

Course Outline

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| COURSE: | LAWS 3509 A – The Charter of Rights Topics: Section 15 - Equality Rights |
| TERM: | Winter 2009-10 |
| PREREQUISITES: | One of LAWS 2004 [1.0], LAWS 2005 [1.0] or LAWS 2105 |
| CLASS: | Day & Time: Thursday – 1805-2055 Room: Please check with Carleton Central for current room location |
| INSTRUCTOR: (CONTRACT) | Bahaa I. Sunallah, of the Ontario Bar |
| CONTACT: | Office: C476 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://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **March 12, 2010 for April examinations**.

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 examine the entities to which the *Charter* applies under s. 32, followed by the Supreme Court of Canada's analysis of the limitation clause in s. 1 of the *Charter* and the remedies available under s. 52 of the *Constitution Act*.

The course will briefly visit the early division within the Supreme Court of Canada about the application of s.15 of the *Charter* and examine the current approach of the Court to equality. We will then examine the litigation arising under s. 15 in various contexts such as employment, health and social benefits 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.

EVALUATION PROCEDURES

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

Class Participation (10%)

Mark assigned based on individual student's participation in class discussions.

Mid-term Exam (40%)

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

Final Exam (50%)

3.0 hours open book exam, 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/index.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/en/const/annex_e.html#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. (Available at library reserves)

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

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

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

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

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

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

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| 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>

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| 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.umontreal.ca/en/1989/1989rcs1-143/1989rcs1-143.html>

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

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

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| Chapter 6: The Purposive and Contextual Approach to Equality (Part I) |
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Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497

<http://scc.lexum.umontreal.ca/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.umontreal.ca/en/2008/2008scc41/2008scc41.html>

Peter Hogg, *Constitutional Law of Canada*, 2007 Student Edition, pp 1144-1176
(Available at library reserves)

*Mohammad A. Qadeer, “The Charter and multiculturalism” Policy Options, February 2007

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

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| Chapter 7: The Purposive and Contextual Approach to Equality (Part II) |
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Peter Hogg, *Constitutional Law of Canada*, 2007 Student Edition, pp 1177-1212

(Available at library reserves)

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| 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.umontreal.ca/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>

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| Chapter 9: Comparator Groups |
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**Granovsky v. Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703

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

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

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

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| Chapter 10: Contextual Factors |
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Lovelace v. Ontario, [2000] 1 S.C.R. 950 (paras. 1-92)

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

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

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

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

(Available at library reserves)

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.umontreal.ca/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>

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| Chapter 11: Special Issues |
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1- Citizenship

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

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

3- Sexual Orientation

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

<http://scc.lexum.umontreal.ca/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

(Available at library reserves)

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

(Available at library reserves)

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

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

**Civil Marriage Act*, Statutes of Canada, Chapter 33

http://www.parl.gc.ca/PDF/38/1/parlbus/chambus/house/bills/government/C-38_4.PDF

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

<http://www.parl.gc.ca/38/1/parlbus/chambus/house/bills/summaries/c38-e.pdf>