

**AP/PPAS3136 3.0 A Public Law II: The Charter of Rights and Freedoms and the
Limits of Public Administration Winter 2020
Section O**

Course Director: Danny O'Rourke

Class Hours: Tues 16:00 pm

Class location ACW 303

Office Hours and Location: 025 McLaughlin College, by appointment

Email: rourke@yorku.ca

Course Description:

This course is designed to examine the main provisions in the charter and discuss how these provisions have been interpreted by the courts. It briefly discusses the historical evolution of human rights provisions in Canada. However, the main focus of this course is the Canadian Charter of Rights and Freedoms. Throughout the course, key provisions including freedom of expression, legal right, equality rights, language rights, aboriginal rights and judicial review of public administration will be examined. Finally, the limitations of the Charter and ongoing debates on the desirability of its entrenchment in the Constitution Act of 1982 will be evaluated.

Expected Learning Outcomes:

After the completion of the course students will:

A- Acquire comprehensive knowledge of the distinctive contents within the Canadian Charter Of Rights and Freedoms (CCoRF)

B-Gain a critical understanding of the historical, cultural and political context(s) in which SCC Charter decisions are made

C- Gain a foundational understanding of judicial review (judicial interpretation and decision-making capacities) through an extensive examination of relevant case/common law

D- Gain an appreciation of the impact that the CCoRF has had (and continues to have) on the creation (and limits) of public policy making in Canada

E- Develop analytical and research skills that are essential to pursuing advanced studies in the field of public policy and administration

Format: Format: The course will consist of lectures, interactive discussion of the readings, and occasional on-line presentations. The course lecture takes place during the first two hours of class. During the final hour of class there will be class discussion. In order to facilitate class discussion and participation, students are expected to read the assigned readings.

Required Textbook:

Peter W. Hogg, Constitutional Law of Canada, Student Edition. Toronto: Carswell, 2013-16

Recommended Books:

Roach, Kent, Robert J. Sharpe and Katherine E. Swinton. The Charter of Rights and Freedoms. Third Edition. Toronto: Irwin Law, 2002.

Roach, Kent. The Supreme Court on Trial: Judicial Activism or Democratic Dialogue. Toronto: Irwin Law, 2001.

Web Resources:**Supreme Court of Canada homepage:**

http://www.scc.csc.gc.ca/welcome/index_e.asp

Reported Decisions of the Supreme Court 1983 to Present:

<http://scc.lexum.unmontreal.ca/en/index.htm>

Canadian Legal information Institute (a search engine for reported court cases in all Canadian jurisdictions).

<http://www.canlii.org/en/index.html>

Course Work:

Mid Term Exam (35%)

Case Summary (30%)

Final Exam (35%)

Important Dates**Lecture and Reading Schedule;**

Week 1 Jan 7 - Introduction to the Course

Outlining course objectives and explaining course requirements

Required Readings:

None

Week 2 Jan 14– Theoretical Foundations for Liberal Democracy and Constitutionalism

Required Readings: None. Lecture Attendance is Mandatory

Week 3 Jan 21 - The Evolution of Human Rights in Canada and Pre-charter protection of Civil Liberties. The Bill of Rights and Provincial Human Rights (Guest Lecturer)

Required Readings;

Hogg, Chapter 34, Hogg, Chapter 35

Week 4 Jan 28 - The Charter of Rights and Freedoms: The Application and Interpretation of the Charter

Required Reading:

Hogg, Chapter 36, Hogg, Chapter 37 and Chapter 38.1-38.12

R.v. Oakes, [1986]

Week 5 Feb 4– The Charter’s Critics and Limitation of Rights

Required Readings:

Hogg, Chapter 38 and Chapter 39

Week 6 Feb 11– *Mid-Term Distributed via email (details to be discussed in lecture)*

Week 7 Feb 25 - Freedom of Religion (Mid Term Due ~ In Lecture)

Hogg, Chapter 42

Week 8 March 3 - Freedom of Expression

Required Readings: Chapter 43

Week 9 March 10 -Fundamental Justice I

Required Readings: Hogg, Chapter 47

Week 10 March 17 - Fundamental Justice II

Required Reading: Hogg, Chapter 47

Week 11 March 24 - Equality Rights

Required Readings: Chapter 55

Week 12 Nov 31 - Aboriginal Rights and Review (Case Summary Due in Class)

Required Readings:

Hogg, Chapter 28

Written Assignments:

Case Summary

The written assignment for this course consists of a case summary on a chosen topic drawn from a list provided below. Topics that are not specified in the list will not be accepted. The essay assignment is worth **30%** of the final grade.

Case Summary: 5-7 pages 10%

How to prepare a case brief/summary by Michael Mac Neil:

“In writing the summary of a judicial decision, it is important to keep in mind the purposes for which you are writing it. The summary is a way of forcing yourself to ask key questions that assist you in understanding the decision. In addition, the summary then provides a quick and easy means of recalling what you have read. Finally, the summary put you in a position to start asking critical questions about a judicial decision. Hence the summary is being written both to help you learn about the contents of the decision, to help you in recalling those contents at some point in the future, and to prepare the way for critical reflection.”

Nature of the Case

“The substantive part of the summary should start with a very brief statement of [the nature of the case](#). This basically answers the question of why there is a legal action before the court, the nature of that action, and what remedy is being sought. The action might be a suit claiming breach of contract for which damages are being sought. Another example might be a suit brought by a prisoner claiming that he was unfairly denied parole. The particular decision might be an appeal of a lower court decision, or it might be an application for judicial review of an administrative tribunal's decision. The key is to discover who is asking this particular court for what.

Try to put this statement of the nature of the case in words that you, the student, understand. Merely repeating the language of the court without understanding what the court is saying is of little assistance in terms of advancing understanding. “

The Facts

“The next part of the summary should provide a succinct statement of the facts of the case. Only those facts that are relevant to the main legal issues should be noted. Sometimes the court itself provides a useful summary of the facts at the beginning of the decision, but sometimes it is necessary to cull the facts from the decision as a whole. Even where the court provides a summary, the summary that you write for yourself will likely be a condensation of the facts as reported by the judge. The summary of facts should not be any longer than three or four sentences, forcing you to hone in on the key elements of the case. It is usually impossible to tell what the most relevant facts are until you have read the whole case, as the final decision may turn on a particular fact or set of facts that is only revealed or discussed near the end of the decision.”

Case Summary Con't

Issue

“The summary should contain a clear statement of the legal issue addressed in the decision. To the extent that a court decision purports to resolve a dispute between the parties on the basis of a legal rule, the legal issue in the case involves an identification of the appropriate legal rule to apply to the resolution of the dispute. It is often appropriate to state the legal issue in the form of a question, such as "where is a contract formed when the acceptance is communicated by fax?" Another example might be: "Does the guarantee of freedom of expression in the Charter of Rights preserve a union's right to engage in picketing?" One problem that arises in identifying the issue is that the court often purports to raise and answer several questions. In many cases there is one central issue on which the resolution of the dispute revolves, and in that situation it is desirable to only state that one issue. However, if it is clear that the court is basing its decision on several issues, then by all means feel free to include them in the summary. The statement of each issue, however, should normally be no longer than a sentence. The key to identifying the issues in a case is to reflect upon who wants what, did they succeed or fail in getting it, and thinking of the issue in the case as explaining why they may have succeeded or failed.”

Concise Rule of Law

“Provide a statement of the general principle of law that the case illustrates. For example, "A contract is formed in the place where an acceptance by fax is received." or "Picketing in the form of leafleting aimed at consumers is a form of freedom of expression protected by the Charter of Rights and Freedoms." The identification of the rule of law is similar to the identification of the issue, but is most often best stated in a declarative fashion, and with somewhat more precision than the statement of the issue. “

Holding and Decision

“Explain the court's rationale in reaching its conclusion. Explain how the court applied the general rule of law to the facts of the case, and the public policy issues or other factors that may influence the judge's reasoning. Finish with a statement indicating how the case was finally decided. For example, "the plaintiff's claim for damages was disallowed" or "the appeal was allowed". (This, of course, assumes that in the description of the nature of the case, you have clearly stated the nature of the plaintiff's claim, or the basis of the appeal). “

Court Cases:

Religious Freedom;

R.v.Big Drug Mart (1985)

R.V.Edwards Books and Arts (1986)

Multani v. Commission Scolaire Marguerite-Bourgeoys (2006)

Syndicat Northcrest v. Amselem (2004)

Freedom of Expression:

R.V. Zundel (1992)

R V. Keegstra (1990)

R V. Butler (1992)

R.v. Sharpe (2001)

Little Sisters Book and Art Emporium v. Canada (2000)

Freedom of Association:

Dummore.v.Ontario (2001)

Delisle v.Canada (1999)

Lavigne v.Ontario Public Service Employees Union (1991)

Fundamental Justice:

Morgentaler v.The queen (1989)

Sing v. Minister of Employment and Immigration (1985)

Chaoulli v. Quebec (2005)

Gosselin v. Quebec (Attorney General, 2002).

Reference re.B.C. Motor Vehicle Act (1985)

Equality Rights;

Andrews v.law Society of B.C. (1989)

Vriend v. Alberta, [1989]

Egan et al.v.The queen, (1995)

Aboriginal Rights:

R.v. Sparrow (1990)

Delgamuukw v. British Columbia (1997)

R.v. Marshall (1999)

Mikisew Cree First Nation v.Canada (Minister of Canadian Heritage, 2005)

Accommodation for Disability:

Students with disabilities who require adaptations or services must discuss their needs with the instructor. Accommodation for disability must be arranged in conjunction with the Office for Persons with Disability.

Plagiarism:

Plagiarism is generally considered to be the most serious academic misconduct that a student can commit. Whether intentionally or unintentionally, instances of plagiarism will have serious academic consequences. In order to avoid slipping into the realm of plagiarism, students are advised to familiarize themselves with York University's definition of academic dishonesty.