



Lakehead University  
POLI 4150 FA – Public Policy and the Law  
11:30 AM – 2:30 PM – Tuesdays – RB3027

Instructor: Mr. Adam Schenk HBA, JD  
External Adjunct Professor, Department of Political Science  
Email: [awschenk@lakeheadu.ca](mailto:awschenk@lakeheadu.ca)

*I'm happy to meet with you to discuss the course at any mutually agreeable time to discuss the course throughout the semester. Please email me to arrange an appointment time.*

### COURSE DESCRIPTION

This course explores a unique collection of Canadian cases addressing a variety of issues related to public policy. While public policy may be assumed to be the purview of legislators, who have been tasked with developing and implementing policy to improve individual and societal well-being, judges also may find themselves grappling with public policy concerns in their decisions. Over the course of the semester we will consider a variety of unique Canadian legal decisions and critically assess what the most prudent public policy should be to address particular issues, with particular emphasis on the judicial consideration of public policy concerns in the application of the common law.

### COURSE REQUIREMENTS AND POLICIES

#### Grading

- Participation: 20%
- Facilitation 1: 10%
- Paper Overview: 10%
- Facilitation 2: 20%
- Final Paper: 40%

#### Required Readings

There is no textbook for this course as required readings are edited versions of Canadian legal decisions or publicly-accessible academic journal articles that are available in the 'Content' section of our course D2L website (our "course site"). You should have a copy of the assigned reading for each class readily available (either digital or hard copy is fine).

## Participation

This is a seminar course, not a lecture-based course. In seminar courses a majority of class time is devoted to discussing the assigned readings, with students doing the vast majority of the talking. Students are expected to fully participate in this discussion, driving it forward by thoughtfully engaging the readings and one another. The discussion should involve a respectful exchange of ideas that includes a willingness to entertain, and an attempt to understand, points of views with which we may disagree. During discussion, students should engage one another in a respectful way, listening to one another charitably, and making room for diverse points of view. Our goal should neither be to produce (nor enforce) unanimous opinion, nor to engage in empty debate. Rather our aim should be to pursue the truth together.

Students are expected to abide by the following requirements:

1. Read assigned material carefully;
2. Be prepared to discuss the readings;
3. Bring the readings to class;
4. Actively and thoughtfully engage in class discussion; and
5. Avoid excessive absences, tardies and private conversations during class.

The entirety of the above will be considered in assessing participation grades. Participation grades are not free marks for simply attending class. Both the quality and the quantity of your contributions to class discussion will be taken into consideration in determining your participation grade.

## Guidelines for Submissions of All Written Assignments

All written assignments are to be submitted to me via email (awschenk@lakeheadu.ca) not through our course site. All assignments must be in PDF form; submitting your paper in PDF form ensures that I see your paper exactly as you've submitted it, whereas assignments submitted as a Word document may have inadvertent formatting issues if you've written them in an older version of Word and I open it in a newer version. Submitting in a format other than PDF attracts an automatic 10% deduction on your assignment.

In regards to late submissions, unless you experience a sudden medical or personal emergency that prevents you from submitting an assignment or you have been explicitly given a prior extension from me, assignments that are submitted after the deadline receive a penalty to their grade. Assignments submitted within 24 hours after the deadline receive a 25% deduction; assignments submitted between 24-48 hours after the deadline receive a 50% deduction; assignments submitted more than 48 hours after the deadline do not receive any marks. Avoiding these penalties is extremely simple: manage your time properly and don't leave assignments until the last minute.

This does not, however, mean that extensions are not available in appropriate circumstances. If you have experienced a personal or medical issue that may prevent you from submitting your assignment on time please do contact me as soon as possible to discuss a potential extension. It is incumbent on you to be as proactive as possible. Do not request extensions because you have a number of other assignments in other courses due around the same time or you simply haven't given yourself enough time to complete the assignment; time management is your responsibility and a crucial skill to develop and hone as an undergraduate student. Do not request an extension because you have suffered some type of technological mishap; make sure you're regularly backing up documents in multiple places in case something goes wrong.

## Facilitation

Similar to other seminar courses, you will be tasked with helping facilitate two of our classes. You will be required to sign up for facilitation on two specific topics, one in the first half of the semester and one in the second half of the semester (a sign-up sheet will be provided in class). Your facilitation responsibilities include the following:

1. Discussion Questions: The submission of 4-5 proposed discussion questions on one of the assigned topics for the week and an explanation accompanying each of your questions identifying a) why you think it is an important question in relation to the specific topic and readings, and b) the discussion or responses that you hope the question would stimulate. The questions and responses should be at least one, but no more than two, pages in length, single-spaced, Times New Roman 12-point font. You do not need to quote any sources in your responses, but should write your anticipated response(s) in full sentences with proper spelling, grammar, and punctuation. Your questions and responses need to be submitted to me at least two days (48 hours) before your class (meaning your questions and responses should be emailed to me no later than 11:30 a.m. on the Sunday before your particular class).
2. Presentation: A 6-8 minute presentation on your assigned topic at the beginning of your respective class. Your presentation will be assessed based on the following criteria:
  - a. Content: The goal of your presentation is to both summarize and explain the assigned reading for your classmates. Your presentation may also include some of your own personal thoughts and views on the subject matter, so long as the majority of your presentation is aimed at summarizing and explaining the readings. Some readings may require you to consult other sources in order to better understand the assigned topic and more effectively explain it in your presentation.
  - b. Presentation Skills: A good presentation involves speaking clearly, loudly, and at a proper pace, making eye contact with the audience and avoiding unnecessary fidgeting. Your presentation should be practiced and organized so that you are comfortable speaking “off the cuff” without having to rely on reading large portions directly from your notes. The presentation time range is wide, and you are allowed to bring a silent timer with you to keep track of how long you have been presenting; marks will be deducted if your presentation is under or over the allowable time range.

Once your presentation is complete I will take on the primary facilitating role for the rest of the class, but if we're struggling to get discussion going I may ask you some of the discussion questions directly to get our conversation moving.

Your initial facilitation is worth 10% of your final grade. Your second facilitation is worth 20% of your final grade. This gives you an opportunity to receive feedback on your initial facilitation and make adjustments and improvements in your second facilitation.

## Paper and Overview

Your major project for this semester is the development of an academic research paper wherein you discuss the relationship between public policy and the law, or address how the law can and should respond to a particular public policy issue. The foundation of your paper is a persuasive, unique thesis statement. I'm very happy to speak with you if you are concerned about whether your chosen case and topic are appropriate or if you wish to get approval for a unique focus for your paper somewhat outside the above parameters.

As a part of this assignment you will have to, in addition to writing your final paper, develop and submit an overview of your paper.

I'm very happy to speak with you as you develop your paper and am willing to provide some feedback on your plans for your assignment or a draft thesis statement.

*a. Expectations for the Final Paper*

Your final paper needs to comply with the following requirements:

1. Thesis Statement: This is a formal, academic essay, which means that it must have as its foundation a persuasive thesis statement wherein you establish a meaningful and insightful position which you support throughout the body of your essay. If I have difficulty readily identifying your thesis statement when I read your introduction then there is a major problem!
2. Word Count: Your final paper must be between 3300-3600 words. Words on your title page or in your footnotes or bibliography don't count towards your word count. This word count is very wide and as a result is non-flexible; if your paper is outside the word limit expect a significant deduction to your grade.
3. Sources: You must cite at least three legal decisions and three academic secondary sources in your paper. These are sources that you actually utilize in your paper, not simply sources that you've consulted and just included in your bibliography. For clarity, only the following types of sources will count towards your academic secondary source total: 1) academic journal articles, or 2) academic books. Other types of sources may be utilized where appropriate, but will not count towards your source total. Course materials do not count towards your source total but should still be referenced if used.
4. Formatting and Citations: While I prefer papers written in accordance with the Turabian/Chicago style, I am flexible so long as your formatting is clear, consistent, and thorough. I do, however, expect the following: 1) a formal, standalone title page, 2) footnotes as opposed to endnotes or in-text references, 3) a complete bibliography, and 4) Times New Roman 12-point font used throughout your paper.
5. Deadline: Your final paper must be submitted by 11:59 p.m. on Thursday, December 1.

*b. Expectations for the Overview*

Your overview should cover the major elements of your paper, clearly identifying what you are arguing and briefly showing how you will be building this argument.

Your overview needs to comply with the following requirements:

1. Necessary Elements: You must have the following elements in your overview:
  - a. Title: Include a simple title for your overview, identifying your topic and also providing your name and student number.
  - b. Thesis: Your overview needs to begin with your thesis statement written in full, as it would appear in your final paper.
  - c. Overview of Major Topics: Your major areas of analysis and argument should be clearly identified and briefly explained to give the reader an idea of how you will be developing your paper. It is fine to do this with bullet points, but you should still utilize full sentences with proper spelling, grammar, and punctuation.

- d. Three Sources: Your overview needs to identify three of the required secondary sources (ie. your focus case and two other sources) that you will utilize in your final paper, each accompanied with a brief statement of what the source is about and how you anticipate using it in your paper. You can choose to do this either as a separate section of your overview, or within your explanation of your major topics.
2. Formatting: Your overview should be at least one half of a page, but no more than one full page, with single-spaced, 12-point Times New Roman font throughout.
3. Deadline: Your overview is to be submitted by **11:59 p.m. on Monday, October 26.**

### Marks and Feedback

All of your marks will be provided to you via myInfo. Feedback will be provided exclusively via our course site. Your individual feedback accompanying each of your marks will be viewable under the 'Assignments' tab.

### Academic Honesty

Academic honesty is expected of all Lakehead University students. Cheating, collusion, and plagiarism will not be tolerated. Students are expected to make themselves fully familiar with Lakehead's policy in this area. Although all these policies will be enforced in full, it is worth emphasizing the following:

***Plagiarism involves presenting another's work, ideas, theories, or interpretation as one's own.***

To avoid plagiarism, writers should always:

1. Put quotation marks around any words from sources
2. Paraphrase material completely; changing (with the help of a thesaurus) or rearranging a few words or the tense of a verb is not paraphrasing.
3. Give accurate and complete citations for all material *including paraphrased material*.
4. Avoid borrowing entire arguments or approaches to a subject from another writer. Make it 'original' while staying faithful to the assignment parameters.

### A Quick Word on Emails

I am very happy to answer questions over email, but there are parameters to the way in which these emails should be written and sent. I expect that your emails to me are written with proper spelling, grammar, and punctuation. If I receive an email that has the appearance of a hastily typed text message, you should not expect an email in reply. I also expect that before you ask me a question you have consulted the syllabus to see if the answer is there.

### Academic Supports

If you feel that you're in need of academic assistance in a particular area, I encourage you to utilize the resources of Lakehead's Academic Support Zone (<https://www.lakeheadu.ca/students/academic-success/student-success->

centre/academic-support-zone). The Academic Support Zone can provide assistance in a variety of different areas, including specific supports for writing papers.

### Disability Accommodations

Lakehead University is committed to achieving full accessibility for persons with disabilities. Part of this commitment includes arranging academic accommodations for students with disabilities and/or medical conditions to ensure they have an equitable opportunity to participate in all of their academic activities. If you are a student with a disability and think you may need accommodations, you are strongly encouraged to contact Student Accessibility Services (SAS) and register as early as possible. For more information, please contact Student Accessibility Services <http://studentaccessibility.lakeheadu.ca> (SC0003, 343-8047 or [sas@lakeheadu.ca](mailto:sas@lakeheadu.ca)).

### Mental Health Resources

As a university student, you may sometimes experience mental health concerns or stressful events that interfere with your academic performance and negatively impact your daily activities.

All of us can benefit from support during times of struggle. If you or anyone you know experiences academic stress, difficult life events or feelings of anxiety or depression, Student Health and Wellness is here to help. Their services are free for Lakehead Students and appointments are available. You can learn more about confidential mental health services available on and off campus at [lakeheadu.ca/shw](http://lakeheadu.ca/shw).

Remember that getting help is a smart and courageous thing to do - for yourself, for those you care about, and for those who care about you. Asking for support sooner rather than later is almost always helpful.

### Dealing with Difficult Course Content

The study of law in some instances necessitates consideration of cases addressing violence or other types of distressing acts. While it is sometimes necessary to confront this unpleasant content to consider how the law can, or should, address these problems, these cases may inadvertently trigger unpleasant personal memories and emotions if the issues we are discussing relate in some way to troubling experiences you have had. If this is the case for you (or upon reviewing a particular assigned reading you believe this may be the case), you may certainly excuse yourself from class or asked to be excused from a particular class ahead of time. Please feel free to contact me about this issue and/or utilize Lakehead's mental health supports via Student Health and Wellness.

## COURSE SCHEDULE

*The course schedule and assigned readings are potentially subject to change at the discretion of the instructor.*

Date	Topic	Reading(s)
September 6	Course Overview and Review of Basic Concepts	N/A
September 13	Defining Public Policy and the Law	Farshad Ghodoosi, "The Concept of Public Policy in Law: Revisiting the Role of Public Policy Doctrine in the Enforcement of Private Legal Arrangements", (2016) 94:3 Nebraska L Rev 685, pages 685-701; 717-733.
	Public Policy and the Judicial Role	Justice Rosalie Abella "Public Policy and the Judicial Role", (1989) 34 McGill LJ 1021.
<b>Part I – Precedents, Evidence, and Family Law</b>		
September 20	Reversing Precedents	<i>Carter v Canada (AG)</i> – 2015, SCC
	Modifying the Common Law and the Spouse as a Witness	1) <i>R v Salituro</i> – 1991, SCC; 2) Heather Cave and Peter Sankoff, "What's Left of Marital Harmony in the Criminal Courts? The Marital Communications Privilege After the Demise of the Spousal Incompetence Rule" (2019) 42:4 MLJ at 1, pages 1-9.
September 27	Legal Disputes Regarding Embryos and Reproductive Materials	1) <i>SH v DH</i> – 2019, ONCA; 2) <i>LT v DT Estate</i> – 2020, BCCA
	The Exclusion of Evidence in Private Law Cases	Peter Sankoff and Zachary Wilson, "A Jurisprudential 'House of Cards': The Power to Exclude Improperly Obtained Evidence in Civil Proceedings", 99 Can Bar Rev (2021) at 145.
October 4	Evidence in Family Law	1) <i>AF v JW</i> – 2013, OSCJ; 2) <i>Wilson v Sinclair</i> – 2022, OSCJ
	Enforcing Foreign Judgments	1) <i>Genova v Knight</i> – 2005, BCCA; 2) Gerald Robertson, "Public Policy and Recognition of Foreign Divorces: <i>Zhang v Lin and Marzara v Marzara</i> ", (2012) Alberta L Rev 49:3 at 745.
<b>Part II – Crime, Negligence, and Health</b>		
October 18	Public Interests and Illegally Obtained Evidence in the Criminal Law Context	<i>R v Harrison</i> – 2009, SCC

	Consent to Violence	<i>R v Jobidon</i> – 1991, SCC
October 25	Circumventing Legal Penalties	1) <i>65302 BC Limited v Canada</i> – 1999, SCC; 2) <i>Karygiannis v City of Toronto et al</i> – 2020, ONCA
	Private Healthcare and <i>Charter</i> Rights	<i>Cambie Surgeries Corporation v British Columbia (AG)</i> – 2022, BCCA
November 1	Public Policy and the Duty of Care I	<i>Hall v Herbert</i> - 1993, SCC
	Public Policy and the Duty of Care II	<i>McCormick v Plambeck</i> - 2022, BCCA
<b>Part III – Contracts, Contracts Everywhere</b>		
November 8	Restraints on Trade	1) <i>Shafroon v KRG Insurance Brokers (Western) Inc</i> – 2009, SCC; 2) <i>Métis National Council Secretariat v Dumont</i> – 2008, MBCA, pages 1-11
	The Contractual Principle of Good Faith and the Duty of Honesty	1) Shannon O’Byrne and Ronnie Cohen, “The Contractual Principle of Good Faith and the Duty of Honest in <i>Bhasin v Hrynew</i> ”, (2015) 53:1 Alberta L Rev 1, pages 1-20; 2) <i>MHR Board Game Design Inc v CBC</i>
November 15	Objectionable Conditions in Wills	1) <i>Re Wishart Estate</i> – 1992, NBQB; 2) <i>Spence v BMO Trust Company</i> – 2016, ONCA
	Public Policy Concerns and Insurance Policies	1) <i>Dhingra v Dhingra Estate</i> – 2012, ONCA; 2) <i>Butterfield v Intact Insurance Company</i> – 2022, OSCJ
November 22	Selling Notorious Houses	1) <i>Stambovsky v Ackley</i> – 1991, Appellate Division of the Supreme Court of the State of New York; 2) <i>Wang v Shao</i> – 2019, BCCA
	Forum Selection and Online User Agreements	<i>Douez v Facebook</i> - 2017, SCC
November 29	<i>Cancellation Date/TBD</i>	<i>TBD</i>
	<i>Cancellation Date/TBD</i>	<i>TBD</i>