

**TOPICS IN LAW AND POLICY:
RELIGIOUS FREEDOM AND SECULARISM IN CANADA
POLSCI 3LP3
Winter 2022, Term 2**

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Course Description

Some of the most challenging and divisive debates in Canadian law and policy concern what appropriate limits to place on religious expression, and where to protect freedom of religion and conscience. What does it mean for Canada to be a secular state? How should the rights of religious minorities be protected? Does the protection of religious freedom necessitate tolerating discrimination or unequal treatment by religious institutions? To what extent do Indigenous religious and spiritual practices – including their related legal orders – receive recognition under the Charter of Rights and Freedoms? How far should freedom of conscience be protected when it interferes with the delivery of publicly-funded services? In this course, we will discuss the philosophical, legal and political implications of our answers to these and other related questions.

This course will engage with the substance of questions about secularism, religious freedom, and freedom of conscience in Canada, as well as the efforts to address these questions in law and policy. It begins with several weeks of discussion about how to conceptualize religion and define secularism, and role of religion and secularism within liberal constitutional orders. The second half of the course focuses on debates over religious freedom in the post-Charter of Rights and Freedoms era.

Course Objectives

By the end of the course students should be able to:

- Express a deeper understanding of the legal protections of religious freedom and freedom of conscience in Canada
- Discuss the strengths and weaknesses of legal and policy frameworks that limit religious expression and freedom of conscience in Canada

Required Materials and Texts

- Mary Anne Waldron, *Free to Believe: Rethinking Freedom of Conscience and Religion in Canada*, University of Toronto Press, 2013.

Course Evaluation – Overview

1. Reading Summaries – 20%
2. Participation – 20%
3. Cases Test – 30%, February 15
4. Policy Brief – 30%, March 29

Course Evaluation – Details

Reading Summaries (20%), on going

Each week, you will submit a 200-300 word summary of one of the assigned readings. You must submit a summary via Avenue to Learn before each of 10 weeks of the course. Summaries are marked for satisfactory completion and they will not be accepted after class begins. If you complete less than 10 summaries, you will lose 10% of this mark for each one uncompleted.

Participation (20%), on going

This quality of this course depends in significant part on the participation of every student. I will not be grading the quantity of your contributions to discussion, as it is expected that every student will actively contribute. However, each student will be graded at the end of the course according to the quality of contributions over the entire course. I regard high quality contributions to be regular, timely, concise, on topic, and oriented towards promoting collective understanding of the course content.

Cases Test (30%), due February 15

Please review the details of the court cases listed below. Five of them will be on the cases test. You will be asked to write one paragraph for each case, summarizing what the case was about and why it is important. This is an in-class test.

Syndicat Northcrest v. Amselem

R. vs. Big M Drug Mart

Zylberberg v. Sudbury Board of Education

Multani v. Commission scolaire Marguerite-Bourgeoys

Chamberlain v Surrey School District No 36

Alberta v. Hutterian Brethren of Wilson Colony

Trinity Western University v. British Columbia College of Teachers

Loyola High School and John Zucchi v. Minister of Education, Recreation and Sports

Law Society of British Columbia v. Trinity Western University

Ktunaxa Nation v. British Columbia

Policy brief (30%), due March 29

Choose one policy area pertaining to religious freedom and freedom of conscience and write a policy brief that states the core issue, describes its importance, summarizes the

main contours of debate, and presents a conclusion or recommendation. This policy brief should be written for a non-specialist audience. Think about your audience as being a Member of Parliament, or other person in a decision-making position who needs a quick background on an issue they must debate or discuss with others.

You can choose any of the policy areas we cover in the course, as well as those that we do not cover. Your brief must be 2000-2500 words (no more), and it should cite at least 6 sources. You will be marked on the clarity of your writing, the effectiveness of your analysis, the persuasiveness of your conclusions or recommendations, as well as on grammar, style, structure, spelling, and correct citations.

Weekly Course Schedule and Required Readings

Week 1 (Jan 11)

January 11 – Introduction

PART 1: CONCEPTS AND HISTORY

Week 2 (Jan 18)

January 18 – Thematic Overview

Readings:

- Mary Anne Waldron, “How Freedom of Conscience and Religion are Protected and Why It Matters,” *Free to Believe: Rethinking Freedom of Conscience and Religion in Canada*, pp. 3-21.
- Lori Beaman, “Religious Diversity in the Public Sphere: The Canadian Case,” *Religions* 2017 (8), 259, pp. 1-18.

Week 3 (Jan 25)

January 25 – Conceptualizing Religion

Readings:

- Harold Coward, Peter Slater, Roland Chagnon, “Religion”, in *The Canadian Encyclopedia*. Available here: <https://www.thecanadianencyclopedia.ca/en/article/religion>
- Wilfred Cantwell Smith, “‘Religion’ in the West,” *The Meaning and End of Religion*, MacMillan, pp. 19-49.
- Vine Deloria Jr., “Religion Today,” *God is Red: A Native View of Religion*, Fulcrum Publishing, pp. 287-298.

Week 4 (Feb 1)

February 1 – Defining Secularism

Readings:

- Charles Taylor, “Western Secularity,” in *Rethinking Secularism*, eds. Craig Calhoun, Mark Juergensmeyer and Jonathan Van Antwerpen, Oxford University Press, 2011, pp. 31-53.
- José Casanova, “The Secular and Secularisms,” *Social Research* vol. 76, no. 4 (2009): 1049-1066.

Week 5 (Feb 8)

February 8 – Religion, Secularism, and Liberal Constitutionalism

Readings:

- John Rawls, “The Idea of an Overlapping Consensus,” *Political Liberalism*, pp.133-140.
- Jocelyn Maclure and Charles Taylor, *Secularism and freedom of conscience*. Harvard University Press, 2011, pp. 1-24.
- Benjamin L. Berger, "Law's Religion: Rendering Culture," *Osgoode Hall Law Journal* 45.2 (2007): 277-314.

Week 6 (Feb 15)

February 15 – Early Canadian Constitutionalism

Readings:

- Benjamin Berger, “Introduction,” *Law’s Religion: Religious Difference and the Claims of Constitutionalism*, University of Toronto Press, 2015, pp. 3-21.
- Peter Russell, *Canada’s Odyssey: A Country Based on Incomplete Conquests*, University of Toronto Press, 2017, pp. 23-53.
- John Borrows, “Indigenous Constitutionalism: Pre-existing Legal Genealogies in Canada,” *The Oxford Handbook of the Canadian Constitution*, pp. 13-43.

Note: Cases Test

Week 7 (Feb 22) Mid-term recess, NO CLASS

Part 2: POST-CHARTER AND MULTICULTURALISM POLICY

Week 8 (Mar 1)

March 1 – Politics and religious diversity in Canada

Readings:

- Micheline Milot. 2009. "Modus Co-vivendi: Religious Diversity in Canada," in *International Migration and the Governance of Religious Diversity*, edited by Paul Bramadat and Mathias Koenig. Montreal: McGill-Queen's University Press, pp. 105-130.
- Paul Bramadat and David Seljak, "Between secularism and post-secularism: A Canadian interregnum," In: Laliberté, A, Berman, B, Bhargava, R (eds) *The Secular State and Religious Diversity: Secularism, Tolerance, and Accommodation*. Vancouver, BC: University of British Columbia Press, 2013, pp. 97–119.

Recommended:

- David Rayside, Paul E. J. Thomas, and Jerald Sabin, *Religion and Canadian party politics*, UBC Press, pp. 3-35.

Week 9 (Mar 8)

March 8 – State neutrality and minority religions

Readings:

- Mary Anne Waldron, "Early Cases: Getting Off on the Wrong Foot," *Free to Believe: Rethinking Freedom of Conscience and Religion in Canada*, pp. pp.22-53.
- Richard Moon, "Freedom of Religion in the Canadian Court: The Limits of State Neutrality," *University of British Columbia Law Review* 45 (2012): 497–549.

Recommended:

- Benjamin Berger, "The Cultural Limits of Legal Tolerance," *Law's Religion: Religious Difference and the Claims of Constitutionalism*, UT Press, pp. 105-132.

Week 10 (Mar 15)

March 15 – Multiculturalism policy and reasonable accommodation

Readings:

- Avigail Eisenberg, "Multiculturalism in a Context of Minority Nationalism and Indigenous Rights: The Canadian Case," In Richard Ashcroft and Mark Bevir eds. *Multiculturalism in the British Commonwealth: 1945-2013*, Cambridge: CUP, 2018, pp.67-82.
- Mary Anne Waldron, "Culture Wars: Majority versus Minority Values," *Free to Believe: Rethinking Freedom of Conscience and Religion in Canada*, pp. 54-94.

Recommended:

- Sarah V. Wayland, "Religious expression in public schools: *Kirpans* in Canada, *hijab* in France," *Ethnic and Racial Studies*, 20:3, 1997, 545-561.

Week 11 (Mar 22)

March 22 – Charter of Values and Bill 21

Readings:

- Jocelyn Maclure and Charles Taylor, "Liberal-Pluralist Secularism: The Case of Quebec," *Secularism and freedom of conscience*, Harvard University Press, 2011, pp. 53-60.
- "The Charter of Quebec Values," *The Immanent Frame*, February 2, 2014. Accessible at: <http://tif.ssrc.org/2014/02/20/the-charter-of-quebec-values/>
- Daniel Béland, André Lecours, and Peggy Schmeiser. "Nationalism, Secularism, and Ethno-Cultural Diversity in Quebec." *Journal of Canadian Studies* 55.1 (2021): 177-202.

Week 12 (Mar 29)

March 29 – Education and discrimination

Readings:

- Mary Anne Waldron, "When Religion and Politics Intertwine," & "Human Rights: A Zero Sum Game?" in *Free to Believe: Rethinking Freedom of Conscience and Religion in Canada*, pp. 95-164.
- Dwight Newman, "On The Trinity Western University Controversy: An Argument for a Christian Law School in Canada," *Constitutional Forum constitutionnel* 22(3), 2013, pp. 1-13.

Policy Brief Due

Week 13 (Apr 5)

April 5 – Indigenous religious freedom

Readings:

- Nicholas Shrubsole, “Religions Plus? Competing frameworks for Indigenous Religious Freedom,” *What Has No Place, Remains: The Challenges for Indigenous Religious Freedom in Canada Today*, University of Toronto Press, 2019, pp. 79-99.
- John Borrows, “Living law on a living earth: Aboriginal religion, law and the constitution” In Richard Moon (Eds.), *Indigenous Peoples and the Law: Comparative and critical perspectives*. Oxford, United Kingdom: Hart Publishing, pp. 161-91.

Week 14 (Apr 12)

April 12 – Health care and “conscience rights”

Readings:

- Jocelyn Maclure and Charles Taylor, “The reasonable limits to freedom of conscience,” *Secularism and freedom of conscience*, Harvard University Press, 2011, pp. 100-104.
- Deina Warren and Derek Ross, “Physicians, conscience, and assisted dying,” *Policy Options*, 4 May 2017. Available at: <https://policyoptions.irpp.org/magazines/may-2017/mandating-physicians-to-participate-in-assisted-suicide/>
- Richard Moon, “The Conscientious Objection of Medical Practitioners to the CPSO’s “Effective Referral” Requirement,” *Constitutional Forum constitutionnel*, Volume 29, Number 1, 2020, pp. 29-37.
- Diane Kelsall, “Physicians are not solely responsible for ensuring access to medical assistance in dying,” *CMAJ* 2018;190:E181.
- Bodley, Steven C. "The College of Physicians and Surgeons of Ontario on MAiD referrals." *CMAJ* 190.23 (2018): E724-E724.

Course Policies

Submission of Assignments

All assignments are due in class on the date indicated in the syllabus. They should be submitted in hard copy, single-spaced, double-sided. The reading response does not

require a bibliography. For the essays, [please use Chicago style footnotes with no bibliography](#). We will go over this in class.

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

Late assignments will be penalized 3 per cent per day, including weekends.

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.