

Department of Law and Legal Studies
Religion and the State in Canada
LAWS 4006A – WINTER 2024

PREREQUISITES: LAWS 2908 and fourth-year Honours standing.

CLASS TIME & DATE: Wednesday, 14:35 – 17:25

ROOM: Please check Carleton Central for class schedule. (In-person)

INSTRUCTOR: Professor Gilles LeVasseur

OFFICE HOURS: Wednesday 17:30-18:30 or by appointment

EMAIL: gilles.levasseur@carleton.ca

CALENDAR COURSE DESCRIPTION:

Legal nature of the interaction of religion and state within an historical framework. Emphasis on Canada after the Charter of Rights and Freedoms and on religious pluralism and resistance to state intervention in religion. Interdisciplinary readings drawn from legal, historical and theological sources.

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.

REQUIRED TEXT: M.H. Ogilvie, *Religious Institutions and the Law in Canada*, 4th ed. (Toronto: Irwin Law, 2017).

BACKGROUND READING:

- Robert Choquette, *Canada's Religions* (University of Ottawa Press, 2004).
- 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 will be placed on Brightspace over the term.

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.

Mid-Term: 25%

Essay: 30% (due on March 27th, explanation and details in first class.)

Final Exam: 45%

Essays may be submitted in print at any time prior to the final submission date of the class in Week Ten and must be submitted in a printed hard copy to the Instructor.

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

LATE PENALTIES AND REQUESTS FOR EXTENSIONS:

The granting of extensions is determined by the instructor. As a general rule, the late papers will not be accepted. 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>

WEEKLY SCHEDULE:WEEK ONE: Introduction – 01-10WEEK TWO: Canada I: Theological and Constitutional Inheritances – 01-17

Ogilvie, chs. 1, 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.

S 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 THREE: Canada II: Interpreting the Charter – 01-24

Ogilvie, chs. 4 and 13.

R. v. Big M. Drug Mart Ltd. (1985) 18 D.L.R. (4th) 321 (S.C.C.).

Edwards Books and Art Ltd. et al. v. R. (1986) 35 D.L.R. (4th) 1 (S.C.C.).

WEEK FOUR: Canada III: Interpreting the Charter – 01-31

Syndicat Northcrest v. Amselem (2004) 241 D.L.R. (4)1 (S.C.C.). th

Mouvement laïque québécois v. Saguenay (City), 2015 SCC 16 (CanLII).

Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations), 2017 SCC 54 (Can LII).

WEEK FIVE: Education I: Denominational Schools -02-07

Ogilvie, chs. 4 and 10.

Adler v. Ontario (1996) 140 D.L.R. (4th) 385 (S.C.C.).

Re Caldwell and Stuart et al. (1984) 15 D.L.R. (4th) 1 (S.C.C.).

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.).

Erazo v. Dufferin-Peel Catholic District School Board, 2014 ONSC 2072 (CanLII).

WEEK SIX: On Brightspace Mid-Term (25%) - 02-14WEEK SEVEN: No class, Reading week, University is closed – 02-21WEEK EIGHT: Education II: Public Schools and Private Religious Schools – 02-28

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., Intervenors (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.).

SL v. Commission scolaire des Chênes, 2012 SCC 7 (CanLII).

Loyola High School v. Quebec (Attorney-General), 2015 SCC 12 (CanLII).

E.T. v. Hamilton-Wentworth District School Board, 2017 ONCA 893 (CanLII).

H.S. v. The Private Academy, 2017 HRTO 791 (CanLII).

Ross v. New Brunswick School District No. 15 (1996) 133 D.L.R. (4) 1 (S.C.C.). th

Kempling v. College of Teachers (British Columbia) (2005) 255 D.L.R. (4) 169 (B.C.C.A.).

WEEK NINE: Employment I: Accommodating Religious Practices -03-06

Ogilvie, ch. 13

Re Ontario Human Rights Commission and Simpson Sears Ltd. (1985) 23 D.L.R. (4th) 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. (4th) 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. (4th) 577 (S.C.C.).

H.T. v. ES Holdings Inc. o/a Country Herbs, 2015 HRTO 1067 (CanLII).

Bhinder v. C.N.R. (1985) 23 D.L.R. (4th) 481 (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) 174 (Ont. Div. Ct.) th

Hellquist v. Owens (2006) 267 D.L.R. (4) 733 (Sask. C.A.). th

Reference re: Marriage Commissioners etc. (2010) 327 D.L.R. (4) 669 (Sask. C.A.). th

WEEK TEN: Employment II: Requiring Religious Practices – 03-13

Ogilvie, ch. 13.

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).

Heintz v. Christian Horizons (2010) 319 D.L.R. (4) 477 (Ont. Div. Ct.).

Schroen v. Steinbach Bible College (1999) 35 C.H.R.R. D/1 (Man. Bd. of Inquiry)

Trinity Western University v. B.C. College of Teachers (2001) 199 D.L.R. (4) 1 (S.C.C.). th

Trinity Western University v. The Law Society of British Columbia, 2018 SCC 32 (CanLII).

Trinity Western University v. The Law Society of Upper Canada, 2018 SCC 33(CanLII).

WEEK ELEVEN: Expression I: Believing, Saying and Acting – 03-20

Multani v. Commission scolaire Marguerite-Bourgeoys (2006)264 D.L.R. (4)577 (S.C.C.).

R. v. N.S., 2012 SCC 72 (CanLII).

Ishaq v. Canada (Citizenship and Immigration), 2015 FC 156 (CanLII); 2015 FCA 151 (CanLII);

2015 FCA 194 (CanLII); 2015 FCA 212 (CanLII).

Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37 (CanLII).

Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11 (CanLII).

WEEK TWELVE: Health and Marriage I: Accommodating Personal Choice -03-27

ESSAY (30%) DUE

Ogilvie, chs 11 and 12.

Malette v. Shulman et al. (1990) 67 D.L.R. (4th) 321 (Ont. C.A.).

Manitoba (Director of Child and Family Services) v. C.(A.) (2009) 309 D.L.R. (4) 581(S.C.C.)

Hamilton Health Sciences Corp. v. D.H., 2014 ONCJ 603 (CanLII); 2015 ONCJ 229 (CanLII).

Egale Canada Inc. v. Canada (Attorney General) (2003) 225 D.L.R. (4th) 472 (B.C.C.A.); (2003) 228 D.L.R. (4th) 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.

LAWS 4006 A&B - 4 - 2019-2020

Bruker v. Marcovitz (2008) 288 D.L.R. (4) 257 (S.C.C.).

WEEK THIRTEEN: Churches I: Using and Disputing Property -04-03

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.

M.H. Ogilvie, "Church Property Disputes: Some Organizing Principles", (1992) 42 University of Toronto Law Journal 377.

Bentley v. Anglican Diocese of New Westminster (2010) 326 D.L.R. (4) 280 (B.C.C.A.) th

Delicata v. Incorporated Synod of the Diocese of Huron, 2013 ONCA 540 (CanLII).

Pankerichan v. Djokic, 2014 ONCA 709 (CanLII).

WEEK FOURTEEN: -04-10

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.

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.

Wall v. Judicial Committee of the Highwood Congregation of Jehovah's Witnesses, 2016 ABCA 255 (CanLII); 2018 SCC 26 (CanLII).

Pederson v. Fulton (1994) 11 D.L.R. (4th) 367 (Ont. Gen. Div.).

Hart v. Roman Catholic Episcopal Corporation of the Diocese of Kingston, 2011 ONCA 728 (CanLII).

M.H. Ogilvie; "Are Members of the Clergy Without the Law? Hart v. Roman Catholic Episcopal

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

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/>.

Winter 2024 Sessional Dates and University Closures	
<i>Please find a full list of important academic dates on the calendar website: https://calendar.carleton.ca/academicyear/</i>	
January 8, 2024	Winter term begins.
January 19, 2024	Last day for registration and course changes (including auditing) in full winter and late winter courses.
January 31, 2024	Last day to withdraw from full winter and the winter portion of fall/winter courses with a full fee adjustment.
February 19, 2024	Statutory holiday. University closed.
February 19-23, 2024	Winter break. No classes.
March 15, 2024	Last day for academic withdrawal from full winter, late winter, and fall/winter courses.
March 27, 2024	Last day for summative tests or examinations, or formative tests or examinations totaling more than 15% of the final grade, in full winter term or fall/winter undergraduate courses, before the official April final examination period (see examination regulations in the Academic Regulations of the University section of the Undergraduate Calendar/General Regulations of the Graduate Calendar).
March 29, 2024	Statutory holiday. University closed.
April 10, 2024	Winter term ends.
	Last day of full winter, late winter and fall/winter term classes.
	Classes follow a Friday schedule (full winter and later winter courses).
	Last day for handing in term work and the last day that can be specified by a course instructor as a due date for term work for full winter term and late winter courses.
	Last day for take home examinations to be assigned.
April 13-25, 2024	Final examinations in full winter, late winter and fall/winter term courses will be held. Examinations are normally held all seven days of the week.
April 25, 2024	All final take-home examinations are due on this day, with the exception of those conforming to the examination regulations in the Academic Regulations of the University section of the Undergraduate Calendar/General Regulations of the Graduate Calendar.