

FALL 2021

CARLETON UNIVERSITY
DEPARTMENT OF POLITICAL SCIENCE
<https://carleton.ca/polisci/>

PSCI 4109A

Politics of the Canadian Charter of Rights and Freedoms



Fall 2021: Seminar, Mondays, 11:35 – 2:25 pm., Online

Instructor: Prof. Radha Jhappan
Office Hours: Tuesdays 3:30-5:30 p.m.

Office: Cyberspace (Zoom Room)
Email: Radha.Jhappan@carleton.ca

Land Acknowledgement

Carleton University acknowledges and is grateful for the location of its campus on the unceded territories of the Omamiwininiwag (Algonquin) nation, the traditional custodians of this land.

Course Description

The *Canadian Charter of Rights and Freedoms* has had significant effects on the Canadian political process, public policy, law, human rights, institutional relations between the executive, legislatures, and the non-elected judiciary, power relations between social groups, political mobilization, the constitutional debate, the economy, and not least, political culture. 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 human 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* issues, including Indigenous/ Aboriginal rights, labour and socio-economic rights, equality rights (gender, sexual identity), fundamental freedoms (religion, expression/ hate speech), and anti-terrorism laws.

Learning Outcomes

Through oral/written presentations, class debates, and analysis of a major *Charter* case that is likely to come before the Supreme Court of Canada, 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 in Canada over the last 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 public policy fields and social groups
- understand constitutional/ human rights cases and the limits of constitutional rights provisions
- assess whether the *Charter* has enhanced or detracted from Canada's variant of liberal democracy

Course Requirements

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

<i>Assignment</i>	<i>Value</i>	<i>Due Date</i>
One Debate Presentation (Oral)	10%	to be scheduled
One Debate Presentation Paper	20%	Due one week after the oral presentation
One Team Cabinet Brief	35%	November 15, 2021
End-of-Term Exam	35%	Scheduled (3 hours)

Grading Formula

A+ = 90+% A = 85-89% A- = 80-84%	EXCELLENT	Excellence in: evidence of original thought ; strong, clear, logical argument ; research and use of sources ; organization of material; formal elements of essay structure (such as introduction, body, conclusion, correctly formatted footnotes and bibliography); and writing skills (including superior composition, no grammatical errors or typos)
B+ = 77-79% B = 73-76% B- = 70-72%	GOOD (above average)	Mastery of material and solid writing skills (i.e. good syntax, organization, structure, very few grammatical errors or typos)

C+ = 67-69% C = 63-66% C- = 60-62%	SATISFACTORY (average)	Clear understanding of material and adequate writing/organizational skills
D+ = 57-59% D = 53-56% D- = 50-52%	UNSATISFACTORY	Limited understanding of material and/or deficient writing skills (i.e. awkward syntax and/or frequent grammatical and other errors)
F = 49% & less	FAIL	Inadequate work in several or all areas

Students must fulfill ALL course requirements in order to achieve a passing grade.

Failure to hand in any assignment or to complete any other course component will result in a grade of F. Deferred final exams are available ONLY if the student is in good standing in the course.

Required Text

Heather MacIvor, CANADIAN POLITICS AND GOVERNMENT IN THE CHARTER ERA, 2nd edition (Toronto: Oxford University Press, 2013) (*at the Bookstore, new or rented, and on reserve in the library*)

You can also get new, used, or rental/ ebooks for less at a range of different sites, though our bookstore price-matches if you bring proof of a cheaper price. See the following for a list:

<https://www.directtextbook.com/isbn/019544728X>

Course Format

We live life live. Seminars will therefore be held live/ synchronously via Zoom. Please note that *you must be signed in to Brightspace* to connect to seminars as the link is encrypted for security.

For privacy and security reasons, ***seminars will NOT be recorded.***

You will not be allowed to record locally from Zoom, nor do you have permission to record seminars or break-out room discussions, or to take photographs, screenshots, or audio recordings by means of any device. Even if you do not have privacy and security concerns, others do, especially some who may be joining from other jurisdictions. Please respect the privacy and security rights of others.

All of this means that if you miss a seminar, you miss it. This is just like the normal, in-person learning mode, so you are no worse off.

Intellectual Property

All materials created for this course by the professor or by students (including lectures, Powerpoints, presentations, posted notes, assignments, and exams) are copyright protected and remain the intellectual property of the author(s). They are intended for personal use only and may not be reproduced or redistributed without prior written consent of the author(s).

Students registered in the course may take notes and make copies of course materials *for their own private educational use only*. Students are not permitted to reproduce or distribute seminar notes and course materials *publicly for any purpose* without express written consent from the copyright holder(s).

Recording of sound or images in lectures and discussion groups is a serious violation of privacy and is STRICTLY PROHIBITED. Please respect the intellectual property rights of others.

Brightspace

Course components such as the syllabus, Zoom meeting link (it's the same link every week in the **"Seminar Zoom Link"** module), course schedule, assignment upload links, grade sheet, pdfs of some readings, email, and announcements are to be managed through Brightspace.

All registered students should have an **email account** through Brightspace, which will be used to post course-related information (e.g. answers to frequently asked questions, class notes, and news about your group assignment). Students are responsible for checking their Brightspace email accounts regularly for such information. All email communication must be via official Carleton university e-mail account. As per university security regulations, I will not respond to emails from personal or non-Carleton accounts.

If you have any **questions** about the course, please use the **Ask the Professor module** in Brightspace. It will be monitored every couple of days and questions will be answered. This ensures fairness in that everyone gets the same information.

Before you ask a question, **please make sure that you have read the course outline thoroughly**. It contains a wealth of information and probably already includes the answer to your question. If it does, I will simply refer you back here.

Please do not send *substantive* questions relating to course material via email. If you have content questions that will take time to answer on email, please make use of my online office hours.

There is also a **Student Lounge/ Discussion Forum** on Brightspace where you can connect with each other to socialize, start discussion threads, organize your teams, etc.

Note that you may have **no expectation of privacy** on Brightspace (including Zoom) as it tracks all your logins and actions, which the Instructor can see. Its Eye is upon you. Act accordingly.

Debate Presentations/ Short Papers – 30% (Oral 10%, paper 20%)

Each student must participate in one debate, to be chosen during the first seminar (Sept. 13), and confirmed no later than the second seminar (Sept. 20). Debates will begin in the second week (Sept. 20).

In keeping with the adversarial nature of the legal process, a debate resolution has been formulated for each week (see outline below), based on debates in the literature. In order to ensure a balanced exchange, students will either choose or be assigned to the “For” or “Against” position. Depending upon the number of students in the class, it is possible that two or more people might be arguing a particular position, in which case presenters should consult in order to avoid repetition in the oral presentation.

Based closely upon the readings and using case examples wherever possible, 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. Construct your position as if you are arguing a legal case – methodically, thoroughly, carefully, with attention to detail, anticipating and refuting your opponent’s arguments. The purpose is to make the strongest possible case.

Each individual’s presentation should normally last **no more than 20 minutes**, so time should be set aside for rehearsal. You may use Powerpoint or other visual media. You should submit your presentation online.

Preparation for presentations includes **reading at least five of the assigned materials** for the debate in question (for both sides of the argument, to be well prepared to address opposing positions).

Following the seminar debate, you should take class comments and relevant discussion into account and revise the subject material of the presentation into an essay of 7-8 pages, to be handed in **one week later**. You will not be required to take the position you argued in the oral debate. Rather, you should argue the position that makes the most sense to you all things considered. The work you have done to argue a particular side of the debate resolution should provide you with a good grounding in the various arguments on each side. You must keep both electronic and hard copies of each of your papers, as well as any notes or other materials used for the assignment.

N.B. Failure to deliver a debate presentation will mean that a course component has not been completed, resulting in a grade of ‘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 via email.

Conduct of the Seminar and Participation

Given the diversity of views on the controversial issues we will be discussing in the debates, civility and collegiality are essential. A willingness to listen to and learn from the perspectives of others – even those opposite to your own - will enrich your experience and knowledge.

Although **there is no formal grade for participation in seminar discussions**, it is a key component of the course. Everyone is expected to prepare carefully for each seminar by reading a chosen core of required readings listed under each week's topic (marked with an asterix), and preparing, in addition to notes for private study, a list of questions and issues emerging from those readings for discussion in the seminar. Consider, for example:

- the author's purpose or agenda in writing the piece (what you think they wish to accomplish)
- major themes and issues and how they relate to the topic or the course themes in general
- Interesting or novel concepts
- whether arguments are well supported and make sense
- inconsistencies or weaknesses within the argument or evidence
- what is missing
- how they might have made a stronger argument
- interesting questions that have arisen for you from the readings
- have they made you think differently about the issue?

You are responsible for asking your questions and contributing to the discussions. Seminars in which only a few voices dominate can become tedious for the majority, so please take responsibility for the quality of your seminar experience by participating often and well.

Late Paper Policy

If you are struggling to make the assignment deadline for the debate presentation paper, **you may grant yourself an extension of up to 7 days without penalty, if you really need it.** You do not need to ask the Instructor. Bear in mind, however, that it may have unwanted effects such as backing up your other assignments in this or other courses.

After that 7-day grace period – i.e. papers submitted after 11:59 p.m. 7 days after the due date - will be considered late. **The late penalty is 3% per day** (e.g. B- to C+), with weekends counting as two days. Please do not ask for an extension beyond the 7-day grace period unless you have a pressing *medical* reason, for which documentation will be required.

N.B. Instructors cannot grant a deferral beyond December 10, 2021 under any circumstances. Students seeking deferrals must apply through the Registrar's office.

Team Cabinet Brief – 35% – Due November 15, 2021

Analyze this:

[La Rose et al. vs. Canada, 2020 FC 1008](#)

In Oct. 2019, 15 children and youths initiated a Charter challenge against the Queen and the Attorney General of Canada arguing that a broad range of public policies contribute to or permit Canada's emission of greenhouse gases at rates that are incompatible with a stable climate. They argue that the government has violated the public trust, as well as their s. 7 rights to life, liberty, and security of the person, since climate change affects their physical and psychological wellbeing. Further, their s. 15 equality rights are being violated as climate change will have disproportionate impacts upon younger generations. They sought declaratory relief, and an order requiring the defendants to develop and implement a Climate Recovery Plan proportionate to Canada's fair share of the remaining global carbon budget to stabilize the earth's climate system. In Feb. 2020, the federal government filed a statement of defense that acknowledged the significant effects of climate change, but argued that the plaintiffs lack public interest standing and have no justiciable claims. The Federal Court quashed the plaintiffs' claim in October, 2020. The case has been appealed to the Federal Court of Appeal. It is likely to reach the Supreme Court whatever the outcome of the FCA proceedings.

[Children all over the world](#) are mobilizing legal systems to contest their governments' climate inaction. [Portuguese children](#) have launched a case before the European Court of Human Rights against 33 governments – all EU states plus Norway, Russia, Switzerland, Turkey, Ukraine, and the United Kingdom. In the U.S., [Juliana vs. U.S.](#) has been winding its way through the courts since 2015. Some litigation in other countries has been successful, including the [Netherlands](#) in 2015, [Columbia](#) in 2018, and [Ireland](#) in 2020. Other [systemic climate cases](#) are pending in various jurisdictions.



Your crack team of legal eagles at the Department of Justice has been chosen to brief the Cabinet on the *La Rose* decision and the upcoming appeal(s). As you can imagine, the Cabinet has a keen interest in the issue because of the widespread ramifications for multiple policies across a range of ministries if such a claim were successful. Such a precedent would also have very significant implications for executive power, accountability, and democracy if courts were to begin mandating particular policies.

Your analysis of the issues in play and the ultimate outcome should be rendered in **30 pages** (double-spaced, in TNR 12 with 1-inch margins, **plus** footnotes and bibliographical sources in a standard format). It should include:

- a short political background to the case (e.g. the political players and interests at stake)
- a synopsis of the facts of the case
- a short analysis of how the issue has or has not been dealt with in Canadian constitutional law
- an analysis of the main arguments tendered in court by each of the parties and intervenors
- a survey of relevant precedents in Canada and other jurisdictions
- an evaluation of the major constitutional issues in play
- the reasons for the lower court's decision in light of constitutional provisions, precedents,

arguments offered by the parties and intervenors, and any other relevant considerations

- an evaluation of the Crown's position
- an evaluation of the plaintiffs' position
- a projection of the outcome (and the reasoning) at the FCA, and eventually the SCC
- an argument as to whether the case does or does not deserve to succeed and why
- an assessment of how the case might have been approached more effectively by the plaintiffs and the Crown

Begin with the following sources:

- La Rose *et. al.*'s [Statement of Claim](#) to the Federal Court
- Crown's [Statement of Defence](#)/ Motion to Strike
- [Written Representations of the Plaintiffs](#)
- [Federal Court's decision](#)
- Plaintiffs' [appeal](#) to the Federal Court of Appeal

Precedents:

- *Friends of the Earth v. Canada (Governor in Council)*, 2008 FC 1183 (CanLII), [2009] 3 FCR 201
- *Turp v. Canada (Justice)*, 2012 FC 893 (CanLII)
- Other relevant precedents

Secondary Legal Literature:

- Jasminka Kalajdzic, "Climate Change Class Actions in Canada", (2021), 100 *S.C.L.R.* (2d) 29-58
- Karinne Lantz, "Case Digest: The Netherlands v. Urgenda Foundation: Lessons for Using International Human Rights Law in Canada to Address Climate Change", (2020) 41 *Windsor Review of Legal and Social Issues*: 145
- Colin Feasby, David Devlieger, and Matthew Huys, "Climate Change and the Right to a Healthy Environment in the Canadian Constitution", (2020) *Alberta Law Review*, 58, 213.
- Lynda M. Collins & Lorne Sossin, "In Search of an Ecological Approach to Constitutional Principles and Environmental Discretion in Canada", (2019) 52 *UBC L Rev* 293 – 343
- Nathalie J. Chalifour & Jessica Earle, "Feeling the Heat: Climate Litigation under the Canadian Charter's Right to Life, Liberty, and Security of the Person", 42 *Vt. L. Rev.* 689
- Lynda M. Collins, "Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution", (2015), 71 *S.C.L.R.* (2d) 519 - 539
- Lauren Wortsman, "[Greening the Charter](#): Section 7 and the Right to a Healthy Environment", (2019) 28 *Dalhousie Journal of Legal Studies*: 245

- Lynda M. Collins and Meghan Murtha, "Indigenous Environmental Rights in Canada: The Right to Conservation Implicit in Treaty and Aboriginal Rights to Hunt, Fish, And Trap", (2010) 47 *Alta. L. Rev.* 959 – 991
- Denisa Mertiri, "The big warmup: The rise and future of climate change litigation", 36 *Adv J* No. 3, 6 – 11

You should search social science journals for relevant articles, as well as news media for coverage and interest group/social movement positions (e.g. [David Suzuki Foundation](#), [CCRC](#)) or interventions, industry and provincial positions re this litigation. Find out who has intervened in the case, look up their positions or factums.

With 25 students, we should have 5 teams of 5. At our last class, depending on how many groups there are, one or two will draw on their brief to defend the Crown's position, one or two will defend the plaintiffs' position, and if we have an odd number, the final team will channel the SCC and adjudicate between the two.

Argue as if your life depended on it....

Final Examination – 35% – scheduled

The 3-hour examination will consist of 5 essay questions, of which you will answer three. The examination is focused on the course materials, especially the required readings and major cases in each subject area. Students who attend seminars regularly and complete the required and a selection of supplementary readings should be well prepared for the examination.

In keeping with instructions from the Dean of Social Sciences, *I will not grant informal deferrals*. Students who are ill or have other extenuating circumstances must apply for a formal deferral through the Registrar's Office.

Oral Examination

At the discretion of the instructor, students may be required to pass a brief oral examination on research papers and essays. You must keep a copy of your paper, as well as all notes and earlier drafts of your work until after the final grade has been assigned and accepted.

SEMINAR TOPICS AND READINGS



Seminar 1 (Sept. 13): Introduction

- general introduction to the course
- presentation schedule
- short lecture

Seminar 2 (Sept. 20): Pre-Charter Civil Rights in Canada

* MacIvor, ch. 2

* 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" (*ebook*)

* Peter J. McCormick, THE END OF THE CHARTER REVOLUTION: LOOKING BACK FROM THE NEW NORMAL, (Univ. of Toronto Press, 2015): ch. 1 (pp.1-25) (*ebook*)

Robert J. Sharpe and Kent Roach, eds. THE CHARTER OF RIGHTS AND FREEDOMS, 5th edition, (Toronto: Irwin Law, 2013), ch. 1 "Historical Context": 4-26

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

For _____

Against _____

Seminar 3 (Sept. 27): The Nature of Charter Rights

MacIvor, ch. 1, pp.339-344

* R. Jhappan, "Charter Politics and the Judiciary", in Glen Williams and Michael Whittington, eds., CANADIAN POLITICS IN THE 21st CENTURY, (Scarborough: Nelson, 2007) (*on Brightspace*)

* Andrew Petter and Alan Hutchinson, "Private Rights/ Public Wrongs: the Liberal Lie of the Charter": *Univ. of Toronto Law Journal*, (1988), 38 (3): 77-98

*Rainer Knopf and Ted Morton, THE CHARTER REVOLUTION AND THE COURT PARTY, (Peterborough: Broadview, 2000), Introduction: 13-32

George Monbiot, "Neoliberalism – the ideology at the root of all our problems", *The Guardian*, April 15, 2016: <https://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot>

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

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

For _____
Against _____

Seminar 4 (Oct. 4): Role of the Judiciary

* MacLvor, chs. 3, 4, 5

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

* Kent Roach, THE SUPREME COURT ON TRIAL: JUDICIAL ACTIVISM OR DEMOCRATIC DIALOGUE? (Irwin Law, 2016): chs. 1, 5, 11

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

Peter W. Hogg, Allison A. Bushell Thornton & Wade K. Wright, "Charter Dialogue Revisited -- Or 'Much Ado About Metaphors'", (2007) 45 *Osgoode Hall L.J.*: 1 – 65

Kayla Cheeke, "Reconciling Crown and Indigenous Legal Orders: the Reciprocal Benefits of Reserving an Indigenous Seat on the Supreme Court of Canada," *Appeal: Review of Current Law and Law Reform*, 22, 97 (2017)

Rory Leishman, AGAINST JUDICIAL ACTIVISM: THE DECLINE OF FREEDOM AND DEMOCRACY IN CANADA, (Montreal: McGill-Queen's U.P., 2006), chs. 1 "Judicial Activism vs. Rule of Law", ch. 6 "Escalating Judicial Attack on Christians"

Anthony Furey, "[Carbon tax ruling judicial activism at its worst](#)", *Toronto Sun*, March 28, 2021:

Grant Brown, "[Judicial Activism Advances Dysfunctional Federalism](#)", *C2C Journal*, Oct. 16, 2020:

Aaron Wherry, "[The Supreme Court gives Conservatives a chance to move past the carbon tax](#)", *CBC News*, March 25, 2021

James Stribopoulos & Moin A. Yahya, "Does a Judge's Party of Appointment or Gender Matter to Case Outcomes?: An Empirical Study of the Court of Appeal for Ontario (2007) 45 *Osgoode Hall L.J.* 315 – 364

Debate Resolution: *Since 1982, Canadian judges have become activists, politicians in robes, thus rendering judicial impartiality impossible.*

For _____

Against _____

October 11: Statutory Holiday: No class

Seminar 5 (Oct. 18): Indigenous/ Aboriginal Rights

***** Short lecture on the history of colonization and 'Aboriginal rights'**

* Menno Boldt and J.A. Long, "Tribal Philosophies and the Canadian Charter of Rights and Freedoms", *Ethnic and Racial Studies*, 7, 1984: 478-493

* Bradford W. Morse, "Aboriginal and Treaty Rights in Canada", (2013) 62 *Supreme Court Law Review* (2d) 569-673

* John Borrows, "Contemporary Traditional Equality: the Effect of the *Charter* on First Nations Politics", in Schneiderman and Sutherland, CHARTING THE CONSEQUENCES: THE IMPACT OF THE CHARTER OF RIGHTS ON CANADIAN LAW AND POLITICS, (U. OF TORONTO PRESS, 1997): 169-199

* Natasha Bakht and Lynda Collins, "The Earth is Our Mother": Freedom of Religion and the Preservation of Indigenous Sacred Sites in Canada", *McGill Law Journal*, (2017) 62 (3): 777-812

(update: Megan Michelson, "The Controversial Ski Resort that will Never Exist", *Outside*, Jan. 2020: <https://www.outsideonline.com/adventure-travel/destinations/north-america/jumbo-glacier-ski-resort-canada/>)

Emily Luther, "Whose Distinctive Culture?: Aboriginal Feminism and R. v. Van der Peet", (2010) 8: 1 *Indigenous Law Journal*: 27-53

Thomas Isaac, "Canadian Charter of Rights and Freedoms: The Challenge of the Individual and Collective Rights of Aboriginal People", (2002) 21 *Windsor Yearbook of Access to Justice* 431

David R. Boyd, "No Taps, No Toilets: First Nations and the Constitutional Right to Water in Canada", (2011) 57: 1 *McGill L. J.*: 81 - 134

Debate Resolution: *The Charter has been a net loss for Indigenous peoples in Canada.*

For _____

Against _____



October 25-29 - Fall Break - No Classes



Seminar 6 (Nov. 1): Economic and Social Rights - Class, Labour, + Business

* MacIvor, pp. 70-71, 225-226, 235-236, 243-249, ch. 8

* Leila Geggie Hurst, "A New Hope, or a Charter Menace? The New Labour Trilogy's Implications for Labour Law in Canada", (2017) 22 *Appeal: Review of Current Law and Law Reform*: 25-43

* Mary Shaw, "The Politics of Poverty: Why the Charter Does Not Protect Welfare Rights", (2007) 12 *Appeal: Review of Current Law and Law Reform*: 1-9

* Andrew Petter, "Wealthcare: the Politics of the Charter Revisited", in Colleen M. Flood, Lorne Sossin and Kent Roach, eds., *ACCESS TO CARE, ACCESS TO JUSTICE: THE LEGAL DEBATE OVER PRIVATE HEALTH INSURANCE IN CANADA*, (University of Toronto Press, 2005): 116-138

Martha Jackman and Bruce Porter, *ADVANCING SOCIAL RIGHTS IN CANADA*, (Irwin Law, 2014), "Introduction": 1-29; ch. 3 "Poverty as a Human Rights Violation": 107-127

Micah L. Berman +, "Commercial Speech Law and Tobacco Marketing: A Comparative Discussion of the United States and Canada," *American Journal of Law & Medicine*, 39, 218 (2013) – section III.

Martha Jackman, "Health Care and Equality: Is There a Cure?", (2007) 15 *Health L. J.* 87 – 141

David DesBaillets, "The International Human Right to Housing and the Canadian Charter: a Case Comment on *Tanudjaja v. Canada (Attorney General)*", (2015) *Windsor Yearbook of Access to Justice*, 32: 121.

Michael Mac Neil, "Freedom of Association in a Free Enterprise System: Wal-Mart in Jonquiere", (2009-2010) 15 *Canadian Labour and Employment L.J.* 495 - 540

Bruce Campbell and Armine Yalnizyan, "[Why Unions Matter](#)", Canadian Centre for Policy Alternatives, 03/10/11:

Jim Stanford, "[The pandemic has caused a surprising rebound for the unions — participation is now higher than it's been in 15 years](#)", *Toronto Star*, Sept. 5, 2020

* BalancedPolitics.org: "[Are Labor Unions a Good Thing?](#)" (pros & cons)

Noël A. Kinsella, "Can Canada Afford a Charter of Social and Economic Rights? Toward a Canadian Social Charter" (2008), 71 *Saskatchewan Law Review*: 7-22

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 7 (Nov. 8): Equality Rights - Gender

*** Short lecture on gender inequality

* MacIvor, ch. 13, pp. 86, 107-108, 136-137, 144-149, 154-161, 192-193, 271

* Alexandra Dobrowolsky, "Mobilizing Equality through Canada's Constitution and Charter: Milestones, or Missed and Even Mistaken Opportunities?", in Manon Tremblay and Joanna Everitt, eds, *THE PALGRAVE HANDBOOK OF GENDER, SEXUALITY, AND CANADIAN POLITICS*, (Palgrave, 2020): especially from the section entitled 'Building the Constitutional Equality Structure from the 1960s' to the conclusion

* Radha Jhappan, "The Equality Pit or the Rehabilitation of Justice?", in R. Jhappan, ed., *WOMEN'S LEGAL STRATEGIES IN CANADA*, (Univ. of Toronto Press, 2002): 175-234

* Jennifer Koshan and Jonnette Watson Hamilton, "The Continual Reinvention of Section 15 of the Charter", (2013) 64 *U.N.B.L.J.* 19 – 53

Valentina Rita Scotti, "Women's rights and minorities' rights in Canada. The challenges of intersectionality in Supreme Court jurisprudence", *Perspectives on Federalism*, (2017) 9 (3): E-194-E-218

Marilou McPhedran, "Creating Trialogue: Women's Constitutional Activism in Canada", *Canadian Woman Studies*, (2006) 25, (3/ 4): 5

Seila Rizvic, "[Why Many Women Can't Get Justice from Sexual Assault Trials](#)", *The Walrus*, 20/02/2018:

Richard Jochelson and Kirsten Kramar, "Essentialism Makes for Strange Bedmates: The Supreme Court Case of J.A. and the Intervention of L.E.A.F.", (2012) 30 *Windsor Y.B. Access Just.*: 77

Dana Olwan, <http://www.rabble.ca/news/2010/05/unfairness-bill-94-unveiled>

Caylee Hong, "Feminists on the Freedom of Religion: Responses to Québec's Proposed Bill 94 (2011) 8 *J.L. & Equality* 27-62

Barbara Findlay, "Real Women: *Kimberly Nixon v. Vancouver Rape Relief*" (2003) 36 *U.B.C. L. Rev.* 57 – 76

Shannon Rupp, "[Transsexual Loses Fight with Women's Shelter: Complex case asked: What's discrimination?](#)", *TheTyee.ca*, 3 Feb 2007

Carissima Mathen, "Transgendered Persons and Feminist Strategy", *Can. J. of Women and the Law*, 16, 2004: 291-316

Jena McGill and Kyle Kirkup, "Locating the Trans Legal Subject in Canadian Law: *XY v. Ontario*", 33 *Windsor Review of Legal and Social Issues* (2013): 96

Mariam Ibrahim, "Transgender woman wins court case; Judge rules birth certificate legislation violates Charter rights", *Edmonton Journal*, 24 Apr 2014: A.1.

Samuel Singer, "Trans Rights are Not Just Human Rights: Legal Strategies for Trans Justice", *Can. J. of Law & Society*, (2020) 35 (2): 293-315

Debate Resolution: *The Charter has produced diminishing returns for Canadian women because of the inherent limitations of the equality frame.*

For _____

Against _____

Seminar 8 (Nov. 15): Equality – Sexual Orientation/Identity



MacIvor, pp. 97-98, 152-154, 322-329

* 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

* Brenda Cossman, "Lesbians, Gay Men, and the Canadian Charter of Rights and Freedoms", (2002) 40 *Osgoode Hall L.J.* 223 – 249

* Susan Boyd, "['Marriage is more than just a piece of paper': Feminist Critiques of Same Sex Marriage](#)", (2013) *Nat'l Taiwan U. L. Rev* 263

* Jo-Anne Pickel, "Wedding Toasts and Unmannerly Wedding Gossip: Same-Sex Marriage and the Charter's Paradoxes for Equality-Seeking Groups" (2004) 3 *Journal of Law and Equality*: 111-135

Faisal Bhabha, "Hanging in the Balance: The Rights of Religious Minorities", (2016), 75 S.C.L.R. (2d) 265 – 284

Katherine Young and Paul Nathanson, "Redefining Marriage or Deconstructing Society: a Canadian Case Study", *Journal of Family Studies*, Nov. 2007, 13, 2: 133-178 (*anti-same sex marriage position*)

Rachael Lake, "MSM Blood Donation Ban: (In)Equality, Gay Rights and Discrimination Under the Charter", (2010) 15 *Appeal: Review of Current Law and Law Reform* 136-149

Robert Wintemute, "Sexual Orientation and the Charter: The Achievement of Formal Legal Equality (1985-2005) and Its Limits", (2004) 49 *McGill L.J.* 1143 - 1180

Debate Resolution: *The essentialist definitions of sexuality and gender identity that tend to underlie the formal equality claims of LGBTQIA individuals promote mere assimilation rather than true equality.*

For _____

Against _____

Seminar 9 (Nov. 22): Fundamental Freedoms - Religion

MacIvor, pp. 226-231, 249-256

* 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

*Tina Mirzazadeh, "Discrimination in the Name of Secularism: A Ban on Religious Symbols in Québec", (2015) 28 *Pac. McGeorge Global Bus. & Dev. L.J.* 411

* Barry W. Bussey, "Law Matters but Politics Matter More: The Supreme Court of Canada and Trinity Western University", (2018) *Ox. J Law Religion*, 7 (3): 559-568

Vrinda Narain, "Quebec's Bill 62: Legislating Difference", (2018) 9 *Colum. J. Race & L.* 54

Matthew P. Harrington, "Canada's New Hierarchy of Rights", (2019), 91 S.C.L.R. (2d) 297 – 350

Morgan Lowrie, "[Quebec court upholds most of province's secularism law, exempts English school boards](#)", *Toronto Star*, April 20, 2021

Allison N. Crawford, "Learning Lessons from Multani: Considering Canada's Response to Religious Garb Issues in Public Schools", (2007) 36 *Ga. J. Int'l & Comp. L.* 159

Michael Manley-Casimir, and Kristen Manley-Casimir, THE COURTS, THE CHARTER, AND THE

SCHOOLS: THE IMPACT OF THE CHARTER OF RIGHTS AND FREEDOMS ON EDUCATIONAL POLICY AND PRACTICE, 1982-2007, (U. of T. Press, 2010):

- John Long and Romulo Magsino, "Religion in Canadian Education: Whither Goest Thou?": 109-134
- Kevin Kindred, "The Teacher in Dissent": 141-154

"[Should politicians pray? Canada's Supreme Court says no, but parliamentarians say 'Amen'](#)", *Global News*, Nov. 1, 2017

Jacquelyn Shaw, "Sacred Rites, Sacred Rights: Balancing Respect for Culture and the Health Rights of Women and Girls in Islamic Canadian Communities Seeking to Practise Female Genital Mutilation", (2004) 3 *Journal of Law and Equality* 31

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 10 (Nov. 29): Fundamental Freedoms (Expression/ Hate speech)

* MacIvor, pp. 224-225, 231-243

* Kathleen Mahoney, "Speech, Equality, and Citizenship in Canada", (2010) *Common Law World Review*, 39 1 (69)

* Edward Greenspan, "Should hate speech be a crime?", *Queens Quarterly*, 111,1, (Spring 2004): 72-85

* 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

Kathleen Mahoney, "The Harm of Hate Speech: Are Media Responses Knee Jerk, Impulsive and Thoughtless?" May 3, 2013: <http://ablawg.ca/2013/05/03/the-harm-of-hate-speech-are-media-responses-knee-jerk-impulsive-and-thoughtless/>

Cara Faith Zwibel, "Reconciling Rights: The *Whatcott* Case as Missed Opportunity", (2013), 63 *S.C.L.R.* (2d) 313 – 335

Carol Lowes, "Hate Speech Quandary: Christians divided over amendment that seeks to protect gays", *Christianity Today*, 2004-07-01, Vol 48 (7): 18

Shimon Koffler Fogel, "[Ottawa is right to tackle online radicalization](#)", *The Toronto Star (Online)*, May 16, 2019.

"[The Saturday Debate: Does the proposed new hate speech law go too far?](#)", *The Toronto Star (Online)*, Jul 31, 2021.

Daniel Tencer, "[Bill C-304: Hate Speech Clause's Repeal Gives White Supremacists Rare Moment of Glee](#)", *Huff Post*, 06/08/2012

Emily Laidlaw, "[Protection Against Online Hate Speech: Time for Federal Action](#)", *ABlawg [BLOG]*, Calgary: Newstex. Mar 19, 2021.

Ishani Maitra and Mary Kate McGowan, "On Racist Hate Speech and the Scope of a Free Speech Principle" (2010) 23 *Canadian Journal of Law and Jurisprudence*: 343 – 372

Joseph Brean, "[Court finds Internet hate speech law Section 13 to be constitutionally valid, doesn't violate freedom of expression](#)", *National Post*, February 2, 2014

Andrew Coyne, "[Whatcott: has he done real harm?](#)", *Edmonton Journal*, 28 Feb 2013: A.21.

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

For _____
Against _____

Seminar 11 (Dec. 6): Charter Rights and Anti-terrorism Measures

MacIvor, ch. 12 (overview of legal rights)

* Kent Roach, "Must We Trade Rights for Security?: The Choice between Smart, Harsh, or Proportionate Security Strategies in Canada and Britain", (2005-2006) 27 *Cardozo L. Rev.*: 2151

*David Jenkins, "In Support of Canada's Anti-Terrorism Act: A Comparison of Canadian, British, and American Anti-Terrorism Law", (2003) 66 *Sask. L. Rev.* 419 – 454

* Kent Roach, "The Role and Capacities of Courts and Legislatures in Reviewing Canada's Anti-Terrorism Law", (March, 2008) 24 *Review of Legal and Social Issues*: 5 (summary of the case law)

* Michael Nesbitt, "Violent crime, hate speech or terrorism? How Canada views and prosecutes far-right extremism (2001–2019)", *Common Law World Review*, (2021) 50 (1): 38-56

Craig Forcese and Kent Roach, "[Bill C-51: the Good, the Bad, and the Truly Ugly](#)", *The Walrus*, 13/02/15

Craig Forcese and Kent Roach, "[The Roses and the Thorns of Canada's New National Security Bill \(C-59\)](#)", *Macleans*, June 20, 2017

Ryan Alford, "Bill C-59 and the Former Bill C-22: Compromised Oversight and Continuing Threats to Non-Derogable Rights", (2018) 69 *UNBLJ* 53 - 95

Craig Forcese and Kent Roach, "Criminalizing Terrorist Babble: Canada's Dubious New Terrorist Speech Crime", (2015) 53:1, *Alta L Rev* 35 – 84

Melissa Ku, "Walking the Tightrope between National Security and Freedom of Expression: A Constitutional Analysis of the New Advocating and Promoting Terrorism Offence", (2016) 21 *Appeal* 83-98

Kai Nielsen, "On the Moral Justifiability of Terrorism (State and Otherwise)", (2003) 41 *Osgoode Hall L.J.* 427 – 444

Craig Forcese and Leah West Sherriff, "Killing Citizens: Core Legal Dilemmas in the Targeted Killing Abroad of Canadian Foreign Fighters", *The Canadian Yearbook of International Law* (Oct 2017): 134-187.

***Debate Resolution:** The threats of contemporary terrorism and the imperatives of national security justify the suspension of certain Charter rights under certain circumstances.*

For _____

Against _____

Seminar 12 (Dec. 10): Cabinet Brief Presentations and Overall Consequences of the Charter

MacIvor, chs. 5, 13

* Harry Arthurs and Brent Arnold, "Does the Charter Matter?", *Review of Constitutional Studies*, 11, 1, (2006): 37-118

* Peter J. McCormick, *THE END OF THE CHARTER REVOLUTION: LOOKING BACK FROM THE NEW NORMAL*, (Univ. of Toronto Press, 2015): conclusion, 231-247 (ebook)

*The Hon. Beverley McLachlin, "The Canadian Charter of Rights and Freedoms' First 30 Years: A Good Beginning", (2013), 61 *S.C.L.R.* (2d) 25 - 44

Daniel Schwartz, "6 big changes the Charter of Rights has brought", *CBC News* · April 17, 2012
<https://www.cbc.ca/news/canada/6-big-changes-the-charter-of-rights-has-brought-1.1244758>

Mark Tushnet, "The Charter's Influence Around the World", (2013) 50 *Osgoode Hall L.J.* 527 – 546

Debate Resolution: *"The Charter does not much matter in the precise sense that it has not – for whatever reason – significantly altered the reality of life in Canada".*

For _____

Against _____



Appendix

Covid-19 Information

All members of the Carleton community are required to follow COVID-19 prevention measures and all mandatory public health requirements (e.g. wearing a mask, physical distancing, hand hygiene, respiratory and cough etiquette) and [mandatory self-screening](#) prior to coming to campus daily.

If you feel ill or exhibit COVID-19 symptoms while on campus or in class, please leave campus immediately, self-isolate, and complete the mandatory [symptom reporting tool](#). For purposes of contact tracing, attendance will be recorded in all classes and labs. Participants can check in using posted QR codes through the cuScreen platform where provided. Students who do not have a smartphone will be required to complete a paper process as indicated on the [COVID-19 website](#).

All members of the Carleton community are required to follow guidelines regarding safe movement and seating on campus (e.g. directional arrows, designated entrances and exits, designated seats that maintain physical distancing). In order to avoid congestion, allow all previous occupants to fully vacate a classroom before entering. No food or drinks are permitted in any classrooms or labs.

For the most recent information about Carleton's COVID-19 response and required measures, please see the [University's COVID-19 webpage](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca

Please note that failure to comply with University policies and mandatory public health requirements, and endangering the safety of others are considered misconduct under the [Student Rights and Responsibilities Policy](#). Failure to comply with Carleton's COVID-19 procedures may lead to supplementary action involving Campus Safety and/or Student Affairs.

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:

Pregnancy accommodation: 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. For more details, visit the Equity Services website: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf.

Religious accommodation: 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. For more details, visit the Equity Services website: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf.

Accommodations for students with disabilities: If you have a documented disability requiring academic accommodations in this course, please contact the Paul Menton Centre for Students with Disabilities (PMC) at 613-520-6608 or pmc@carleton.ca for a formal evaluation or contact your PMC coordinator to send your instructor your Letter of Accommodation at the beginning of the term. You must also contact the PMC no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, reach out to your instructor as soon as possible to ensure accommodation arrangements are made. For more information, please visit carleton.ca/pmc.

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 engage in student activities 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. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please contact the departmental administrator or visit: students.carleton.ca/course-outline.

Sexual Violence Policy

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated. 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: carleton.ca/sexual-violence-support.

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 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, art works, 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;
- 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 which cannot be resolved directly with the course’s instructor. The Associate Deans of the Faculty conduct 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 may include a mark of zero for the plagiarized work or a final grade of "F" for the course.

More information on the University’s Academic Integrity Policy can be found at:
<https://carleton.ca/registrar/academic-integrity/>.

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).

Submission and Return of Term Work

Papers must be submitted directly to the instructor according to the instructions in the course outline. During the COVID-19 pandemic, the departmental office will not accept assignments submitted in hard copy.

Grading

Standing in a course is determined by the course instructor, subject to the approval of the faculty Dean. Final standing in courses will be shown by alphabetical grades. The system of grades used, with corresponding grade points is:

Percentage	Letter grade	12-point scale	Percentage	Letter grade	12-point scale
90-100	A+	12	67-69	C+	6
85-89	A	11	63-66	C	5
80-84	A-	10	60-62	C-	4
77-79	B+	9	57-59	D+	3
73-76	B	8	53-56	D	2
70-72	B-	7	50-52	D-	1

Standing in a course is determined by the course instructor subject to the approval of the Faculty Dean. This means that grades submitted by an instructor may be subject to revision. No grades are final until they have been approved by the Dean.

Carleton E-mail Accounts

All email communication to students from the Department of Political Science will be via official Carleton University e-mail accounts and/or Brightspace. As important course and university information is distributed this way, it is the student's responsibility to monitor their Carleton University email accounts and Brightspace.

Carleton Political Science Society

The Carleton Political Science Society (CPSS) has made its mission to provide a social environment for politically inclined students and faculty. By hosting social events, including Model Parliament, debates, professional development sessions and more, CPSS aims to involve all political science students at Carleton University. Our mandate is to arrange social and academic activities in order to instill a sense of belonging within the Department and the larger University community. Members can benefit through our networking opportunities, academic engagement initiatives and numerous events which aim to complement both academic and social life at Carleton University. To find out more, visit us on Facebook <https://www.facebook.com/CarletonPoliticalScienceSociety/>.

Official Course Outline

The course outline posted to the Political Science website is the official course outline.