

FALL 2019

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

PSCI 4109A

Politics of the Canadian Charter of Rights and Freedoms



Seminar: Wednesdays 14:35 – 17:25

(Please confirm location on Carleton Central)

Dr. R. Jhappan

Email:

Office Hours:

Office: D697 Loeb Tel: 520 2600, ext. 2788

Radha.Jhappan@carleton.ca

W 12:00 – 14:00 Th 12:00 – 14:00, or by appointment

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 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 Aboriginal rights, labour and socio-economic rights, fundamental freedoms (religion, expression), anti-terrorism, and equality rights (gender, sexual identity).

Through oral/written presentations, class debates, and analysis of a major *Charter* case the class will attend at 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 social groups and public policy fields; understand constitutional/ human rights 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	25%	graded in essay format
One Case Analysis/Research Essay	35%	November 13, 2019
End-of-Term Exam	40%	In class, Dec 4, 2019

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; and writing skills (including superior composition, no grammatical errors or typos; formal elements of essay structure such as introduction, body, conclusion, correctly formatted footnotes and bibliography)
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 and below	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) (available at the bookstore, and on reserve in the library)

Debate Presentations/ Short Papers - 25%

Each student must participate in one debate, to be chosen during the first seminar (Sept. 4), and confirmed no later than the second seminar (Sept. 11). Debates will begin in the second week (Sept. 11).

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.

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

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 20 minutes, so time should be set aside for rehearsal.

Preparation for presentations includes reading at least 5 of the assigned materials 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: legal cases; articles in legal or political science journals; legal briefs; position papers; polemical articles and books; statutes; the Criminal Code; legislative debates; parliamentary committee reports; government discussion or policy papers; Royal Commission reports; briefs to commissions; and policy analyses in journals.

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. Alternatively, search the **LexisNexis/ QuickLaw** database through the library – go to Databases, databases starting with Q, Quicklaw, Court Decisions or Case Summaries or Law Reviews and Journals for scholarly articles.

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*. The paper should be treated as an individual exercise. 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 should provide you with a good grounding in the various arguments on each side. 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.

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 will be required.

Case Analysis/ Research Essays – 35% - Due November 13, 2019

Analyze this:

38332 (Thursday, Sept. 26, 2019)

Conseil scolaire francophone de la Colombie-Britannique, Fédération des parents francophones de Colombie-Britannique, et al. v. Her Majesty the Queen in Right of the Province of British Columbia, et al.

(British Columbia) (Civil) (By Leave)

Keywords


Canadian charter (Non-criminal) - Canadian Charter — Minority language educational rights — Application of s. 23 of Charter where number of eligible students is insufficient to offer full educational services — In analysis under s. 1 of Charter, whether it is appropriate to deny very basis of Charter right in order to minimize harm caused by infringement — Whether it is appropriate to consider cost savings in s. 1 analysis and, if so, extent to which cost savings can be considered — Whether guiding principle of s. 23 is substantive equivalence or “proportionality” — Whether government policies are immune from Charter damages.

Summary

The applicants allege that the Province of British Columbia infringed the minority language educational rights guaranteed by s. 23 of the Charter by underfunding the French language education system. They were partially successful at trial, and the judge awarded damages for a Charter breach based on the Province’s failure to adequately fund the transportation program for a period of 10 years. The appeal filed by the Conseil scolaire was dismissed, the Province’s cross appeal was allowed and the damages awarded for failure to fund the transportation program were set aside.

If you are unable to attend the above case in person, you may view the proceedings on CPAC or the SCC website, though there is no guarantee that it will be available or when.



 Imagine you are the member of the Supreme Court who has been chosen by your peers to write the majority (or perhaps unanimous) decision in this case. Your analysis of the issues in play and the final decision should be rendered in 10-12 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. how the issue has or has not been dealt with in public policy, statutory, or constitutional law);
- a synopsis of the facts of the case;
- an evaluation of the major constitutional issues in play;
- a précis of the lower court decision(s) and reasons, as well as relevant precedents;
- an analysis of the main arguments tendered in court by each of the parties and intervenors;
- the reasons for the Court's decision in light of constitutional provisions, precedents, arguments offered by the parties and intervenors, and any other relevant considerations.

Final Examination - 40%

The final examination will be held during the last class, December 4, 2019.

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 3-hour examination will consist of a series of essay questions, of which you will be required to 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.

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. 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.

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 on the due date.

Late assignments may be submitted to the drop box in the corridor outside B640 Loeb. Assignments will be retrieved every weekday at **4:00 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 to students.

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.
- Students must meet all the course requirements for 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 4, 2019 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. 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 4, 2019 under any circumstances. Students seeking deferrals must apply 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.

Course Email via CuLearn

All registered students should have an email account through the CuLearn system. I will be using the CuLearn 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 CuLearn email accounts frequently for such information.

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



ALL ELECTRONIC DEVICES ARE BANNED FROM THE SEMINAR

Please **SWITCH OFF** and **PUT AWAY** laptops, cell phones, ipods, tablets etc. (Pacemakers ok).

Presence is a course requirement!

The use of laptops and other electronic devices can be distracting, both for yourself and for those around you:

Michael Oliveira, "Students' use of laptops in class lowers grades: Canadian study", *The Globe and Mail*, 14/08/13:

<https://www.theglobeandmail.com/life/parenting/back-to-school/laptops-in-class-lowers-students-grades-canadian-study/article13759430/>

SEMINAR TOPICS AND READINGS

Seminar 1 (Sept. 4): Introduction



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

Seminar 2 (Sept. 11): 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"

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

* 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

Kent Roach, "Common Law Bills of Rights as Dialogue between Courts and Legislatures", *University of Toronto Law Journal* (2005) 55, 3: 733-766

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

Christopher MacLennan, TOWARD THE CHARTER: CANADIANS AND THE DEMAND FOR A NATIONAL BILL OF RIGHTS, 1929–1960, (Montreal and Kingston: McGill-Queen's University Press, 2003), chs. 1, 2, 5, 6

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. 18): 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):

* Andrew Petter, THE POLITICS OF THE CHARTER: THE ILLUSIVE PROMISE OF CONSTITUTIONAL RIGHTS, ch. 3 "Private Rights/ Public Wrongs: the Liberal Lie of the Charter": 77-98

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>

Rainer Knopf and Ted Morton, *THE CHARTER REVOLUTION AND THE COURT PARTY*, (Peterborough: Broadview, 200), Part 1

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

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

- ch. 3, "Framers' Intent and the Parliamentary Arena": 80-103

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

For _____

Against _____

Seminar 4 (Sept. 25): 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
 Joel Bakan, *JUST WORDS: CONSTITUTIONAL RIGHTS AND SOCIAL WRONGS*, (Toronto: University of Toronto Press, 1997), ch. 7, "Judges and Dominant Ideology": 103-113

* Rosemary Cairns Way, "Reforming Judicial Appointments: Change and Challenge", (2017) 68 *UNBLJ* 18 - 29

* Madam Justice Lynn Smith, "Judicial Education on Context", (2005) 38 *U.B.C. L. Rev.* 569 – 582

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

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

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")

Rob Martin, "Our judges are enemies of judicial independence", *The Lawyers Weekly*, 13:35 January 28, 1994

Colleen Sheppard, "Inclusion, Voice, and Process-Based Constitutionalism", (2013) 50 *Osgoode Hall L.J.* 547 - 574

Robert J. Sharpe and Kent Roach, eds. THE CHARTER OF RIGHTS AND FREEDOMS, 5th edition, (Toronto: Irwin Law, 2013), ch. 2 "The Legitimacy of Judicial Review": 27-46

Elizabeth Halka, "Madam Justice Bertha Wilson: A "Different Voice" in the Supreme Court of Canada", (1996) 35 *Alta. L. Rev.* 242

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

For _____

Against _____

Seminar 5 (Oct. 2): Indigenous/ Aboriginal Rights

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

* Bradford W. Morse, "SYMPOSIUM: 20 YEARS UNDER THE CHARTER: Twenty Years of Charter Protection: The Status of Aboriginal Peoples under the Canadian Charter of Rights and Freedoms", (2002) 21 *Windsor Y.B. Access Just.* 385

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

* Larry Chartrand, "Indigenous Peoples: Caught in a Perpetual Human Rights Prison", (2016) 67 *UNBLJ* 167 – 186

* Ian Peach, "Section 15 of the Canadian Charter of Rights and Freedoms and the Future of Federal Regulation of Indian Status" (2012) 45 *UBC L Rev* 103 – 144

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

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

John Borrows, "Unextinguished: Rights and the Indian Act", (2016) 67 *UNBLJ*: 3-35

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

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

For _____

Against _____

Seminar 6 (Oct. 9): Economic and Social Rights - Class, Labour, + Business

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

*Susanna Quail, "Labour Rights and Labour Politics under the Charter", (2015) 45:2 *Ottawa L Rev.* 343 - 364

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

*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

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

Lynda M. Collins, "Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution", (2015), 71 *S.C.L.R.* (2d) 519 - 539

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: <http://behindthenumbers.ca/2011/10/03/why-unions-matter/>

CBC, "Highlights in Canadian labour history": <http://www.cbc.ca/news/canada/story/2009/09/04/f-labour-day-canadian-workforce.html>

Janet McFarland, "The weakening state of Canadian labour unions", The Globe and Mail 02/09/12: <http://www.theglobeandmail.com/news/national/the-weakening-state-of-canadian-labour-unions/article4515873/?page=all>

UFCW, "Facts About Unions": http://www.ufcw.ca/index.php?option=com_content&view=article&id=29&Itemid=49&lang=en

* BalancedPolitics.org - Unions (Pros & Cons, Arguments For and Against, Advantages & Disadvantages), "Are Labor Unions a Good Thing?": <http://www.balancedpolitics.org/unions.htm>

* Errol Black Jim Silver, "Labour Notes: The attack on unions has now come to Canada": <http://www.policyalternatives.ca/publications/commentary/labour-notes-attack-unions-has-now-come-canada#sthash.P3CgIOam.dpuf>

Martha Jackman and Bruce Porter, "Socio-Economic Rights Under the Canadian Charter", *Canadian Issues*, (Fall 2007): 26-31.

Alexander Alvaro, "Why Property Rights Were Excluded from the CCRF", (1991) 24 *Can. J. of Political Science*: 309-329

Matthew Rottier, "OHS Community Services Society v. Canada (AG): Positive Health Rights, Health Care Policy, and s. 7 of the Charter", *Windsor Review of Legal and Social Issues*, 31 (2011): 41-64

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

Gilles Paradis, "Public Health and the Canadian Charter of Rights and Freedoms", *Canadian Journal of Public Health*, (Nov/Dec 2011): 403.

Nathalie J. Chalifour, "Environmental Justice and the Charter: Do Environmental Injustices Infringe Sections 7 and 15 of the Charter?", *Journal of Environmental Law and Practice*, 28 (1) (Dec 2015): 89-124

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. 16): Charter Rights and Anti-terrorism Measures

* MacIvor, ch. 12

* 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

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

* Craig Forcese and Kent Roach, "Bill C-51: the Good, the Bad, and the Truly Ugly", *The Walrus*, Feb. 13, 2015: <http://thewalrus.ca/bill-c-51-the-good-the-bad-and-the-truly-ugly/>

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

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

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, "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

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

W. Wesley Pue, "The War on Terror: Constitutional Governance in a State of Permanent Warfare?", (2003) 41 *Osgoode Hall L.J.* 267 - 292

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

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

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

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 _____



October 21-25 - Fall Break - No Classes



Seminar 8 (Oct. 30): Equality Rights - Gender

*** Short lecture on gender inequality

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

*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

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

*Margot Young, "Unequal to the Task: 'Kapp'ing the Substantive Potential of Section 15", (2010), 50 *S.C.L.R.* (2d) 183 – 219

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

Marilou McPhedran, "A Truer Story: Constitutional Trialogue", (2007), 36 *S.C.L.R.* (2d) 102 - 136

Seila Rizvic, "Why Many Women Can't Get Justice from Sexual Assault Trials", *The Walrus*, 20/02/2018: <https://thewalrus.ca/why-many-women-cant-get-justice-from-sexual-assault-trials/>

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"

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

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: <http://thetyee.ca/News/2007/02/03/Nixon/>

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

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

Jason Proctor, "VSB transgender policy causes parents to file leads lawsuit: BC Supreme Court petition claims VSB decision violates School Act and Charter rights", *CBC News*, Nov 10, 2014
<http://www.cbc.ca/news/canada/british-columbia/vsb-transgender-policy-causes-parents-to-file-leads-lawsuit-1.2830155>

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

Michelle Chan, "Beyond Bountiful: Toward an Intersectional and Postcolonial Feminist Intervention in the British Columbia Polygamy Reference" (2011) 16 *Appeal: Review of Current Law and Law Reform*: 15 – 30

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

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

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

For _____

Against _____



Seminar 9 (Nov. 6): 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

* 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

Jena McGill, "Now It's My Rights Versus Yours" Equality in Tension with Religious Freedoms", (2016) 53:3 *Alta L Rev* 583 – 608

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

Kathleen Harris, "'Our collective shame': Trudeau delivers historic apology to LGBT Canadians", Nov 28, 2017: <https://www.cbc.ca/news/politics/homosexual-offences-exunge-records-1.4422546>

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

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

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

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

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 10 (Nov. 13): 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

* Janet Epp Buckingham, "Competing Rights Under the Canadian Charter: Are Some Issues More Equal than Others?", (2017), 79 *Supreme Court Law Review* (2d): 261 – 285

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

Alex Fielding, "When Rights Collide: Liberalism, Pluralism and Freedom of Religion in Canada", *Appeal: Review of Current Law and Law Reform* (2008) 13: 28 – 50

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

"House of Commons prayer scrutinized after top court decision: Prayer to 'Almighty God' before each sitting could be in violation of Charter", CBC News, April 23, 2015

<http://www.cbc.ca/news/politics/house-of-commons-prayer-scrutinized-after-top-court-decision-1.3046108>

Beverly Baines, "Equality's Nemesis?" (2006) 5, *J.L. & Equality*: 57 – 80

Jonathon W. Penney & Robert J. Danay, "The Embarrassing Preamble? Understanding the "Supremacy of God" and the Charter", (2006) 39 *U.B.C. L. Rev.* 287 – 331

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

Beverly Baines, "Banning Niqabs in the Canadian Courtroom: Different Standards for Judges", <http://www.jurist.org/forum/2013/01/bev-baines-canada-niqab.php>

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 11 (Nov. 20): Fundamental Freedoms (Expression/ Hate speech)

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

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

*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/>

*"Speech act theory": <http://rhetorica.net/speech.htm>

*"Bill C-304: Hate Speech Clause's Repeal Gives White Supremacists Rare Moment Of Glee", http://www.huffingtonpost.ca/2012/06/08/bill-c-304-hate-speech-tories_n_1581437.html

find a legal article on this

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

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

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

Bill C-16, An Act to Amend the Canadian Human Rights Act and the Criminal Code (to add gender identity and gender expression to the prohibited grounds of discrimination and to extend protection against hate propaganda) (first reading May 17, 2016)

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:

<http://news.nationalpost.com/2014/02/02/court-finds-internet-hate-speech-law-section-13-to-be-constitutionally-valid-doesnt-violate-freedom-of-expression/>

Terry Heinrichs, "Censorship as Free Speech! Free Expression Values and the Logic of Silencing in R. v. Keegstra", (1998) 36 *Alberta Law Review*: 835

Ken Norman, "Words Matter: A Case Comment on the *Whatcott* Judgment", *Saskatchewan Law Review*, (2014) 77, 1: 105-117

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*, 07, 2004

Dan Shapiro, "What Does it Mean for Speech to be Offensive?", in Janet Keeping, Dan Shapiro, and Gillian Stewart, eds., *DEAL WITH IT! FREE SPEECH, ETHICS AND THE LAW IN CANADA*, (Chumir Foundation: Calgary, 2012)

Gregory Gordon, "Hate Speech and Persecution: a Contextual Approach", *Vanderbilt Journal of Transnational Law*, 03/2013, 46, 2

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

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

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

Linda McKay-Panos, "The Last Word on Hate Speech and Human Rights?", *Law Now* 34.5 (May/June 2010): 1-5

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

For _____
Against _____

Seminar 12 (Nov. 27): 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*)

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

Andrew Petter, *THE POLITICS OF THE CHARTER: THE ILLUSIVE PROMISE OF CONSTITUTIONAL RIGHTS*, (UTP, 2010), ch. 9 "Taking Dialogue Theory Much Too Seriously", ch. 10 "Legalize This"

Josephine Savarese and Bonnie Morton, "The Influence of the Canadian Charter of Rights and Freedoms on Social Justice Advocates in New Brunswick and Saskatchewan", (2007), 36 *S.C.L.R.* (2d) 283 - 307

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>

Daniel Schwartz, "Charter of Rights turns Canada into a 'constitutional' trendsetter", CBC News, April 17, 2012: <https://www.cbc.ca/news/canada/charter-of-rights-turns-canada-into-a-constitutional-trendsetter-1.1216350>

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

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 _____

Seminar 13 (Dec. 4): In Class exam

The exam will be 3 hours, based on readings. See description on p. 5.

Academic Accommodations

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 obligation

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 obligation

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

Academic 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, meet with your instructor as soon as possible to ensure accommodation arrangements are made. carleton.ca/pmc

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and its survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: carleton.ca/sexual-violence-support

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 compete or perform 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

Plagiarism

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

- 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;
- submitting a take-home examination, essay, laboratory report or other assignment written, in whole or in part, by someone else;
- using ideas or direct, verbatim quotations, or paraphrased material, concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another's data or research findings;
- failing to acknowledge sources through the use of proper citations when using another's works and/or failing to use quotation marks;
- handing in "substantially the same piece of work for academic credit more than once without prior written permission of the course instructor in which the submission occurs.

Plagiarism is a serious offence 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.

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

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

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.

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 cuLearn. As important course and University information is distributed this way, it is the student's responsibility to monitor their Carleton and cuLearn accounts.

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/> and our website <https://carletonpss.com/>, or stop by our office in Loeb D688!"

Official Course Outline

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