

Public Law II: The Charter of Rights and Freedoms and the Limits of Public Administration

AP/PPAS 3136 3.0 A

Fall 2021

Wednesdays 2:30-5:20 PM

Accolade Building West (ACW) 306

Course Director: Adam Schachhuber

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Office Hours: By appointment

Office Location: Zoom

Course Description:

This course surveys the law of human rights and civil liberties in Canada. Lectures and required readings will focus in particular on the main provisions of the *Canadian Charter of Rights and Freedoms* – which include fundamental freedoms (e.g. freedom of conscience and religion, freedom of expression, and freedom of association), democratic rights, legal rights, equality, and language rights – as well as Aboriginal and treaty rights and the politics of judicial review. Students can expect to learn how to read and make sense of legislation and case law, to acquire basic legal research and writing skills, and above all to develop a foundational understanding of the Supreme Court of Canada’s *Charter* jurisprudence and its influence on contemporary Canadian law, politics, and public administration.

Format:

This course is scheduled to meet as a three-hour weekly lecture. As much as half of this time will be dedicated to discussion and working on legal research and writing skills. If Covid-19-related conditions at the university allow, there should also be several opportunities to engage in semi-structured debates, moots, and mock trials.

Required Readings:

There is one required textbook for the course:

Ian Greene, *The Charter of Rights and Freedoms: 30+ years of decisions that shape Canadian life* (Toronto: James Lorimer & Co., 2014)

The paperback edition is available for purchase at the York University Bookstore. The paperback and/or an eBook can also be purchased through the publisher’s [website](#).

Additional required readings – consisting primarily of Supreme Court of Canada (SCC) judgments and the odd law review article – will be made accessible through hyperlinks on this syllabus and the course’s eClass page.

Useful Websites:

[The Supreme Court of Canada \(SCC\) homepage](#)

[CanLII \(Canadian Legal Information Institute\)](#)

[Osgoode Digital Commons \(free access to Osgoode journals and Osgoode faculty scholarship\)](#)

[Osgoode Hall Law Library research guides](#)

[TheCourt.ca \(online legal magazine with strong coverage of Canadian constitutional law cases\)](#)

Evaluation:

Participation:	10%
Case Brief (1-2 pp., due Sept. 29-Nov. 3):	10%
In-Class Midterm Test (Oct. 27):	20%
Case Comment (8-10 pp., due Dec. 1):	30%
Final Exam (Fall exam period):	30%

Lecture and Reading Schedule:

Week 1 (Sept. 8): *Introduction to the course*

Week 2 (Sept. 15): *Rights consciousness and the protection of civil rights before the Charter*

Greene, ch.1, “Civil Rights in Canada During the Pre-Charter Era”

[Reference Re Alberta Statutes \(Alberta Press Case\), \[1938\] S.C.R. 100](#)

[Roncarelli v. Duplessis, \[1959\] S.C.R. 121](#)

[Robertson and Rosetanni v. The Queen, \[1963\] S.C.R. 651](#)

[The Queen v. Drybones, \[1970\] S.C.R. 282](#)

[Attorney General of Canada v. Lavell and Bédard, \[1974\] S.C.R. 1349](#)

Week 3 (Sept. 22): *The politics of the Charter*

Greene, Ch. 2, “The Charter”

[The Honourable Madame Justice Beverley M. McLachlin, "The Charter: A New Role for the Judiciary?" *Alberta Law Review* Vol. 29, No. 3 \(1991\)](#)

Week 4 (Sept. 29): Charter *interpretation and the limitation or override of Charter rights*

[R. v. Oakes, \[1986\] 1 S.C.R. 103](#)

[Ford v. Quebec \(Attorney General\), \[1988\] 2 S.C.R. 712](#)

[John D. Whyte, "On Not Standing for Notwithstanding." *Alberta Law Review* Vol. 28, No. 2 \(1990\)](#)

[Peter Russell "Standing Up for Notwithstanding." *Alberta Law Review* Vol. 29, No. 2 \(1991\)](#)

Week 5 (Oct. 6): *Fundamental freedoms I: Freedom of conscience and religion*

Greene, Ch. 3, "The Fundamental Freedoms"

[R. v. Big M Drug Mart Ltd., \[1985\] 1 S.C.R. 295](#)

[R. v. Edwards Books and Art Ltd. \[1986\] 2 S.C.R. 713](#)

[Syndicat Northcrest v. Amselem, \[2004\] 2 S.C.R. 551, 2004 SCC 47](#)

[Multani v. Commission scolaire Marguerite-Bourgeoys, \[2006\] 1 S.C.R. 256, 2006 SCC 6](#)

Reading Week (Oct. 13): No Class!

Week 6 (Oct. 20): *Fundamental freedoms II: Freedom of expression; Freedom of association*

[R. v. Keegstra, \[1990\] 3 S.C.R. 697](#)

[R. v. Zundel, \[1992\] 2 S.C.R. 731](#)

[Ross v. New Brunswick School District No. 15, \[1996\] 1 S.C.R. 825](#)

[R. v. Butler, \[1992\] 1 S.C.R. 452](#)

[R. v. Sharpe, \[2001\] 1 S.C.R. 45, 2001 SCC 2](#)

[Reference Re Public Service Employee Relations Act \(Alta.\), \[1987\] 1 S.C.R. 313](#)

[Lavigne v. Ontario Public Service Employees Union, \[1991\] 2 S.C.R. 211](#)

[Dunmore v. Ontario \(Attorney General\), \[2001\] 3 S.C.R. 1016, 2001 SCC 94](#)

[Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia, \[2007\] 2 S.C.R. 391, 2007 SCC 27](#)

In-Class Midterm Test (Oct. 27)

Week 7 (Nov. 3): *Democratic rights*

Greene, Ch. 4, “Democratic Rights”

[Sauvé v. Canada \(Chief Electoral Officer\), \[2002\] 3 S.C.R. 519, 2002 SCC 68](#)

[Reference re Prov. Electoral Boundaries \(Sask.\), \[1991\] 2 S.C.R. 158](#)

[Reference re Secession of Quebec, \[1998\] 2 S.C.R. 217](#)

[Harper v. Canada \(Attorney General\), \[2004\] 1 S.C.R. 827, 2004 SCC 33](#)

Week 8 (Nov. 10): *Legal rights*

Greene, Ch. 5, “Legal Rights”

[Re B.C. Motor Vehicle Act, \[1985\] 2 S.C.R. 486](#)

[R. v. Morgentaler, \[1988\] 1 S.C.R. 30](#)

[Gosselin v. Québec \(Attorney General\), \[2002\] 4 S.C.R. 429, 2002 SCC 84](#)

[Chaoulli v. Quebec \(Attorney General\), \[2005\] 1 S.C.R. 791, 2005 SCC 35](#)

[Peter W. Hogg. “The Brilliant Career of Section 7 of the Charter.” *The Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference* 58 \(2012\)](#)

Week 9 (Nov. 17): *Equality*

Greene, Ch. 6, “Equality”

[Andrews v. Law Society of British Columbia, \[1989\] 1 S.C.R. 143](#)

[R. v. Turpin, \[1989\] 1 S.C.R. 1296](#)

[Law v. Canada \(Minister of Employment and Immigration\), \[1999\] 1 S.C.R. 497](#)

[Little Sisters Book and Art Emporium v. Canada \(Minister of Justice\), \[2000\] 2 S.C.R. 1120, 2000 SCC 69](#)

[R. v. Kapp, \[2008\] 2 S.C.R. 483, 2008 SCC 41](#)

Week 10 (Nov. 24): *Aboriginal rights*

Greene, Ch. 8, “Aboriginal Rights”

[R. v. Sparrow, \[1990\] 1 S.C.R. 1075](#)

[R. v. Van der Peet, \[1996\] 2 S.C.R. 507](#)

[Delgamuukw v. British Columbia, \[1997\] 3 S.C.R. 1010](#)

[R. v. Marshall, \[1999\] 3 S.C.R. 456](#)

[Haida Nation v. British Columbia \(Minister of Forests\), \[2004\] 3 S.C.R. 511, 2004 SCC 73](#)

Week 11 (Dec. 1): *Revisiting the Charter and its critics*

Greene, Ch. 9, “The *Charter* and Human Rights”

[Peter W. Hogg and Allison A. Bushell, “The Charter Dialogue Between Courts and Legislatures \(Or Perhaps the Charter of Rights Isn’t Such a Bad Thing After All\).” *Osgoode Hall Law Journal* Vol. 35, No. 2 \(1997\)](#)

[Andrew Petter, “Taking Dialogue Theory Much Too Seriously \(Or Perhaps Charter Dialogue Isn’t Such a Good Thing After All\).” *Osgoode Hall Law Journal* Vol. 45, No. 1 \(2007\)](#)

Grades:

Grades for this course will be calculated according to the standard nine-point grading scheme used in all undergraduate programs at York University (e.g. A+=“Exceptional”=90-100%, A=“Excellent”=80-89%, B+=“Very Good”=75-79%, B=“Good”=70-74, C+=“Competent”=65-69%, C=“Fairly Competent”=60-64%, etc.). A detailed explanation of this scheme can be found in the School of Public Policy and Administration’s [Academic Calendar](#).

Assignment Submission and Late Penalties:

Written assignments should be submitted on or before the advertised due date through the link(s) provided on the course’s eClass page. Because it is a short assignment and students are allowed the flexibility to choose to submit it on or before any one of four possible due dates, no late case briefs will be accepted; nor will any extensions be granted. Case comments submitted after the due date will be assessed a late penalty of five percent (ie. one half-letter grade) per day. Extensions on the case comment assignment will be granted only in exceptional circumstances.

Missed Tests/Exams:

Students who miss the in-class midterm test should contact the Course Director as soon as possible. There is no automatic right to a make-up test. The final exam in this course is scheduled to take place during the official Fall semester exam period and will be conducted under the specific conditions required by the Registrar’s Office. In accordance with York University policy and procedure, students who miss the final exam should contact both the Course Director and the School of Public Policy and Administration as soon as possible. Students who seek a make-up test for the final exam may be required to request deferred standing in the course.

Academic Honesty:

Students should familiarize themselves with their rights and responsibilities regarding academic honesty. These are clearly laid out in the [Senate Policy on Academic Honesty](#) and the [Student Code of Conduct](#) as well as the [Academic Integrity Module](#) provided through the Student Papers and Academic Research Kit (SPARK). Additional resources can be found in the [Academic Honesty Letter](#) sent to undergraduate students of the Faculty of Liberal Arts & Professional Studies in 2020.

Accommodations for Students with Disabilities:

Students with disabilities may seek academic accommodations in accordance with the [Senate Policy on Academic Accommodation for Students with Disabilities](#). Students who seek academic accommodations must be registered with Student Accessibility Services and should try to provide the Course Director with a Letter of Accommodation as early in the semester as possible.