

COURSE: LAWS 3509A | Settler Sovereignty & Aboriginal and Treaty Rights: The Charter's Section 25

TERM: Summer 2024

PREREQUISITES: (0.5 Credit from [LAWS 2105](#), [LAWS 2201](#), [LAWS 2302](#), [LAWS 2502](#)) and 0.5 credit in LAWS at the 2000 level.

CLASS: **Day & Time:** Tuesdays and Thursdays 11:35am-2:25pm
Room: Please check Carleton Central for current Class Schedule *Zoom (online synchronous)*
<https://carleton-ca.zoom.us/j/97198524588>

INSTRUCTOR: Dr. Stacy Douglas

CONTACT: **Office Hrs:** *Tuesdays and Thursdays 2:30-3:30*
[Book time with Stacy Douglas: LAWS 3509 Office Hours](#)
Telephone: 613-520-2600 x. 8028
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CALENDAR COURSE DESCRIPTION

Selected issues in the Canadian Charter of Rights and Freedoms. The topics of this course may vary from year to year, and are announced in advance of registration.

COURSE DESCRIPTION

Whose rights do we talk about then we invoke the Charter? How do we understand law in a settler society? In this class we will discuss the history and use of the *Charter of Rights and Freedoms*, with a special emphasis on section 25 which covers Aboriginal and treaty rights. We will explore how this section has been used both as a tool by indigenous peoples and how it has been used as a tool to in the maintenance of settler sovereignty.

REQUIRED TEXTS

All texts are available through Ares (accessible through our Brightspace page).

EVALUATION

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.

All components must be successfully completed in order to get a passing grade.

Assignment	Value	Due Date
Weekly Quizzes (4 at 2.5% each)	10%	9, 16, 23 May and 6 June
Attendance	10%	Throughout
Participation	10%	Throughout
Midterm	25%	Thursday 30 May
Oral Evaluations	15%	11 or 13 June
Final Essay	30%	Tuesday 18 June

GRADING

The following percentage equivalents apply to all final grades at Carleton:

A+	90-100	B+	77-79	C+	67-69	D+	57-59	
A	85-89	B	73-76	C	63-66	D	53-56	F 0-49
A-	80-84	B-	70-72	C-	60-62	D-	50-52	

When I grade your assignments I will be marking with the following criteria in mind:

Style

Has the author taken care in their formatting, grammar, attention to word count, and appropriate referencing? Where appropriate, have they attempted to infuse their work with creative flourish?

Structure

Has the author laid out a clear and effective argument for their reader? In particular did the author begin with a clear introduction and overview of their supporting points, and use signposting throughout? Is it a convincing argument overall?

Content

Has the author understood the material and conveyed it effectively to their reader? Have they supported their interpretations with page references and other academic sources?

Research

Has the author demonstrated a thoughtful and meticulous approach to their research? Have they been intellectually honest about their sources by seeking out primary material and bolstering their interpretation with appropriate secondary sources?

Critical Analysis

Has the author been able to understand the material, communicate about it clearly, **and** use their critical reading and writing skills to analyze the material? A demonstrated depth of critical analysis will be key for achieving high marks on essays.

REFERENCING

The Law Department recommends that you follow the Legal Style set out here:

http://www1.carleton.ca/law/ccms/wp-content/ccms-files/legal_style_sheet.pdf

However, if you prefer another referencing style you may use it provided that you are consistent throughout and the style is academically recognized (e.g. Harvard, MLA, Chicago). If you are unsure about the proper format of a particular referencing style, please consult a referencing style guide from the library.

The Academic Writing Centre and Writing Tutorial Services provide students and faculty assistance with the teaching and learning of academic writing. Please contact them in advance and make use of their services:

<http://www.carleton.ca/wts/>

Tips for avoiding plagiarism (see also page 9 below):

- Give yourself enough time to work on your assignment, so you are not tempted to copy text from other sources.
- Take notes carefully so that you include specific sources and page numbers. Be sure to clearly identify which ideas are your own and which come from your sources.
- Reference as you write, rather than leaving all the referencing to the end. Even if you just use shorthand as you write (i.e. note the author's last name and page number), you can then go back and do the formatting later. But it is always better to reference as you go – it will save you time in the long run and you are less likely to forget something.
- Consult a referencing guide! If you are unsure about referencing format or procedure, check a referencing style guide.

For more help see: <http://www.library.carleton.ca/help/citing-your-sources>

Remember: Using another person's work without acknowledgment, or using work in a way that may mislead or deceive your reader is plagiarism. It doesn't matter whether you deliberately intended to deceive or not; it still counts as plagiarism and is subject to the university's policies and penalties on academic misconduct. Plagiarism is not only dishonest, but it undermines the integrity of academic scholarship and is not acceptable.

***ALL INSTANCES OF PLAGIARISM WILL BE REPORTED
DIRECTLY TO THE DEAN.***

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

All assignments submitted after the deadline will incur a 3% late penalty per day.

The granting of extensions is determined by the instructor, who will confirm whether an extension is granted and the length of the extension. For requests for short-term extensions, please complete the form at the following link and submit it to the instructor prior to the assignment due date:

<https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>

For more information regarding academic consideration for short-term incapacitation (illness, injury, or extraordinary circumstances beyond a student's control), please visit the following link: <https://students.carleton.ca/course-outline/#academic-consideration-for-short-term-incapacitation>

SCHEDULE

Week 1: Royal Proclamation

1. Royal Proclamation | History & Context | Part I (Tuesday 7 May)

The Covenant Chain, Royal Proclamation and Treaty Of Niagara (Museum of History)
<https://www.historymuseum.ca/history-hall/covenant-chain-royal-proclamation-treaty-niagara/>

250th Anniversary of the Royal Proclamation of 1763 (Crown-Indigenous Relations and Northern Affairs Canada) <https://www.rcaanc-cirnac.gc.ca/eng/1370355181092/1607905122267#a5>

Further Reading

Venables, Robert (2010) "Polishing The Silver Covenant Chain: A Brief History of Some of the Symbols and Metaphors in Haudenosaunee Treaty Negotiations" Onondaga Nation:
<https://www.onodaganation.org/history/2010/polishing-the-silver-covenant-chain-a-brief-history-of-some-of-the-symbols-and-metaphors-in-haudenosaunee-treaty-negotiations/>

Videos

Haudenosaunee's Legendary Founding | Native America | Sacred Stories | PBS
<https://www.youtube.com/watch?v=D0elAQYLdfc>

2. Royal Proclamation | History & Context | Part II (Thursday 9 May)

Borrows, John. "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government." In *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference*. Vancouver: University of British Columbia Press, 1997. 155-172. (17 pages)

Borrows, John. "Indigenous Constitutionalism: Pre-existing Legal Genealogies in Canada". In: *The Oxford Handbook of the Canadian Constitution*. Eds. Oliver, Peter C. (Peter Crawford), Patrick Macklem, and Nathalie Des Rosiers. New York: Oxford University Press, 2017. 50-87. (37 pages)

Hall, Anthony J. Revolution and Empire. In: *The American Empire and the Fourth World*. McGill Queen's University Press, 2003. 295-370.* (students: you must read from 336-370 for a total of 34 pages, but read the whole chapter – 75 pages – for more context)

Further Reading

Macklem, Patrick, 'The Form and Substance of Aboriginal Title: Assimilation, Recognition, Reconciliation', in Peter Oliver, Patrick Macklem, and Nathalie Des Rosiers (eds), *The Oxford Handbook of the Canadian Constitution*, Oxford Handbooks (2017; online edn, Oxford Academic, 6 Nov. 2017), <https://doiorg.proxy.library.carleton.ca/10.1093/law/9780190664817.003.0015>

Questions to consider:

- i) Is pre-Confederation history a challenge to our current constitutional structure? Why or why not?;
- ii) How do we make sense of the Royal Proclamation, with its double-sided assertion, in 2024? How can people be simultaneously made free and made to submit with the same document?;
- iii) If, as many scholars suggest, that a nation to nation relation has been “lost” (or actively and violently suppressed) since 1763, how might it be found again? Would that be desirable? Why or why not?

Week 2: Section 25 | History and Context

3. Section 25 | History and Context | Part I (Tuesday 14 May)

Government of Canada. “Section 25”. Charterpedia. Charter of Rights and Freedoms. Accessed 22 April 2024: <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art25.html>

Royal Commission on Aboriginal Peoples. “Chapter Four: Restructuring the Relationship”: <https://www.rcaanc-cirnac.gc.ca/eng/1100100014597/1572547985018>

Further Reading

Oliver, Peter, Patrick Macklem, and Nathalie Des Rosiers, 'Introduction', in Peter Oliver, Patrick Macklem, and Nathalie Des Rosiers (eds), *The Oxford Handbook of the Canadian Constitution*, Oxford Handbooks (2017; online edn, Oxford Academic, 6 Nov. 2017), <https://doi-org.proxy.library.carleton.ca/10.1093/law/9780190664817.003.0001>, accessed 22 Apr. 2024.

4. Section 25 | History and Context | Part II (Thursday 16 May)

Arbour, Jane M. “The Protection of Aboriginal Rights within a Human Rights Regime: In Search of an Analytical Framework for Section 25 of the Canadian Charter of Rights and Freedoms.” *Supreme Court Law Review* 21 (2003): 3–69. (66 pages)

Russell, Peter H. Chapters Six and Seven. In: *Sovereignty: The Biography of a Claim*. Toronto, Ontario; University of Toronto Press, 2021. 71-98. (27 pages)

Further Reading

Iacobucci, Frank. “Reconciling Rights’ The Supreme Court of Canada’s Approach to Competing Charter Rights.” *Supreme Court Law Review* 20 (2003): 137–170. (23 pages)

Pasternak, Shiri. “Jurisdiction and Settler Colonialism: Where Do Laws Meet?” *Canadian Journal of Law and Society / Revue Canadienne Droit et Society* 29, no. 2 (2014): 145–61. (16 pages)

Questions to consider:

- i) What is the difference between s. 25 and s. 35?;
- ii) What is the goal of s. 25?
- iii) What is the goal of s. 35?

- iv) What is the relationship between federalism and s. 25? S. 35?
- v) Why is “jurisdiction” relevant to this conversation?

Week 3: Key Cases

5. Key Cases | Part I (Tuesday 21 May)

Horn, Greg. “White, Montour, Win Historic Tobacco Case” *Kahnawake News*. 31 October 2023. Accessed 22 April 2024: <https://kahnawakenews.com/white,-montour-win-historic-tobacco-case-p4584-1.htm>

6. Key Cases | Part II (Tuesday 23 May)

R. v. Kapp, [2008] 2 S.C.R. 483, 2008 SCC 41 (67 pages)

Further Reading

Hutchinson, Celeste, "Case comment on *R. v. Kapp*: an analytical framework for section 25 of the Charter," *McGill Law Journal*, 52.1 (Spring 2007): 173(18)

R. c. Montour, 2023 QCCS 4154 (CanLII): https://coursuperieureduquebec.ca/fileadmin/cour-superieure/Jugements_diffuses_sur_X/R.c.White_et_Montour.pdf

Questions to consider:

- i) What are the key takeaways from *Kapp*?
- ii) What does the Montour decision add to the analysis in *Kapp*, if anything?

Week 4: Politics (Bill C-92)

7. Politics | Part I (Tuesday 28 May)

Gilbride, Bridget, Emilie Bundock, and Nathan Surkan. “Bill C-92 Reference: Government Of Canada Can Affirm Indigenous Rights, But The Courts Determine Whether They Exist” *Indigenous Law Bulletin*, Fasken Law 20 Feb 2024. Accessed 22 April 2024: <https://www.fasken.com/en/knowledge/2024/02/bill-c92-reference-government-of-canada-can-affirm-indigenous-rights>

Franks, Scott “The Supreme Court of Canada’s Child Welfare Ruling: Short and Long-Term Implications”. *Yellowhead Institute*. 20 Feb 2024. Accessed 22 April 2024: <https://yellowheadinstitute.org/2024/02/20/scc-child-welfare-ruling/>

8. Politics | Part II (Thursday 30 May)

Reference re An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5 (CanLII). Accessed 22 April 2024: <https://canlii.ca/t/k2qhn> (100 pages)

Questions to consider:

- i) What is the argument of the Quebec government?
- ii) What is the argument of the SCC?
- iii) How does the decision in the *Reference* accord (or not) with the Peter Russell piece we read on federalism and settler sovereignty?

Midterm in class today.

Week 5: Section 25 in 2024 (*Dickson*)

9. Section 25 in 2024 | Part I (Tuesday 4 June)

Ahmed, Hassan. "Interpretive Prism or Shield? A Primer on Section 25 of the *Charter*". Centre for Constitutional Studies. 16 August 2022. Accessed 22 April 2024:

<https://www.constitutionalstudies.ca/2022/08/interpretive-prism-or-shield-a-primer-on-section-25-of-the-charter/>

CBC News. "Supreme Court of Canada hears appeal on Yukon First Nation's residency requirement". 7 February 2023. Accessed 22 April 2024:

<https://www.cbc.ca/news/canada/north/vuntut-gwitchin-dickson-residency-supreme-court-1.6738767>

I will release and discuss the final essay questions during lecture today.

10. Section 25 in 2024 | Part II (Thursday 6 June)

Dickson v Vuntut Gwitchin First Nation, 2021 YKCA 5 (to paragraph 231)

Further Reading

Hamilton, Robert. "Self-Governing Nation or "Jurisdictional Ghetto"? Section 25 of the Charter of Rights and Freedoms and Self-Governing First Nations in Canada" (2022) 27:1 *Rev Const Stud* 279

Mills, Aaron. The Lifeworlds of Law: In Revitalizing Indigenous Legal Orders Today. *McGill Law Journal* 847. 61:4. 2016. <https://lawjournal.mcgill.ca/article/the-lifeworlds-of-law-on-revitalizing-indigenous-legal-orders-today/>

Swiffen, Amy. "Section 25 and Indigenous Legalities: Exploring Plurinational Federalism In Canada." *Canadian Bar Review* 101, no. 2 (2023): 365-388.

Podcasts

Mills, Aaron "The River Knows Where to Go" On: Enshrined: Why Rights Matter and What's the Matter with Rights. University of Chicago Podcast Network. Season 1, Episode 6. October 7, 2021: <https://podcasts.apple.com/us/podcast/6-the-river-knows-where-to-go/id1577996421?i=1000537837001>

Mills, Aaron "Rooted Constitutionalism" On: Canadian Institute for the Administration of Justice Podcast. Episode 65. June 15, 2023: <https://ciaj-icaj.ca/en/podcasts/rooted-constitutionalism/>

Week 6: Oral Evaluations

All students are asked to submit their essay preparation exercise sheet via Brightspace **no later than 12pm (noon) on Monday 10 June** (this will be provided to you by Professor Douglas on 4 June). Then, during class time, each student will have five minutes to discuss their outlines (and answer questions) with Professor Douglas on Tuesday 11 June and Thursday 13 June respectively. Students will be told which date and approximately what time they will present at. The exams will be private and conducted via Zoom.

Week 7: Final Papers Due

All students are asked to submit their final essays via Brightspace **no later than 2pm on Tuesday 18 June.**

University and Departmental Policies

DEPARTMENT POLICIES AND REGULATIONS

Please review the following webpage to ensure that your practices meet our Department's expectations, particularly regarding standard departmental protocols and academic integrity requirements:
<https://carleton.ca/law/student-experience-resources/>.

PLAGIARISM

The University Academic Integrity Policy defines plagiarism as “*presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one's own.*” This 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, artworks, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, material on the internet and/or conversations.

Examples of plagiarism include, but are not limited to:

- any submission prepared in whole or in part, by someone else, including the unauthorized use of generative AI tools (e.g., ChatGPT);
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another's data or research findings without appropriate acknowledgement;
- submitting a computer program developed in whole or in part by someone else, with or without modifications, as one's own; and
- failing to acknowledge sources through the use of proper citations when using another's work and/or failing to use quotations marks.

Plagiarism is a serious offence that cannot be resolved directly by the course's instructor. The Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of “F” for the course.

STATEMENT ON STUDENT MENTAL HEALTH

As a University student you may experience a range of mental health challenges that significantly impact your academic success and overall well-being. If you need help, please speak to someone. There are numerous resources available both on- and off-campus to support you.

Emergency Resources (on and off campus):

- <https://carleton.ca/health/emergencies-and-crisis/emergency-numbers/>

Carleton Resources:

- Mental Health and Wellbeing: <https://carleton.ca/wellness/>
- Health & Counselling Services: <https://carleton.ca/health/>
- Paul Menton Centre: <https://carleton.ca/pmc/>

- Academic Advising Centre (AAC): <https://carleton.ca/academicadvising/>
- Centre for Student Academic Support (CSAS): <https://carleton.ca/csas/>
- Equity & Inclusivity Communities: <https://carleton.ca/equity/>

Off Campus Resources:

- Distress Centre of Ottawa and Region: (613) 238-3311 or TEXT: 343-306-5550, <https://www.dcottawa.on.ca/>
- Mental Health Crisis Service: (613) 722-6914, 1-866-996-0991, <http://www.crisisline.ca/>
- Empower Me: 1-844-741-6389, <https://students.carleton.ca/services/empower-me-counselling-services>
- Good2Talk: 1-866-925-5454, <https://good2talk.ca/>
- The Walk-In Counselling Clinic: <https://walkincounselling.com>

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 and Family-Status Related Accommodations

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 about the accommodation policy, visit the [Equity and Inclusive Communities \(EIC\)](#) website.

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, please go to: <https://carleton.ca/equity/focus/discrimination-harassment/religious-spiritual-observances/>

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 for a formal evaluation. You can find the Paul Menton Centre online at: <https://carleton.ca/pmc/>

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).

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and where survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/equity/sexual-assault-support-services>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor 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. Read more here: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit: <https://students.carleton.ca/services/accommodation/>.

Academic Consideration for Medical and Other Extenuating Circumstances

Due to medical and other extenuating circumstances, students may occasionally be unable to fulfill the academic requirements of their course(s) in a timely manner. The University supports the academic development of students and aims to provide a fair environment for students to succeed academically. Medical and/or other extenuating circumstances are circumstances that are beyond a student's control, have a significant impact on the student's capacity to meet their academic obligations, and could not have reasonably been prevented.

Students must contact the instructor(s) as soon as possible, and normally no later than 24 hours after the submission deadline for course deliverables. If not satisfied with the instructor's decision, students can conduct an "informal appeal" to the Chair of the department within three (3) working days of an instructor's decision. We have created a webform specifically for appeals to the Chair, which can be found here: <https://carleton.ca/law/application-for-review-of-refusal-to-provide-academic-consideration/>. *Note: This form only applies to LAWS courses and is not the same as a formal appeal of grade.* More information about the academic consideration can be found [here](#).