

## Religion and the State in Canada

LAWS 4006A

2008-2009

**INSTRUCTOR:** Professor M.H. Ogilvie  
Of the Bars of Ontario and Nova Scotia  
Department of Law  
Loeb D596  
613-520-2600 Ext. 3672

**OFFICE HOURS:** Wednesday 2:30 - 4:30  
or by appointment

**REQUIRED TEXT:** M.H. Ogilvie, Religious Institutions and the Law in Canada, 2nd ed. (Toronto: Irwin Law, 2003).

**BACKGROUND READING:**

- Robert T. Handy, A History of the Churches in United States and Canada, (Oxford U.P., 1976).
- Terence Murphy and Roberto Perin, A Concise History of Christianity in Canada (Oxford U.P., 1996).
- Mark A. Noll, A History of Christianity in the United States and Canada, (Grand Rapids: Eerdmans, 1992).

Other course materials are either placed on reserve at the MacOdrum Library and in the Law Resource Centre or are to be found in the law reports and law journals to which reference is made in the Syllabus which follows.

Students who wish to remind themselves of the fundamentals of English and Canadian constitutional history may wish to re-read: M.H. Ogilvie, Historical Introduction to Legal Studies, (Toronto: Carswell, 1982).

**EVALUATION:**

Class Participation	20%
Class Presentation	30%
Essay	50%

Essays may be submitted at any time prior to the final submission date of the final class in Week Twelve.

### **PURPOSE OF THIS COURSE:**

This course is designed to achieve two goals. The first goal is to deepen students' historical understanding of the religion and state divisions within Canadian public life today; in particular, by studying the historical background to the constitutional settlement in Canada and the theological traditions on which that historical evolution and understanding of the relationship between religion and state are based. The second goal is to study some of the public law dimensions of contemporary religion and state relations in Canada after the Charter. Although theological and religious views are voiced on a wide variety of legal issues today, the course will focus on those issues which are immediately derived from the written constitution.

The course will trace the historical evolution in constitutional law from the unified vision of Western Christendom through the divisions of Christianity into competing denominations to the religiously pluralistic society of twenty-first century Canada.

**ALL STUDENT WORK IS SUBJECT TO THE CONTRACTUAL PROVISIONS CONTAINED IN THE CURRENT CARLETON UNIVERSITY UNDERGRADUATE CALENDAR AND TO THIS COURSE OUTLINE.**

**WEEK ONE: Introduction****WEEK TWO: The Political Theology of Church and State in the Western Tradition**

- Ogilvie, ch. 1.
- Charles Villa-Vicenzio, Between Christ and Caesar. Classic and Contemporary Texts on Church and State, (Grand Rapids, Mich: Eerdmans, 1986) pp. xv-xxvi; 20-125. (Readings from Augustine, Aquinas, Luther, Calvin, Radical Reformers, Knox, Barth, Bonhoeffer and Vatican II.)

**WEEK THREE: Canada I: Constitutional Inheritances**

- Ogilvie, chs. 2, 4.
- M.H. Ogilvie, "What is a Church By Law Established?" (1990) 28 Osgoode Hall Law Journal 179.
- Paul Horwitz, "The Sources and Limits of Freedom of Religion in a Liberal Democracy: Section 2 (a) and Beyond" (1996) 54 University of Toronto Faculty of Law Review 1.
- F.C. DeCoste, "What's the Charter Got to do With It?" In Daniel Cere and Douglas Farrow (eds.), Divorcing Marriage. Unveiling the Dangers in Canada's New Social Experiment, (Montreal: McGill-Queens, 2004) 120-131.

**WEEK FOUR: Canada II: Interpreting the Charter**

- Ogilvie, chs. 4 and 13.
- R. v. Big M. Drug Mart Ltd. (1985) 18 D.L.R. (4th) 321 (S.C.C.).
- Lord's Day Act, R.S.C. 1970, c. L-13 and R.S.C. 1985, c. L-2, s. 173.
- Edwards Books and Art Ltd. et al. v. R. (1986) 35 D.L.R. (4th) 1 (S.C.C.).
- Retail Business Holidays Act, R.S.O. 1990, c. R. 30 as am.

**WEEK FIVE: Education I: Denominational School Funding and Constitutional Privilege**

- Ogilvie, chs. 4 and 10.
- Reference Re An Act to amend the Education Act (1987) 40 D.L.R. (4th) 18 (S.C.C.).
- Adler v. Ontario (1997) 140 D.L.R. (4th) 385 (S.C.C.).
- Bal v. Ontario (Attorney-General) (1994) 121 D.L.R. (4th) 96 (Ont. Gen. Div.); (1997) 34 O.R. (3d) 484 (C.A.).

**WEEK SIX: Education II: Denominational Schools and Private Religious Schools**

- Ogilvie, chs. 4 and 10.
- Daly v. Ontario (Attorney-General) (1999) 172 D.L.R. (4th) 241 (Ont. C.A.).
- O.E.C.T.A. v. Dufferin-Peel Roman Catholic Separate School Board (1999) 172 D.L.R. (4th) 260 (Ont. C.A.)
- Re Caldwell and Stuart et al. (1984) 15 D.L.R. (4th) 1 (S.C.C.).
- Re Newfoundland Teachers' Association et al. and The Queen in Right of Newfoundland et al. (1988) 53 D.L.R. (4th) 161 (Nfld. C.A.).
- Casagrande v. Hinton Roman Catholic Separate School District No. 155 (1987) 38 D.L.R. (4th) 382 (Alta. Q.B.).
- Re Black and Metropolitan Separate School Board (1988) 52 D.L.R. (4th) 736 (Ont. H.C.).
- Hall (Litigation Guardian of) v. Powers (2002) 59 O.R. (3d) 423 (Ont. S.C.J.).

**WEEK SEVEN: Education III: Public School Prayer and Religious Instruction**

- Ogilvie, chs. 4 and 10.
- Re Zylberberg et al. and Director of Education of Sudbury Board of Education; League for Human Rights of B'Nai Brith Canada et al., Intervenor (1988) 65 O.R. (2d) 641 (Ont. C.A.).
- Re Corporation of the Civil Liberties Association et al. and Minister of Education et al. (1990) 71 O.R. (2d) 341 (C.A.).
- Chamberlain v. School District #36 (Surrey) (2002) 221 D.L.R. (4<sup>th</sup>) 156 (S.C.C.).
- Jones v. The Queen (1986) 31 D.L.R. (4<sup>th</sup>) 569 (S.C.C.).
- Ross v. New Brunswick School District No. 15 (1996) 133 D.L.R. (4<sup>th</sup>) 1 (S.C.C.).
- Kempling v. College of Teachers (British Columbia) (2005) 255 D.L.R. (4<sup>th</sup>) 169 (B.C.C.A.).

**WEEK EIGHT: Employment I: Accommodating Religious Practices**

- Ogilvie, ch. 13
- Re Ontario Human Rights Commission and Simpson Sears Ltd. (1985) 23 D.L.R. (4<sup>th</sup>) 321 (S.C.C.).
- Alberta Human Rights Commission v. Central Alberta Dairy Pool; Canadian Human Rights Commission et al., Intervenor (1990) 72 D.L.R. (4<sup>th</sup>) 417 (S.C.C.).
- Board of School Trustees, School District No. 23 (Central Okanagan) et al. v. Renaud et al; Ontario Human Rights Commission et al., Intervenor (1992) 95 D.L.R. (4<sup>th</sup>) 577 (S.C.C.).
- One Day's Rest in Seven Act, R.S.O., 1990, c. O. 7.
- Binder v. C.N.R. (1985) 23 D.L.R. (4<sup>th</sup>) 481 (S.C.C.).
- Grant v. Canada (Attorney General) (1994) 94 C.L.L.C. 14,035; (1995) 125 D.L.R. (4<sup>th</sup>) 556 (Fed. C.A.).
- Multani v. Commission scolaire Marguerite-Bourgeoys (2004) 241 D.L.R.(4<sup>th</sup>) 336 (S.C.C.).
- Ontario (Human Rights Commission) v. Brockie (2000) 37 C.H.R.R. D/15 (Ont. Bd. of Inquiry); (2002) 222 D.L.R. (4<sup>th</sup>) 174 (Ont. Div. Ct.)
- Hellquist v. Owens (2006) 267 D.L.R. (4<sup>th</sup>) 733 (Sask. C.A.).

**WEEK NINE: Employment II: Requiring Religious Practices**

- Ogilvie, ch. 13.
- Human Rights Code, R.S.O. 1990, c. H. 19.
- Parks v. Christian Horizons (1991) 92 C.L.L.C. 17,008 (Ont. Bd. of Inquiry); (1993) 14 O.R. (3d) 374 (Gen. Div.).
- Garrod v. Rehema Christian School (1991) 92 C.L.L.C. 17,003 (Ont. Bd. of Inquiry).
- Schroen v. Steinbach Bible College (1999) 35 C.H.R.R. D/1 (Man. Bd. of Inquiry)
- Vriend v. Alberta (1998) 156 D.L.R. (4<sup>th</sup>) 385 (S.C.C.).
- Trinity Western University v. B.C. College of Teachers (2001) 199 D.L.R. (4<sup>th</sup>) 1 (S.C.C.).

**WEEK TEN: Health and Marriage I: Accommodating Personal Choice**

- Ogilvie, chs 11 and 12.
- Malette v. Shulman et al. (1990) 67 D.L.R. (4<sup>th</sup>) 321 (Ont. C.A.).
- Re Y. (A.) (1993) 111 Nfld. & P.E.I.R. 91, 348 A.P.R. 91 (Nfld. U.F.C.).
- Walker v. Region 2 Hospital Corp (1994) 116 D.L.R. (4<sup>th</sup>) 477 (N.B.C.A.).
- Re Dueck (1999) 171 D.L.R. (4<sup>th</sup>) 761 (Sask. Q.B.).
- H.(B.) v. Alberta (Director of Child Welfare) [2002] 7 W.W.R.616, (Alta Q.B.); [2002] 7 W.W.R. 644 (Alta. C.A.); leave to appeal refused (2002) 295 N.R. 198n (S.C.C.).
- Egale Canada Inc. v. Canada (Attorney General) (2003) 225 D.L.R. (4<sup>th</sup>) 472 (B.C.C.A.); (2003) 228 D.L.R. (4<sup>th</sup>) 416 (B.C.C.A.).

- Halpern v. Canada (Attorney General) (2003) 225 D.L.R. (4th) 529 (Ont. C.A.).
- Reference re: Same-Sex Marriage (2004) 246 D.L.R. (4th) 193 (S.C.C.).
- F.L. Morton, "Taking Section 33 Seriously", in Cere and Farrow, Divorcing Marriage, 135-154.
- Bruker v. Marcovitz 2007 S.C.C. 54.

**WEEK ELEVEN: Churches I: Using and Disputing Property**

- Ogilvie, ch. 8.
- Religious Organizations Lands Act, R.S.O. 1990, c. R. 23.
- Re Incorporated Synod of the Diocese of Toronto and H.E.C. Hotels Ltd. (1987) 44 D.L.R. (4th) 161 (Ont. C.A.).
- M.H. Ogilvie, "The Legal Status of Ecclesiastical Corporations" (1989) 15 Canadian Business Law Journal 74.
- United Church of Canada v. Anderson (1991) 2 O.R. (3d) 304 (Gen. Div.).
- M.H. Ogilvie, "Church Property Disputes: Some Organizing Principles", (1992) 42 University of Toronto Law Journal 377.
- Syndicat Northcrest v. Amselem (2004) 241 D.L.R. (4th) 1 (S.C.C)
- Congregation des temoins de Jéhovah etc. v. Lafontaine (Village) (2004) 241 D.L.R. (4th) 83 (S.C.C.)

**WEEK TWELVE: Churches II: Disciplining Laity and Clergy**

- Ogilvie, ch. 9.
- Hofer v. Hofer (1970) 13 D.L.R. (3d) 1 (S.C.C.).
- Lakeside Colony of Hutterian Brethren v. Hofer (1992) 97 D.L.R. (4th) 17 (S.C.C.).
- M.H. Ogilvie, "Ecclesiastical Law - Jurisdiction of Civil Courts - Governing Documents of Religious Organizations - Natural Justice: Lakeside Colony of Hutterian Brethren v. Hofer, (1993) 72 Canadian Bar Review 238.
- Ogilvie, ch. 9.
- McCaw v. United Church of Canada (1988) 51 D.L.R. (4th) 86 (Ont. H.C.); (1991) 82 D.L.R. (4th) 289 (Ont. C.A.).
- Davis v. United Church of Canada (1992) 8 O.R. (3d) 75 (Gen. Div.).
- M.H. Ogilvie, "Ecclesiastical Law - Jurisdiction of the Civil Courts - Status of Clergy: McCaw v. United Church of Canada", (1992) 71 Canadian Bar Review 597.
- Pederson v. Fulton (1994) 11 D.L.R. (4th) 367 (Ont. Gen. Div.).
- B. (E.) v. Order of the Oblates of Mary Immaculate in the Province of British Columbia (2005) 258 D.L.R. (4th) 385 (S.C.C.).