

Course Outline

COURSE: LAWS 3509 A – The Charter of Rights Topics: Section 15 - Equality Rights

TERM: Fall 2011-12

PREREQUISITES: One of LAWS 2004 [1.0], LAWS 2005 [1.0] or LAWS 2105

CLASS: **Day & Time:** Thursday – 6:05 pm - 8:55 pm
 Room: Please check with Carleton Central for current room location

INSTRUCTOR: Bahaa I. Sunallah, of the Ontario Bar
(CONTRACT)

CONTACT: **Office:** B442 LA (Loeb)
 Office Hrs: By appointment
 Email: bsunalla@connect.carleton.ca

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: <http://www2.carleton.ca/pmc/students/accommodations> . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by 11 November 2011 for December exams and 7 March 2012 for April exams.

For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website:
www.carleton.ca/equity

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

A courepack will be available at the University Bookstore. 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 on pages 7-10 in the 2011-12 Undergraduate Calendar and at the following site: <http://www.carleton.ca/cuuc/university/academicyear.html> .

3. Final/Deferred Final Examinations

Please note specifically pg 40, 2.5 b 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)

Mid-term Exam (40%)

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

Final Exam (60%)

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

SCHEDULE

Chapter 1: Course Introduction and Overview
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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#anchors: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

*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 <i>Charter</i>
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***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

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
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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

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
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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
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***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 (<i>The Nancy Law Test</i>)
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***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
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***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
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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
 Leave to appeal to SCC denied:
<http://www.canlii.org/en/ca/scc-l/doc/2009/2009canlii47476/2009canlii47476.pdf>

Chapter 9:	Contextual Factors
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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>

Chapter 10: *Special Issues**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_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

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_ls.asp?ls=c38&Parl=38&Ses=1