

Course Outline

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<b>COURSE:</b>	<b>LAWS 3509A – The Charter of Rights Topics</b>
<b>TERM:</b>	<b>Fall 2015</b>
<b>PREREQUISITES:</b>	<b>Prerequisite(s): LAWS 2105 or LAWS 2201 or LAWS 2302 or LAWS 2502</b>
<b>CLASS:</b>	<b>Day &amp; Time: Thursdays – 6:05 pm - 8:55 pm</b>
	<b>Room: Please check with Carleton Central for current room location</b>
<b>INSTRUCTOR: (CONTRACT)</b>	<b>Bahaa I. Sunallah, of the Ontario Bar</b>
<b>CONTACT:</b>	<b>Office: B442 LA (Loeb)</b>
	<b>Office Hrs: By Appointment</b>
	<b>Email: bahaa.sunallah@carleton.ca</b>

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**Academic Accommodations**

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/>

**Plagiarism**

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of

calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at:

<http://www.carleton.ca/studentaffairs/academic-integrity/>

### ***Department Policy***

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://www.carleton.ca/law/student-resources/department-policies/>

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## **COURSE DESCRIPTION**

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 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. 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*. Consideration will be given to the relationship, and dialogue, between Parliament and the Courts.

The course format is seminar 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. A digital casebook entitled "[Selected Readings in The Canadian Charter of Rights and Freedoms \(Equality Rights\)](#)" will be available in cuLearn and the University's library. Other selected readings will be made available through the Library Reserves system.

## **IMPORTANT NOTES**

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

Link to current Carleton Undergraduate Calendar: <http://calendar.carleton.ca/undergrad/>

## 2. Pertinent Dates and Holidays

Pertinent dates and holidays can be found in the 2015-2016 Undergraduate Calendar.

## 3. Deferred Final Examinations

Deferrals for final examinations are granted following successful application by the student to the Registrar's Office. Please note specifically section 2.5: Deferred Final Examination of the Undergraduate Calendar:

"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)**

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

#### **Attendance (10%)**

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

2.0 hours. In-class on Thursday October 22, 2015

#### **Final Exam (50%)**

3.0 hours. Formally scheduled during the University's final examination period (December 9 – 21, 2015).

### **SCHEDULE**

- #1      September 10  
          Chapters 1 and 2
- #2      September 17  
          Chapters 3
- #3      September 24  
          Chapters 4
- #4      October 1  
          Chapter 4
- #5      October 8  
          Chapter 5

#6      October 15  
          Chapter 5  
          *Midterm review*

#7      October 22  
          **Midterm**  
  
          October 29  
          (October 26-30, 2015 Fall break, no classes.)

#8      November 5  
          Midterm discussion and Chapter 6

#9      November 12  
          Chapters 6 & 7

#10     November 19  
          Chapter 7

#11     November 26  
          Chapter 8

#12     December 3  
          Chapters 9 & 10  
          *Final Exam review*

December 9-21, 2015 Final examinations in fall term courses.

Note that \* indicates an “optional” reading that is available online and not included in the digital casebook.  
 Note that ¶ indicates an “optional” reading that is available in Ares and not included in the digital casebook.  
 Note that ^ indicates that a mandatory reading is available in Ares and not included in the digital casebook.

### 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

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

^ The Right 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

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

### Chapter 2: Application of the Charter and the Notwithstanding Clause

*Graham Garton Q.C.*, “Canadian Charter of Rights Decisions Digest, SECTION 32(1)”  
*Graham Garton Q.C.*, “Canadian Charter of Rights Decisions Digest, SECTION 33”

### Chapter 3: Early Section 15 Jurisprudence

*Andrews v. Law society of British Columbia*, [1989] 1 S.C.R. 143 (paras. 19-49)

\* *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 4: The Purposive and Contextual Approach to Equality

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

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

*Withler v. Canada (Attorney General)*, [2011] 1 S.C.R. 396 (paras. 1-40)

*Quebec (Attorney General) v. A*, 2013 SCC 5 (paras. 283-381 & 410-450)

*Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30

### Chapter 5: Comparator Groups – the Road to Withler

\* *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*, [2003] 2 S.C.R. 504 (paras. 1-14 & 66-122)

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

\* *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>

*Withler v. Canada (Attorney General)*, [2011] 1 S.C.R. 396 (paras. 41-67)

**Chapter 6: Analogous Grounds**

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

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

*R. v. Banks*, 2007 ONCA 19 (paras. 1-27, 89-106) Leave to appeal to SCC denied

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

<http://www.canlii.org/en/ns/nsca/doc/2009/2009nsca17/2009nsca17.html>

Leave to appeal to SCC denied:

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

**Chapter 7: Contextual Factors**

*Lovelace v. Ontario*, [2000] 1 S.C.R. 950 (paras. 1-92)

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

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

*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)

^Peter Hogg, *Constitutional Law of Canada*, 2015 Student Edition, Chapter 55

**Chapter 8: Charter Justification: s. 1 of the Charter**

*Andrews v. Law society of British Columbia*, [1989] 1 S.C.R. 143 (paras. 1-18)

*Vriend v. Alberta*, [1998] 1 S.C.R. 493 (paras. 108-128)

*Alberta v. Hutterian Brethern of Wilson Colony*, 2009 SCC 37

**Chapter 9: Constitutional Remedies: s. 52 of the Constitution Act, 1982 and s. 24 of the Charter**

\**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. 129-202)

**Chapter 10: \*Judicial Review and the Role of Parliament and the Courts**

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

<http://digitalcommons.osgoode.yorku.ca/ohlj/vol45/iss1/>

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

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

Grant Huscroft, “Constitutionalism From the Top Down”

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

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

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

Kent Roach, “Sharpening the Dialogue Debate: The Next Decade of Scholarship”

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

## Chapter 11: \*Special Issues

### 1- 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>

### 2- 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\\_CCLA\\_2000.pdf](http://www.nelligan.ca/e/pdf/Legislative_Changes_for_same_sex_partners_CCLA_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  
<http://lawjournal.mcgill.ca/userfiles/other/449577-4fishe.pdf>

*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?ls=c38&Parl=38&Ses=1](http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_Is.asp?ls=c38&Parl=38&Ses=1)