

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

**AP/PPAS 3136 3.0 O**

**Winter 2022**

**Thursday 7:00-10:00 PM**

**Victor Phillip Dahdaleh Building (DB) 106**

**Course Director:** Adam Schachhuber

**Email:** [aschachh@yorku.ca](mailto:aschachh@yorku.ca)

**Office Hours:** By appointment

**Office Location:** Zoom

## **Course Description:**

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

## **Format:**

This section of Public Law II is scheduled to meet in person.

## **Required and Recommended Readings:**

There is one required textbook for the course:

Robert J. Sharpe and Kent Roach, *The Charter of Rights and Freedoms, 7<sup>th</sup> ed.* (Toronto: Irwin Law, Inc., 2021)

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

There is also one recommended textbook:

Thomas M.J. Bateman, Janet L. Hiebert, Rainer Knopff, Peter H. Russell, *The Court and the Charter: Leading Cases, 2<sup>nd</sup> ed.* (Toronto: Emond Publishing, 2017)

The Bateman et al. book contains abridged texts of many (but not all) of the cases we will study in this course. It may be particularly useful to students who are new to reading case law. The paperback edition is available for purchase at the York University Bookstore. The paperback and an eBook are also available through the publisher's [website](#).

Further required and recommended readings – which will consist primarily of Supreme Court of Canada (SCC) cases and some law review articles – can be accessed through the hyperlinks on this syllabus or the course's eClass page.

### **Useful Websites:**

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

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

[Charterpedia](#)

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

[Osgoode Hall Law Library research guides](#)

[TheCourt.ca \(Osgoode student blog with up-to-date coverage of constitutional law cases\)](#)

[Centre for Constitutional Studies \(University of Alberta\)](#)

[David Asper Centre for Constitutional Rights \(University of Toronto\)](#)

### **Evaluation:**

Attendance and Participation:	10%
Case Brief (2-3 pp., due Jan. 27-Feb.17):	10%
In-Class Midterm Test (March 3):	25%
Case Comment (8-10 pp., due April 11):	30%
Final Exam (Winter exam period):	25%

### **Lecture and Reading Schedule:**

**Week 1 (Jan. 13): Introduction to the course**

**Week 2 (Jan. 20): Human rights in Canada before the *Charter***

Sharpe and Roach, Ch. 1, "Historical Context"

[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 (Jan. 27): The politics of the *Charter***

Sharpe and Roach, Ch. 2, “The Legitimacy of Judicial Review”

Bateman et al., “Introduction”

[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 \(1997\)](#)

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

**Week 4 (Feb. 3): *Charter* interpretation; The reasonable limits clause; The override clause**

Sharpe and Roach, Ch. 3, “Interpretation of the *Charter of Rights and Freedoms*,” Ch. 4, “Limitation of *Charter* Rights,” and Ch. 5, “The Legislative Override”

[Hunter et al. v. Southam Inc., \[1984\] 2 S.C.R. 145](#)

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

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

**Week 5 (Feb. 10): Fundamental freedoms I: Freedom of conscience and religion**

Sharpe and Roach, Ch. 8, “Freedom of Conscience and Religion”

[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](#)

[Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 34, \[2009\] 2 S.C.R. 567](#)

## **Week 6 (Feb. 17): Fundamental freedoms II: Freedom of expression**

Sharpe and Roach, Ch. 9, “Freedom of Expression”

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

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

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

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

## **Reading week (Feb. 24): No class!**

## **In-class midterm test (March 3)**

## **Week 7 (March 10): Fundamental freedoms III: Freedom of association**

Sharpe and Roach, Ch. 10, “Freedom of Association”

[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](#)

[Ontario \(Attorney General\) v. Fraser, 2011 SCC 20, \[2011\] 2 S.C.R. 3](#)

[Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4, \[2015\] 1 S.C.R. 245](#)

## **Week 8 (March 17): Legal rights I**

Sharpe and Roach, Ch. 13, “Life, Liberty, and Security of the Person and the Principles of Fundamental Justice”

[Singh v. Minister of Employment and Immigration, \[1985\] 1 S.C.R. 177](#)

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

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

[Charkaoui v. Canada \(Citizenship and Immigration\), \[2007\] 1 S.C.R. 350, 2007 SCC 9](#)

[Canada \(Attorney General\) v. Bedford, 2013 SCC 72, \[2013\] 3 S.C.R. 1101](#)

[Carter v. Canada \(Attorney General\), 2015 SCC 5, \[2015\] 1 S.C.R. 331](#)

### **Week 9 (March 24): Legal rights II**

Sharpe and Roach, Ch. 14, “Rights in the Criminal Process”

[R. v. Stinchcombe, \[1991\] 3 S.C.R. 326](#)

[R. v. Mills, \[1999\] 3 S.C.R. 668](#)

[R. v. Patrick, 2009 SCC 17, \[2009\] 1 S.C.R. 579](#)

[R. v. Grant, 2009 SCC 32, \[2009\] 2 S.C.R. 353](#)

[R. v. N.S., 2012 SCC 72, \[2012\] 3 S.C.R. 726](#)

[R. v. Nur, 2015 SCC 15, \[2015\] 1 S.C.R. 773](#)

### **Week 10 (March 31): Equality**

Sharpe and Roach, Ch. 15, “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](#)

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

### **Week 11 (April 7): Aboriginal and treaty rights**

Sharpe and Roach, Ch. 17, “Indigenous 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](#)

## **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 with a flexible, four-week submission window, 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 (i.e., one half-letter grade) per day. Extensions for the case comment assignment will be granted only in exceptional circumstances.

## **Missed Tests/Exams:**

Students who miss a test or exam for any reason should contact the Course Director as soon as possible. There is no automatic right to a make-up test.

## **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.

Several private, third-party tutoring companies have begun advertising their services to York University students through eClass. To help eliminate these advertisements, please change your eClass profile settings to private. To hide your email address in eClass: 1) Click your name on the top-right of the eClass website, then click “Profile” on the drop-down menu; 2) Under “User details” click “Edit profile”; 3) From the “Email display” drop-down menu choose “Hide my email address from non-privileged users”; 4) Scroll to the bottom of the page and click on the “Update profile” button.

## **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 provide the Course Director with a Letter of Accommodation at the beginning of the semester.