

Dalhousie University  
Department of Political Science

**POLI 3206: Constitutional Law and Politics in Canada**  
**Winter 2023**

**Class times:** Monday and Wednesday from 2:35PM-3:55PM

**Classroom Location:** LSC-Common Area C236 (seminar)

## COURSE INFORMATION

### Instructor (and TA) Information

**Instructor:** Dr. Rachael Johnstone (she/her)

**Office:** Henry Hicks, Room #355

**Office Hours:** Monday 11:30AM-12:30PM (or by appointment)

**Email:** regjohns@dal.ca

### Email Etiquette

Email is the best way to get in touch with the professor or your TAs outside of scheduled office hours. Emails should be used for brief questions that can be answered quickly. You professor and TAs will try to respond to all email inquiries within 24 hours during the work week (Monday-Friday). If students want to discuss course material, assignments, or another matter in any detail, they should see the professor or TAs during office hours.

**Always** use your Dalhousie email account to send emails (messages from other accounts do not always go through).

**Include** the subject line “POLI 3206”

**Address** emails to the professor or TA (i.e. Dear Dr. Johnstone)

**Sign off** with your first and last name and student number

In the event of changes to the class schedule (for instance, class cancellations) or other unforeseen situations, an update will be posted on the class Brightspace page.

### Course Description

This course explores the interplay between constitutional law and politics in Canada. Starting with the events leading up to Confederation, it looks at the enactment of the Constitution Act (1867) and the patriation of Canada’s constitution, including the enactment of the Charter of Rights and Freedoms (1982), and the institutional arrangements accompanying them.

### Course Pre-requisites, Co-requisites and/or other Restrictions

This course has two recommended prerequisites: POLI 2210.03 or 2220.03.

### Learning Management System Site Information

Once you are enrolled in the class, the POLI 3206 Brightspace page can be found by logging on to the Brightspace page ([www.dal.ca/brightspace](http://www.dal.ca/brightspace)) using your NetID.

### Class Format

This class is an in-person seminar with some discussion and group-focused in-class work.

### Course Learning Outcomes

- Describe and critique the relationship between constitutional law and politics in Canada
- Understand and assess relevant theories and approaches
- Improve facility in written communication
- Foster a habit of thoughtful, constructive participation in class

### Required Text(s)

There are two required texts for this course.

Macfarlane, Emmett, ed. 2018. *Policy Change, the Courts, and the Canadian Constitution*. Toronto: University of

Toronto Press.

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

Macfarlane's 2013 book is available through the Dalhousie Library website and has unlimited user access. His 2018 book is also available, but only four students can access it at one time, so if you are relying on this copy for the course be sure to plan ahead. There is also limited virtual access to the 2018 e-book through Brightspace. If you sign up to the platform, you can get two weeks of unlimited access to the e-book and then, if you wish, choose to purchase full access when the trial is complete. Copies of the 2018 are also available for purchase at the university bookstore and online, directly through the publisher or through third party sellers.

All the additional readings can be accessed online through the course Brightspace page (most in the form of library e-reserves, but some as external links).

### **Course Schedule**

University holidays and important dates from the University calendar such as withdrawal and drop dates can be found here: [https://www.dal.ca/academics/important\\_dates.html](https://www.dal.ca/academics/important_dates.html).

### **Week 1 – Introduction**

Welcome to the course! This week we will go over course expectations and content.

Guest speaker: Cara Locke, Assistant Clerk, Nova Scotia Legislature (Wednesday, January 11<sup>th</sup>)

### **Week 2 – The British North America Act, Confederation, and Patriation**

Borrows, John. 2017. "Canada's Colonial Constitution." In *The Right Relationship: reimagining the implementation of historical treaties*, Eds. Michael Coyle and John Borrows, 17-38. Toronto: University of Toronto Press.

Russell, Peter. 2004. "The Question of Our Time." In *Canada's Odyssey: can Canadians become a sovereign people*, 3-6. Toronto: University of Toronto Press.

Russell, Peter. 2004. "The Sovereignty of the People." In *Canada's Odyssey: can Canadians become a sovereign people*, 7-11. Toronto: University of Toronto Press.

Harder, Lois, and Steven Patten. 2015. "Looking Back on Patriation and Its Consequences." In *Patriation and Its Consequences: Constitution Making in Canada*, 3-24 Toronto: University of Toronto Press.

### **Week 3 – Amending the Constitution**

Russell, Peter H. 1993. "The End of Mega Constitutional Politics in Canada?" *PS: Political Science & Politics* 26(1): 33-37.

Scholtz, Christa. 2016. "Part II and Part V: Aboriginal Peoples and Constitutional Amendment." In *Constitutional Amendment in Canada*, Ed. Emmett Macfarlane, 85-102. Toronto: University of Toronto Press.

Baker, Dennis, And Mark D. Jarvis. 2016. "The End of Informal Constitutional Change in Canada." In *Constitutional Amendment in Canada*, Ed. Emmett Macfarlane, 185-207. Toronto: University of Toronto Press.

In-Class Test (Wednesday, February 1<sup>st</sup>)

#### **Week 4 – Constitutional Amendment Part II**

Hogg, Peter W. and Allison A. Thornton. 2001. “The Charter Dialogue between Courts and Legislatures.” In *Judicial power and Canadian democracy*, Eds. Paul Howe and Peter H. Russell, 106-110. Montreal and Kingston: McGill-Queen’s University Press.

Albert, Richard. 2018. “The Desuetude of the Notwithstanding Clause – and How to Revive it.” In *Policy Change, the Courts, and the Canadian Constitution*, Ed. Emmett Macfarlane, 146-165. Toronto: University of Toronto Press.

Mathen, Carissima. 2021. “An Inconvenient Constitution? The Troubles with Suspended Declarations of Invalidity” *The Supreme Court Law Review* 101: 345-350.

#### **Week 5 – Reference Power**

Puddister, Kate. 2019. “The Canadian Reference Power: Delegation to the Courts and the Navigation of Federalism.” *Publius: The Journal of Federalism* 49(4): 561-586.

Berger, Kate Glover. 2016. “The Impact of Constitutional References on Institutional Reform.” In *Constitutional Amendment in Canada*, Ed. Emmett Macfarlane, 125-145. Toronto: University of Toronto Press.

#### **Week 6 - Judicial Decision Making I**

Macfarlane, Emmett. 2013. “Introduction.” *Governing From the Bench: The Supreme Court of Canada and the Judicial Role*, 1-14. Vancouver: UBC Press.

Macfarlane, Emmett. 2013. “Studying Judicial Behaviour.” *Governing From the Bench: The Supreme Court of Canada and the Judicial Role*, 15-38. Vancouver: UBC Press.

Macfarlane, Emmett. 2013. “The Evolution of the Court and Its Justices.” *Governing From the Bench: The Supreme Court of Canada and the Judicial Role*, 39-69. Vancouver: UBC Press.

Research Essay Due

#### **Week 7 – Winter Study Break**

#### **Week 8 - Judicial Decision Making II**

Macfarlane, Emmett. 2013. “Setting the Stage: Exploring Court Processes Leading to Decisions.” *Governing From the Bench: The Supreme Court of Canada and the Judicial Role*, 70-100. Vancouver: UBC Press.

Macfarlane, Emmett. 2013. “The Decision: Collegiality, Conflict, and Consensus.” *Governing From the Bench: The Supreme Court of Canada and the Judicial Role*, 101-132. Vancouver: UBC Press.

McLachlin, Beverley Hon. 2001. “Courts, Legislatures and Executives in the Post-Charter Era.” In *Judicial power and*

*Canadian democracy*, Eds. Paul Howe and Peter H. Russell, 63-72. Montreal and Kingston: McGill-Queen's University Press.

Wilson, Bertha. 2001. "We Didn't Volunteer." In *Judicial power and Canadian democracy*, Eds. Paul Howe and Peter H. Russell, 73-79. Montreal and Kingston: McGill-Queen's University Press.

Guest speaker: The Honourable Linda Oland, Justice for the Nova Scotia Court of Appeal (retired) (Wednesday, March 8<sup>th</sup>)

### **Week 9: Courts and Public Policy**

Macfarlane, Emmett. 2013. "A Question of Competence: Examining Judicial Policy Making." *Governing From the Bench: The Supreme Court of Canada and the Judicial Role*, 133-159. Vancouver: UBC Press.

Macfarlane, Emmett. 2013. "The Court in Government and Society: Dialogue, Public Opinion, and the Media." *Governing From the Bench: The Supreme Court of Canada and the Judicial Role*, 160-181. Vancouver: UBC Press.

Macfarlane, Emmett. 2013. "Conclusion." *Governing From the Bench: The Supreme Court of Canada and the Judicial Role*, 182-190. Vancouver: UBC Press.

Hiebert, Janet. 2018. "The Charter, Policy, and Political Judgment." In *Policy Change, the Courts, and the Canadian Constitution*, 81-102. Toronto: University of Toronto Press.

### **Week 10 – Freedom of Expression**

Moon, Richard. 2022. "Does Freedom of Expression Have a Future?" In *Dilemmas of Free Expression*, ed. Emmett Macfarlane, 15-34. Toronto: University of Toronto Press.

Guest speaker: Canadian Civil Liberties Association (CCLA) (Wednesday, March 15<sup>th</sup>)

In-Class Test (Monday, March 13<sup>th</sup>)

### **Week 11 – Indigenous Rights**

Asch, Michael. 2014. "Aboriginal Rights and the Canadian Constitution." In *On being here to stay: treaties and Aboriginal rights in Canada*, 10-33. Toronto: University of Toronto Press.

Do, Minh. 2022. "The Duty to Consult and Reconciliation: The Supreme Court's Idea of the Purpose and Practice of Consulting Indigenous Peoples." *International Journal of Canadian Studies* 58: 73-91.

Metallic, Naiomi, and Contance MacIntosh. 2020. "Canada's actions around the Mi'kmaq fisheries rest on shaky legal ground." *Policy Options*, November 9, 2020. <https://policyoptions.irpp.org/magazines/november-2020/canadas-actions-around-the-mikmaq-fisheries-rest-on-shaky-legal-ground/>.

Guest speaker: Minh Do, Assistant Professor, Political Science, University of Guelph (Wednesday, March 22<sup>nd</sup>)

### **Week 12 –Reproductive Rights**

Johnstone, Rachael. 2018. "Canadian Abortion Politics and the Limitations of Litigation." In *Policy Change, the Courts, and the Canadian Constitution*, 337-355. Toronto: University of Toronto Press.

White, Linda A. 2013. "Federalism and Equality Rights Implementation in Canada." *Publius* 44(1): 157-182.

LEAF. 2020. "Impact Case Studies Voume 2: LEAF and PEI Abortion Access." *Women's Legal Education and Action Fund (LEAF)*. <https://www.leaf.ca/wp-content/uploads/2020/11/Impact-Case-Study-2-LEAF-and-Abortion-Access-in-PEI.pdf>

Guest speaker: Kat Owens, Women's Legal Education and Action Fund (LEAF), Project Director for LEAF's Reproductive Justice Project (Monday, March 27<sup>th</sup>)

### Week 13 – Review

No assigned readings

### Course Assessments

Assignments descriptions and rubrics are available on the course Brightspace page.

Assessment	%	Deadline
In-Class Tests (2 X 15%)	30	Wednesday, February 1 <sup>st</sup> Monday, March 13 <sup>th</sup>
Research Essay	35	Friday, February 17 <sup>th</sup>
Final Exam	35	April exam period (the exam schedule is posted by the university on February 1 <sup>st</sup> )

- The final exam will take place during the formal exam period. This is a two-hour exam that will have an essay component and may also contain short answer and multiple choice questions. Please do not make any travel arrangements until the final exam calendar is available. No accommodations for exams will be made for reasons of travel.
- The conversion scale for numeric to letter grades, as well as the university scale descriptors, are available in the Grading Practices Policy at: [https://www.dal.ca/dept/university\\_secretariat/policies/academic/grading-practices-policy.html](https://www.dal.ca/dept/university_secretariat/policies/academic/grading-practices-policy.html).

### Submission of Assessments

Your research essay will be submitted and returned using the dropbox on the course Brightspace page. It must be submitted in either .doc or docx format. All Dalhousie students have access to free Microsoft Word software through Microsoft Office. Instructions about how to download this software can be found through the Information Technology Services website (<https://www.dal.ca/dept/its.html>). Documents submitted as PDFs or through other programs, such as Pages, will be penalized -5% and may not receive in-text comments.

Grades for all of your assignments will be returned using Brightspace. Please note that test and final exams are not returned to students. If students wish to review their tests or exams they need to arrange to do so through the professor.

### Late or Missed Assignments

Late assignments are penalised at 5% per day for a period of 7 days (inclusive of weekends and holidays). Failing to

submit an assignment within that period will result in a failure for that assignment. Extensions on assignments may be granted in exceptional circumstances. Please note that technological issues are not considered to be a valid reason for late submission. It is the student's responsibility to make appropriate back-ups and to submit assignments in the requested format.

## Grade Appeals

Any errors of addition should be raised immediately with your professor.

If you would like to discuss the details of an assignment or your grade after it is returned you are welcome to do so, but **you must wait 24 hours after the assignment is returned before contacting your professor**. While asking for an explanation of your grade is perfectly fine, asking for a re-grade requires greater effort on the part of the student. If a student is concerned that an assignment was not graded appropriately, the student should first meet with the professor to discuss the assignment. To request a review of an assignment, the student must provide a 1-page explanation of why the assignment was improperly graded that engages with the comments provided by the professor. The explanation and the original assignment should be submitted to the professor via email no later than **2 weeks** after the assignment was made available for return. Note: Grades may be either raised, stay the same, or lowered on appeal.

## Recording Seminar

Seminars for this course are not recorded. Students may not make recording of seminars, either video or audio, unless recordings are part of an approved accommodation that has first been discussed with the professor.

## Technology in the Classroom

Students are welcome to use electronic devices in class, but only for legitimate classroom purposes, such as taking notes, accessing readings, or working on in-class activities. In the event that these devices are misused or are otherwise distracting, either to the professor or to other students, the student will be asked to put away their device(s) and future use of these devices may be prohibited.

## UNIVERSITY POLICIES, STATEMENTS, GUIDELINES and RESOURCES for SUPPORT

This course is governed by the academic rules and regulations set forth in the University Calendar and the Senate. <https://academiccalendar.dal.ca/Catalog/ViewCatalog.aspx?pageid=viewcatalog>

### University Statements

- Territorial Acknowledgement:

Dalhousie University is located in Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq. We are all Treaty people.

- Academic Integrity

At Dalhousie University, we are guided in all of our work by the values of academic integrity: honesty, trust, fairness, responsibility and respect. As a student, you are required to demonstrate these values in all of the work you do. The University provides policies and procedures that every member of the university community is required to follow to ensure academic integrity. (read more: [http://www.dal.ca/dept/university\\_secretariat/academic-integrity.html](http://www.dal.ca/dept/university_secretariat/academic-integrity.html))

- Accessibility

The Student Accessibility Centre is Dalhousie's centre of expertise for student accessibility and accommodation. The advising team works with students on the Halifax campus who request accommodation as a result of: a disability, religious obligation, or any barrier related to any other characteristic protected under Human Rights legislation (NS, NB, PEI, NFLD).

If there are aspects of the design, instruction, and/or experiences within this course that result in barriers to your inclusion please contact:

- the Student Accessibility Centre ([https://www.dal.ca/campus\\_life/academic-support/accessibility.html](https://www.dal.ca/campus_life/academic-support/accessibility.html)) for all courses offered by Dalhousie with the exception of Truro.
- the Student Success Centre in Truro for courses offered by the Faculty of Agriculture (<https://www.dal.ca/about-dal/agricultural-campus/student-success-centre.html>)

Please note that your classroom may contain accessible furniture and equipment. It is important that these items remain in the classroom, undisturbed, so that students who require their use will be able to fully participate.

- Student Code of Conduct

Everyone at Dalhousie is expected to treat others with dignity and respect. The Code of Student Conduct allows Dalhousie to take disciplinary action if students don't follow this community expectation. When appropriate, violations of the code can be resolved in a reasonable and informal manner—perhaps through a restorative justice process. If an informal resolution can't be reached, or would be inappropriate, procedures exist for formal dispute resolution. (read more: [https://www.dal.ca/campus\\_life/safety-respect/student-rights-and-responsibilities/student-life-policies/code-of-student-conduct.html](https://www.dal.ca/campus_life/safety-respect/student-rights-and-responsibilities/student-life-policies/code-of-student-conduct.html))

- Diversity and Inclusion – Culture of Respect

Every person at Dalhousie has a right to be respected and safe. We believe inclusiveness is fundamental to education. Dalhousie is strengthened in our diversity and dedicated to achieving equity. We are committed to being a respectful and inclusive community where everyone feels welcome and supported, which is why our university prioritizes fostering a culture of diversity and inclusiveness.

(read more: <https://www.dal.ca/cultureofrespect.html>)

- Fair Dealing policy

The Dalhousie University Fair Dealing Policy provides guidance for the limited use of copyright protected material without the risk of infringement and without having to seek the permission of copyright owners. It is intended to provide a balance between the rights of creators and the rights of users at Dalhousie.

(read more: [https://www.dal.ca/dept/university\\_secretariat/policies/academic/fair-dealing-policy-.html](https://www.dal.ca/dept/university_secretariat/policies/academic/fair-dealing-policy-.html) )

## University Policies and Programs

- Important Dates in the Academic Year (including add/drop dates)  
[http://www.dal.ca/academics/important\\_dates.html](http://www.dal.ca/academics/important_dates.html)
- Dalhousie Grading Practices Policy  
[https://www.dal.ca/dept/university\\_secretariat/policies/academic/grading-practices-policy.html](https://www.dal.ca/dept/university_secretariat/policies/academic/grading-practices-policy.html)
- Grade Appeal Process  
[https://www.dal.ca/campus\\_life/academic-support/grades-and-student-records/appealing-a-grade.html](https://www.dal.ca/campus_life/academic-support/grades-and-student-records/appealing-a-grade.html)
- Sexualized Violence Policy  
[https://www.dal.ca/dept/university\\_secretariat/policies/health-and-safety/sexualized-violence-policy.html](https://www.dal.ca/dept/university_secretariat/policies/health-and-safety/sexualized-violence-policy.html)



- Scent-Free Program  
<http://www.dal.ca/dept/safety/programs-services/occupational-safety/scent-free.html>

### **Learning and Support Resources**

- General Academic Support – Advising  
[https://www.dal.ca/campus\\_life/academic-support/advising.html](https://www.dal.ca/campus_life/academic-support/advising.html) (Halifax)  
<https://www.dal.ca/about-dal/agricultural-campus/student-success-centre/academic-support/advisingdalac.html> (Truro)

*Syllabus last updated: January 5, 2023*