

# THE CHARTER OF RIGHTS AND FREEDOMS

## POLSCI 3RF3

### Winter 2023

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**Class:** Tues 12:30-2:20  
Wed 12:30–1:20

**Class Location:** JHE 264  
**Office:** KTH 528  
**Office Hours:** Mon 1:00-3:00

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## **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 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.

## **Recommended Text**

- Bateman et al. 2017. *The Court and the Charter: Leading Cases, 2<sup>nd</sup> ed.* Toronto: Emond Publishing.

## **Class Format**

The course is scheduled is scheduled for one two-hour (Tuesdays) and one one-hour (Wednesdays) sessions per week.

Two hours of each week (Tuesday classes) 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, Wednesday 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, to undertake other course related activities or discuss law school and/or legal careers.

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. Three Case Decisions  
due February 03, March 02 and 30, 2023.
2. Final Exam  
April 2023 Exam Period

### **Course Evaluation – Details**

#### **Case Decisions (20% each – for a total of 40% or 60% of the final grade) Due January 30, 2023, February 25, 2023 and March 20, 2023.**

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.

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.

**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 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.

### **Final Exam (40 or 60%), April Exam Period**

The final exam will follow a similar format to the assignments, but 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.

### **Final Grade Calculation**

The value of the assignments and the exam is variable so that students may have some choice over how their performance in the course will be assessed. The weighting of the various assessments will be based on the following principles.

- i. Students must submit a minimum of two assignments and complete the final exam in order to have the possibility of receiving all of the marks in the course.
- ii. Students may submit two or three assignments in total to be graded.
- iii. Each assignment will be worth 20% of the final grade.
- iv. In the event that students decide to submit only two assignments, the final exam will be worth 60% of the final grade.
- v. If a student submits all three assignments, the final exam will presumptively be worth 40% of the final grade.
- vi. If a student submits all three assignments and their final exam grade is higher than any one of the assignment grades, the final exam will be worth 60% of the final grade and the lower value assignment will be dropped from the final grade calculation. A student ***MUST*** submit all three assignments for grading in order to have this option available.

Please note that because Avenue to Learn cannot accommodate different weighting of grade calculations on an individual student basis, the grade weights on Avenue may not reflect the actual weighting for each individual student. If a student has their final exam weighted out of 60%, the mark showing on Avenue after the weighting will be out of 60.

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

### **Week 1 – January 09, 2023 – Introduction and Review of Judicial Role**

**January 10, 2023 Course Introduction and Public Law Review**

**January 11, 2023 Public Law Review cont'd**

Readings: Chapter 1 - Introduction

### **Week 2 – January 16, 2023 – Scope and Application of the Charter**

**January 17, 2023 The Structure of the Charter and Section 32  
Private versus Public and the “Legislature”**

**January 18, 2023 – The “Government”**

Readings: None

### **Week 3 – January 23, 2023 – Scope and Application of the Charter**

**January 24, 2023 The “Government” continued and Section 33**

**January 25, 2023 Hypothetical Scenario Assignment Review**

Readings: None

### **Week 4 – January 30, 2023 – Section 1**

**January 31, 2023 “Prescribed By Law” and the Oakes Test**

**February 01, 2023 Oakes continued**

Readings: Case 14 – R v. Oakes, pages 166-172.

Case 7 – RJR MacDonald v. Canada, pages 90-101

**Note: Assignment 1 is due by end of day on February 03, 2022**

### **Week 5 – February 06, 2023 – Freedom of Religion**

**February 07, 2023 Section 2(a) in General  
Meanings of Conscience and Religion  
Scope and Evolution of Freedom of Religion**

**February 08, 2023 The test for Freedom of Religion**

Readings: Case 4 – The Queen v. Big M Drug Mart, pages 47-55

Case 8 – Syndicat Northcrest v. Amselem, pages 102-110

Case 9 – Multani v. C.S. Marguerite-Bourgeoys, pages 111-121

**Week 6 – February 13, 2023 Freedom of Expression**

**February 14, 2023 Section 2(b) and the Meaning and Purposes of Expression**

**The test for and types of Expression?**

**February 15, 2023 The Expression Test and Types continued**

Readings: Case 5 – Ford v. Quebec, pages 56-74

Case 6 – R. v. Butler, pages 75-89

Case 10 – Saskatchewan v. Whatcott, pages 122-133

Case 13 – Harper v. Canada, pages 156- 165

**Week 7 – February 20, 2023 - Reading Week**

Readings: None

**Week 8 – February 27, 2023 Life, Liberty and Security of the Person**

**February 28, 2023 Section 7 in General**

**The tests for “Life” and “Liberty”**

**March 01, 2023 The tests for “Security of the Person”**

Readings: Section E – pages 230-318, except for Case 22 – Gosselin v. Quebec, pages 254-268.

**Assignment Two due by end of day on March 02, 2023.**

**Week 9 – March 06, 2023 – Equality Rights**

**March 07, 2023 Section 15 and Equality Before and Under the Law  
The *Andrews* test and the Evolution of Equality**

**March 08, 2023 The return to *Andrews* and “Analogous Grounds”**

Readings: Section F – pages 319-368.

**Week 10 – March 13, 2023 – Legal Rights**

**March 14, 2023 Section 8 and the Meanings of Search and Seizure and Expectations of Privacy**

**March 15, 2023 Reasonableness, Warrants and Places of Privacy**

Readings: Case 17 – R. v. Patrick, pages 202-208.

**Week 11 – March 20, 2023 – Legal Rights continued**

**March 21, 2023      Section 10 Rights on Arrest and Detention**

**March 22, 2023      To Be Determined**

Readings:    Case 35 – R. v. Grant, pages 412-416 (Section A - Charter Breach).

**Week 12 – March 27, 2023 – More Legal Rights**

**March 28, 2023      Section 11 and Justice System Rights  
                                 Section 12 and the Meaning and Test for Cruel and  
                                 Unusual Punishment**

**March 29, 2023      To Be Determined**

Readings:    Case 19 – R. v. Nur, pages 219-229.

**Assignment 3 due by end of day on March 30, 2023.**

**Week 13 – April 03, 2023 – Miscellaneous Rights and Remedies**

**April 04, 2023      Section 3 and the Democratic Rights  
                                 Section 6 and the Mobility Rights**

**April 05, 2023      Section 24 and Remedies**

Readings:    Case 12 – Sauve v. Canada, pages 143-155.

Case 35 – R. v. Grant, pages 416-421 (Section B – Exclusion of Evidence).

**Week 14 – April 10, 2023 – Exam Preparation**

**April 11, 2023      Exam Preparation**

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 RETURN OF THE GRADED ASSIGNMENTS TO THE CLASS 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.

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.

## **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.