

## CHARTER OF RIGHTS AND FREEDOMS Winter 2020

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**Class:** Mon, Thu - 3:30–4:20;  
Tues 4:20 -5:30  
**Room:** MDCL 1102

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**Office Hours:** Tues. 2:30 - 4:20

### Contents

Course Description.....	3
Course Objectives.....	3
Optional Materials and Texts.....	3
Class Format.....	4
Course Evaluation – Overview.....	4
Course Evaluation – Details.....	4
Case Decisions (20% each – for a total of 60% of the final grade).....	4
Take Home Exam (40%), March 31, 2020.....	5
Research Paper (40%), April 07, 2020.....	5
Weekly Course Schedule and Required Readings.....	6
Week 1 (Jan 06, 07, 09) Introduction and Review of Judicial Role.....	6
Week 2 (Jan 13, 14, 16) Scope and Application of the Charter.....	6
Week 3 (Jan 20, 21, 23) Limitations and Justified Infringements.....	6
Week 4 (Jan 27, 28, 30) Freedom of Religion.....	7
Week 5 (Feb 03, 04, 06) Freedom of Religion & Freedom of Expression.....	7
Week 6 (Feb 10, 11, 13) Freedom of Expression.....	8
Week 7 (Feb 17 – 23) - Reading Week.....	8
Week 8 (Feb 24, 25, 27) Life, Liberty and Security of the Person.....	8
Week 9 (Mar 02, 03, 05) LLSOP continued and Legal Rights.....	8
Week 10 (Mar 09, 10, 12) Legal Rights.....	9
Week 11 (Mar 16, 17, 19) Legal Rights and Section 15 Equality Rights.....	9
Week 12 (Mar 23, 24, 26) Equality, Miscellaneous Rights and Exam Prep.....	10
Week 13 (Mar 30, 31, Apr 2) Take Home Exam and Miscellaneous Rights.....	10
Week 14 (Apr 06, 07) Miscellaneous Rights.....	10
Course Policies.....	11

Submission of Assignments.....	11
Grades.....	11
Late Assignments .....	11
Absences, Missed Work, Illness .....	12
Avenue to Learn .....	13
Turnitin.com.....	13
Academic Accommodation for Religious, Indigenous or Spiritual Observances (RISO) .....	13
University Policies .....	13
Academic Integrity Statement.....	13
Academic Accommodation of Students with Disabilities.....	14
Faculty of Social Sciences E-mail Communication Policy .....	14
Course Modification.....	14

## **Course Description**

The introduction of the Charter of Rights and Freedoms into the Canadian constitutional landscape in 1982 dramatically altered the relationship between Canadians and their governments as well as the interaction between elected legislatures and governments and the courts. Thirty-five years later, in an era of a rights culture, citizens are as likely to look to the courts to protect or pursue their policy goals as they are to their elected legislatures and the ability of the state to govern in historic and/or traditional ways has been greatly altered. Underlying these changes is an ongoing debate (both academic and in the practices of politics) concerning judicial activism and the appropriate role of the judiciary in democratic states versus the actions of seemingly more legitimate elected governments.

The course is intended to give students a greater understanding of the interaction between politics, the courts and the law and to provide insight into some of the legal and political limitations faced by governments in attempting to make public policy in Canada as a result of the Charter of Rights and Freedoms.

## **Course Objectives**

By the end of the course students should:

- Have a greater understanding of the interaction between the legislative and executive branches of government with the judiciary in the context of a constitutional bill of rights;
- Be able to describe the constituent elements of the Canadian Constitution and the key legal and political rights set out in the Charter of Rights and Freedoms;
- Analyze current political and public policy issues from a legal and civil rights perspective;
- Apply the knowledge they have gained to generate arguments on either side of an issue and appraise the validity and legitimacy of arguments advanced in public by politicians and the media in relation to claims from citizens under the Charter of Rights and Freedoms;
- Able to present arguments and case summaries in written format in a brief, clear and concise manner supported by evidence and theory.

## **Optional Materials and Texts**

- Milanovic, Nick E. Introduction to Public Law: Readings on the Law, State and Constitution. Captus Press, 2015.
- Milanovic, Nick E. Introduction to Public Law: Readings on the Law, State, and Citizen. Captus Press, 2015.

## **Class Format**

The course is scheduled is scheduled for three one-hour sessions per week.

A minimum of two hours of each week will be conducted in an interactive lecture format by the instructor with students having the opportunity to ask questions concerning the information being provided to them. The third hour of classes will consist of additional time for lecture material as well as for quasi-tutorial sessions to review hypothetical fact scenarios and cases to reinforce and apply lecture material and to assist with the completion of course assignments or to undertake other course related activities.

In addition to formal class time, students are invited to meet with the instructor during regular office hours or by appointment to discuss course content or any other concerns.

## **Course Evaluation – Overview**

1. Case Decisions, February 03, 2020, February 27, 2020 and March 19, 2020.
2. Take Home Exam, March 31, 2020  
or  
Research Paper, April 07, 2020.

## **Course Evaluation – Details**

**Case Decisions (20% each – for a total of 60% of the final grade)**

**Due February 03, 2020, February 27, 2020 and March 19, 2020.**

***PLEASE NOTE THAT THE DUE DATES LISTED IN OUTLINE ARE TENTATIVE AND TIMING OF ACTUAL DUE DATES WILL DEPEND ON COVERAGE OF COURSE MATERIALS.***

Students will submit three (3) brief papers (maximum length to be set out in each assignment) based on a hypothetical set of facts associated with a Supreme Court of Canada case dealing with dealing with a Charter of Rights and Freedom issue. Students will be asked to write a judicial decision of their own concerning a hypothetical set of facts with an application of the appropriate law as taught in lecture.

Students may write the paper solely or jointly with one other student in the class. Unless agreed to in advance by all students in the group and the instructor, students will both receive the same grade for the assignment and both are responsible for ensuring that the assignment conforms to the Academic Integrity Policy.

Students will be provided with the details of each particular assignment during class at least one week prior to the assignment being due. Assignments will be graded on the basis that the assignment identifies and applies the appropriate legal test to the fact

scenario and the extent to which it demonstrates an understanding of course content. Assignments will be graded solely on the basis of course content.

### **Take Home Exam (40%), March 31, 2020**

The take home exam will follow a similar format to the assignments, but must be sole authored. It will be based on all materials covered throughout the course, although it will be more heavily weighted to a right or rights issues arising in the final month of the course.

The take home exam will be released to student on March 30, 2020 at the end of class. Students will have twenty five hours to complete the take home exam and submit it ***IN PAPER FORMAT*** to the instructor by the end of class on March 31, 2020. The exam will be graded solely on the basis of course content.

***PLEASE NOTE THAT THE DEADLINE FOR THE TAKE HOME EXAM IS A HARD DEADLINE AND THERE WILL BE NO EXCEPTIONS OR ACCOMMODATIONS PROVIDED TO IT.***

***ELECTRONIC SUBMISSIONS OF THE TAKE HOME EXAM WILL NOT BE ACCEPTED. IT MUST BE SUBMITTED IN PAPER FORMAT, PREFERABLY IN CLASS, BY THE DEADLINE.***

***STUDENTS WHO REQUIRE ACCOMMODATIONS AND WHO DO NOT THINK THAT THEY WILL BE ABLE TO COMPLETE THE TAKE HOM EXAM WITHIN THE PERMITTED TIME SHOULD OPT FOR THE RESEARCH PAPER OPTION.***

**OR**

### **Research Paper (40%), April 07, 2020**

The research paper will examine a Charter of Rights and Freedoms issue of contemporary relevance to the democratic life and/or practices of government in Canada.

The research paper is expected to be a major research project that will involve both secondary (academic literature) and primary (judicial decisions or submitted legal briefs/factums of parties) research and rely upon both political science and law based sources.

The research paper can take the format of either a standard political science based research paper (introduction, theory/literature review, methodology, research findings, discussion/conclusion) or legal brief/factum (Issue, factual background, applicable law, order sought).

The research paper may be sole or joint authored and should be between fifteen to twenty pages in length (using standard 11 point times new roman font), exclusive of footnotes/endnotes and a list of references or bibliography.

Further instructions and a list of potential research topics will be provided to the class by mid-January.

## **Weekly Course Schedule and Required Readings**

### **Week 1 (Jan 06, 07, 09) Introduction and Review of Judicial Role**

**January 06, 2020 – Introduction and Pick Up of Course Outline**

Readings:

None

**January 07, 2020 – The Rule of Law and the Judiciary (Constitutional and Public Law Review)**

Readings:

- Constitution – Chapter 4
- Citizen – Chapter 6

**January 09, 2020 – The Constitution (Constitutional and Public Law Review)**

Readings:

- Constitution – Chapters 2 and 3

### **Week 2 (Jan 13, 14, 16) Scope and Application of the Charter**

**January 13, 2020 – The Structure of the Charter and Section 32**

Readings:

- Citizen – Chapter 7

**January 14, 2020 – Private versus Public and the “Legislature”**

Readings:

- Citizen – Chapter 8

**January 16, 2020 – The “Government”**

Readings:

None

### **Week 3 (Jan 20, 21, 23) Limitations and Justified Infringements**

**January 20, 2020 – Section 33 and Section 1**

Readings:

None

**January 21, 2020 – “Prescribed by Law” and Justified Infringements**

Readings:

None

**January 23, 2020 –The Oakes Test**

Readings:

None

**Note: Assignment 1 to be distributed in class.**

**Week 4 (Jan 27, 28, 30) Freedom of Religion**

**January 27, 2020 – Section 2(a) in General and the Meanings of Conscience and Religion**

Readings:

- Citizen – Chapter 9, pages 177-184

**January 28, 2020 – Scope and Evolution of Freedom of Religion**

Readings:

None

**January 30, 2020 – Hypothetical Scenario & Section 1 Assignment Review**

Readings:

None

**Week 5 (Feb 03, 04, 06) Freedom of Religion & Freedom of Expression**

**February 03, 2020 – The test for Freedom of Religion**

Readings:

None

**Note: Assignment 1 is due in class.**

**February 04, 2020 – The test for Freedom of Religion continued.**

Readings:

None

**February 06, 2020 – Freedom of Expression – Meaning and Purposes**

Readings:

None

**Week 6 (Feb 10, 11, 13) Freedom of Expression**

**February 10, 2020 – The test for and types of Expression?**

Readings:

- Citizen – Chapter 9, pages 184-190

**February 11, 2020 – Types of Expression continued?**

Readings:

None

**Note: Assignment 2 to be distributed in class**

**February 13, 2020 – Hypothetical Scenario & FOE Assignment Review**

Readings:

None

**Week 7 (Feb 17 – 23) - Reading Week**

Readings: None

**Week 8 (Feb 24, 25, 27) Life, Liberty and Security of the Person**

**February 24, 2020 – Section 7 in General and the Meaning of “Life”**

Readings:

- Citizen – Chapter 9, pages 190-201

**February 25, 2020 – The tests for “Life” and “Liberty”**

Readings:

None

**February 27, 2020 – The tests for “Liberty” and “Security of the Person”**

Readings:

None

**Note: Assignment 2 due in class.**

**Week 9 (Mar 02, 03, 05) LLSOP continued and Legal Rights**

**March 02, 2020 – LLSOP and the Principles of Fundamental Justice**

Readings:

None

**March 03, 2020 – Section 8 and the Meanings of Search and Seizure and Expectations of Privacy**

Readings:

None

**March 05, 2020 – Reasonableness, Warrants and Places of Privacy**

Readings:

None

**Week 10 (Mar 09, 10, 12) Legal Rights**

**March 09, 2020 – Section 10 and the Meaning of Arrest and Detention**

Readings:

None

**Note: Assignment 3 to be distributed in class.**

**March 10, 2020 – Section 11 and Justice System Rights**

Readings:

None

**March 12, 2020 – Hypothetical Scenario & Search and Seizure Assignment Review**

Readings:

None

**Week 11 (Mar 16, 17, 19) Legal Rights and Section 15 Equality Rights**

**March 16, 2020 – Section 12 and “Cruel and Unusual Punishment”**

Readings:

None

**March 17, 2020 – Section 15 and Equality Before and Under the Law**

Readings:

- Citizen – Chapter 10

**March 19, 2020 – The *Andrews* test and the evolution of equality**

Readings:

None

**Note: Assignment 3 due in class**

**Week 12 (Mar 23, 24, 26) Equality, Miscellaneous Rights and Exam Prep**

**March 23, 2020 – Equality, the return to *Andrews* and “Analogous Grounds”**

Readings:

- Citizen – Chapter 11

**March 24, 2020 – Section 3 and the Democratic Rights**

Readings:

None

**March 26, 2020 – Exam Preparation**

Readings:

None

**Week 13 (Mar 30, 31, Apr 2) Take Home Exam and Miscellaneous Rights**

**March 30, 2020 – Exam Preparation**

Readings:

None

**March 31, 2020 – Take Home Exam Due**

Readings:

None

**April 02, 2020 - Section 6 Mobility Rights**

Readings:

None

**Week 14 (Apr 06, 07) Miscellaneous Rights**

**April 06, 2020 – Miscellaneous**

Readings:

None

**April 07, 2020 – Research Papers due in Class**

Readings:

None

## **Course Policies**

### **Submission of Assignments**

Written assignments should be provided to the instructor, either at the beginning of class or during office hours prior to class. As a last resort, assignments can be submitted to the box outside of the political science office after hours (date-stamped for the following day) or to the Department of Political Science Office during regular business hours. Assignments will not be accepted that are slipped under the instructor's or any other door.

Papers received by e-mail or fax will not be accepted without the prior express permission of the instructor on each assignment.

### **Grades**

Grades will be based on the McMaster University grading scale:

<b>MARK</b>	<b>GRADE</b>
90-100	A+
85-90	A
80-84	A-
77-79	B+
73-76	B
70-72	B-
67-69	C+
63-66	C
60-62	C-
57-59	D+
53-56	D
50-52	D-
0-49	F

### **Late Assignments**

Students should make all reasonable attempts to submit papers on the due date. In the event that a legitimate extension is required, students should speak to the instructor ***in advance*** of the due date to make the appropriate arrangements for such an extension. Requests for an extension submitted by e-mail will not be considered – you must speak to the instructor in person.

Examinations and/or assignments related to this and other courses do not constitute or qualify as exceptional circumstances or legitimate excuses.

Late papers may be penalized at the rate of five percentage points per working day for each day of delay, up to a maximum of one week. After one week, the instructor may refuse to accept any late assignments in the absence of proper medical certification justifying an inability to fulfill academic requirements on a prolonged basis. Papers

accepted after one week of lateness, in addition to the daily deduction, will be subject to a further deduction of one full letter grade (ie. A to B, B to C) per each week of lateness.

The instructor reserves the right to not provide any comments or feedback on papers submitted after the original deadline, whether an extension is granted or not and whether any other late penalties are applied.

**IN ALL CIRCUMSTANCES, A LATE ASSIGNMENT MUST BE SUBMITTED FOR GRADING PRIOR TO THE POSTING TO AVENUE TO LEARN OF THE GRADED ASSIGNMENTS OR IT WILL NOT BE ACCEPTED AND NO MAKEUP OR REPLACEMENT ASSIGNMENTS WILL BE PROVIDED.**

### **Absences, Missed Work, Illness**

Students should make all reasonable efforts to attend and are responsible for the material covered in each and every scheduled class. However, it is understood that some absences are unavoidable and students should make every effort to catch up on missed materials and the instructor will provide reasonable assistance to assist a student. In this regard, students should attempt to obtain lecture notes or other class materials from their colleagues in the class before seeking assistance from the instructor concerning missed lecture and/or class content.

Requests for the instructor to repeat a lecture or seminar discussion (either during office hours or at any other time) or provide access to the instructor's lecture notes are not reasonable requests for assistance.

In the event that students are unable to attend class or tutorials or complete required assignments, they should avail themselves of the MSAF policy or submit the appropriate medical or other documentation to their faculty office to support an accommodation request based on a prolonged absence. In the absence of either an MSAF or a faculty approved accommodation request, the instructor reserves the sole right to not accept any outstanding work in accordance with the late assignments policy.

If a student has submitted the appropriate documentation to their faculty and been granted an allowance for outstanding work or has received the approval of the instructor for the incomplete work, the instructor reserves the sole right to re-allocate the missed grades to other assignments and/or the take home exam or research paper.

Please note that an MSAF submission, where permitted, provides a three day extension for any assignment. In the event that students require a further period of time to submit their outstanding work, they must discuss any further extension with the instructor prior to the end of the three day MSAF extension. In the absence of a further approved extension, an assignment subject to an MSAF becomes a late submission after three days.

The filing of an MSAF does not relieve a student of the obligation to complete the outstanding assignment.

### **Avenue to Learn**

In this course we will be using Avenue to Learn. Students should be aware that, when they access the electronic components of this course, private information such as first and last names, user names for the McMaster e-mail accounts, and program affiliation may become apparent to all other students in the same course. The available information is dependent on the technology used. Continuation in this course will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

### **Turnitin.com**

In this course we will be using a web-based service (Turnitin.com) to reveal authenticity and ownership of student submitted work. Students will be expected to submit their work electronically either directly to Turnitin.com or via Avenue to Learn (A2L) plagiarism detection (a service supported by Turnitin.com) so it can be checked for academic dishonesty. Students who do not wish to submit their work through A2L and/or Turnitin.com must still submit an electronic and/or hardcopy to the instructor. No penalty will be assigned to a student who does not submit work to Turnitin.com or A2L. All submitted work is subject to normal verification that standards of academic integrity have been upheld (e.g., on-line search, other software, etc.). For more information please refer to the [Turnitin.com Policy](#).

### **Academic Accommodation for Religious, Indigenous or Spiritual Observances (RISO)**

Students requiring academic accommodation based on religious, indigenous or spiritual observances should follow the procedures set out in the RISO policy. Students requiring a RISO accommodation should submit their request to their Faculty Office normally within 10 working days of the beginning of term in which they anticipate a need for accommodation or to the Registrar's Office prior to their examinations. Students should also contact their instructors as soon as possible to make alternative arrangements for classes, assignments, and tests

### **University Policies**

#### **Academic Integrity Statement**

You are expected to exhibit honesty and use ethical behavior in all aspects of the learning process. Academic credentials you earn are rooted in principles of honesty and academic integrity.

Academic dishonesty is to knowingly act or fail to act in a way that results or could result in unearned academic credit or advantage. This behavior can result in serious consequences, e.g. the grade of zero on an assignment, loss of credit with a notation on

the transcript (notation reads: “Grade of F assigned for academic dishonesty”), and/or suspension or expulsion from the university.

It is your responsibility to understand what constitutes academic dishonesty. For information on the various types of academic dishonesty please refer to the [Academic Integrity Policy](#).

The following illustrates only three forms of academic dishonesty:

1. Plagiarism, e.g. the submission of work that is not one’s own or for which credit has been obtained.
2. Improper collaboration in group work.
3. Copying or using unauthorized aids in tests and examinations.

### **Academic Accommodation of Students with Disabilities**

Students who require academic accommodation must contact Student Accessibility Services (SAS) to make arrangements with a Program Coordinator. Academic accommodations must be arranged for each term of study. Student Accessibility Services can be contacted by phone 905-525-9140 ext. 28652 or e-mail [sas@mcmaster.ca](mailto:sas@mcmaster.ca). For further information, consult McMaster University’s Policy for [Academic Accommodation of Students with Disabilities](#).

### **Faculty of Social Sciences E-mail Communication Policy**

Effective January 1, 2010, it is the policy of the Faculty of Social Sciences that all e-mail communication sent from students to instructors (including TAs), and from students to staff, must originate from the student’s own McMaster University e-mail account. This policy protects confidentiality and confirms the identity of the student. It is the student’s responsibility to ensure that communication is sent to the university from a McMaster account. If an instructor becomes aware that a communication has come from an alternate address, the instructor may not reply at his or her discretion.

### **Course Modification**

The instructor and university reserve the right to modify elements of the course during the term. The university may change the dates and deadlines for any or all courses in extreme circumstances. If either type of modification becomes necessary, reasonable notice and communication with the students will be given with explanation and the opportunity to comment on changes. It is the responsibility of the student to check his/her McMaster email and course websites weekly during the term and to note any changes.