

THE CHARTER OF RIGHTS AND FREEDOMS
POLSCI 3RF3
Winter 2022, Term 2

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Course Description

An examination of the Charter of Rights and Freedoms and its interpretation and impact on governments, public policy and governance in Canada.

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. Almost forty years later, and 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 be able to:

- 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.

Required Materials and Texts

- All reading material will be available online.

Class Format

The course includes two hours of lecture per week. The third hour of class will be a class discussion.

Course Evaluation – Overview

1. Short Essay – 20%, due February 11
2. Annotated Bibliography – 10%, due March 4
3. Research Essay – 30%, due April 1
4. Take-Home Final Exam – 30%, due April 15
5. In-Class Discussions – 10%

Course Evaluation – Details

Short Essay (20%), due February 11

1,000-1,500-word essay (approximately 4-6 pages) that answers the question: what impact, if any, has the Charter had on Canadian politics? The thesis should take this broad question and present an argument, focusing on a specific policy area.

Students must cite at least 3 peer-reviewed journal articles or academic books.

Annotated Bibliography (10%), due March 4

This assignment will consist of three sections. First, write a paragraph describing a tentative thesis for the research paper (this should indicate what Supreme Court decision(s) that will be examined). Second, the citation style that will be used. And third, following that citation style, cite 3 peer-reviewed journal articles and do a short write-up of 4-5 sentences for each source. The write-up should describe the main argument of the reading and why it will be important to your research paper.

Research Essay (30%), due April 1

1,500-2,000-word research essay (approximately 6-8 pages) that examines at least one decision by the Supreme Court of Canada involving the Charter. The paper should be focused on one major issue of Canadian politics. Students should explain why the Court came to that decision and its impact. It should also ask, should that decision be rethought?

Students must cite at least 5 peer-reviewed journal articles or academic books.

Take-Home Final Exam (30%), due April 22

The final exam will be a take-home exam. Students will be given the exam on April 15. There are 5 questions and students are expected to answer 4. Each answer must present an argument, using examples from lectures & readings.

In-Class Discussions (10%)

In the third hour of lecture, students are expected to engage in a discussion about the week's topic and reading. This is also a chance for students ask questions or contribute their own thoughts on the topics.

Weekly Course Schedule and Required Readings

Week 1 (January 10-14) – REMOTE

**January 10 & 12 – Introduction to the Course
History of the Charter**

January 14 – The Impact of the Charter

Readings: Morton, F. L. "The Political Impact of the Charter of Rights and Freedoms." *Canadian Journal of Political Science*, 22, 1987, 31-55.

Week 2 (January 17-21)

January 17 & 19 – Structure of the Charter

January 21 – Public & Private Distinction

Readings: Moon, Richard. "Dolphin Delivery and the Court's Loss of Confidence." *National Journal of Constitutional Law*, 39, 2019, 123-138.

Week 3 (January 24-28)

January 24 & 26 – Application of the Charter

January 28 – The Charter and the Supreme Court

Readings: Feasby, Colin. "Failing Students by Taking a Pass on the Charter in *Pridgen v. University of Calgary*." *Constitutional Forum*, 22, 2013, 19-30.

Week 4 (January 31 – February 4)

January 31 & February 2 – Legal Rights: Liberty, Security & Justice

February 4 – Security of the Person

Readings: Manfredi, Christopher P. "Fundamental Justice in the Supreme Court of Canada: Decisions under Section 7 of the Charter of Rights and Freedoms, 1984-1988," *The American Journal of Comparative Law*, 38, no. 3, 1990, 653-682.

Week 5 (February 7-11)

February 7 & 9 – Equality Rights

February 11 – Section 15 and the Supreme Court

Readings: Young, Margot. "Unequal to the Task: "Kapp'ing" the Substantive Potential of Section 15," *Supreme Court Law Review*, 50, no. 2, 2010, 183-219.

Note: Short Essay due February 11.

Week 6 (February 14-18)

February 14 & 16 – Language Rights

February 18 – Section 23 and the Supreme Court

Readings: Pothier, Dianne. “Language rights remedies in the Supreme Court of Canada: invisible, gentle, or stern hand?” *Review of Constitutional Studies*, 19, no. 2, 2014, 147-189.

Week 7 (Feb 21-27, 2022) Mid-term recess, NO CLASS

Week 8 (February 28 – March 4)

February 28 & March 2 – Freedom of Religion

March 4 – Religious Accommodation

Readings: Moon, Richard. “Freedom of Religion Under the Charter of Rights: Limits to State Neutrality,” *UBC Law Review*, 45, no. 2, 2012, 497-550.

Note: Annotated Bibliography due March 4.

Week 9 (March 7-11)

March 7 & 9 – Freedom of Expression

March 11 – The Impact of Hate Speech

Readings: Newman, Stephen L. “Liberty, Community, and Censorship: Hate Speech and Freedom of Expression in Canada and the United States,” *The American Review of Canadian Studies*, 32, no. 3, 2002, 369-396.

Week 10 (March 14-18)

March 14 & 16 – Justifications of Rights Violations

March 18 – Reasonable Limits

Readings: Choudhry, Sujit. “So What Is the Real Legacy of Oakes? Two Decades of Proportionality Analysis under the Canadian Charter’s Section 1,” *Supreme Court Law Review*, 34, no. 2, 2006, 501-535.

Week 11 (March 21-25)

March 21 & 23 – Indigenous Politics

March 25 – The Constitution & Section 35

Readings: Milward, David. "The Current Situation in Canada," *Aboriginal Justice and the Charter: Realizing a Culturally Sensitive Interpretation of Legal Rights*, UBC Press, 2012, 26-48.

Week 12 (March 28 – April 1)

March 28 & 30 – No Lectures

April 1 – Criminal Law

Readings: Phillips, John Kingman. "The Rest of the Story of R. v. Stinchcombe: A Case Study in Disclosure Issues," *Alberta Law Review*, 40, no. 3, 539-565.

Notes: Research Essay due April 1

Week 13 (April 4-8)

April 4 & 6 – Democracy in Canada

April 8 – The Courts & Lobbying

Readings: Savoie, Donald. "New Forces above the Fault Line." *Democracy in Canada: Disintegration of Our Institutions*, McGill-Queen's University Press, 2019, 307-324.

Week 14 (April 11)

April 11 – Review

Course Policies

Submission of Assignments

All assignments are due electronically via the assignment submission folders on Avenue-to-Learn by 11:59pm of the due date.

All essays are to be written in formal academic style and must be fully referenced (in-text citation and Works Cited page). Essays must be double-spaced, have page numbers and include a title page. Title page must have an original title, the student's name, the course code, the instructor's name, and the date the paper is handed in.

Essays must have a clear thesis statement that presents an argument.

Students are free to use any citation format they wish. Just be consistent. I recommend MLA because I find it the clearest form of citation.

Grades

Grades will be based on the McMaster University grading scale:

MARK	GRADE
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

The penalties for late submission of assigned coursework are 2% per day, including weekends, unless accompanied by medical documentation.

Absences, Missed Work, Illness

McMaster Student Absence Form (MSAF): In the event of an absence for medical or other reasons, students should review and follow the Academic Regulation in the Undergraduate Calendar “Requests for Relief for Missed Academic Term Work”.

Courses With An On-Line Element

Some courses may use on-line elements (e.g. e-mail, Avenue to Learn (A2L), LearnLink, web pages, capa, Moodle, ThinkingCap, etc.). Students should be aware that, when they access the electronic components of a course using these elements, 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 a course that uses on-line elements will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

Online Proctoring

Some courses may use online proctoring software for tests and exams. This software may require students to turn on their video camera, present identification, monitor and record their computer activities, and/or lock/restrict their browser or other applications/software during tests or exams. This software may be required to be installed before the test/exam begins.

Authenticity / Plagiarism Detection

Some courses may use a web-based service (Turnitin.com) to reveal authenticity and ownership of student submitted work. For courses using such software, students will be expected to submit their work electronically either directly to Turnitin.com or via an online learning platform (e.g. A2L, etc.) using plagiarism detection (a service supported by Turnitin.com) so it can be checked for academic dishonesty.

Students who do not wish their work to be submitted through the plagiarism detection software must inform the Instructor before the assignment is due. No penalty will be assigned to a student who does not submit work to the plagiarism detection software.

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 details about McMaster's use of Turnitin.com please go to www.mcmaster.ca/academicintegrity.

Copyright and Recording

Students are advised that lectures, demonstrations, performances, and any other course material provided by an instructor include copyright protected works. The Copyright Act and copyright law protect every original literary, dramatic, musical and artistic work, **including lectures** by University instructors

The recording of lectures, tutorials, or other methods of instruction may occur during a course. Recording may be done by either the instructor for the purpose of authorized distribution, or by a student for the purpose of personal study. Students should be aware that their voice and/or image may be recorded by others during the class. Please speak with the instructor if this is a concern for you.

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 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.

Academic Integrity Statement

You are expected to exhibit honesty and use ethical behaviour in all aspects of the learning process. Academic credentials you earn are rooted in principles of honesty and academic integrity. **It is your responsibility to understand what constitutes academic dishonesty.**

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 behaviour 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. For information on the various types of academic dishonesty please refer to the [Academic Integrity Policy](#), located at <https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/>

The following illustrates only three forms of academic dishonesty:

- plagiarism, e.g. the submission of work that is not one’s own or for which other credit has been obtained.
- improper collaboration in group work.
- copying or using unauthorized aids in tests and examinations.

Conduct Expectations

As a McMaster student, you have the right to experience, and the responsibility to demonstrate, respectful and dignified interactions within all of our living, learning and working communities. These expectations are described in the [Code of Student Rights & Responsibilities](#) (the “Code”). All students share the responsibility of maintaining a positive environment for the academic and personal growth of all McMaster community members, **whether in person or online**.

It is essential that students be mindful of their interactions online, as the Code remains in effect in virtual learning environments. The Code applies to any interactions that adversely affect, disrupt, or interfere with reasonable participation in University activities. Student disruptions or behaviours that interfere with university functions on online platforms (e.g. use of Avenue 2 Learn, WebEx or Zoom for delivery), will be taken very seriously and will be investigated. Outcomes may include restriction or removal of the involved students’ access to these platforms

Academic Accommodation of Students with Disabilities

Students with disabilities who require academic accommodation must contact [Student Accessibility Services](#) (SAS) at 905-525-9140 ext. 28652 or sas@mcmaster.ca to make arrangements with a Program Coordinator. For further information, consult McMaster University’s [Academic Accommodation of Students with Disabilities](#) policy.

Faculty of Social Sciences E-mail Communication Policy

Effective September 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.

Extreme Circumstances

The University reserves the right to change the dates and deadlines for any or all courses in extreme circumstances (e.g., severe weather, labour disruptions, etc.). Changes will be communicated through regular McMaster communication channels, such as McMaster Daily News, A2L and/or McMaster email.