

Fall 2010

CARLETON UNIVERSITY
DEPARTMENT OF POLITICAL SCIENCE

PSCI 4109A

The Politics of the Canadian Charter of Rights and Freedoms

Seminar: Thursdays 11:35 – 14:25 p.m.
Room: 404 Southam Hall (please confirm location on Carleton Central)

Instructor: Prof. Radha Jhappan **Office:** D697 Loeb
Office Hours: T 12:00 – 2:00 p.m. Th 3:30 – 5:30 p.m., or by appointment
Tel: 2788 **Email:** rjhappan@connect.carleton.ca

Course Description

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

Through oral/written presentations, analysis of a major *Charter* case the class will attend at the Supreme Court of Canada, and class debates, students will be able to: engage key issues and debates in the fields of law and public policy; trace the shifting values that have underpinned human rights law and jurisprudence over the twentieth century; compare and contrast the roles of legislatures and courts in making law; better understand various ideological approaches to 'rights' discourse; examine issues of accessibility to the courts and accountability of non-elected judges; analyze and evaluate the *Charter's* impact on various social groups and public policy fields; understand legal cases; and 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:

One Debate Presentation	20%	(graded in essay format)
One Case Analysis/Research Essay	30%	(15 pages) Due Thurs. Nov. 18, 2010
End-of-Term Exam	35%	(scheduled – December 9-22)
General Participation	15%	(based on engagement with readings/in-class discussion)

Grading Formula

A+	90-100	B+	77-79	C+	67-69	D+	57-59
A	85-89	B	73-76	C	63-66	D	53-56
A-	80-84	B-	70-72	C-	60-62	D-	50-52

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

Academic Accommodations

For Students with Disabilities: Students with disabilities requiring academic accommodations in this course are encouraged to contact the Paul Menton Centre (PMC) for Students with Disabilities (500 University Centre) to complete the necessary forms. After registering with the PMC, make an appointment to meet with the instructor in order to discuss your needs **at least three weeks before the first assignment is due**. This will allow for sufficient time to process your request. The deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is **November 15, 2010**.

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

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

Debate Presentations/ Short Papers – 20%

Each student must participate in one debate, to be chosen during the first seminar (Sept. 9), and confirmed no later than the second seminar (Sept. 16). Debates will begin in the second week (Sept. 16).

In keeping with the adversarial nature of the legal process, a debate resolution has been formulated for each week (see outline below). In order to ensure a balanced exchange, students will either choose or be assigned to the “For” or “Against” position. Depending upon the number of students in the class, there may well be two or more people arguing each position, in which case the debate should be approached as a team exercise – but only for the purpose of the oral presentation. The paper should be treated as an individual exercise. Students must confer with others on their ‘team’ to avoid repetitious arguments in the class presentation, preferably 1-2 weeks before the debate. Each individual’s presentation should normally last no more than 15 minutes, so time should be set aside for rehearsal.

N.B. Failure to deliver a debate presentation will mean that a course component has not been completed, resulting in 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, either directly by telephone/ voice mail (2788), or by an email message. A medical note detailing the extent of incapacitation (e.g. cannot write, see etc.) will be required.

Preparation for presentations includes reading most or even all of the assigned material for the debate in question (for both sides of the argument, in order to be well prepared to address opposing positions), as well as conducting some supplementary research. Depending on the topic, useful sources include: articles in legal or political science journals; legal briefs; position papers; polemical articles and books; statutes; the Criminal Code; legislative debates reported in Hansard; parliamentary committee reports; government discussion or policy papers; Royal Commission reports; briefs to commissions; policy analyses in journals; legal cases; and progress reports from government departments.

N. B. It is generally a good idea to see whether there are any more recent cases on your topic than those in the assigned texts, so check the Canadian Legal Information Institute website at: <http://www.canlii.org/> which has a searchable database for both Supreme Court and Canada-wide/ provincial court (including Charter of Rights) decisions, constitutional documents, statutes and regulations etc. For international comparisons, try <http://www.worldlii.org/>. For articles in legal journals, try the Canadian Periodical Index–Q through the electronic resources tab in the library site.

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

Following the seminar debate, you should take class comments and relevant discussion into account and revise the subject material of the presentation into an essay of 6-8 pages, to be handed in *one week later*. You will not be required to take the position you argued in the oral debate, but rather, you should argue the position that makes most sense to you. The work you have done to argue a particular side of the debate resolution will provide you with a good grounding in the various arguments, some of which you will endorse, others of which you will refute. The oral presentation will be worth 5%, and the written paper 15%. The presentation paper must be handed in within one week of the relevant oral seminar debate. Students must keep both electronic and hard copies of each of their papers, as well as any notes or other materials used for the assignment.

Case Analysis/ Research Essays – Thursday, November 18, 2010

The case analysis will be based on one of the cases summarized below, preferably the first (for scheduling and university grade deadline reasons). In the event that you cannot attend one of these cases, at the discretion of the instructor you may analyze a Charter case heard by the Supreme Court of Canada within the past year. However, the instructor must approve the case.

Nov. 8, 2010

Aliu Imoro v. Her Majesty the Queen (Ontario) (Criminal) (As of Right)

Charter - Criminal law - Search and seizure - Entrapment - Remedies - Stay of proceedings - Exclusion of evidence - Canadian Charter of Rights and Freedoms, s. 24(2). The police received an anonymous tip that the Appellant was selling drugs from an apartment in Toronto, and they decided to investigate. An undercover police officer went to the apartment on two separate occasions to buy drugs, and on both occasions, the Appellant sold the officer cocaine. The police subsequently obtained a search warrant for the Appellant's apartment, and upon execution, they seized cocaine, marijuana and the police "buy money" that was used to purchase the drugs. The Appellant was arrested and charged with two counts each of trafficking cocaine, possession of controlled substances for the purposes of trafficking, and possession of the proceeds of crime. At trial, the Appellant alleged entrapment and moved to have the evidence excluded pursuant to s. 24(2) of the Charter. The trial judge found that the undercover officer's conduct amounted to entrapment, excluded the seized drugs and "buy money", and acquitted the Appellant. The Court of Appeal set aside the acquittals, concluding that there was no evidence to support a finding of entrapment, and entered verdicts of guilty.

Dec. 15, 2010

Olga Maria Nixon v. Her Majesty the Queen (Alberta) (Criminal) (By Leave)

Charter of Rights - Criminal law - Prosecutorial discretion - Abuse of process - Right to life, liberty and security of person - Plea resolution agreements - Repudiation of plea resolution agreements - Once the Crown has exercised ultimate forms of its core prosecutorial discretion, first by electing to bring a prosecution and second by exercising its discretion to accept a guilty plea to a lesser charge, does the Crown's public repudiation of its plea resolution agreement also constitute a hitherto unrecognized ultimate exercise of a core power of Crown discretion? - In order to repudiate a plea resolution agreement, must an attorney general or his or her senior agent believe, and establish, that the first Crown prosecutor's plea resolution agreement was unconscionable, or for an analogous reason, similarly flawed so that if the original agreement was honoured it would undermine the integrity of the court or otherwise bring the administration of justice into disrepute? - Did the Court of Appeal err in deciding that a plea resolution agreement is not in the nature of a lawyer's undertaking? - If not, how are such agreements to be characterized? The prosecution in this case arose from a motor vehicle accident that took place in Alberta in September 2006. The Applicant, Ms. Nixon, drove her motor vehicle home through a stop sign and collided with another vehicle, killing a husband and wife, and injuring their seven year old child. Ms. Nixon was charged with several Criminal Code offences, including impaired driving causing death, impaired driving causing bodily harm, and parallel charges for dangerous driving. A plea resolution was eventually reached. Ms. Nixon agreed to plead guilty to the regulatory offence of careless driving in exchange for immunity from a criminal prosecution. Before the guilty plea was entered, the office of the Attorney General for the Province of Alberta found that the plea resolution agreement was not in the best interests of the administration of justice. The agreement was thus withdrawn. In response, Ms. Nixon brought a Charter application, alleging that the Crown's repudiation of the agreement constituted an abuse of process and breached her s. 7 Charter right not to be deprived of life, liberty and security of the person. The trial judge granted the application. The Court of Appeal allowed the appeal.

Dec. 16, 2010

Her Majesty the Queen in Right of Alberta (Minister of Aboriginal Affairs and Northern Development), et al. v. Barbara Cunningham, et al. (Alberta) (Civil) (By Leave)

Charter of Rights and Freedoms, s. 15 – Constitutional law – Right to equality – Aboriginal law – Métis – Respondents' membership in the Peavine Métis Settlement terminated pursuant to s. 90 of the Métis Settlements Act, R.S.A. 2000, c. M-14 after they voluntarily registered as Indians under the Indian Act, R.S.C. 1985, c. I-5 – Section 75 of the MSA prohibits individuals with Indian status from obtaining Métis settlement membership – Whether the Court of Appeal applied the correct interpretation and application of R. v. Kapp with respect to s.15(2) Charter analysis, particularly, on the relationship between the ameliorative purpose of a given scheme and impugned provisions – Whether this appeal addresses issues fundamental to the role of a government wishing to establish an ameliorative program designed to assist a vulnerable or disadvantaged social group – Whether this appeal addresses issues fundamental to the preservation of Métis culture, which is recognized as a distinct aboriginal culture under s.35 of the Constitution Act, 1982 – Whether this appeal raises issues regarding the right of self-determination and self-definition of all identifiable cultures and minorities within Canada –Whether this appeal addresses issues relevant to persons with Indian status and federal legislation – Whether this appeal raises issues pertaining to the correct approach with respect to s.15(1) Charter analysis. The respondents are individuals whose membership in the Peavine Métis Settlement was terminated pursuant to s. 90 of the Métis Settlements Act, R.S.A. 2000, c. M-14 (“MSA”), which calls for the removal of Métis settlement members who voluntarily register as Indians under the Indian Act, R.S.C. 1985, c. I-5. Section 75 of the MSA prohibits individuals with Indian status from obtaining Métis settlement membership. The respondents' names were removed from its membership list by the applicant, Registrar, Métis Settlements Land Registry pursuant to a list from the then Peavine Council (a new Council has been subsequently elected). The chambers judge denied the respondents' request for a declaration that ss. 75 and 90(1)(a) of the MSA breach ss. 2(d), 7, and/or 15(1) of the Charter. The Court of Appeal allowed the appeal, granted the respondents a declaration of constitutional invalidity of ss. 75 and 90 of the MSA and a direction of severance regarding those provisions, together with an order directing the Registrar to restore the respondents' names to Peavine's membership list. They ordered the relief be retroactive and declined the request that these remedies be suspended for a period of time.



Write a case analysis of 15 pages (double-spaced pages, plus footnotes and bibliographical sources - see the required reading “Essay Tips” on WebCT) that provides: a short political background to the case (e.g. how the issue has or has not been dealt with in public policy); an overview of the players involved (interest groups, state actors); a synopsis of the facts of the case; where possible, a précis of the lower court decision and reasons, as well as relevant precedents; an analysis of the arguments tendered in court by each of the parties; an evaluation of the major political and constitutional issues in play; an assessment of how the court will/should decide the case based on precedents in the area, constitutional provisions, and other relevant considerations.

This assignment will require background research into the issue area and how it has been handled by the legislature and by the courts in the past. Secondary academic literature is available in these issue areas, so you should begin with the required and reserved course texts where appropriate, then search academic books and journals, especially legal journals. The essay will respect all the rules of good essay composition: a central question the essay will address; an introduction with the plan for development of the argument; appropriate choice of method for topic development; respect for argument and evidence; clear and economical exposition; good quality and quantity of appropriate research; appropriately formatted footnotes and bibliography (see “Essay Tips 2010” on *WebCT*).

Scheduled Examination – 35%

The final examination will be held during the scheduled examination period, December 9-22, 2010. *If you are not going to be available during this period, do not take this course.* 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.

The three-hour examination will consist of a series of essay questions, of which you will be required to answer three. The purpose of the examination is to test your knowledge of 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.

N.B. Examinations are scheduled by the university administration, not the Instructor. Please note that they may be scheduled at any time up to the final day of the examination period from December 9-22, 2010. *If you are not going to be available during the scheduled examination period, do not take this course.*

Conduct of the Seminar and Participation Grade – 15%

All students are expected to prepare carefully for each seminar by **reading a chosen core of required readings listed under each week's topic**, and preparing, in addition to notes for private study, **a list of questions and issues emerging from those readings for discussion in the seminar.** Students making debate presentations will necessarily have read most of the core readings and a number of additional materials.

The general participation grade will be distributed over a variety of kinds of participation in the seminars over the whole length of the course, **principally based on the required readings**, including: questions and comments to presenters; faithfulness and steadiness in building up central ideas and themes from week to week as our base of knowledge and shared vocabulary grow (which of course requires steady attendance); contribution of information and analysis to the seminars on the basis of good preparation; and, of course, civility and collegiality in providing good questions and bridges into the discussion for others, as well as both collaborating with and arguing against other viewpoints in the development of themes. Please note that **the participation grade is not for attendance**, although obviously *regular attendance is a prerequisite of a good participation mark.*

N.B. Students who do not participate in seminars will receive a zero for this required component of the course, resulting in a final grade of F for the whole course.

Submission and Return of Term Work

Class presentation papers must be handed in to me in class one week after the oral presentation. Research papers must be handed directly to me in class or during my office hours. Late assignments may be submitted to the drop box in the corridor outside B640 Loeb. Assignments will be retrieved every business day at **4 p.m.**, stamped with that day's date, and then distributed to the instructor. Please attach a **stamped, self-addressed envelope** so that I

can return your assignment by mail. Final exams are intended solely for the purpose of evaluation and will not be returned.

Please note the following:

- Essays sent by fax to the Department of Political Science will not be accepted.
- Papers emailed to the Instructor or the Department will not be accepted.
- DO NOT put on-time essays in the instructor's mailbox. Essays placed in mailboxes may be considered late, as instructors are not necessarily on campus every day (see Late Paper Policy below).
- DO NOT put essays under Instructors' doors under any circumstances.
- There is no penalty for handing in essays before the due date.
- The current Undergraduate Calendar states: "To obtain credit in a course, students must meet all the course requirements for attendance, term work and examinations". A grade of 'F' will be assigned where term work is incomplete.
- *Subject to earlier course deadlines*, no term assignment submitted after December 6, 2010 will be accepted.

Late Paper Policy

You may have an extension for the presentation paper automatically. However, marks will be deducted for late submissions at the rate of one-third of a letter grade per day, e.g. B- to C+, with weekends counting as two days.

If you have serious extenuating circumstances which would warrant an extension without penalty, such as death in the family or illness, medical documentation detailing the extent of your incapacitation is required i.e. the medical note from a certified health care professional need not record your diagnosis, but it must specify what you are consequently unable to do, e.g. see, write etc. However, *you must make your case before the due date*. Instructors are under no obligation to accept a late paper unless it has been cleared prior to the deadline. Retroactive extensions will not be granted. Therefore, you are strongly advised to begin early so that you can get sources from the library (and help if you need it). You should complete your paper *before* the deadline.

N.B. Instructors cannot grant a deferral beyond December 6, 2010 under any circumstances. Students seeking deferrals must apply through the Registrar's office.

Approval of final grades

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.

Plagiarism

The Undergraduate Calendar defines plagiarism as: “to use and pass off as one’s own idea or product, work of another without expressly giving credit to another”. Plagiarism has occurred when a student:

- (a) directly copies another’s work without acknowledgment; or
- (b) closely paraphrases the equivalent of a short paragraph or more without acknowledgment;
- (c) borrows, without acknowledgment, any ideas in a clear and recognizable form in such a way as to present them as the student’s own thought, where such ideas, if they were the student’s own would contribute to the merit of his or her own work; or
- (d) buys, downloads, or in any way procures an essay or other format of work produced by another for the purpose of submitting it as one’s own work.

Instructors who suspect plagiarism are required to submit the paper and supporting documentation to the Department Chair who will refer the case to the Dean. Plagiarism will not be tolerated.

It is not permitted to hand in the same assignment to two or more courses. The Department's Style Guide is available at:

www.carleton.ca/polisci/undergrad/styleguide.pdf

Students should be especially careful about full citation of sources downloaded from the Internet. For greater clarity, see the "Essay Tips" document on WebCT and the Undergraduate Calendar. *For their own protection, all students are required to keep a complete dossier of their notes, rough drafts, research materials (other than returnable library books) and a hard copy of their final draft, as well as computer files as records of ‘dates created’ and ‘dates modified’ for essay files.* Failure to keep such materials could result in a failing grade.

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.

Course Email via WebCT

All registered students should have an email account through the WebCT system. I will be using the WebCT service to post electronic versions of course readings, as well as to make announcements and convey course-related information (e.g. re the Supreme Court trip). Students are responsible for checking their WebCT email accounts frequently for such information.

Please do not send substantive questions relating to course material via email. If you have questions, please come to see me during office hours to discuss them.

Required Texts (available at Octopus Books, 116 3rd Ave., [off Bank St.], Tel: 613 233 2589)

Heather MacIvor, CANADIAN POLITICS AND GOVERNMENT IN THE CHARTER ERA, (Toronto: Thomson Nelson, 2006)

Michael Mandel, THE CHARTER OF RIGHTS AND THE LEGALIZATION OF POLITICS IN CANADA, (Toronto: Wall and Thompson, 1994) - many copies in library

SEMINAR TOPICS AND READINGS

SEMINAR 1 (SEPT. 9): INTRODUCTION

- general introduction to the course
- presentation schedule
- discussion of Supreme Court case hearing for class trip

SEMINAR 2 (SEPT. 16): PRE-CHARTER CIVIL RIGHTS IN CANADA

* Mandel, pp. 1-27

* 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”

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

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

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

For _____

Against _____

SEMINAR 3 (SEPT. 23): THE NATURE OF CHARTER RIGHTS

* MacIvor, ch. 1

* Mandel, ch. 1: 60-74

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

Andrew Petter, THE POLITICS OF THE CHARTER: THE ILLUSIVE PROMISE OF CONSTITUTIONAL RIGHTS, (UTP, 2010), ch. 3, "Private Rights/ Public Wrongs: the Liberal Lie of the Charter", and ch. 5, "Rights in Conflict: the Dilemma of Charter Legitimacy"

J.E. Magnet, G. Beaudoin, et. al., eds. THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS: REFLECTIONS ON THE CHARTER AFTER 20 YEARS, (Toronto: LexisNexis Butterworths, 2003):

- Michael D. Behiels, "Pierre Elliott Trudeau's Legacy: the Canadian Charter of Rights and Freedoms": 139-173
- Gerald-A. Beaudoin, "Dynamic Interpretation of the Charter": 175-198

James B. Kelly, GOVERNING WITH THE CHARTER: LEGISLATIVE AND JUDICIAL ACTIVISM AND FRAMERS' INTENT, (Vancouver: U.B.C. Press, 2005):

- ch. 2, "Constitutional Politics and the Charter": 46-79
- ch. 3, "Framers' Intent and the Parliamentary Arena": 80-103

Robert J. Sharpe, K.E. Swinton, and Kent Roach, THE CHARTER OF RIGHTS AND FREEDOMS, 2nd ed., (Toronto: Irwin Law, 2002), ch. 6 ("Application": 85-96)

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

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

For _____

Against _____

SEMINAR 4 (SEPT. 30): ROLE OF THE JUDICIARY

* MacIvor, chs. 3, 4

Mandel, pp. 39-81

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

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

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

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

- ch. 2, “Judges and the Charter Revolution”: 33-58
- ch. 5, “The Jurocracy”: 107-128
- ch. 6, “Power Knowledge: the Supreme Court as the Vanguard of the Intelligentsia”: 129-147

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

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

C.L. Ostberg and Matthew E. Wetstein, ATTITUDINAL DECISION MAKING IN THE SUPREME COURT OF CANADA, (Vancouver: UBC Press, 2007), ch. 8 (210-227)

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

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

Rob Martin, “Our judges are enemies of judicial independence”, *The Lawyers Weekly*, 13:35 January 28, 1994 (WebCT)

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

For _____

Against _____

SEMINAR 5 (OCT. 7): INTEREST GROUPS AND THE DEMOCRATIC PROCESS

MacIvor, ch. 6

F.L. Morton and R. Knopff, THE CHARTER REVOLUTION AND THE COURT PARTY, (Peterborough: Broadview, 2000), ch. 3, ch. 4, “The State Connection”: 87-106

Faisal Bhabha, “Institutionalizing Access-to-Justice: Judicial, Legislative and Grassroots Dimensions (2007), 33 Queen's L.J. 139 – 178

Miriam Smith, *A CIVIL SOCIETY?: COLLECTIVE ACTORS IN CANADIAN PUBLIC LIFE*, (Broadview: Peterborough, 2005): ch. 6

Ian Brodie, *FRIENDS OF THE COURT: THE PRIVILEGING OF INTEREST GROUP LITIGANTS IN CANADA*, (SUNY Press, 2002), chs. 3, 4

Debate Resolution: The admission of interest groups into the constitutional litigation arena since 1982 has perverted both the legal and the democratic processes.

For _____

Against _____

SEMINAR 6 (OCT. 14): ECONOMIC RIGHTS CLASS, LABOUR, AND BUSINESS

MacIvor, pp. 272-278

* Mandel, ch. 5

* Judy Fudge, "Labour is not a Commodity": The Supreme Court of Canada and the Freedom of Association", (2004) 67 *Saskatchewan Law Review* 425 – 452 (WebCT)

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

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

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

- ch. 5, "Freedom of Association and the Dissociation of Workers": 77-86
- ch. 6, "Power to the Powerful": 87-94
- ch. 9, "What's Wrong with Social Rights?": 134-141

Judy Fudge, "Legally Speaking: Courts, Democracy, and the Market", in J.E. Magnet, G. Beaudoin, et. al., eds. *THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS: REFLECTIONS ON THE CHARTER AFTER 20 YEARS*, (Toronto: LexisNexis Butterworths, 2003): 111-135

Andrew Petter, *THE POLITICS OF THE CHARTER: THE ILLUSIVE PROMISE OF CONSTITUTIONAL RIGHTS*, (UTP, 2010), ch. 8 "Wealthcare"

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 (WebCT)

Margot Young, "Section 7 and the Politics of Social Justice", (2005) 38 *U.B.C. L. Rev.* 539 – 560 (WebCT)

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

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 (OCT. 21): ABORIGINAL RIGHTS

* Bradford W. Morse, “Twenty Years of Charter Protection: The Status of Aboriginal Peoples under the Canadian Charter of Rights and Freedoms”, (2002) 21 *Windsor Yearbook of Access to Justice* 385 (WebCT)

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

* Mary Ellen Turpel, “Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences”, in Richard Devlin, ed. *CANADIAN PERSPECTIVES ON LEGAL THEORY*, (Toronto: Emond Montgomery, 1991): 503-527

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 (WebCT)

James (Sákéj) Youngblood Henderson , “Postcolonial Indigenous Legal Consciousness”, (2002) 1 *Indigenous L.J.* 1 – 56

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

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

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

For _____

Against _____

SEMINAR 8 (OCT.28): CHARTER RIGHTS AND THE ANTI-TERRORISM ACT

* 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 (WebCT)

* Faisal A. Bhabha, “Tracking 'Terrorists' or Solidifying Stereotypes?: Canada's Anti-Terrorism Act in Light of the Charter's Equality Guarantee” (2003) 16 *Windsor Review of Legal and Social Issues*: 95 (WebCT)

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

Reem Bahdi, “No Exit: Racial Profiling and Canada's War Against Terrorism” (2003) 41 *Osgoode Hall L.J.* 293 - 317 (WebCT)

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 (WebCT)

Alysia Davies, “Invading the Mind: The Right to Privacy and the Definition of Terrorism in Canada”, (2006) 3:1 *University of Ottawa Law & Technology Journal*: 249 (WebCT)

Jonathan Shapiro, “An Ounce of Cure for a Pound of Preventive Detention: Security Certificates and the Charter”, (2008) 33 *Queen's L.J.* 519 – 564 (WebCT)

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 9 (NOV. 4): EQUALITY RIGHTS - GENDER

* MacIvor, ch. 11, pp. 157-161, 164-166, 168-173

* Sheila McIntyre and Sanda Rodgers, eds., *DIMINISHING RETURNS: INEQUALITY AND THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS*, (Markham, Ont.: LexisNexis Butterworths, 2006):

- Sheila McIntyre and Sanda Rodgers, “Introduction”
- Sheila McIntyre, “Deference and Dominance: Equality Without Substance”

* Radha Jhappan, ed., *WOMEN'S LEGAL STRATEGIES IN CANADA*, (Univ. of Toronto Press, 2002):

- R. Jhappan, “The Equality Pit or the Rehabilitation of Justice?": 175-234
- Sheila McIntyre, “Feminist Movement in Law: Beyond Privileged and Privileging Theory”: 42-100

Daphne Gilbert and Diana Majury, “Critical Comparisons: the Supreme Court of Canada Dumps s.15”, (2006) 24 Windsor Yearbook of Access to Justice 111

Christopher P. Manfredi, FEMINIST ACTIVISM IN THE SUPREME COURT: LEGAL MOBILIZATION AND THE WOMEN’S LEGAL EDUCATION AND ACTION FUND, (Vancouver: U.B.C. Press, 2004): ix-x, 63-90, 112-148, 193-197

Mandel, pp. 376-454

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

For _____

Against _____

SEMINAR 10 (NOV. 11): EQUALITY RIGHTS - SEXUAL ORIENTATION/ IDENTITY

* MacIvor, pp. 166-168

* 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 (WebCT)

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

John Fisher, “Outlaws or In-laws?: Successes and Challenges in the Struggle for LGBT Equality”, (2004) 49 McGill L.J. 1183 – 1208

F.C. DeCoste, “The Halpern Transformation: Same-Sex Marriage, Civil Society, and the Limits of Liberal Law”, (2003) 41 Alberta Law Review 619 - 642

Elaine Craig, “‘I Do’ Kiss And Tell: The Subversive Potential Of Non-Normative Sexual Expression From Within Cultural Paradigms”, (Fall 2004) 27 Dalhousie L.J. 403

Sheila McIntyre and Sanda Rodgers, eds., DIMINISHING RETURNS: INEQUALITY AND THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS, (Markham, Ont.: LexisNexis Butterworths, 2006):

- Shelley Gavigan: “Equal Families, Equal Parents, Equal Spouses, Equal Marriage: The Case of the Missing Patriarch”

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

Bruce MacDougall, “The Separation of Church and State: Destabilizing Traditional Religion-based Legal Norms on Sexuality”, (2003) 36 U.B.C. L. Rev. 1-27 (WebCT)

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

For _____

Against _____

SEMINAR II (NOV. 18): FUNDAMENTAL FREEDOMS (RELIGION)

* MacIvor, pp. 249-256

Mandel, pp. 405-433

* 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 (WebCT)

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

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

Ayelet Shachar, “Religion, State, and the Problem of Gender: New Modes of Citizenship and Governance in Diverse Societies”, (2005) 50 *McGill L.J.* 49-88 (WebCT)

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

Zoë Oxaal, “Second-Guessing the Bishop: Section 93, the Charter, and the "religious government actor" in the Gay Prom Date Case”, (2003), 66 *Sask. L. Rev.* 455 – 484 (WebCT)

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

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

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 (WebCT)

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 12 (NOV. 25): FUNDAMENTAL FREEDOMS (EXPRESSION)

* MacIvor, pp. 256-272

Mandel, pp. 369-376

* Jean-François Gaudreault-DesBiens, “From Sisyphus's Dilemma to Sisyphus's Duty? A Meditation on the Regulation of Hate Propaganda in Relation to Hate Crimes and Genocide”, (2001) 46 McGill L.J. 121 – 139 (WebCT)

* Ian B. McKenna, “Canada’s Hate Propaganda Laws - A Critique”, Ottawa Law Review, 26, 1, 1994: 159-185 (WebCT)

* 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

June Ross, “The Protection of Freedom of Expression by the Supreme Court of Canada”, in J.E. Magnet, G. Beaudoin, et. al., eds. THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS: REFLECTIONS ON THE CHARTER AFTER 20 YEARS, (Toronto: LexisNexis Butterworths, 2003): 81-109

Jonathan Cohen, “More Censorship or Less Discrimination?: Sexual Orientation Hate Propaganda in Multiple Perspectives”, (2000) 46 McGill L.J. 69-104 (WebCT)

Luke McNamara, “Negotiating the Contours of Unlawful Hate Speech: Regulation Under Provincial Human Rights Laws in Canada”, (2005) 38 U.B.C. L. Rev. 1-82 (WebCT)

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

For _____

Against _____

SEMINAR 13 (DEC 2): OVERALL CONSEQUENCES OF THE CHARTER

* MacIvor, chs. 5, 13

* Janet L. Hiebert, CHARTER CONFLICTS: WHAT IS PARLIAMENT’S ROLE?, (Montreal: McGill-Queen’s, 2002): 200-228

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 (WebCT)

Carissima Mathen, “Dialogue Theory, Judicial Review, and Judicial Supremacy: A Comment on ‘Charter Dialogue Revisited’”, (2007) 45 *Osgoode Hall L.J.* 125 - 146

J.E. Magnet, G. Beaudoin, et. al., eds. THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS: REFLECTIONS ON THE CHARTER AFTER 20 YEARS, (Toronto: LexisNexis Butterworths, 2003):

- Rainer Knopff, “How Democratic is the Charter? And Does It Matter?”: 199-218
- Vic Toews, “The Charter in Canadian Society”: 345-350
- Rosalie Silberman Abella, “Public Opinion, the Courts, and Rights: The Charter in Context”: 421-435

Andrew Petter, THE POLITICS OF THE CHARTER: THE ILLUSIVE PROMISE OF CONSTITUTIONAL RIGHTS, (UTP, 2010), ch. 9 “Taking Dialogue theory Much Too Seriously”

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

For _____

Against _____