

PSCI 4109A
The Politics of the Canadian Charter of Rights and Freedoms
Mondays 11:35am-2:25pm
Online

Location: Zoom (link available on Brightspace)

Instructor: Dr. Lev Marder (please in emails/in person just address as Lev)

Email: levmarder@cunet.carleton.ca

Office Hours: Mondays 10-11am through Zoom (or by appointment)

Course Description: Most democratic constitutions attempt to balance the rights, liberties, and responsibilities of a wide range of entities. In this course, we will examine the complexity of this balancing act at multiple levels in the Canadian context, especially focusing on the Canadian Charter of Rights and Freedoms. What *should* be the Charter's purpose? How *should* it treat individuals? How *should* it treat groups? How *should* it address global concerns? These are the four questions, the four pillars, of the course gradually increasing in their scope of analysis. To properly ask “how *should* something work?” we have to understand how something was designed, functioned before, and how dys/functional it is today. We will combine the study of theory with the analysis of supreme court cases, and concrete concerns including hate speech, gender equality, Indigenous rights, and language rights. Doing so, will help us better understand how historical, political, social, economic, and global forces shape how Canada balances its distribution of rights, liberties and responsibilities and how the Charter affects the political, social and economic arrangements in Canada.

Course Learning Outcomes: Upon completing this course, students will have:

- Developed critical and creative thinking skills through textual analysis, discussions, and the testing of theories and arguments against court cases and concrete legal conundrums in the Canadian context
- Improved literacy skills through the writing of the position paper on the limits of the Charter
- Honed communication skills in multiple settings through weekly class and forum participation
- Expanded global understanding, having by the end of the course situated the Charter within a set of cultural and political concerns that lead students to reflect on the inseparability of the local and global.
- Fostered professional and ethical behaviour through teamwork, and the practice of collaborative and respectful questioning of various perspectives.

Course Format: The class is organized around broad questions and texts that will help us formulate our positions, and it will only be as great as our collective participation in opening up the questions, and respectfully challenging each other's views. Online lecture introducing the week's topic and main ideas available 11:35-1pm on Mondays will lead into the discussion from 1:00pm-2:25pm. For that latter portion, the discussion, your participation is crucial (15%). That discussion will help us apply the theories and critiques covered in the readings and lecture to real world case studies/court cases. This will prepare you for the forum participation (40%) on Brightspace during the remainder of the week. Hence you will have the optimal combination of theory and practice on a weekly basis. The cases discussed, text readings, and lectures will all be tested using the midterm (20%) and essential to succeeding during the debate on the limits of the Charter (25%).

Required Materials: All Readings available on Brightspace. Learning material cost: 0\$.

COURSE ASSESSMENT

Participation	Ongoing	15%
2 Forum "lead responses" (10% each)	Ongoing (at least one by Feb 13)	20%
5 forum "responses" (4% each)	Ongoing	20%
Midterm	February 23	20%
<u>Debate on the limits of the Charter</u>	April 6-8	25%
Total		100%

Lead Responses (2x10%=20%)

Every week starting with Week 2, during class on Monday I will share the "forum question of the week" based on the case studies we cover. Your task will be to respond to the question in the form of an 800-900 word short essay by Friday that week in the assignment dropbox AND on the forum set up for that week. The "lead responses" should directly respond to the question as it applies to the case study(ies) discussed during the Monday class and use properly cited evidence from the week's lecture and assigned reading material. Most importantly, you are supposed to use evidence, this is the critical part, from the Monday lecture and the readings—this is the key to success. Summaries or details of the case study and outside research on the case study will take away precious space and lower the grade on this assignment. You are to write the lead response TWO times during the semester, and at least once by February 13 (failure to do so will result in a 10% loss of your overall grade in the course). A grading rubric and an example of a lead response appears on Brightspace.

Forum Responses (5x4%=20%)

Students NOT writing a "lead response" for a given week, will participate in the discussion on the forum at least 5 times (only 5 random responses will be graded) during the weeks when they are not writing the "Lead Response" and at least once by February 15th. They are due on Sunday in response to the Friday "Lead Responses". The "Responses to the Lead Response" are limited to 300 words each. The "Responses to a Lead Response" are to likewise show understanding of the week's material, so make sure to comment with substance, and properly cite course material.

Respond to the lead response raising questions, or issues, or extending the argument likewise using the week's assigned material, to make sure everything you say is supported by evidence and to show you can use what you learn in that week to engage in discussion. A rubric can be found on Brightspace.

Midterm (February 23rd) 20%

The midterm will cover course material up to this point in this course (readings and lectures and case studies). The midterm will be held during class time and two hours will be allotted for the midterm. It is to be completed individually. The midterm is open book, notes are allowed, but no use of AI permitted. The midterm will consist of 40 multiple choice questions.

Debating the Limits of the Charter (April 6-8 25%)

During the March 2nd class, when we discuss "Jurisdictions, Rights, and Constitutional Amendments" we will generate a list of possible desirable and undesirable limits of the Charter (ranging from protection of rights in cyberspace to "rights" that are not protected in the Charter). We will narrow down the list in that class and then you will be tasked with arguing a position: is that particular limit desirable or not? By April 6, you will generate your five-page argument in support of or against the limit and post it on the "Setting the limits of the Charter" forum (15%). Between April 6-8, our class will have a debate on the forum and you will respond to each other and essentially approve or disapprove of the limits (10%). Please note, much much much more detailed instructions will be discussed in class and posted on Brightspace.

Participation (15%)

Excellent seminar participation involves consistently coming to class online, demonstrably having read the material, staying for the entire class, paying full attention to what others in the class are contributing, and making valuable contributions to the discussion in smaller and larger groups. Good participation involves consistently coming to class, and sometimes making valuable contributions (often showing that one has familiarized themselves with class material before the discussion).

Weekly Schedule:

Week 1 (Jan 5): Charter's Purpose (I): Introduction and nature of the Charter

Week 2 (Jan 12): Charter's Purpose (II): What is the political purpose of the Charter?

Readings:

1. Peter H. Russell, "The Political Purposes of the Canadian Charter of Rights and Freedoms," *The Canadian Bar Review*. (1983) 61: 30-54.
2. Zhang, Z. (2023). Discussion on the Principles of the Canadian Charter of Rights and Freedoms. *Transactions on Social Science, Education and Humanities Research*, 1, 129-135.
3. Harrington, Joshua. "The Alchemy of Equality Rights." *Const. F.* 30 (2021): 53-82.

Week 3 (Jan 19): Charter's Purpose (III): (Reasonable) Limitations on Rights and Freedoms

1. Webber, Grégoire. "What Oakes should have said (or how to read a limitations clause)." Queen's University Legal Research Paper 2022-002 (2022).
2. Sigalet, Geoffrey. "The Truck and the Brakes: Understanding the Charter's Limitations and Notwithstanding Clauses Symmetrically." (2022).

Week 4 (Jan 26): Charter's Purpose (III): Judicial review vs. Will of the people

Readings:

1. Christopher P. Mandfredi, "Judicial Power and the Charter: Three Myths and a Political Analysis," *Supreme Court Law Review* (2001) 14: 331-9.
2. Grant A. Huscroft, "'Thank God We're Here': Judicial Exclusivity in Charter Interpretation and Its Consequences," *Supreme Court Law Review* (2004) 25: 241-67.
3. Emmet Macfarlane, "'You Can't Always Get What You Want': Regime Politics, the Supreme Court of Canada, and the Harper Government," *Canadian Journal of Political Science* (2017): 1-21.
4. Beverley McLachlin, "Courts, Legislatures and Executives in the Post-Charter Era," *Policy Options* (June 1999): 41-7.

Week 5 (Feb 2): From Purpose to Individual Rights (I): The Charter and Access to Justice: Supporting the disadvantaged

Readings:

1. 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: University of Toronto Press, 1997): 271-302.
2. Dana Phillips, "Public Interest Standing, Access to Justice, and Democracy under the Charter: Canada (AG) v. Downtown Eastside Sex Workers United Against Violence", *Constitutional Forum* (2013) 22:2: 21-30.
3. Nelligan O'Brien Payne, "At Long Last, Supreme Court of Canada Grants Unions Charter Rights", *Labour Law Newsletter*, (2002) 11:1: 107-108.
4. Martha Jackman, "Poor Rights: Using the Charter to Support Social Welfare Claims", *Queen's Law Journal*, (1993) 19: 65-94.

Week 6 (Feb 9): Individual Rights (II): The Charter and the Freedom of Expression

Readings:

1. Barendt: "Why Protect Freedom of Speech?"
2. Skim: Jane Bailey: "Private Regulation and Public Policy: Towards effective restriction on internet hate propaganda"
3. Kanellis, Grigoris. "Freedom of Speech vs. Hate Speech in European Law: A Balancing Act." *SSRN—Social Science Research Network* (2025)

Week 7 (Feb 16): Reading Week! No classes.

Week 8 (Feb 23): Midterm (25%)

The midterm will cover material up to this point in this course (readings and lectures and case studies). It will consist of 50 multiple choice questions. You will have 80 minutes to complete the midterm.

Week 9 (March 2): Jurisdictions, Rights, and Constitutional Amendments

Readings:

1. Robinson, I., Simeon, R. (2009). The dynamics of Canadian federalism. In James Bickerton and Alain-G. Gagnon (eds). Canadian Politics (5th edition)
2. Kathy L. Brock. Accords and Discord: The politics of Asymmetrical federalism and intergovernmental relations. Asymmetrical Series 2005 (16).
3. Carissima Mathen, ““The question calls for an answer, and I propose to answer it’: The Patriation Reference as Constitutional Method,” Supreme Court Law Review (2011) 54: 143-66.
4. Constitution Act, 1982, ss.38-49

Week 10 (Mar 9): Charter and Group Rights(I): the right to national-self determination

Readings:

1. Kymlicka, Will "Three Forms of Group-Differentiated Citizenship in Canada." In *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib, Princeton: Princeton University Press (1996): 153-170.
2. Brosseau, Laurence and Roy Mar-Andre, “ The Notwithstanding Clause of the Charter” Background Paper, Library of Parliament, 2018.<https://bdp.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2018-17-e.pdf>.
3. Spitzer, Aaron John. “Reconciling Shared Rule: Liberal Theory, Electoral-Districting Law and “National Group” Representation in Canada”, Canadian Journal of Political Science 51.2 (2018): 447-466.

Week 11 (Mar 16): Charter and Group Rights (II): language rights

Readings:

1. McDougall, Andrew, “Bill 101 as god and demon: The Charter of the French language and English Canada”
2. Skim: “Discussion Guide: Consultations and Engagement on the Implementation of the Indigenous Languages Act”, Government of Canada. <<https://www.canada.ca/en/canadian-heritage/campaigns/consultation-indigenous-languages-act-implementation/discussion-guide.html>>.
3. Fontaine, Lorena, et al. “How Canada’s proposed Indigenous Languages Act fails to deliver”. Yellowhead Institute. <<https://yellowheadinstitute.org/wp-content/uploads/2019/05/bill-c-91-response-yellowhead-brief.pdf>>.

Week 12 (Mar 23): The Constitution, Reconciliation and Indigenous Rights (I)

Readings:

1. James (Sa'kej) Youngblood Henderson, "Constitutional Vision and Judicial Commitment: Aboriginal and Treaty Rights in Canada," *Australian Indigenous Law Review*. (2010) 14(2): 24-48.
2. Kulchyski, Peter. "Aboriginal Rights Are Not Human Rights" *Prairie Forum*.
3. Chadwick Cowie , "Quebec Sovereignty and Indigenous Nationhoods: Critiquing the Quebec Secessionist Movement from 'an Indigenous Lens'"

Week 13 (Mar 30): The Constitution, Reconciliation and Indigenous Rights (II)

Readings:

1. Green, Joyce. "Canaries in the Mines of Citizenship: Indian Women in Canada," *Canadian Journal of Political Science* 34.4 (2001):7 15-738.
2. Kiera Ladner, "Up the Creek: Fishing for a New Constitutional Order," *Canadian Journal of Political Science* 38:4 (2005): 923-953

Week 14 (April 6-8) Debating the limits of the Charter

Course Policies

Submission of Assignments and Late Policy:

Written assignments are due at 11:59pm in the dropbox online through Brightspace on the day indicated on the syllabus.

Late assignments, without proper documentation and prior agreement with your instructor when possible, will receive a 10% daily deduction including weekends. Forum lead responses and responses cannot be late and will be assessed a 0 if late.

If you know that you will have a few assignments due in several classes on the same day, come talk to your instructor about it early (at least two weeks before the deadline) and a short extension may be granted. Extensions are official only in written form, when confirmed through email.

Reading, Email, Office Hour and Other Rules:

Every student is responsible for all required readings. Some of the texts are more difficult than others. Students are expected to come to every class online having read the reading assigned for that class.

I will be happy to meet with you through Zoom, please reach out, let me know what times work for you, and I'll be happy to chat. Come, sit, relax in the virtual office and if you want to talk about the university in general or the course in particular, I'll be glad to see you. My rule for both email communication and office hours is that you meet me half way. (For example, just asking what does Rawls think of equality doesn't give me anything to work with in order to help you out). Be

prepared to tell me what you know and what you understand so that we can build on that basis to enrich your understanding and experience.

Please include the course code in your email. I will reply to emails within 24 hours (and usually much much much much quicker), so if you do not get a reply from me within 24 hours, the wires must have crossed somewhere and you should email me again to make sure your email gets through. Please don't hesitate to resend emails in those cases, as quick communication under these circumstances is paramount and I'd love to help.

Political Science Course Outline Appendix

REQUESTS FOR ACADEMIC ACCOMMODATION

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

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. Here is a list that may be helpful:

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 consideration for medical or other extenuating circumstances:

Students must contact the instructor(s) of their absence or inability to complete the academic deliverable within the predetermined timeframe due to medical or other extenuating circumstances. For a range of medical or other extenuating circumstances, students may use the online self-declaration form and where appropriate, the use of medical documentation. This policy regards the accommodation of extenuating circumstances for both short-term and long-term periods and extends to all students enrolled at Carleton University.

Students should also consult the [Course Outline Information on Academic Accommodations](#) for more

information. Detailed information about the procedure for requesting academic consideration can be found [here](#).

Pregnancy: 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. For accommodation regarding a formally-scheduled final exam, please contact Equity and Inclusive Communities (EIC) at equity@carleton.ca or by calling (613) 520-5622 to speak to an Equity Advisor.

Religious obligation: 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. For more details [click here](#).

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. If you are already registered with the PMC, please request your accommodations for this course through the [Ventus Student Portal](#) 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*). Requests made within two weeks will be reviewed on a case-by-case basis. For final exams, the deadlines to request accommodations are published in the [University Academic Calendars](#). 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 its 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 will be provided to students who compete or perform at the national or international level. 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.

PETITIONS TO DEFER

Students unable to write a final examination because of illness or other circumstances beyond their control may apply within **three working days** to the Registrar's Office for permission to write a deferred examination. The request must be fully supported by the appropriate documentation. Only deferral petitions submitted to the Registrar's Office will be considered. [See Undergraduate Calendar, Article 4.3](#)

INTELLECTUAL PROPERTY

Student or professor materials created for this course (including presentations and posted notes, labs, case studies, assignments and exams) remain the intellectual property of the author(s). They are intended for personal use and may not be reproduced or redistributed without prior written consent of the author(s). Permissibility of submitting substantially the same piece of work more than once for academic credit. If group or collaborative work is expected or allowed, provide a clear and specific description of how and to what extent you consider collaboration to be acceptable or appropriate, especially in the completion of written assignments.

WITHDRAWAL WITHOUT ACADEMIC PENALTY

Please reference the [Academic Calendar](#) for each term's official withdrawal dates

OFFICIAL FINAL EXAMINATION PERIOD

Please reference the [Academic Calendar](#) for each term's Official Exam Period (may include evenings & Saturdays or Sundays)

For more information on the important dates and deadlines of the academic year, consult the [Carleton Calendar](#).

GRADING SYSTEM

The grading system is described in the Undergraduate Calendar section [5.4](#).

Standing in a course is determined by the course instructor subject to the approval 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 Dean.

ACADEMIC INTEGRITY

Academic integrity is an essential element of a productive and successful career as a student. Students are required

to familiarize themselves with the university's [Academic Integrity Policy](#).

PLAGIARISM

The University Senate defines plagiarism as "*presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own.*" This can include:

- any submission prepared in whole or in part, by someone else, including the unauthorized use of generative AI tools (e.g., ChatGPT);
- reproducing or paraphrasing portions of someone else's published or unpublished material, and presenting these as one's own without proper citation or reference to the original source;
- submitting a take-home examination, essay, laboratory report or other assignment written, in whole or in part, by someone else;
- using ideas or direct, verbatim quotations, or paraphrased material, concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another's data or research findings;
- failing to acknowledge sources through the use of proper citations when using another's works and/or failing to use quotation marks;
- handing in "*substantially the same piece of work for academic credit more than once without prior written permission of the course instructor in which the submission occurs.*"

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.

RESOURCES (613-520-2600, phone ext.)

Department of Political Science (2777)	B640
Loeb	
Registrar's Office (3500)	300 Tory
Centre for Student Academic Success (3822)	4 th floor
Library	
Academic Advising Centre (7850)	302 Tory
Paul Menton Centre (6608)	501
Nideyinàn	
Career Services (6611)	401 Tory