

**TOPICS IN LAW AND POLICY:
RELIGION IN LAW AND POLICY IN CANADA
POLSCI 3LP3
Winter 2023, 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 are Indigenous religious and spiritual practices – including their related legal orders – protected 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.

Course Objectives

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

- Express a nuanced 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 in Canada.

Required Materials and Texts

- All materials are available on Avenue to Learn.

Class Format

- Class will begin with a lecture, followed by discussion of cases.

Course Evaluation – Overview

1. Attendance – 10%
2. Reading Summaries – 20%
3. Cases Test – 35%, March 1
4. Policy Brief – 35%, March 29

Course Evaluation – Details

Attendance (10%), starting January 25

Your attendance in class is important both for your learning, and for the learning of your classmates. You may have two unexcused absences without any penalty. After that, you will lose 10% of your attendance mark for each absence. Attendance will be taken at the beginning of each class.

Reading Summaries (20%)

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 8 weeks of the course. Summaries are marked for satisfactory completion and they will not be accepted after class begins. If you complete less than 8 summaries, you will lose 12.5% of this mark for each one uncompleted.

Cases Test (35%), March 1

Each of the cases below will be presented and discussed in class prior to the test. Four of them will be on the cases test. You will be asked to write one paragraph for each case summarizing the decision and why it is important. This is an in-class test.

R v. Oakes

Syndicat Northcrest v. Amselem

R. v. Big M Drug Mart

R. v. Edwards Books and Art Ltd.

Multani v. Commission scolaire Marguerite-Bourgeoys

Chamberlain v. Surrey School District No 36

Alberta v. Hutterian Brethren of Wilson Colony

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

Policy Brief (35%), 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 (January 11)

January 11 – Introduction

Week 2 (January 18)

January 18 – Thematic Overview

Readings:

- Lori Beaman, “Religious Diversity in the Public Sphere: The Canadian Case,” *Religions* 2017 (8), 259, pp. 1-18.
- Richard Moon, “Freedom of Religion in the Canadian Court: The Limits of State Neutrality,” *University of British Columbia Law Review* 45 (2012): 497–549.
- Case: *R. v. Oakes*

Week 3 (January 25)

January 25 – Charter Cases: Defining Religion

Readings:

- Richard Moon. “Religious Commitment and Identity: *Syndicat Northcrest v. Amselem*,” *Supreme Court Law Review* 2005 (29): 201-220.
- Mary Anne Waldron, “Early Cases: Getting Off on the Wrong Foot,” *Free to Believe: Rethinking Freedom of Conscience and Religion in Canada*, Toronto: University of Toronto Press, pp.22-53.
- Case: *Syndicat Northcrest v. Amselem*
- Case: *R. v. Big M Drug Mart*
- Case: *R. v. Edwards Books and Art Ltd.*

Week 4 (February 1)

February 1 – Charter Cases: Limiting Religion

Readings:

- Christopher J. Evans “Adjudicating Contested Values: Freedom of Religion and the Oakes Test.” *Journal of Law & Equality* 10 (2013): 5–36.
- Benjamin Berger, “The Cultural Limits of Legal Tolerance,” *Law’s Religion: Religious Difference and the Claims of Constitutionalism*, Toronto, University of Toronto Press, pp. 105-132.

- Case: *Alberta v. Hutterian Brethren of Wilson Colony*

Week 5 (February 8)

February 8 – Charter Cases: Non-Discrimination

Readings:

- Sarah V. Wayland, "Religious expression in public schools: *Kirpans* in Canada, *hijab* in France," *Ethnic and Racial Studies* 1997 (20:3): 545-561.
- Avigail Eisenberg, "Choice or identity? Dilemmas of protecting religious freedom in Canada," In *Multireligious Society*, eds. Francisco Colom Gonzalez, Gianni D'Amato, Routledge, 2016, pp. 145-161.
- Case: *Multani v. Commission scolaire Marguerite-Bourgeoys*

Week 6 (February 15)

February 15 – Charter Cases: Schools and Secularism

Readings:

- Richard Moon, "The Supreme Court of Canada's Attempt to Reconcile Freedom of Religion and Sexual Orientation Equality in the Public Schools," in *Faith, Politics, and Sexual Diversity*, eds. David Rayside and Clyde Wilcox, UBC Press, 2011, pp. 321-38.
- Howard Kislowicz. "Loyola High School v. Attorney General of Quebec: On Non-triviality and the Charter Value of Religious Freedom," *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 2015 (71:1), 331-351.
- Case: *Chamberlain v. Surrey School District No 36*
- Case: *Loyola High School and John Zucchi v. Minister of Education, Recreation and Sports*

Week 7 (February 22) – Mid-term recess, No Class

Week 8 (March 1)

March 1 – Religion, Secularism, and Post-Secularism in Canada

Readings:

- 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* 2007 (45.2): 277-314.

- Paul Bramadat and David Seljak, "Between secularism and post-secularism: A Canadian interregnum," In *The Secular State and Religious Diversity: Secularism, Tolerance, and Accommodation*, eds. Laliberté, A, Berman, B, Bhargava, R. Vancouver, BC: University of British Columbia Press, 2013, pp. 97–119.

Notes: Cases Test

Week 9 (March 8)

March 8 – Multiculturalism and Reasonable Accommodation

Readings:

- Avigail Eisenberg, "Multiculturalism in a Context of Minority Nationalism and Indigenous Rights: The Canadian Case," In *Multiculturalism in the British Commonwealth: 1945-2013*, Richard Ashcroft and Mark Bevir eds., Cambridge: CUP, 2018, pp.67-82.
- Richard Moon, "Religious accommodation and its limits: The recent controversy at York University," *Constitutional Forum* 2014 (23).

Week 10 (March 15)

March 15 – 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 11 (March 22)

March 22 – Trinity Western University

Readings:

- Dwight Newman, "On the Trinity Western University Controversy: An Argument for a Christian Law School in Canada," *Constitutional Forum* 22(3), 2013, pp. 1-13.

- Richard Moon, “The Accreditation of TWU’s Law Program,” *Law Matters (CBA-Alberta)*, Summer (2015).
- Case: *Law Society of British Columbia v. Trinity Western University*

Week 12 (March 29)

March 29 – 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.
- Case: *Ktunaxa Nation v. British Columbia*

Notes: Policy Brief Due

Week 13 (April 5)

April 5 – Medical Assistance in Dying 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.

Week 14 (April 12)

April 12 – Conclusion

Course Policies

Submission of Assignments

All assignments must be submitted in either MS Word or PDF format via Avenue to Learn before the beginning of lecture on the due date.

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 accepted without penalty for three days after the due date. From that point forward, late assignments will receive a penalty of 2 percentage points a day. Extensions will be considered if they are requested in person ahead of time.

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](https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/), 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.