1. Course Description

Unlike private law, which concerns the legal relations between individuals, public law encompasses relations among persons (individuals and corporate bodies), groups, levels of government, and the various actors and institutions comprising the state. These relations form the basis of administrative, constitutional, and the vast multiplicity of statutory law. Public law defines the structure, powers, and duties that inform these legal relations. The fundamental purposes of public law are to ensure legal accountability for public law-making and decision-making as well as to guarantee the legitimacy of the respective procedures. Rules, principles, and standards constitute some of the legal means to ensure such accountability. Statutes, however, will be the central legal instruments we consider and we will focus on the approaches to statutory interpretation and how legislation furthers legal and political accountability.

2. Teaching and Learning Objectives

There are several teaching and learning objectives for this class. The course aims to:

- describe and explain the Canadian public law order, including the interactions among the three branches of government—the executive, the legislature, and the judiciary;
- introduce the public law powers of the Crown;
- explain how law structures and limits public power through common law and statutory constraints;
- develop statutory interpretation skills through exercises, assignments, readings and in-class participation;
- familiarize students with judge-made law, including precedent and principles, and the practice of judicial review;
- provide an opportunity for both legal research and writing and critical analysis of public law concepts through course assignments such as the research memorandum;
- foster a collegial environment where you can interact your peers as professional colleagues.

The course uses lectures and problem-solving exercises to meet these objectives.
3. Required Materials


- All other materials can be found on the course website: https://sites.google.com/site/ubclaw251publiclaw/

- A very helpful general resource that provides an excellent overview of Canada’s system of government is: Eugene A. Forsey, How Canadians Govern Themselves: http://www.parl.gc.ca/About/Parliament/SenatorEugeneForsey/home/index-e.html

Other useful resources are:

- Pierre-André Côté, Stéphane Beaulac and Mathieu Devinat, The Interpretation of Legislation in Canada (Toronto: Carswell, 2011).

4. Basic Structure of the Course

The course is divided into six parts. We will consider interpretation problems throughout.

1. Public law in Canada Classes 1 to 5
2. Statutory interpretation Classes 6-12
3. Recurring constitutional principles in Canadian public law Classes 13-18
4. The structure and operation of Parliament Classes 19-21
5. The exercise of executive authority Classes 22-23
6. The courts and the judiciary Classes 24

Please note that the class will run for 60 minutes.
5. Course Evaluation

All assignments must be submitted in Word format, double-spaced in Times New Roman font (12 pt). Unless otherwise indicated, all assignments are independent and individual in nature. Any assignments not conforming to the guidelines will not be considered as submitted.

All assignments should be emailed to my assistant, Dana Fister (fister@allard.ubc.ca). Please also bcc yourself. When you email your assignments, the subject line of your email should read: Law 251.003 – Liston – Exam Code XXXX. This will make life much easier for my assistant.

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<th>Assignments</th>
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| expected to work collaboratively to produce a short (5-7 minute) focused presentation, and an accompanying document in any format to post on the website for the benefit of your peers. Each topic has a “DD” (or “democratic deficit”) element to it, which you will want to consider alongside the key informational points. The presentation should summarize the topic you have been assigned, identify problematic or noteworthy issues, and propose potential responses to them. Some additional research will be warranted but you should not plan to spend more than two hours preparing the presentation, not including reading time.

A sign up sheet will be distributed in class. The syllabus schedule identifies the dates and topics for each DD presentation. Groups must meet with the instructor one week before the presentation in order to review and discuss the structure of the presentation, the materials, key points, outstanding questions, and other any pertinent information needed in order to prepare.
ii. **Classroom engagement**
Regular attendance as well as informed and respectful participation in class discussion is expected. Participation by asking questions, providing responses, and active listening is vital to the classroom environment.

6. **Grading Criteria**

The Faculty of Law provides the following general grading guidelines:

**80% to 100% (A- to A+):** Exceptional/Excellent performance: strong evidence of original thinking; good organization; capacity to analyze and synthesize; superior grasp of subject matter with sound critical evaluations; evidence of extensive knowledge base.

**68% to 79% (B- to B+):** Competent/Good performance: evidence of grasp of subject matter; some evidence of critical capacity and analytic ability; reasonable understanding of relevant issues; evidence of familiarity with the readings.

**55% to 67% (C- to C+):** Adequate/Satisfactory performance: understanding of the subject matter; ability to develop solutions to simple problems in the material; acceptable but uninspired work, not seriously faulty but lacking style and vigour.

**50% to 54% (D):** Barely adequate understanding, serious flaws, inability to communicate course content.

**00% to 49% (F):** Inadequate performance: little or no evidence of understanding of the subject matter; weakness in critical and analytic skills; limited or irrelevant use of the material in answers.

7. **Late Assignments**


I have no discretion regarding late assignments. Unless you have permission from the Examinations Committee, I am required to deduct marks for every day, including weekends and holidays, that you are late.

Please contact the Examinations Committee (http://www.allard.ubc.ca/academic-concessions-accommodations) in order to request a deferral or accommodation for any assignment.
8. **Academic Integrity**

All UBC law students are subject to the University’s rules on Academic Misconduct (http://vpacademic.ubc.ca/integrity/ubc-regulation-on-plagiarism/), and are expected to act with academic integrity at all times. Students should be especially aware of the University’s rules in relation to plagiarism. Plagiarism includes: copying the work of another student; copying or paraphrasing from a textbook or reference book, journal article, case or electronic source without proper footnoting; copying your own work that has already been submitted for another course in this degree or another degree, passing off the ideas of another person as your own. If you plagiarize, you will be subject to penalties set out in the UBC calendar (http://www.calendar.ubc.ca/vancouver/index.cfm?tree=3,54,111,959).

If you would like to learn more about academic misconduct, visit the UBC Library’s website on academic integrity (http://learningcommons.ubc.ca/guide-to-academic-integrity/). Examples of academic misconduct can also be found in the UBC Annual Report on Student Discipline (http://universitycounsel.ubc.ca/discipline/).

Academic honesty is an essential requirement in an institution of higher learning. Academic misconduct not only has serious consequences for your education at law school, it may also have implications for your future plans in the legal profession.

9. **Keynote Speakers**

We are very fortunate and excited to have three keynote speakers this term who will talk about current issues in Canadian public law. The speakers, times and locations are:

- Chief Dr. Robert Joseph, Reconciliation Canada on Thursday September 24 in the UBC First Nations Longhouse’s Sty-Wet-Tan Great Hall (http://reconciliationcanada.ca/about-2/team/chief-dr-robert-joseph/).
- Ms. Suzanne Legault, Information Commissioner of Canada during the week of November 23rd (day and time TBD) (http://www.oic-ci.gc.ca/eng/abu-ans_who-we-are_qui-sommes-nous.aspx).

10. **Classroom Courtesy**

The classroom is a community regulated by several basic guidelines, the most fundamental of which is the development of open environment where everyone can express their own opinions and ideas and, reciprocally, is respectful of other views.

**Late arrival:** There are often unpredictable events that prevent students from arriving to class on time. If this is the case, please be respectful of others, and enter the class as quietly as possible.
Early departure: If you know in advance that you need to leave the class early, be sure that you take a seat as close to the exit as possible to minimize disruption. You can also tell the instructor in advance that you are going to be leaving early.

Laptop use/portable devices: Use of portable music devices is not permitted in class. If continual non-academic laptop use is observed during the lecture—email, Twitter, Facebook, etc.—you will be asked to stop as it distracting for all of your nearby colleagues. Persistent use may result in a student being asked to leave the classroom and may also reduce your participation mark.

Cell Phones: If you have a cell phone, please make sure that it is turned off during class.

11. Communication

I am usually on campus every day. I have regular office hours and can also be available to meet by appointment outside of office hours. My physical door is almost always open—save for when I am writing. My email door is always open and I strive to respond to your emails promptly—between 24 and 48 hours, depending on my assessment of the urgency.

Please contact me if you have any trouble accessing the course website or materials posted there. I will contact you using the UBC Faculty Service Centre so please make sure that you have given Student Services the current email address where you will receive my class messages and through which you will sign up for accessing the Google website.

Students can email me anytime with comments, questions, or observations on the material or the class and I will, where warranted, bring this information back into our class for discussion either during the lecture or on the course website. If a response to an email inquiry cannot be answered in a few short sentence, I will likely request that you make an appointment to come and see me to discuss the questions.
# Class Schedule

Please read all of the assigned materials before class and please have relevant materials and statutes in front of you in class for easy reference. Except for the *Public Law* textbook, I will post all additional materials on the course website. Our progress through the materials may vary from the schedule.

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<th>CLASS + DATE</th>
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<td><strong>Part 1</strong></td>
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<td>1 September 8</td>
<td>INTRODUCTION TO PUBLIC LAW 1</td>
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<td>A. Syllabus and course expectations</td>
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<td>B. Public versus private law: a brief overview (based on Ch 1 of <em>Public Law</em>)</td>
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<td>C. Class exercise <em>Askin v Law Society of British Columbia</em></td>
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<td>2 September 10</td>
<td>INTRODUCTION TO PUBLIC LAW 2: CANADIAN LEGAL INHERITANCES</td>
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<td>A. Canada’s common and civil law traditions  <em>Public Law</em>, 81-87, 92-93</td>
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<td>B. Statutes  <em>Public Law</em>, 101-107</td>
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<td>C. “A constitution similar in principle ...” <em>Public Law</em>, 113-115</td>
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|              | D. Canada’s written and unwritten legal traditions  
|              | • *Patriation Reference = conventions* as unwritten “rules” *Public Law*, 115-120 |         |
| 3 September 15| INTRODUCTION TO PUBLIC LAW 3: CANADIAN LEGAL INHERITANCES CONT’D |         |
|              | A. Canada’s written and unwritten legal traditions continued |         |
|              | • *Reference re Secession of Quebec = principles* as unwritten legal norms  *Public Law*, 120-134 |         |
|              | B. Intro to the judiciary and its constitutional framework  *Public Law*, 359-369 |         |
| 4 September 17| INTRODUCTION TO PUBLIC LAW 4: TWO RECURRING PUBLIC LAW THEMES |         |
|              | A. Does Canada have a democratic deficit? Coyne, “Repairing the House” |         |
|              | B. Do the courts support or undermine democracy?  *Public Law*, 556-560 |         |
|              | C. Recap: cases, conventions, precedents, principles, rules *stare decisis & statutes*  *Public Law*, 87-92 |         |
| 5 September 22| INTRODUCTION TO PUBLIC LAW 5: THE PRINCIPLE OF RECONCILIATION, THE CROWN & INDIGENOUS PEOPLES |         |
|              | A. Indigenous peoples and the Canadian state  *Public Law*, 53-60 |         |
|              | B. The honour of the Crown  *Public Law*, 68-70 & 95-97 |         |
|              | C. The principle of reconciliation  Borrows, *Drawing Out Our Law*, 39-71 |         |
| September 24 | First Keynote Speaker: Chief Dr. Robert Joseph, Reconciliation Canada |         |
| 12:30 – 2:00 | First Nations Longhouse Sty-Wet-Tan Great Hall (http://reconciliationcanada.ca/about-2/team/chief-dr-robert-joseph/) |         |
Part 2  Statutory Interpretation

6  September 24  INTRODUCTION TO INTERPRETATION
A. Approaches to interpretation  Public Law, 426-429
B. Static vs dynamic approaches  Public Law, 29-32 & 429-432
C. Interpretation Act, RSBC 1996, c 238

7  September 29  THE MODERN APPROACH TO STATUTORY INTERPRETATION
A. An overview of its components and methods  Public Law, 433-450
B. Origin and application  Public Law, 450-459
  • Re Rizzo and Rizzo Shoes Ltd. = the leading case

8  October 1  PRINCIPLES OF THE MODERN APPROACH 1: WORDS & LEGISLATIVE INTENT
A. How common law presumptions are incorporated and used in the modern approach
B. Example 1: The presumption against absurdity  Public Law, 480-485
  • Conacher v Canada (Prime Minister) = are fixed election dates absurd?
C. Example 2: The “associated words” principle  Public Law, 215-224 & 486-490
  • Opitz v Wrzesnewskyj = the meaning of “irregularities” in the CEA
  • If you want to refresh your knowledge about Canada’s electoral system, read pp 209-210 of Public Law.

9  October 6  PRINCIPLES OF THE MODERN APPROACH 2: PURPOSE & CONTEXT
A. Contextual and purposive analysis in the modern approach  Public Law, 490-506
  • Canada (AG) v Mossop = the meaning of “family status”

10 October 8  PRINCIPLES OF THE MODERN APPROACH 3: DYNAMIC & STATIC APPROACHES REDUX
A. Interpretive disagreements: dissent v majority  Public Law, 459-479
  • Reference re Supreme Court Act, ss 5 and 6 = eligibility requirements

11 October 13  AN APPLICATION OF THE MODERN APPROACH 1
A. Sea changes in meaning  Public Law, 506-518
  • Agraira v Canada (Public Safety and Emergency Preparedness) = the new meaning of “national security”?

12 October 15  AN APPLICATION OF THE MODERN APPROACH 2
A. The modern approach in a critical light  Public Law, 520-522
B. “Cheat Sheet for the Modern Approach”  Public Law, 523-525
  • Case study: Canada (Minister of Citizenship and Immigration) v Kandola (Guardian at Law), 2014 FCA 85 = interpreting “parent” and “child”

OCTOBER 19  CANADA’S 42ND GENERAL ELECTION & VOTING DAY
Part 3  Recurring Constitutional Principles in Canadian Public Law

TUESDAY OCTOBER 20  RESEARCH MEMORANDUM DISTRIBUTED (in class)

13 October 20  Fundamental Principle 1: The Rule of Law
A. The ideas of legal accountability and validity  Liston, “The Rule of Law”
B. Interpretation and change?: broad v narrow approaches  Public Law, 134-151
   • Roncarelli v Duplessis = all government action must comply with law
   • Reference re Secession of Quebec = the full normative force of unwritten principles
   • BC v Imperial Tobacco = limitations on unwritten principles
   • Trial Lawyers Association of BC v BC (AG) = normative force revived?
C. Class exercise

October 22  Second Keynote Speaker: The Honourable Marshall Rothstein, retired judge of the Supreme Court of Canada

14 October 22  Fundamental Principle 2: Constitutional Supremacy
A. The principle of constitutional supremacy  Public Law, 151-154
   1. Hierarchy of law
   2. Adjudication
   3. Counter-majoritarianism
   4. Amendment by super-majority
B. Constitutions, amendment, and interpretation revisited  Public Law, 168-174
C. Judicial power and judicial review  Public Law, 527-530, 560-563
   1. From the 1867 to the 1982 Constitution: a quiet revolution?
      • Vriend v Alberta = institutional dialogue

15 October 27  Fundamental Principle 3: The Separation of Powers
A. Forsey, “Canadian and American Government,”  How We Govern Ourselves, 24-29
B. The doctrine of the separation of powers  Public Law, 160-164
C. Judicial deference to other branches of government
   • Canada v Khadr = judicial deference to the executive  Public Law, 164-168
   • Doucet-Boudreau v Nova Scotia (Minister of Education) = constraints on judicial power

DD Group 1: Should we worry about the growth of judicial power?

16 October 29  Fundamental Principle 4: The Crown & Constitutional Monarchy
A. The Crown: the “first principle of government”  Public Law, 177-185
   • O’Donohue v The Queen = the rules of succession
   • McAteer v Canada (AG) = the citizenship oath

DD Group 2: Canada and the Monarchy: Time for a change?
TUESDAY NOVEMBER 3  RESEARCH MEMORANDUM ASSIGNMENT DUE @ 4 PM

17 November 3  FUNDAMENTAL PRINCIPLE 5: PARLIAMENTARY SUPREMACY
A. The origins and meaning of parliamentary supremacy  Public Law, 154-158
   • Babcock v Canada = the significance of express statutory language
   • Wells v Newfoundland = the power to make “bad” laws
   • Authorson v Canada = the power to follow unfair procedures

DD Group 3: Should courts correct “bad” law-making and unfair procedures?

18 November 5  FUNDAMENTAL PRINCIPLE 6: RESPONSIBLE GOVERNMENT
A. Types of bills  Public Law, 274-278
B. The meaning of responsible gov’t  Malcolmson & Myers, “Responsible Gov’t”
   • Ontario (Attorney General) v OPSEU, [1987] 2 SCR 2 paras 47-66 & 92-117

DD Group 4: Omnibus bills: An exercise in responsible or irresponsible government?

Part 4  The Structure and Operation of Parliament

19 November 10  PARLIAMENTARY GOVERNMENT, THE PRINCIPLE OF DEMOCRACY, KEY ACTORS
A. What is democracy?  Gutmann, “Democracy,” 521-531
   • Shell Canada Products Ltd v Vancouver =
      reviewing municipal powers & local democracy  Public Law, 353-357
B. KEY PARLIAMENTARY ACTORS: THE MONARCH AND THE GOVERNOR GENERAL
   • Canada as a constitutional monarchy  Public Law, 185-186
      Galt, “Not derived from the people...”

DD Group 5: Would Canadian democracy be better off without the Monarch & GG?

20 November 12  KEY PARLIAMENTARY ACTORS: THE SENATE AND THE HOUSE OF COMMONS
A. Senate  Public Law, 186-200
   • Reference re Senate Reform = the rules regarding reform
B. The House of Commons  Public Law, 200-201
   1. Canada’s electoral system
C. Sources of parliamentary law
   1. Parliamentary privilege and procedure  Public Law, 250-256
      • Canada (House of Commons) v Vaid = the “rights” of Parliament
   2. Standing orders  Public Law, 256

DD Group 6: Senate reform: What next?

21 November 17  KEY PARLIAMENTARY ACTORS: THE SPEAKER OF THE HOUSE
A. Summoning, prorogation, dissolution  Public Law, 231-240
B. The Speaker  Public Law, 242-244
C. Class exercise: Prorogation, the PM & the GG  Speaker Milliken’s ruling (excerpt)
Part 5  
**The Exercise of Executive Authority**

22 November 19  
THE EXECUTIVE BRANCH AND ITS FUNCTIONS  
A. Functions performed by executive institutions in Canada  
   *Public Law, 297-305*  
B. Sources of executive power: Prerogative powers  
   - *Black v Chrétien* = judicial review of prerogative powers  
C. Sources of executive power: Statutory powers  
   *Public Law, 316*  
D. Constitutional constraints and vacuums  
   *Public Law, 317-322*

DD Group 7: Should all prerogative powers be available for judicial review?

| Week of Nov 23rd TBD | Third Keynote Speaker: Ms. Suzanne Legault, Information Commissioner of Canada  
                       | (http://www.oic-ci.gc.ca/eng/abu-ans_who-we-are_qui-sommes-nous.aspx ) |

23 November 24  
EXECUTIVE INSTITUTIONS AND THEIR RELATIONSHIP TO THE POLITICAL EXECUTIVE  
A. The Crown  
   *Public Law, 322-323*  
B. Prime Minister and Cabinet  
   *Public Law, 324-328*  
   - *Guergis v Novak et al* = powers of the supreme executive authority  
C. Public service  
   *Public Law, 328-332*  
   - *Fraser v Canada (PSSRB)* = political neutrality of the civil service  
D. Rise of the administrative state in Canada  
   *Public Law, 305-311*  
E. Administrative agencies  
   *Public Law, 332-346*  
   - *Ocean Port Hotel Ltd v BC* = administrative independence

DD Group 8: Should civil servants have greater political freedom?

Part 6  
**The Courts and the Judiciary**

24 November 26  
INSTITUTIONAL DIALOGUE REVISITED  
A. Supreme Court appointments  
   *Public Law, 370-386*  
   - *Reference re Supreme Court Act* = SCC appointment qualifications  
B. The principle of judicial independence  
   *Public Law, 386-397*  
   - *Ref re Remuneration of Judges* = the meaning of judicial independence  
C. The aftermath: a critical look at institutional dialogue

DD Group 9: The Prime Minister and the Chief Justice: Tempest in a constitutional teapot?

November 27  
OPTIONAL LUNCHTIME REVIEW CLASS (ROOM TBA)

FRIDAY NOVEMBER 27  
TAKE HOME EXAM DISTRIBUTED @ 3:30 PM

MONDAY NOVEMBER 30  
TAKE HOME EXAM DUE @ 9:00 AM

25 December 1  
NO CLASS

26 December 3  
NO CLASS