Office:** W424

**Office Phone:** 902-494-4500

**Office Hours:** By appointment (send me a email if you want to meet)

**Email:** [naiomi.metalli@dal.ca](mailto:naiomi.metalli@dal.ca)

### **Course Description**

This required second year course concerns itself with three main themes: (1) the division of powers under the Constitution Act, 1867; (2) Aboriginal and Treaty rights under section 35 of the *Constitution Act, 1982*; and (3) the *Canadian Charter of Rights and Freedoms*. This course is intended to follow from the basic introduction to and foundation for constitutional law laid in the first year Public Law course. Throughout the class, emphasis will be placed on the role of the Constitution in the relationships between different governments, as well as its role in relationship between individuals, collectives and government. We also focus on the role the courts as the Constitution's chief interpreter and guardian, as well as on constitutional litigation as a problem-solving process, through which fundamental values are examined.

### **Teaching Method**

The course will be taught through lectures. PowerPoint presentations of my lectures will be uploaded to Brightspace in advance of each class. My style is to engage the class in the materials in a variety of ways, including class discussion, small group discussions on hypothetical problems, and class polling and questions. The approach to classroom interaction will be based on the assumption that students have done the readings assigned for the day.

### **Learning Management System Site Information**

Course materials, class Powerpoints and other class materials will be posted to Brightspace. Class announcements will also be posted to Brightspace, as well as sent to students by email (via Brightspace).

## Required Text(s)

- *Canadian Constitutional Law*, 5th Edition (2017), Emond Montgomery (available at the bookstore)
  - Some Chapter are available only online. See <http://emond.ca/canadian-constitutional-law-5th-edition.html> and click on “Online Chapters”.
  - Emond also has a 2018-2019 Supplement. See <http://emond.ca/canadian-constitutional-law-5th-edition.html> and click “Supplements”
- Additional materials will also be made available on Brightspace.

## TopHat

We will be using the Top Hat ([www.tophat.com](http://www.tophat.com)) classroom response system in class. You will be able to submit answers to in-class questions using Apple or Android smartphones and tablets, laptops, or through text message.

You can visit the Top Hat Overview (<https://success.tophat.com/s/article/Student-Top-Hat-Overview-and-Getting-Started-Guide>) within the Top Hat Success Center which outlines how you will register for a Top Hat account, as well as providing a brief overview to get you up and running on the system.

An invitation will be sent to you by email, but if don't receive this email, you can register by simply visiting our course website: <https://app-ca.tophat.com/e/143125>

Note: our Course Join Code is **143125**.

I understand that all the Civil Procedure professors are requiring subscription to Top Hat, so you will already all be subscribing to this service for full year. Thus, there should be no further additional cost to you in our using Top Hat in this class.

Should you require assistance with Top Hat at any time, due to the fact that they require specific user information to troubleshoot these issues, please contact their Support Team directly by way of email ([support@tophat.com](mailto:support@tophat.com)), the in app support button, or by calling 1-888-663-5491.

## Additional References Resources:

There are texts available from in the reference section of the Dunn Library that are helpful references if you are having difficult appreciating a subject or want to read more about beyond what is the required materials. These include:

- Peter Hogg, *Constitutional Law of Canada* (loose-leaf) (Toronto, Ontario: Thomson Reuters, 2018) – ON RESERVE AT DUNN LIBRARY

- Patrick Monohan et al., *Constitutional Law* (Toronto, Ontario: Irwin Law, 2017) – ON RESERVE AT DUNN LIBRARY

### Class Schedule

Class #	Date	Topics(s)
1	Sept 6	Introduction to Constitutional Law
2	Sept 11	Introduction to Division of Powers
3	Sept 13	Double Aspect & Ancillary Powers
4	Sept 18	Interjurisdictional Immunity (IJI) Paramountcy
5	Sept 20	Peace Order and Good Governance (Part 1)
6	Sept 25	Peace Order and Good Governance (Part 2)
7	Sept 27	Trade & Commerce (Part 1)
8	Oct 2	Trade & Commerce (Part 2)
9	Oct 4	Criminal Law Power (Part 1)
10	Oct 9	Criminal Law Power (Part 2) The Spending Power
11	Oct 11	Aboriginal Rights (Part 1)
12	Oct 16	Aboriginal Rights (Part 2)
13	Oct 18	Treaty Rights Duty to Consult
14	Oct 23	Legislative Authority in respect of Indigenous Peoples Self-Government
15	Oct 25	Introduction to the Charter S. 2(a) Freedom of Conscience & Religion (Part 1)
16	Oct 30	S. 2(a) Freedom of Conscience & Religion (Part 2)
17	Nov 1	S. 2(d) Freedom of Association <i>**Recorded lecture – Prof Metallic away</i>
18	Nov 6	S. 2(b) Freedom of Expression (Part 1)
19	Nov 8	S. 2(b) Freedom of Expression (Part 2)
<i>Nov. 12-16 – Reading week</i>		
20	Nov 20	S. 7 Life, Liberty and the Security of the Person (Part 1)

21	Nov 22	S. 7 Life, Liberty and the Security of the Person (Part 2)
22	Nov 27	Language Rights
23	Nov 29	Standing & Remedies
24	Dec 4	Wrap-up and Review
	<i>Dec 14</i>	<i>Final Exam at 9:30 am</i>

## Evaluations

100% final examination - 3 hours plus 30 minutes reading time

- December 14, 2018 at 9:30AM
- Examinable materials: all assigned reading and all content and material addressed in class
- Using exam4 software
- Students will be permitted to bring into the exam hard copies of the course materials, and their notes. No other materials permitted.

On the exam, you will be responsible for all assigned reading and all content and material addressed in class.

Optional Fail-Safe Writing Assignment:

- Students can choose to complete an optional fail-safe writing assignment for 15% of their grade. The intention of this assignment is to encourage writing on a constitutional topic that the student finds compelling.
- This assignment requires students to select a current topic, issue or controversy related to some aspect of the materials for this course and complete a critical essay of not more than 1500-2000 words (e.g. 6-8 double-spaced pages in 12 point font).
- Students who complete the paper will write the same exam, but if their paper grade is higher than their raw final mark on the exam, their exam grade will count for 85% and their paper will count for 15%. (This combined grade may still be subject to curving, as with all final grades.)
- This assignment will be assessed based on critical reasoning, originality, analysis of the issue raised and organization and presentation. This is not a research exercise and students are asked not to rely on more than 3 sources beyond class materials.
- This optional assignment is due on December 5, 2018 at 1:30 pm and is to be emailed to me at: [naiomi.metallic@dal.ca](mailto:naiomi.metallic@dal.ca). You are free to hand in this assignment any time before the deadline.

## **Inclusivity**

Dalhousie University is committed to a welcoming and respectful working and learning environment that is free from harassment and discrimination. We encourage open dialogue, however members of the class are expected to refrain from speaking or behaving in ways that are harmful to others, through racism, homophobia, sexism, or other derogatory treatment based on characteristics protected under the Nova Scotia *Human Rights Act*. Please do not hesitate to speak with me if you have questions or concerns, or see [www.dalrespect.dal.ca](http://www.dalrespect.dal.ca) for further information on resources and supports.

## **Mi'kmaq Land Acknowledgement**

Dalhousie University is situated in Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq People. This territory is covered by the "Treaties of Peace and Friendship" which Mi'kmaq and Wolastoqiyik (Maliseet) people first signed with the British Crown in 1725. The treaties did not deal with surrender of lands and resources but in fact recognized Mi'kmaq and Wolastoqiyik (Maliseet) title and established the rules for what was to be an ongoing relationship between nations.

## **Student Requests for Accommodation**

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean, Academic Michael Deturbide or the Director of Student Services and Engagement Dana-Lyn Mackenzie as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit [www.dal.ca/access](http://www.dal.ca/access) for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at (902) 494-2836.

## **Submission of Major Papers and Assignments**

Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties: <https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

Please note students may also be required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching

software service to check for originality. Students wishing to choose an alternative method of checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

- a) submit copies of multiple drafts demonstrating development of their work
- b) submit copies of sources
- c) submit an annotated bibliography

## **Plagiarism**

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>.

Any paper or assignment submitted by a student at the Schulich School of Law 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 and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

## **Additional Student Resources**

- General Academic Support – Advising Halifax: [https://www.dal.ca/campus\\_life/academic-support/advising.html](https://www.dal.ca/campus_life/academic-support/advising.html)
- Fair Dealing Guidelines <https://libraries.dal.ca/services/copyright-office/guidelines/fair-dealing-guidelines.html>
- Student Health Services - [https://www.dal.ca/campus\\_life/health-and-wellness.html](https://www.dal.ca/campus_life/health-and-wellness.html)
- Counselling- [https://www.dal.ca/campus\\_life/health-and-wellness/frequently-asked-questionsaugust-2017.html](https://www.dal.ca/campus_life/health-and-wellness/frequently-asked-questionsaugust-2017.html)