

York University
AP/PPAS/POLS 3136 3.0 W Section O
Public Law II: The Charter of Rights and Freedoms and the Limits of Public
Administration
Winter 2021 (No Prerequisite)
R 19:00-22:00
Location: Zoom on Course Webpage

Course Director: Khashayar Hooshiyar
Virtual Office Location: Zoom Video Conferencing
Office Hours: T & R 16:00-17:00
Email: khoosh@yorku.ca

- This is a remote course and all course lectures, activities, and assignments can be found on Moodle.
- For this course, regular updates to the course on eClass will happen on: FRIDAYS

Course webpage: TBA

Technical requirements for taking the course: In order to fully participate in this course, students will be required to take part in video conferencing and will also appear on video (e.g., for tutorial/seminar discussion, group work, assignment submission, etc), In addition to stable, higher-speed Internet connection, students will need access to a computer with webcam and microphone OR a smart device (iPhone is fine) with these features.

To determine Internet connection and speed, there are online tests, such as [Speedtest](#), that can be run.

IMPORTANT. You must **sign in with your YorkU** email account to be allowed to join the live session.

As the instructor, I use eClass to create lessons, teach lessons, manage course content, and interact online with students. Students use eClass to review their course syllabi, attend online lectures, participate in class discussions, submit assignments, take tests, and interact with course instructors, and other students.

Organization of the course:

The course will consist of lectures, interactive discussion of the readings, and occasional audio-visual presentations.

Live sessions will be recorded and made available for students viewing upon approval by the instructor (e.g., international students, students with competing obligations, etc.)

There will also be opportunities for students to participate asynchronously. Please visit the course webpage on eClass for further information.

To facilitate a more effective online learning experience, lectures will be broken into 25 to 30-minute segments. After each segment, there will be opportunities for a short break followed by a few minutes of interactive activities such as Q & A.

Students shall note the following:

- Zoom is hosted on servers in the U.S. This includes recordings done through Zoom.
- If you have privacy concerns about your data, provide only your first name or a nickname when you join a session.
- The system is configured in a way that all participants are automatically notified when a session is being recorded. In other words, a session cannot be recorded without you knowing about it.

Technology requirements and FAQs for Moodle can be found here
<https://www.yorku.ca/moodle/students/faq/index.html>

Here are some useful links for student computing information:

Support & Resources: <https://www.yorku.ca/laps/support/>
Zoom@YorkU User Reference Guide: <https://uit.yorku.ca/wp-content/uploads/sites/3/2012/02/Zoom@YorkU-User-Reference-Guide.pdf>
eLearning: <https://currentstudents.yorku.ca/technology-protocol-for-students>
Student Guide to eLearning at York University:
<https://teachingcommons.yorku.ca/resources/elearning/>

Virtual office hours:

Zoom: Each week I hold **2 hours of virtual office hours:** T & R 16:00-17:00
I am available for Zoom conferencing with students during this time to discuss any questions or concerns you may have. **Please wait in the waiting room on entry** to be called. Office hours are first come first served.

Email: I respond to email daily between 12:00-12:30 pm Monday-Friday (excluding holidays). Any emails sent after 12:00 pm will be responded to the next day. Emails sent after 12:00 pm Friday will receive a response Monday morning between 12:00 and 12:30 pm. I respond to every single email sent. Every email always gets a response.

- In general, questions about substantive issues and course material must be asked during office hours. When communicating with the instructor via email,

please provide your details: if you do not include your name, student number and course name or number, I may not know who you are. Put the course # in the subject area of your email.

Course description:

This course examines key provisions in the Canadian Charter of Rights and Freedoms as the courts have interpreted them. These include freedom of expression, legal rights, equality rights, language rights, and aboriginal people's rights. The course will also examine Charter cases involving reproductive rights and the rights of organized labour. A key theme discussed throughout the course is the judicialization of politics that supposedly has occurred with the advent of the Charter.

Course objectives and learning outcomes:

- understand the history, development, and significance of the rights consciousness movement in Canada.
- develop a comprehensive knowledge of the origins of and conditions under which the Charter of Rights and Freedoms was entrenched into the Canadian Constitution.
- acquire a critical understanding of the political, social, and legal significance and implications of the Charter as well as learn how different academic perspectives assesses the pros and cons of the Charter.
- learn how the birth of the Charter has dramatically changed the role and responsibilities of courts/judges in Canada as well as the changes it has brought about in society.
- understand key provisions in the Canadian Charter of Rights and Freedoms as the courts have interpreted them.
- critically understand the important role of the courts and judicial review in promoting and protecting rights and freedoms.
- analyse case laws and discuss possible socio-political impacts of each decision as well as discuss the reasons behind the gaps between the Charter and the way it is implemented by the justice system.

READINGS:

Required: The following are required readings:

Robert J. Shaprpe, *The Charter of Rights and Freedoms, 2017*
This book is available for purchase from York University bookstore.

You can also purchase or rent the digital version of the book from the following online store: TBA

Case law: The course is also based on a discussion of case law. You can directly access the cases by pointing your browser to the web-link listed for each in the course outline on course webpage. Excerpted summaries (with commentaries) for many of these cases are also available in the text by Peter Russell, Rainer Knopff, Thomas Bateman & Jane Hiebert, *The Court and the Constitution: Leading Decisions*.

Recommended: The following textbook is recommended (though not required):

Peter W. Hogg, *Constitutional Law of Canada* Student Edition

When preparing your case comment it is strongly recommended that you refer to Joanne Buckley, *Fit to Print: The Canadian Student's Guide to Essay Writing* (Toronto: Harcourt, 2001).

Other Books of Interest: The following are other books that may interest students:

Bakan, [Just Words: Constitutional Rights and Social Wrongs](#)

Beatty, [Constitutional Law in Theory and Practice](#)

Cairns, [The Charter versus Federalism](#)

Greene, [The Charter of Rights](#)

Hiebert, [Charter Conflicts: What is Parliament's Role](#)

Hirschl, [Towards Juristocracy](#)

Hutchinson, [Waiting for CORAF: A Critique of Law and Rights](#)

Kelly, [Governing with the Charter](#)

Knopff and Morton, [Charter Politics](#)

Mandel, [The Canadian Charter of Rights and the Legalization of Politics](#), 2nd ed.

Manfredi, [Judicial Power and the Charter](#)

Martin, [The Most Dangerous Branch: How the Supreme Court of Canada Has Undermined Our Law and Our Democracy](#)

Morton and Knopff, [The Charter Revolution and the Court Party](#)

Morton, ed., [Law, Politics and the Judicial Process in Canada](#) 3rd ed

Monahan, [Politics and the Constitution](#)

Roach, [The Supreme Court on Trial: Judicial Activism or Democratic Dialogue](#)

Web Resources:

Supreme Court of Canada homepage:

<http://www.scc-csc.gc.ca/>

Reported decisions of the Supreme Court 1983 to present:

<http://scc.lexum.org/en/index.html>

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

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

Access to Justice Network (AJCNET): A legal education network.

<http://www.acjnet.org/nahome/default.aspx>

Law Union of Ontario: A news and information resource.

<http://www.lawunion.ca/>

Osgoode Hall Law School sponsored blog containing commentaries on and discussions of Supreme Court decisions:

<http://www.thecourt.ca/>

Centre for Constitutional Studies: Focuses on the interdisciplinary study of constitutional matters.

<http://www.law.ualberta.ca/centres/ccs/>

Jurist Canada: A legal education network.

<http://jurist.law.utoronto.ca/index.htm>

Homepage of the Canadian Judicial Council:

<http://www.cjc-ccm.gc.ca/article.asp?id=5>

Homepage of the Office for the Commissioner for Federal Judicial Affairs:

<http://www.fja.gc.ca/fja-cmf/index-eng.html>

Legal Information Institute (Cornell University Law School), a legal resource for U.S. constitutional law:

<http://www.law.cornell.edu/>

EVALUATION:

	Weight	Format	Date
Attendance & Participation	15%	Class participation and reports	
Exam 1	20%	Format: Identifications & short answer essay questions. More information on course webpage	March 4
Case Comment	35%	Maximum 6 pages, double space. See course webpage for more information	April 1
Exam 2	30%	Format: Identifications & short answer essay questions. More information on course webpage	During Official Exam Period

Grading, Assignment Submission, Lateness Penalties and Missed Tests

Grading: The grading scheme for the course conforms to the 9-point grading system used in undergraduate programs at York (e.g., A+ = 9, A = 8, B+ = 7, C+ = 6, etc.). Assignments and tests* will bear either a letter grade designation or a corresponding number grade (e.g. A+ = 90 to 100, A = 80 to 89, B+ = 75 to 79, etc.)

(For a full description of York grading system see the York University Undergraduate Calendar - <http://calendars.registrar.yorku.ca/2010-2011/academic/index.htm>)

Assignment Submission: Proper academic performance depends on students doing their work not only well, but on time. Accordingly, assignments for this course must be received on the due date specified for the assignment. Assignments are to be handed in electronically through course webpage.

- Your assignment should be accompanied by an assessment of the originality of the text issued by www.turnitin.com

To promote academic integrity in this course, students will be normally required to submit their written assignments to Turnitin (via eClass) for a review of textual similarity and the detection of possible plagiarism. In so doing, students will allow their material to be included as source documents in the Turnitin.com reference database, where they will be used only for the purpose of detecting plagiarism. The terms that apply to the University's use of the Turnitin service are described on the Turnitin.com website.

- Instruction on how to submit your paper to **Turnitin** can be found at: <http://www.yorku.ca/moodle/students/documentation/turnitin.html>
- Instruction on how to submit your paper to **Turnitin** can be found at: <http://www.yorku.ca/moodle/students/documentation/turnitin.html>

Lateness Penalty: Assignments received later than the due date will be penalized at 3% per day (including weekends). Assignments later than 7 days past the deadline will not be graded. Exceptions to the lateness penalty for valid reasons such as illness, compassionate grounds, etc., may be entertained but will require compelling reasons.

Missed Tests and Late Assignments: Students with compelling reasons for missing a course test or a late submission of an assignment may request accommodation from the instructor.

- In order **to be eligible for a make-up**, students who missed their exams must provide compelling reason for their inability to write the exam on its originally scheduled date.

Other course policies

- It is the responsibility of the student to catch up on missed class notes.
- Students are expected to **attend all lectures**.
- Students are required to keep copies of all submitted assignments in case of the unlikely event that an assignment is lost.

- Students are expected to join live Zoom lectures on time and stay for the entire duration of class.
- **All students are expected to familiarize themselves with the following information:**
 - [Student Rights & Responsibilities](#)
 - [Academic Accommodation for Students with Disabilities](#)[For more language on course information, please consult the University's [Important Course Information document](#).]
- **Policy on audio-visual recordings of live sessions on eClass:**
 - 1) the recordings should be used for educational purposes only and as a means for enhancing accessibility; 2) students do not have permission to duplicate, copy and/or distribute the recordings outside of the class (these acts can violate not only copyright laws but also [FIPPA](#)); and 3) all recordings will be destroyed after the end of classes.
- **Academic honesty and integrity**

In this course, we strive to maintain academic integrity to the highest extent possible. Please familiarize yourself with the meaning of academic integrity by completing SPARK's [Academic Integrity module](#) at the beginning of the course. Breaches of academic integrity range from cheating to plagiarism (i.e., the improper crediting of another's work, the representation of another's ideas as your own, etc.). All instances of academic dishonesty in this course will be reported to the appropriate university authorities, and can be punishable according to the [Senate Policy on Academic Honesty](#).

Important Dates: <https://registrar.yorku.ca/enrol/dates/fw20>

Important: It is your responsibility as a student to ensure that you are available to sit for examinations during the entire exam period for the term corresponding to your course. We strongly recommend that you do not make any travel arrangements prior to the end of the term's examination schedule.

CLASS SCHEDULE & REQUIRED READINGS

JAN 14

INTRODUCTION: OBJECTIVES, STRUCTURES AND SYLLABUS

NO READINGS

JAN 21

HUMAN RIGHTS, FREEDOM, DEMOCRACY
YOU TUBE: "THE STORY OF HUMAN RIGHTS"

- Introduction to human rights
<https://www.sfu.ca/~aheard/intro.html>
- Universal Declaration of Human Rights and Democracy
<http://www.un.org/en/universal-declaration-human-rights/>
<http://www.un.org/en/sections/issues-depth/democracy/>

JAN 28

THE ROAD TO THE CHARTER

- Sharpe & Roach, pp. 4-26
- Human Rights in Canada: A Historical Perspective
https://historyofrights.ca/wp-content/uploads/pubs/article_HistoryOfHR.pdf
- *The Charter of Rights and Freedoms*
<http://laws-lois.justice.gc.ca/eng/Const/page-15.html#h-39>

FEB 4

THE COURTS AND JUDICIAL REVIEW

- Sharpe & Roach, pp. 27- 46

FEB 11

PERSPECTIVES, INTERPRETATION, AND THE CHARTER

- Sharpe & Roach, pp. 48-64
- *Doucet-Boudreau v. Nova Scotia (Minister of Education)* [2003]
<http://scc.lexum.org/en/2003/2003scc62/2003scc62.html>
- Sharpe & Roach, pp. 4-26

FEB 18- NO CLASS.		READING WEEK	
FEB 25	FUNDAMENTAL FREEDOMS: FREEDOM OF EXPRESSION		
<p>Required</p> <ul style="list-style-type: none"> • Sharpe & Roach, pp. 166-203 <p><u>Suggested:</u></p> <p><i>R. v. Keegstra</i>, [1990] http://scc.lexum.org/en/1990/1990rcs3-697/1990rcs3-697.html</p> <p><i>R. v. Zundel</i>, [1992] http://scc.lexum.org/en/1992/1992rcs2-731/1992rcs2-731.html</p> <p><i>R. v. Butler</i>, [1992] http://scc.lexum.org/en/1992/1992rcs1-452/1992rcs1-452.html</p> <p><i>R. v. Sharpe</i>, [2001] http://scc.lexum.org/en/2001/2001scc2/2001scc2.html</p> <p><i>Little Sisters Book and Art Emporium v. Canada (Minister of Justice)</i>, [2000] http://scc.lexum.org/en/2000/2000scc69/2000scc69.html</p> <p><i>RJR-MacDonald Inc. v. Attorney General of Canada</i>, [1995] http://scc.lexum.org/en/1995/1995rcs3-199/1995rcs3-199.html</p> <p><i>Canada (Attorney General) v. JTI-Macdonald Corp.</i>, [2007] http://scc.lexum.org/en/2007/2007scc30/2007scc30.html</p>			
MARCH 4		MID-TERM EXAM	
MARCH 11	FREEDOM OF ASSOCIATION & DEMOCRATIC RIGHTS		
<ul style="list-style-type: none"> • Sharpe & Roach, pp. 205-217; 219-234 			

MARCH 18

LEGAL RIGHTS

Required:

Sharpe & Roach, pp. 244-292

Suggested:

Singh v. Minister of Employment and Immigration, [1985]

<http://scc.lexum.org/en/1985/1985rsc1-177/1985rsc1-177.html>

Reference re. B.C. Motor Vehicle Act, [1985]

<http://scc.lexum.org/en/1985/1985rsc2-486/1985rsc2-486.html>

Askov v. The Queen, [1990]

<http://scc.lexum.org/en/1990/1990rsc2-1199/1990rsc2-1199.html>

Rodriguez v. Attorney General of British Columbia, [1993]

<http://scc.lexum.org/en/1993/1993rsc3-519/1993rsc3-519.html>

R. v. O'Connor, [1995]

<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1323/index.do>

R. v. Mills, [1999]

<http://scc.lexum.org/en/1999/1999rsc3-668/1999rsc3-668.html>

Canadian Foundation For Children, Youth and the Law v. Canada (Attorney General), [2004]

<http://scc.lexum.org/en/2004/2004scc4/2004scc4.html>

Gosselin v. Québec (Attorney General), [2002]

<http://scc.lexum.org/en/2002/2002scc84/2002scc84.html>

Charkaoui v. Canada (Citizenship and Immigration), [2007]

<http://scc.lexum.org/en/2007/2007scc9/2007scc9.html>

Canada (Prime Minister) v. Khadr, [2010]

<http://scc.lexum.org/en/2010/2010scc3/2010scc3.html>

Canada (Attorney General) v. PHS Community Services Society, [2011]

<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/7960/index.do?r=AAAAAQAGSU5TSVRFAAAAAAE>

R. v. Cole, [2012]

<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/12615/index.do>

MARCH 25

EQUALITY RIGHTS

Required:

Sharpe & Roach, pp. 354-405

Suggested:

Andrews v. Law Society of British Columbia, [1989]

<http://scc.lexum.org/en/1989/1989rcs1-143/1989rcs1-143.html>

Schachter v. Canada, [1992]

<http://scc.lexum.org/en/1992/1992rcs2-679/1992rcs2-679.html>

Symes v. Canada, [1993]

<http://scc.lexum.org/en/1993/1993rcs4-695/1993rcs4-695.html>

Re Thibaudeau and the Queen, [1995]

<http://scc.lexum.org/en/1995/1995rcs2-627/1995rcs2-627.html>

Eldridge v. British Columbia (Attorney General), [1997]

<http://scc.lexum.org/en/1997/1997rcs3-624/1997rcs3-624.html>

Egan et al. v. The Queen, [1995]

<http://scc.lexum.org/en/1995/1995rcs2-513/1995rcs2-513.html>

Vriend v. Alberta, [1998]

<http://scc.lexum.org/en/1998/1998rcs1-493/1998rcs1-493.html>

M. v. H., [1999]

<http://scc.lexum.umontreal.ca/en/1999/1999rcs2-3/1999rcs2-3.html>

Law v. Canada (Minister of Employment and Immigration), [1999]

<http://scc.lexum.org/en/1999/1999rcs1-497/1999rcs1-497.html>

Halpern et al v. Attorney General of Canada et al, [2003]

<http://www.ontariocourts.on.ca/decisions/2003/june/halpernC39172.htm>

Reference re Same-Sex Marriage, [2004]

<http://scc.lexum.org/en/2004/2004scc79/2004scc79.html>

Hodge v. Canada [2004]

<http://scc.lexum.org/en/2004/2004scc65/2004scc65.html>

Newfoundland (Treasury Board) v. N.A.P.E. [2004]
<http://scc.lexum.org/en/2004/2004scc66/2004scc66.html>

Auton v. British Columbia (Attorney General) [2004]
<http://scc.lexum.org/en/2004/2004scc78/2004scc78.html>

APRIL 1

THE CHARTER DEBATE: JUDICIAL VS. LEGISLATIVE SUPREMACY AND LIMITATIONS OF THE CHARTER RIGHTS

*** CASE COMMENTS ARE DUE : SUBMIT TO TURNITIN VIA COURSE WEBPAGE***

Required:

- Sharpe & Roach, pp. 66-92
- F.L. Morton, "Dialogue or Monologue? "Policy Options Vol. 20 (April 1999) <http://archive.irpp.org/po/archive/apr99/morton.pdf> (4 pages -Available on the internet)

Suggested:

Allan Hutchinson & Andrew Petter, "Private Rights/Public Wrongs: The Liberal Lie of the Charter." The University of Toronto Law Journal, 38:3 (Summer, 1988), 278-297

Peter Hogg and Allison A. Bushell, "The Charter Dialogue Between Courts and Legislatures," Osgoode Hall Law Journal 35:1 (1997).

F.L. Morton and Rainer Knopff, Excerpt from The Charter Revolution and the Court Party System (Peterborough: Broadview, 1999).

Simon V. Potter, "Judging the Judiciary: The Rule of Law in the Age of the Charter." Policy Options 24:9 (October, 2003).

APRIL 8

THE CONSTITUTION ACT 1982 AND ABORIGINAL RIGHTS

Required:

"The Constitutional Rights of the Aboriginals of Canada." Available online at: <http://caid.ca/ConRigAboPeo1982.pdf>

Calder et al. v. Attorney-General of British Columbia, [1973]
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5113/index.do>

R. v. Sparrow, [1990]
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/609/index.do>

Suggested:

Delgamuukw v. British Columbia, [1997]
<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1569/index.do>

R. v. Van der Peet, [1996]
<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1407/index.do>

R. v. Marshall, [1999]
<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1739/index.do>

Corbiere v. Canada (Minister of Indian and Northern Affairs), [1999]
<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1704/index.do>

McIvor v. Canada (Registrar of Indian and Northern Affairs), [2009]
<http://www.canlii.org/en/bc/bcca/doc/2009/2009bcca153/2009bcca153.html>