

## Course Outline

COURSE:	LAWS 3509 A – The Charter of Rights Topics: Section 15 - Equality Rights
TERM:	Fall 2012-2013
PREREQUISITES:	LAWS 2004 [1.0] (no longer offered) or LAWS 2005 [1.0] (no longer offered) or LAWS 2105 or LAWS 2201 or LAWS 2302 or LAWS 2502.
CLASS:	Day & Time: Monday – 6:05 pm - 8:55 pm Room: Please check with Carleton Central for current room location.
INSTRUCTOR: (CONTRACT)	Bahaa I. Sunallah, of the Ontario Bar
CONTACT:	Office: B442 LA (Loeb) Office Hrs: By appointment Email: <a href="mailto:bsunalla@connect.carleton.ca">bsunalla@connect.carleton.ca</a>

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You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

**Pregnancy obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

**Religious obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

**Academic Accommodations for Students with Disabilities:** The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or [pmc@carleton.ca](mailto:pmc@carleton.ca) for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.carleton.ca/equity/>

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### COURSE OBJECTIVES

The purpose of this course is to explore issues surrounding equality rights under the *Charter of Rights and Freedoms (Charter)* in addition to a study of the applicability of the *Charter* and remedies available to the Courts. The course will first briefly examine the application of the *Charter* under s. 32, and the limitation clause in s. 1 of the *Charter* and the remedies available under s. 52 of the *Constitution Act*.

The course will then examine the current approach of the Supreme Court to equality and the litigation arising under the equality guarantee in s. 15. We will examine equality rights in contexts such as employment, health and social benefits where the deferential treatment is based on the grounds of: age, marital /common-law

status, sexual orientation, citizenship, and aboriginal status amongst other enumerated or analogous grounds. Consideration will be given to the relationship, and dialogue, between Parliament and the Courts.

The course format is lecture style, with heavy emphasis on class discussions and students' participation based on your readings of the caselaw and the academic views being discussed. You are expected to participate actively in class discussions. It is recognized that the class will include students with various and diverse views, and a respectful dialogue should be maintained at all times. You are, of course, free to disagree with opinions expressed by other students and myself, but should do so in a respectful and non-personalized way. All students should be permitted an equal opportunity to voice their opinions.

### **REQUIRED READINGS**

Required readings for this course include Supreme Court of Canada decisions as well as selected readings from authoritative textbooks, articles and commentaries. Supreme Court of Canada decisions as well as most articles and commentaries are available online. Other selected readings will be made available through the Library Reserves system.

Note that \* indicates "optional" reading.

### **IMPORTANT NOTES**

#### **1. Carleton University Calendar**

Link to current Carleton University Calendar: <http://www.carleton.ca/calendars/ugrad/current/pdf/>

#### **2. Pertinent Dates and Holidays**

Pertinent dates and holidays can be found in the 2012-2013 Undergraduate Calendar.

#### **3. Final/Deferred Final Examinations**

Please note specifically section 2.5: Deferred Final Examinations, paragraph 2:

"...The granting of a deferral also requires that the student has performed satisfactorily in the course according to the evaluation scheme established in the Course Outline, excluding the final examination for which deferral privileges are requested. Reasons for denial of a deferral may include, among other conditions, a failure to (i) achieve a minimum score in the course before the final examination; (ii) attend a minimum number of classes; (iii) successfully complete a specific task (e.g. term paper, critical report, group project, computer or other assignment); (iv) complete laboratory work; (v) successfully complete one or more midterms; or (vi) meet other reasonable conditions of successful performance."

### **EVALUATION PROCEDURES**

**(All components must be completed in order to get a passing grade)**

**Attendance (5%)**

**In-class participation and/or take-home mini-assignments (5%)**

**Mid-term Exam (40%)**

2.0 hours. The date will be announced in the second week of classes.

**Final Exam (50%)**

3.0 hours, during the University's final examination period.

**SCHEDULE****Chapter 1: Course Introduction and Overview**

*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11

<http://laws.justice.gc.ca/en/charter/1.html>

Section 52 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11

[http://laws.justice.gc.ca/eng/Const/9.html#anchorsc:7-bo-ga:l\\_VII](http://laws.justice.gc.ca/eng/Const/9.html#anchorsc:7-bo-ga:l_VII)

Honourable Beverley McLachlin (Remarks of), “The Charter 25 Years Later: The Good, The Bad, and the Challenges” Osgoode Hall Law Journal, Volume 45, Number 2

[http://ohlj.ca/archive/documents/45-2\\_04\\_McLachlin\\_postFR.pdf](http://ohlj.ca/archive/documents/45-2_04_McLachlin_postFR.pdf)

\*Patrick Monahan, Constitutional Law of Canada, The *Canadian Charter of Rights and Freedoms*, Chapter 13.

Hugh Segal, “How we got the Charter: a reality check” Policy Options, February 2007

<http://www.irpp.org/po/archive/feb07/segal.pdf>

**Chapter 2: Application of the Charter**

\**Graham Garton Q.C.*, “*Canadian Charter of Rights Decisions Digest, SECTION 32(1)*”

[http://www.canlii.org/en/ca/charter\\_digest/s-32-1.html](http://www.canlii.org/en/ca/charter_digest/s-32-1.html)

Peter H. Russell, “The notwithstanding clause: the Charter's homage to parliamentary democracy” Policy Options, February 2007

<http://www.irpp.org/po/archive/feb07/russell.pdf>

**Chapter 3: Limitation Clause (justification) and Constitutional Remedies**

Sujit Choudhry and Kent Roach, “Racial and Ethnic Profiling: Statutory Discretion, Constitutional Remedies, and Democratic Accountability” Osgoode Hall Law Journal, Volume 41, Number 1

[http://www.ohlj.ca/archive/articles/41\\_1\\_choudry\\_roach.pdf](http://www.ohlj.ca/archive/articles/41_1_choudry_roach.pdf)

*Schachter v. Canada*, [1992] 2 S.C.R. 679 (paras. 1-86)

<http://scc.lexum.org/en/1992/1992rcs2-679/1992rcs2-679.html>

*Vriend v. Alberta*, [1998] 1 S.C.R. 493 (paras. 108-202)

<http://scc.lexum.org/en/1998/1998rcs1-493/1998rcs1-493.html>

**Chapter 4: Judicial Review and the Role of Parliament and the Courts**

The following articles appear in Osgoode Hall Law Journal, Volume 45, Number 1.

Peter W. Hogg, Allison A. Bushell Thornton and Wade K. Wright, “*Charter Dialogue Revisited—Or “Much Ado About Metaphors”*”

<http://ohlj.ca/english/documents/Hogg.pdf>

\*Richard Haigh and Michael Sobkin, “Does the Observer Have an Effect?: An Analysis of the Use of the Dialogue Metaphor in Canada’s Courts”

<http://ohlj.ca/english/documents/Haigh.pdf>

\*Grant Huscroft, “Constitutionalism From the Top Down”

<http://ohlj.ca/english/documents/Huscroft.pdf>

Christopher Manfredi, “The Day the Dialogue Died: A Comment on *Sauvé v. Canada*”

<http://ohlj.ca/english/documents/Manfredi.pdf>

\*Carissima Mathen, “Dialogue Theory, Judicial Review, and Judicial Supremacy: A Comment on ‘*Charter Dialogue Revisited*’”

<http://ohlj.ca/english/documents/Mathen.pdf>

Andrew Petter, *Taking Dialogue Theory Much Too Seriously (Or Perhaps Charter Dialogue Isn't Such a Good Thing After All)*

<http://ohlj.ca/english/documents/Petter.pdf>

Kent Roach, *"Sharpening the Dialogue Debate: The Next Decade of Scholarship"*

<http://ohlj.ca/english/documents/Roach.pdf>

Peter W. Hogg, Allison A. Bushell Thornton and Wade K. Wright. *"A Reply on "Charter Dialogue Revisited"*

<http://ohlj.ca/english/documents/HoggReply.pdf>

#### Chapter 5: Early Section 15 Jurisprudence

*Andrews v. Law society of British Columbia*, [1989] 1 S.C.R.

143 <http://scc.lexum.org/en/1989/1989rcs1-143/1989rcs1-143.html>

\**Egan v. Canada*, [1995] 2 S.C.R. 513 (paras. 1-30, 113-181)

<http://scc.lexum.org/en/1995/1995rcs2-513/1995rcs2-513.html>

#### Chapter 6: The Purposive and Contextual Approach to Equality (*The Nancy Law Test*)

\*Mohammad A. Qadeer, *"The Charter and multiculturalism" Policy Options*, February 2007

<http://www.irpp.org/po/archive/feb07/qadeer.pdf>

*Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497

<http://scc.lexum.org/en/1999/1999rcs1-497/1999rcs1-497.html>

*R. v. Kapp*, [2008] 2 S.C.R. 483, 2008 SCC 41 (paras. 1-26)

<http://csc.lexum.org/en/2008/2008scc41/2008scc41.html>

Peter Hogg, *Constitutional Law of Canada*, 2007 Student Edition, pp 1144-1212

#### Chapter 7: Comparator Groups

\**Granovsky v. Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703

<http://scc.lexum.org/en/2000/2000scc28/2000scc28.html>

*Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur*, [2003] 2 S.C.R. 504 (paras. 1-14 and 66-122)

<http://scc.lexum.org/en/2003/2003scc54/2003scc54.html>

*Hodge v. Canada (Minister of Human Resources Development)*, [2004] 3 S.C.R. 357

<http://scc.lexum.org/en/2004/2004scc65/2004scc65.html>

*Withler v. Canada (Attorney General)*, [2011] S.C.J. No. 12

<http://scc.lexum.org/en/2011/2011scc12/2011scc12.html>

#### Chapter 8: Analogous Grounds

*Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203 (paras. 1-21)

<http://scc.lexum.org/en/1999/1999rcs2-203/1999rcs2-203.html>

*Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch)*, (2002) 59 O.R. (3d) 481

<http://www.canlii.org/en/on/onca/doc/2002/2002canlii44902/2002canlii44902.pdf>

*R. v. Banks*, 2007 ONCA 19 (paras. 1-27, 89-106)

<http://www.canlii.org/en/on/onca/doc/2007/2007onca19/2007onca19.pdf>

Leave to appeal to SCC denied:

<http://www.canlii.org/en/ca/scc-l/doc/2007/2007canlii37182/2007canlii37182.pdf>

*Boulter v. Nova Scotia Power Incorporated*, 2009 NSCA 17

[http://www.courts.ns.ca/decisions\\_recent/documents/2009nsca17.pdf](http://www.courts.ns.ca/decisions_recent/documents/2009nsca17.pdf)

Leave to appeal to SCC denied:

<http://www.canlii.org/en/ca/scc-l/doc/2009/2009canlii47476/2009canlii47476.pdf>

<b>Chapter 9: Contextual Factors</b>
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*Lovelace v. Ontario*, [2000] 1 S.C.R. 950 (paras. 1-92)

<http://scc.lexum.org/en/2000/2000scc37/2000scc37.html>

*Gosselin v. Québec (Attorney General)*, [2002] 4 S.C.R. 429 (paras. 1-74)

<http://scc.lexum.org/en/2002/2002scc84/2002scc84.html>

\*Jessie Givner, “Child Poverty and Social Assistance: *Gosselin v. Quebec (Attorney General)*” *Canadian Family Law Quarterly*, Volume 24

*Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76 (paras. 1-2, 50-70 & 71-129)

<http://scc.lexum.org/en/2004/2004scc4/2004scc4.html>

\**Wynberg v. Ontario*, (2006), 82 O.R. (3d) 561 (C.A.) (paras. 1-190 & 203-207)

<http://www.canlii.org/en/on/onca/doc/2006/2006canlii22919/2006canlii22919.pdf>

Leave to appeal to SCC denied:

<http://www.canlii.org/en/ca/scc-l/doc/2007/2007canlii11900/2007canlii11900.pdf>

<b>Chapter 10: *Special Issues</b>
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### 1- Citizenship

*Lavoie v. Canada*, 2002 SCC 23, [2002] 1 S.C.R. 769

<http://csc.lexum.org/en/2002/2002scc23/2002scc23.html>

*Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358

<http://scc.lexum.org/en/1997/1997rcs1-358/1997rcs1-358.html>

### 2- Disability

Yvonne Peters, “Twenty Years of Litigating for Disability Equality Rights: Has it Made a Difference?”

An Assessment by the Council of Canadians with Disabilities. Prepared for CCD by Yvonne Peters

<http://ccdonline.ca/en/humanrights/promoting/20years>

“*Chaoulli* and universality - a timely Charter test case” by Stanley H. Hartt, Policy Options, February 2007.

<http://www.irpp.org/po/archive/feb07/hartt.pdf>

*Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, [2004] 3 S.C.R. 657

<http://scc.lexum.org/en/2004/2004scc78/2004scc78.html>

### 3- Sexual Orientation

*M. v. H.*, [1999] 2 S.C.R. 3

<http://scc.lexum.org/en/1999/1999rcs2-3/1999rcs2-3.html>

P. MacEachern, “Recent Legislative Amendments Dealing With Same Sex Partners” [http://www.nelligan.ca/e/pdf/Legislative\\_Changes\\_for\\_same\\_sex\\_partners\\_CLA\\_2000.pdf](http://www.nelligan.ca/e/pdf/Legislative_Changes_for_same_sex_partners_CLA_2000.pdf)

B. Cossman, “Lesbians, Gay Men and the *Canadian Charter of Rights and Freedoms*” (2002) 40 Osgoode Hall L. J. 223

J. Fisher, “Outlaws or In-laws?: Successes and Challenges in the Struggle for LGBT Equality” (2004) 49 McGill L.J. 1183

*Reference re Same-Sex Marriage*, [2004] 3 S.C.R. 698

<http://scc.lexum.org/en/2004/2004scc79/2004scc79.html>

Bill C-38 The Civil Marriage Act, Library of Parliament

[http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills\\_Is.asp?Is=c38&Parl=38&Ses=1](http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_Is.asp?Is=c38&Parl=38&Ses=1)