

PSCI 4109A
The Politics of the Canadian Charter of Rights and Freedoms
Thursday's 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 12:00-1:00pm 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 the 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 11:35-1:00pm on Thursday will lead into the discussion from 1:00pm-2:25pm. For that latter portion, the discussion, your participation is crucial. 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 (50%) 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 (25%) and essential to succeeding during the constitutional amendment convention (25%).

Required Materials: All Readings available on Brightspace

COURSE ASSESSMENT

2 Forum “lead responses” (15% each)	Ongoing (at least one by February 10 th)	30%
4 forum “responses” (4% each)	Ongoing (at least one by February 12 th)	20%
Midterm	February 15	25%
<u>Constitutional Amendment Convention</u>	<u>April 3-5</u>	<u>25%</u>
Total		100%

Lead Responses (2x15%=30%)

Every week starting with Week 2, during class on Thursdays 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 Saturday of 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 Thursday class and use evidence from the week's lecture and assigned reading material. Most importantly, you are supposed to use evidence, this is the critical part, use evidence from the Thursday 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 10th (failure to do so will result in a 15% loss of your overall grade in the course). A grading rubric and an example of a lead response appears on Brightspace.

Forum Responses (4x5%=20%)

Students NOT writing a “lead response” for a given week, will participate in the discussion on the forum at least 4 times (only 4 random responses will be graded) during the weeks when they are not writing the “Lead Response” and at least once by February 12th. They are due on Monday in response to the Saturday “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 reference 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 15th) 25%

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. It will consist of 40 multiple choice questions.

Debating the Limits of the Charter (April 3-5) 25%

During the February 29 class, when we discuss freedom of expression, 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 3rd, 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 3rd and 5th, 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.

Weekly Schedule:

Week 1 (Jan 11): Charter's Purpose (I): Introduction and nature of the Charter

Week 2 (Jan 18): 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 25): 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 (Feb 1): Charter's Purpose (III): Judicial review vs. Will of the people

- Readings:*
1. Christopher P. Manfredi, "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 8): 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 15): 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 7 (Feb 22): Reading Week! No classes.

Week 8 (Feb 29): 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. Richard Moon, "The Attack on Human Rights Commissions and the Corruption of Public Discourse"

Week 9 (Mar 7): 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 10 (Mar 14): 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 11 (Mar 21): The Constitution, Reconciliation and Indigenous Rights (I)

- Readings:
1. James (Sa'ke'j) 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 12 (March 28): 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 (Apr 3-5): 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 Dropbox 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.

University Policies

Appendix

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>

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:

Academic consideration for medical or other extenuating circumstances: Please contact your instructor if you are experiencing circumstances that (a) are beyond your control, (b) have a significant impact your capacity to meet your academic obligations, and (c) could not have reasonably been prevented. Decisions on academic consideration are in your instructor's discretion; they will be guided by the course learning outcomes and the principle of good faith. Please see [here](#) for more details. For considerations relating to course work, your instructor may request that you complete the [Self-Declaration form](#). To apply for a deferral of your final exam, you must submit the Self-Declaration form to the Registrar's Office no later than three days after the scheduled examination or take-home due date.

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 accommodation regarding a formally-scheduled final exam, you must complete the Pregnancy Accommodation Form ([click here](#)).

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 [click here](#).

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 details, [click here](#).

Accommodation for student activities: Carleton University recognizes the substantial benefits, both to the individual student and to the university, that result from a student participating in activities beyond the classroom. Reasonable accommodation will 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. For more information, please [click here](#).

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.

Academic Integrity

Academic integrity is an essential element of a productive and successful career as a student. Carleton's [Academic Integrity Policy](#) addresses academic integrity violations, including plagiarism, unauthorized collaboration, misrepresentation, impersonation, withholding of records, obstruction/interference, disruption of instruction or examinations, improper access to and/or dissemination of information, or violation of test and examination rules. Students are required to familiarize themselves with the university's academic integrity rules.

Plagiarism

The Academic Integrity Policy 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, websites, 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.

Use of Artificial Intelligence

Unless explicitly permitted by the instructor in a particular course, any use of generative artificial intelligence (AI) tools to produce assessed content (e.g., text, code, equations, image, summary, video, etc.) is considered a violation of academic integrity standards.

Procedures in Cases of Suspected Violations

Violations of the Academic Integrity Policy are serious offences which cannot be resolved directly with the course’s instructor. When an instructor suspects a violation of the Academic Integrity Policy, the Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the student. Penalties are not trivial. They may include a mark of zero for the assignment/exam in question 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. 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.