

CARLETON UNIVERSITY
DEPARTMENT OF POLITICAL SCIENCE

Winter 2006

PSCI 4109B
The Politics of the Canadian Charter of Rights and Freedoms

Seminar: Mondays 6:05 – 8:55 p.m.
Room: A602 Loeb

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Office Hours: Mondays 3:30-5:30 or by appointment

Course Description

The *Canadian Charter of Rights and Freedoms* has had significant effects on Canadian political culture, power relations between social groups, political mobilization, the constitutional debate, and not least, public policy. This seminar course examines the impact of the Charter on Canadian politics, with a view to evaluating its overall effects on policy-making and the political process, as well as on citizens' rights. After examining the pre-*Charter* history of civil rights legislation and jurisprudence, the nature of *Charter* rights and the role of the judiciary, seminars will focus upon a number of key *Charter* provisions, including fundamental freedoms (religion, expression), language, labour, socio-economic, and equality rights (gender, sexual identity), and Aboriginal rights.

Through oral/written presentations, course readings and class debates, students will be able to: engage key issues and debates in the fields of law and public policy; trace the shifting values that have underpinned human rights law and jurisprudence over the twentieth century; compare and contrast the roles of legislatures and courts in making law; better understand various ideological approaches to 'rights' discourse; examine issues of accessibility to the courts and accountability of non-elected judges; analyze and evaluate the *Charter's* impact on various social groups and public policy fields; and assess whether the *Charter* has enhanced or detracted from Canada's variant of liberal democracy.

Course Requirements: Undergraduate Students

The final course grade will be based on the following components:

One Debate Presentation and paper	25%	(6-7 pages – graded in essay format)
One Case Analysis/Research Essay	40%	(15-18 pages) Due March 6 th , 2006 Topic approval February 13 th , 2006
One paper (debate resolution)	15%	(6-7 pages – graded in essay format)
General Participation and Weekly forms	20%	

Accommodations

Students with disabilities requiring academic accommodations must contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. Then, make an appointment

with the Instructor *within the first three weeks of classes*. Late requests for special arrangements will not be accommodated. The University provides accommodation for religious observances. Please consult the Instructor.

Debate Presentations/ Short Papers

In keeping with the adversarial nature of the Canadian common law system, undergraduate students must participate in one debate, graduate students in two debates, to be chosen during the first seminar (January 09), and confirmed no later than the second seminar (January 16). Debates will begin in the second week (January 16).

A debate resolution has been formulated for each week (see outline below). In order to ensure a balanced exchange, students will either choose or be assigned to the “For” or “Against” position for each of their two presentations. Depending upon the number of students in the class, there may well be two or more people arguing each position, in which case the debate should be approached as a team exercise. Students must confer with others on their ‘team’ to avoid repetitious arguments, preferably 1-2 weeks before the debate. Each individual’s presentation should normally last 10-15 minutes, so time should be set aside for rehearsal.

N.B. Failure to deliver a debate presentation will mean that a course component has not been completed, resulting in an ‘F’ for the course. If a student is unable, for medical reasons, to attend class to deliver a presentation, s/he must inform the instructor *before* the class by a message (timed and dated) left at the Political Science office (Loeb B640). A medical note detailing the extent of incapacitation (e.g. cannot write, see etc.) will be required.

Preparation for presentations includes reading all of the assigned material including some of the recommended readings (use your discretion) for the debate in question, as well as conducting some supplementary research. Depending on the topic, useful sources include: articles in legal or political science journals; legal briefs; position papers; polemical articles and books; statutes; the Criminal Code; legislative debates reported in Hansard; parliamentary committee reports; government discussion or policy papers; (Royal) Commission reports; briefs to commissions; policy analyses in journals; legal cases; and progress reports from government departments. N. B. It is generally a good idea to see whether there are any more recent cases on your topic than those in the assigned texts, so check the Canadian Human Rights Yearbook (by year - *KE 438 A45 C36*) or the Supreme Court Reports. It is highly recommended that you use the QuickLaw legal database, which is available in the Law Dept. computer lab on the 4th floor of Loeb – you can arrange for training in how to use it.

Debate presentations should proceed logically from a brief statement of the position, to a coherent exposition of a series of arguments (with supporting evidence), to a succinct conclusion. A good debate presentation will show awareness of and sensitivity to counter-positions, and will anticipate and refute the opposition’s arguments.

Following the seminar debate, the student will take class comments and relevant discussion into account and revise the subject material of the presentation into an essay of 6-7 pages, to be handed in *one week later*. You will not be required to take the position you argued in the oral debate, but rather, you should argue the position that makes most sense to you. The work you have done to argue a particular side of the debate resolution will provide you with a good grounding in the various arguments, some of which you will endorse others of which you will refute. The presentation paper must be handed in within one week of the relevant oral seminar debate. Late papers will not be accepted.

In addition, you will also select a topic from another week and submit an essay (6-8 pages) based on the readings. Again, you will be required to take a clear position, based on the debate question, and argue for that position. This paper should be similar in format as the presentation papers. It is due one week after the topic has been debated and discussed in class. Late papers will not be accepted.

Students must keep copies of each of their papers.

Case Analysis/ Research Essays – March 06, 2006

Students are required to choose a Charter case (heard and/or decided by the Supreme Court of Canada in the past two years) which deals specifically with an issue pertaining to a social movement (e.g., the lesbian and gay rights movement, children's rights, the right to die, the right to health care, the women's movement, etc.). Supreme Court case decisions can be at <http://www.lexum.umontreal.ca/csc-scc/en/index.html>

Students are then required to write a case analysis of 15-18 pages which provides: a short political background to the case (e.g. how the issue has or has not been dealt with in public policy); an overview of the players involved (interest groups, state actors); a synopsis of the facts of the case; where possible, a précis of the lower court decision and reasons; an analysis of the arguments and position of all the parties involved; an evaluation of the major political and constitutional issues in play; an assessment of how the court decided the case, as well as an examination of the affects the case decision had on the political movement.

The chosen topic/case **must** be approved me no later than February, 13th, 2006. I will not accept a paper if the topic has not been approved.

This assignment will require background research into the issue area and how it has been handled by the legislature and by the courts in the past. Secondary academic literature is available on virtually every issue area, so students should begin with the required and reserved course texts where appropriate, then search academic books and journals, especially legal journals, through CUBE and CD-ROM, and if possible, *Quick Law*.

The case analysis (or the research essay) should be a minimum of 15 and a maximum of 18 typed, double-spaced numbered pages. The essays will respect all the rules of good essay composition: a central question the essay will address; an introduction with the plan for development of the argument; appropriate choice of method for topic development; respect for argument and evidence; clear and economical exposition; good quality and quantity of appropriate research; appropriately formatted footnotes and bibliography.

Papers should be handed in to me directly in class, or, if late, placed in the departmental mailbox to be date-stamped. **Do not** push papers under my door. Please note that papers left in my mailbox will not be date-stamped, so I shall receive them as submitted on the day on which I actually see them.

Late papers will be penalized by 5% per day.

Conduct of the Seminar and Participation and Weekly Forms Grade

All students are expected to carefully prepare for each seminar by reading a chosen core of required readings listed under each week's topic, and preparing, in addition to notes for private study, a list of questions and issues emerging from those readings for discussion in the seminar.

To ensure better and focused discussions, for each session, students are asked to submit two (2) written questions raised by that session's readings. The questions should speak specifically to the issues, assumptions, criticisms and so on raised by the readings and the week's debate resolution. Questions should not focus solely on a summary of an author's arguments; nor should they be overly broad, general or loosely dealing with the week's topic. The questions are to be placed in the departmental drop off box or emailed to me a full day ahead of the seminar.

Students making debate presentations will necessarily have read most of the core readings and a number of additional materials.

The general participation grade will be distributed over a variety of kinds of participation in the seminars over the whole length of the course: questions and comments to presenters as well as those submitted to the instructor in your weekly forms; faithfulness and steadiness in building up central ideas

and themes from week to week as our base of knowledge and shared vocabulary grow (which of course requires steady attendance); contribution of information and analysis to the seminars on the basis of good preparation; and, of course, civility and collegiality in providing good questions and bridges into the discussion for others, as well as both collaborating with and arguing against other viewpoints in the development of themes.

Plagiarism

A copy of the university policy on plagiarism is attached for your reference. Plagiarism will not be tolerated. The Chair of the Political Science Department has asked that the following statement appear in all course outlines: At the discretion of the Instructor, students may be required to pass a brief oral examination on the essays. This provision is intended to allow the instructor to evaluate suspected cases of plagiarism or other problems with essays. Students are also warned that submitting the same assignment for more than one course is not permitted.

Required Texts

Michael Mandel, *THE CHARTER OF RIGHTS AND THE LEGALIZATION OF POLITICS IN CANADA*, (Toronto: Wall and Thompson, 1994)

Janet L. Hiebert, *CHARTER CONFLICTS: WHAT IS PARLIAMENT'S ROLE?*, (McGill-Queen's U. P., 2002)

Additional articles have been placed on reserve at the library under the PSCI 4109

SEMINAR TOPICS AND READINGS

Seminar 1 (January 09): Introduction

general introduction to the course
presentation schedule
introductory lecture on Constitutions and the *Charter of Rights*

Seminar 2 (January 16): Pre-Charter Civil Rights in Canada

Required

Kenneth H. Fogarty, *EQUALITY RIGHTS AND THEIR LIMITATIONS IN THE CHARTER*, (Carswell, Toronto, 1987) ch. 2, "The Canadian Bill of Rights and Equality Before the Law"

Peter Hogg, "A Comparison of the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights", in Gerald-A. Beaudoin and Ed Ratushny, *THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS*, 2nd edition, (Toronto: Carswell, 1989): 1-20

James W. St. G. Walker, "RACE", *RIGHTS AND THE LAW IN THE SUPREME COURT OF CANADA*, (Wilfred Laurier University Press, 1997), "Orientation", pp. 3-36, ch. 2, "Quong-Wing v. the King"

Recommended

* Ian Greene, THE CHARTER OF RIGHTS, (Toronto: James Lorimer & Co., 1989): ch. 1.

Dale Gibson, THE LAW OF THE CHARTER: EQUALITY RIGHTS, (Toronto: Carswell, 1990): 1-45

P. Russell, R. Knopff, and F. L. Morton, FEDERALISM AND THE CHARTER, (Ottawa: Carleton U. P., 1989): 291-346, 347-384

Debate Resolution: *The Canadian Bill of Rights and common law rights would have been adequate human rights instruments had they not been willfully misinterpreted by the courts.*

For _____

Against _____

Seminar 3 (January 23): The Nature of Charter Rights and Access Issues

The Nature of Charter Rights:

Required

Mandel, ch. 1

Richard Sigurdson, "Left- and Right-Wing Charterphobia in Canada: a Critique of the Critics", *International J. of Can. Studies*, 7-8 Spring-Fall 1993: 95-116

Recommended

*R. Jhappan, "Charter Politics and the Judiciary", in Glen Williams and Michael Whittington, eds., CANADIAN POLITICS IN THE 21st CENTURY, (Scarborough: Nelson, 2000): 217-234

Hon. Beverley McLachlin, "Charter Myths", (1999) 33 *U.B.C. Law Review*: 23

Richard Sigurdson, "The Left Legal Critique of the Charter: a Critical Assessment", *Windsor Yearbook of Access to Justice*, 1993: 116-155

Access Issues:

Required

Mary Jane Mossman, "The Charter and Access to Justice in Canada", in David Schneiderman and Kate Sutherland, eds., CHARTING THE CONSEQUENCES: THE IMPACT OF THE CHARTER OF RIGHTS ON CANADIAN LAW AND POLITICS, (TORONTO: U. OF T. PRESS, 1997): 271-302

Ian Brodie, "Interest Group Litigation and the Embedded State: Canada's Court Challenges Program", *Can. J. of Political Science*, XXXIV: 2, 2001:

Recommended

Morton and Knopff, THE CHARTER REVOLUTION AND THE COURT PARTY, (Peterborough: Broadview, 2000), ch. 4, "The State Connection": 87-106

Debate Resolution: *Constitutionalization of individual rights is the perfect neo-conservative strategy for managing government and curtailing state regulation.*

For _____

Against _____

Seminar 4 (January 30): Role of the Judiciary

Required

Mandel, pp. 39-81

Hiebert, chs. 1, 2, 3

Recommended

*Joel Bakan, JUST WORDS: CONSTITUTIONAL RIGHTS AND SOCIAL WRONGS, (Toronto: University of Toronto Press, 1997), ch. 7, "Judges and Dominant Ideology": 103-113

Maryka Omatsu, "The Fiction of Judicial Impartiality", (1997) 9, 1, *Can. J. of Women and the Law*: 1-16

Morton and Knopff, THE CHARTER REVOLUTION AND THE COURT PARTY:

ch. 2, "Judges and the Charter Revolution": 33-58

ch. 5, "The Jurocracy": 107-128

ch. 6, "Power Knowledge: the Supreme Court as the Vanguard of the Intelligentsia": 129-147;

Madam Justice Claire L'Heureux-Dubé, "Making a Difference: The Pursuit of a Compassionate Justice", (1997) 31 *U.B.C. L. Rev.* 1-15

Madame Justice Beverley M. McLachlin, "The Charter: A New Role for the Judiciary?", (1991) 29 *Alta. L. Rev.* (No. 3) 540

Peter McCormick and Ian Greene, JUDGES AND JUDGING: INSIDE THE CANADIAN JUDICIAL SYSTEM, (Toronto: Lorimer, 1990): 59-80, 228-258

Lorne Sossin, "The Sounds of Silence: Law Clerks, Policy Making and the Supreme Court of Canada", (1996) 30 *U.B.C. Law Review* 279-308

Justice Rosalie Silberman Abella (Court of Appeal for Ontario), "The Judicial Role in a Democratic State", (2001), 26 *Queen's L.J.* 573 - 583

Mr. Justice Michel Bastarache, "The Role of Academics and Legal Theory in Judicial Decision-making" (1999) 37, 3 *Alberta Law Review*: 739-747

Rob Martin, "Our judges are enemies of judicial independence", *The Lawyers Weekly*, 13:35

January 28, 1994

"Case Comments: *R. v. R. D. S.*: An Editor's Forum", (1998) 10, 1, *Can. J. of Women and the Law*: 159-212

Andrew Heard, "The Charter in the Supreme Court of Canada: the Importance of which Judges Hear an Appeal", *Can. J. of Political Science*, XXIV, 2, June 1991: 289-308

Richard Devlin, A. Wayne MacKay and Natasha Kim, "Reducing the Democratic Deficit: Representation, Diversity and the Canadian Judiciary, or Towards a "Triple P" Judiciary", (2000) 38 *Alta. L. Rev.* (No. 3): 734 – 866

Debate Resolution: *The demographic characteristics of the judiciary are better predictors of case outcomes than the contents of the law.*

For _____
Against _____

Seminar 5 (February 6): Economic Rights: Class, Labour and Business

Required

Mandel, ch. 5

Hiebert, ch. 4

Joel Bakan, *JUST WORDS: CONSTITUTIONAL RIGHTS AND SOCIAL WRONGS*, (Toronto: Univ. of Toronto Press, 1997):

ch. 5, "Freedom of Association and the Dissociation of Workers": 77-86

ch. 6, "Power to the Powerful": 87-94

ch. 9, "What's Wrong with Social Rights?": 134-141

Recommended

*Richard Bauman, "Business, Economic Rights and the Charter", in Schneiderman and Sutherland, *CHARTING THE CONSEQUENCES*: 58-108

Alexander Alvaro, "Why Property Rights Were Excluded from the CCRF", (1991) 24 *Can. J. of Political Science*: 319.

Nelligan O'Brien Payne, "At Long Last, Supreme Court of Canada Grants Unions Charter Rights", *Labour Law Newsletter*, Vol. 11, No. 1, Spring 2002: 107 – 108

David Schneiderman, "A Comment on *RJR-MacDonald v. Canada (A.G.)*", (1996) 30 *U.B.C. L. Rev.* 165-180

Martha Jackman, "Poor Rights: Using the Charter to Support Social Welfare Claims", (Fall 1993) 19 *Queen's Law Journal*: 65-94

Amber Elliot, "Social Assistance and the Charter: Is there a Right to Welfare in Canada?", (2001) 7 *Appeal* 74 – 83

Gregory Hein, "Interest Group Litigation and Canadian Democracy", in Paul Howe and Peter H. Russell, eds. JUDICIAL POWER AND CANADIAN DEMOCRACY, (Queen's U. P., 2001): 214-254

Tamara Friesen, "The Right to Health Care", (2001) 9 *Health L. J.* 205 – 222

Debate Resolution: *The Charter enshrines no economic rights and is equally silent on property, social, and labour rights. Therefore, there is no inherent bias in favour of business.*

For _____

Against _____

Seminar 6 (February 13): Aboriginal Rights

Required

John Borrows, "Contemporary Traditional Equality: the Effect of the *Charter* on First Nations Politics", in Schneiderman and Sutherland, CHARTING THE CONSEQUENCES: 169-199

Mary Ellen Turpel, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences", in Devlin, pp. 503-527

Caroline Andrews and Sandra Rodgers, eds., WOMEN AND THE CANADIAN STATE, (Montreal and Kingston: McGill-Queen's, 1997):

Wendy Moss, "The Canadian State and Indian Women: the Struggle for Sex Equality under the *Indian Act*": 79-88

Teressa Nahanee, "Indian Women, Sex Equality, and the *Charter*": 89-103

Recommend

*Patrick Macklem, INDIGENOUS DIFFERENCE AND THE CONSTITUTION OF CANADA, (University of Toronto Press, 2001), ch. 7: "Indigenous Difference and the Charter."

Report of the Royal Commission on Aboriginal Peoples, vol 2, ch. 3, pp. 226-34: "The Canadian Charter of Rights and Freedoms," including "The Commission's View." **CRP**

Patricia Monture-Angus, "A First Journey in Decolonized Thought: Aboriginal Women and the Application of the Canadian Charter", in P. Monture-Angus, THUNDER IN MY SOUL: A MOHAWK WOMAN SPEAKS, (Halifax: Fernwood, 1995): 131-151

Thomas Isaac and Mary Sue Maloughney, "Dually Disadvantaged and Historically Forgotten?: Aboriginal Women and the Inherent Right of Aboriginal Self-Government", (1992) 21 *Manitoba Law J.* 453-475

Joyce Green, "Constitutionalizing the Patriarchy: Aboriginal Women and the Aboriginal Government", (1993) 4, 4 *Constitutional Forum*: 110-120

Jennifer Koshan, "Aboriginal Women, Justice and the Charter: Bridging the Divide?" (1998) 32 *U.B.C. L. Rev.* 23-54

Michael Murphy, "Culture and the Courts: A New Direction in Canadian Jurisprudence on Aboriginal Rights?", *Can. J. of Political Science*, XXXIV: 1, 2001

Thomas Isaac, "Individual Versus Collective Rights: Aboriginal People and the Significance of *Thomas v. Norris*", (1992) 21 *Manitoba Law J.* 618-630

Michael Asch, "From Calder to Vander Peet," in Paul Havemann ed., *INDIGENOUS PEOPLES' RIGHTS IN AUSTRALIA, CANADA & NEW ZEALAND*, (Oxford U.P., 1999).

James [sakéj] Youngblood Henderson, "First Nations' Legal Inheritances in Canada: The Mikmaq Model", (1996) 23 *Manitoba Law J.* 1-31

Debate Resolution: *The Charter must apply fully to Aboriginal peoples as it does to all other Canadians.*

For _____

Against _____

February 20 – Reading Week – No Classes

Seminar 7 (February 27): Language Rights and Québec Nationalism

Required

Mandel, ch. 3

Robert Vandycke, "The 1982 Constitution and the Charter of Rights: a View from Québec", in F. Rocher and M. Smith, eds., *NEW TRENDS IN CANADIAN FEDERALISM*, (Broadview, 1995): 133-148

David Schneiderman, "Dual(ling) Charters: The Harmonics of Rights in Canada and Québec", (1992) 24 *Ottawa Law Review*: 235

Recommended

* Yves de Montigny, "The Impact (Real or Apprehended) of the CCRF on the Legislative Authority of Québec", in Schneiderman and Sutherland, *CHARTING THE CONSEQUENCES*: 3-33

Paul Sniderman, Joseph Fletcher, Peter Russell and Philip Tetlock, *THE CLASH OF RIGHTS*, (New Haven: Yale University Press, 1996), ch. 7, "The Politics of Language and Group Rights": 191-234

Gordon Scott Campbell, "Language, Equality and the Charter: Collective vs. Individual Rights in Canada and Beyond", (Dec. 1993) 4 *N. J. C. L.*: 29-73

Nathalie Des Rosiers, "From Québec Veto to Québec Secession: the Evolution of the Supreme Court of Canada on Québec-Canada Disputes", (2000) 13, 2 *Can. J. of Law and Jurisprudence* 171-183

Lysiane Gagnon, "The Charter and Québec", in Philip Bryden, S. Davis and J. Russell, eds., *PROTECTING RIGHTS AND FREEDOMS: ESSAYS ON THE CHARTER'S PLACE IN CANADA'S POLITICAL, LEGAL, AND INTELLECTUAL LIFE*, (Toronto: U. of T. Press, 1994): 45-51

Debate Resolution: *The Charter of Rights is the greatest threat to French language rights and Québec’s cultural distinctiveness since the Conquest.*

For _____
Against _____

Seminar 8 (March 06): Equality Rights - Gender

Required

Mandel, pp. 376-454

Hiebert, ch. 5

Recommended

R. Jhappan, ed., WOMEN’S LEGAL STRATEGIES IN CANADA, (Univ. of Toronto Press, 2002):

Sheila McIntyre, “Feminist Movement in Law: Beyond Privileged and Privileging Theory”: 42-100

Diana Majury, Women’s (In)Equality before and after the *Charter*”: 101-134

* F. L. Morton and Avril Allen, “Feminists and the Courts: Measuring Success in Interest Group Litigation in Canada”, *Can. J. of Political Science*, XXXIV: 1, 2001: 55-84

Mary Jane Mossman, “Gender Equality and the Canadian Charter: Making Rights Work for Women?”, in Phil Thomas and Penny Smith, eds., MAKING RIGHTS WORK, (Oxford: Blackwell, 1999).

Diana Majury, “The Charter, Equality Rights, and Women: Equivocation and Celebration”, (2002) 40 *Osgoode Hall L.J.* 297 - 336

Women's Legal Education and Action Fund, EQUALITY AND THE CHARTER: TEN YEARS OF FEMINIST ADVOCACY BEFORE THE SUPREME COURT OF CANADA, (Toronto: Emond Montgomery, 1996) (*contains all of LEAF's briefs up to 1995*)

Debate Resolution: *The Charter has been a net loss for Canadian women.*

For _____
Against _____

Seminar 9 (March 13): Equality Rights - Sexual Orientation/ Identity

Required

Hiebert, ch. 8

Carl F. Stychin, "Essential Rights and Contested Identities: Sexual Orientation and Equality Rights Jurisprudence in Canada", (1995) 8 *Can. J. of Law & Jurisprudence*: 49-66

Smith, Miriam, "Political Activism, Litigation and Public Policy: The Charter Revolution and Lesbian and Gay Rights in Canada, 1985-1999" *International Journal of Canadian Studies* 21(Spring 2000), pp. 81-110.

Didi Herman, "The Good, the Bad, and the Smugly: Sexual Orientation and Perspectives on the Charter", in Schneiderman and Sutherland, CHARTING THE CONSEQUENCES: 200-217

Recommended

Didi Herman, RIGHTS OF PASSAGE, ch 3&4

*Kathleen A. Lahey, ARE WE 'PERSONS' YET?; LAW AND SEXUALITY IN CANADA (University of Toronto Press, 1999): chs. 3, 7, 9

Mary Eaton, "Lesbians, Gays and the Struggle for Equality Rights: Reversing the Progressive Hypothesis", (1994) 17, 1, *Dalhousie Law Journal*: 130-186

Bruce MacDougall, QUEER JUDGMENTS: HOMOSEXUALITY, EXPRESSION AND THE COURTS IN CANADA, (Univ. of Toronto Press, 2000), chs. 3 & 4

Sarah Loosemore, "EGALE v. Canada: The Case for Same-Sex Marriage", (2002) 60(1) *U.T. Fac. L. Rev* 43 – 63

Robert Wintemute, "Religion vs. Sexual Orientation: A Clash of Human Rights?", (2002) *University of Toronto Journal of Law and Equality*, 1, 125

Bruce MacDougall, "A Respectful Distance: Appellate Courts Consider Religious Motivation of Public Figures in Homosexual Equality Discourse -- The Cases of Chamberlain and Trinity Western University", (2002) 35 *U.B.C. L. Rev.* 511 - 538

Debate Resolution: *The essentialist definition of sexuality that tends to underlie the formal equality claims of lesbian and gay individuals promotes mere assimilation rather than true equality.*

For _____

Against _____

Seminar 10 (March 20): Fundamental Freedoms (Religion)

Required

Mandel, pp. 405-433

Shannon Ishiyama Smithey, "Religious Freedom and Equality Concerns under the Canadian Charter of Rights and Freedoms", *Can. J. of Political Science*, XXXIV, 1, 2001: 85-107

Irwin Cotler, "Freedom of Conscience and Religion", in Beaudoin and Ratushny, pp. 165-194

Banafsheh Sokhansanj, "Our Father Who Art in the Classroom: Exploring a Charter Challenge to Prayer in Public Schools", (1992), 56 *Sask. L. Rev.* 47

Recommended

David M. Brown, "Freedom from or Freedom for?: Religion as a Case Study in Defining the Content of Charter Rights", (2000) 33 *U.B.C. Law Review* 551-615

* Claude Denis, "Rights and Spirit Dancing: Aboriginal Rights and the Canadian State", in Jonathan Hart and Richard Bauman, eds., *EXPLORATIONS IN DIFFERENCE: LAW, CULTURE, AND POLITICS*, (Toronto: Univ. of Toronto Press, 1996): 199-226

John Von Heyking, "The Harmonization of Heaven and Earth?: Religion, Politics, and Law in Canada", (2000) 33 *U.B.C. L. Rev.* 663-697

Thomas v. Norris [1992] 2 C. N. L. R. 139 (forced participation in sweat lodge ceremony)

Jack and Charlie v. R. [1985] 2 S. C. R. 332 (First Nations' cultural/religious practices)

Debate Resolution: *The right to religious freedom has been rendered virtually meaningless by the higher courts' overly secularized definition of Canadian society.*

For _____

Against _____

Seminar II (March 27): Fundamental Freedoms (Expression)

Required

Mandel, pp. 369-376

Martha Shaffer, "Criminal Responses to Hate-Motivated Violence: is Bill C-41 Tough Enough?", (Dec. 1995) 41 *McGill Law Journal*: 199-250

Ian B. McKenna, "Canada's Hate Propaganda Laws - A Critique", *Ottawa Law Review*, 26, 1, 1994: 159-185

David Schneiderman, *FREEDOM OF EXPRESSION AND THE CHARTER*, (Thompson, 1991):

Alan Borovoy, "How Not to Fight Racial Hatred", pp. 243-248

Irwin Cotler, "Racist Incitement: Giving Free Speech a Bad Name", pp. 249-257

Recommended

Jamie Cameron, "The Past, Present, and Future of Expressive Freedom under the Charter", (1997) 35 *Osgoode Hall L.J.*: 1-74

Cynthia Petersen, "A Queer Response to Bashing: Legislating Against Hate", (Summer 1991) 16 *Queen's Law Journal*: 237-260

* Bruce P. Elman, "Combating Racist Speech: The Canadian Experience", (1994) 32, 4 *Alberta L. Rev.*: 623

Evelyn Kallen, "Never Again: Target Group Responses to the Debate Concerning Anti-Hate Propaganda Legislation", (1991) *11 Windsor Yearbook on Access to Justice*: 46-73

Debate Resolution: *The Supreme Court has placed unreasonable limits on Canadians' freedom to express hatred.*

For _____

Against _____

Seminar 12 (April 03): Overall Consequences of the Charter: Selected Aspects

* Hiebert, CHARTER CONFLICTS, ch. 9

* Schneiderman and Sutherland, CHARTING THE CONSEQUENCES:

Kathleen Lahey, "The Impact of the CCRF on Income Tax Law and Policy": 109-168

Ian Urquhart, "Infertile Soil?: Sowing the Charter in Alberta": 34-57

* Joel Bakan and Michael Smith, "Rights, Nationalism and Social Movements in Canadian Constitutional Politics": 218-244

* Schneiderman and Sutherland, "Conclusion: Towards an Understanding of the Impact of the Charter of Rights on Canadian Law and Politics": 343-355

F. Leslie Seidle, ed., EQUITY AND COMMUNITY: THE CHARTER, INTEREST ADVOCACY AND REPRESENTATION, (Montreal: Institute for Research on Public Policy, 1993):

Leslie Pal, "Advocacy Organizations and Legislative Politics: the Effect of the CCRF on Interest Group Lobbying of Federal Legislation, 1989-91": 119-158

Seidle, "Interest Advocacy through Parliamentary Channels: Representation and Accommodation": 189-223

Patrick Monahan and Marie Finkelstein, eds. THE IMPACT OF THE CHARTER ON THE PUBLIC POLICY PROCESS, (North York: York Univ. Centre for Public Law and Public Policy, 1993), Part I

Peter W. Hogg and Allison A. Bushell, "The Charter Dialogue between Courts and Legislatures (or Perhaps the Charter of Rights Isn't Such a Bad Thing After All)", (1997) *35 Osgoode Hall L.J.*: 75-124

Christopher Manfredi and James Kelly, "Six Degrees of Dialogue: A Response to Hogg and Bushell", (1999) *37, 3 Osgoode Hall Law J.* 513-536

Debate Resolution: *The Charter has detracted from democratic decision making in Canada.*

For _____

Against _____

Academic Accommodations

For Students with Disabilities: Students with disabilities requiring academic accommodations in this course are encouraged to contact the Paul Menton Centre (PMC) for Students with Disabilities (500 University Centre) to complete the necessary forms. After registering with the PMC, make an appointment to meet with the instructor in order to discuss your needs **at least two weeks before the first in-class**

test or CUTV midterm exam. This will allow for sufficient time to process your request. Please note the following deadlines for submitting completed forms to the PMC for formally scheduled exam accommodations: **November 7th, 2005** for fall and fall/winter term courses, and **March 10, 2006** for winter term courses.

For Religious Observance: Students requesting accommodation for religious observances should apply in writing to their instructor for alternate dates and/or means of satisfying academic requirements. Such requests should be made during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist, but no later than two weeks before the compulsory academic event. Accommodation is to be worked out directly and on an individual basis between the student and the instructor(s) involved. Instructors will make accommodations in a way that avoids academic disadvantage to the student. Instructors and students may contact an Equity Services Advisor for assistance (www.carleton.ca/equity).

For Pregnancy: Pregnant students requiring academic accommodations are encouraged to contact an Equity Advisor in Equity Services to complete a *letter of accommodation*. Then, make an appointment to discuss your needs with the instructor at least two weeks prior to the first academic event in which it is anticipated the accommodation will be required.

Plagiarism: The Undergraduate Calendar defines plagiarism as: "to use and pass off as one's own idea or product, work of another without expressly giving credit to another." The Graduate Calendar states that plagiarism has occurred when a student either: (a) directly copies another's work without acknowledgment; or (b) closely paraphrases the equivalent of a short paragraph or more without acknowledgment; or (c) borrows, without acknowledgment, any ideas in a clear and recognizable form in such a way as to present them as the student's own thought, where such ideas, if they were the student's own would contribute to the merit of his or her own work. Instructors who suspect plagiarism are required to submit the paper and supporting documentation to the Departmental Chair who will refer the case to the Dean. It is not permitted to hand in the same assignment to two or more courses. The Department's Style Guide is available at: www.carleton.ca/polisci/undergrad/styleguide.pdf

Oral Examination: At the discretion of the instructor, students may be required to pass a brief oral examination on research papers and essays.

Submission and Return of Term Work: Papers must be handed directly to the instructor and will not be date-stamped in the departmental office. Late assignments may be submitted to the drop box in the corridor outside B640 Loeb. Assignments will be retrieved every business day at 4 p.m., stamped with that day's date, and then distributed to the instructor. For essays not returned in class please attach a **stamped, self-addressed envelope** if you wish to have your assignment returned by mail. Please note that assignments sent via fax or email will not be accepted. Final exams are intended solely for the purpose of evaluation and will not be returned.

Approval of final grades: Standing in a course is determined by the course instructor, *subject to the approval of the Faculty Dean*.

Course Requirements: Students must fulfill all course requirements in order to achieve a passing grade. Failure to hand in any assignment will result in a grade of F. Failure to write the final exam will result in a grade of ABS. FND (Failure – No Deferred) is assigned when a student's performance is so poor during the term that they cannot pass the course even with 100% on the final examination. In such cases, instructors may use this notation on the Final Grade Report to indicate that a student has already failed the course due to inadequate term work and should not be permitted access to a deferral of the examination. Deferred final exams are available ONLY if the student is in good standing in the course.

Connect Email Accounts: The Department of Political Science strongly encourages students to sign up for a campus email account. Important course and University information will be distributed via the Connect email system. See <http://connect.carleton.ca> for instructions on how to set up your account.

