

POLS 3136: Public Law II

The Charter of Rights and Freedoms

Term: Winter 2022

Course Director: Martin Schoots-McAlpine, 2021polsta@gmail.com

Time: Tuesday 14:30-17:30

Office Hours: Tuesday 12:30-1430

Location: Virtual (for now)

Required Texts

- Ian Greene, *The Charter of Rights and Freedoms: 30+ Years of Decisions That Shape Canadian Life*, James Lorimer and Company 2014.
- eds. Christian Leuprecht and Peter H. Russel, *Essential Readings in Canadian Constitutional Politics*, University of Toronto Press 2011.

Both texts have been ordered and will be available through the bookstore. Additional articles will be made available online or can be found through York's library.

Course Description: This course will serve as a critical overview of the Canadian Charter of Rights and Freedoms. The course will explore the Charter on its own terms as a constitutional document, and will also engage with various critiques of the Charter from both the left and the right. Furthermore, the course will dive deeper into the concept of "rights" itself, to help students understand the Charter as a document fundamentally within the horizons of bourgeois liberalism. Finally, the course will survey relevant case law, giving students an appreciation for the interplay between Canadian politics and the Charter, as well as the impact of the Charter on everyday life.

Readings

(NOTE: You are not required to read the various cases under the "Cases" heading. Those are there purely to help with your Case Study Presentations. More on this below.)

January 11, 2022	<ul style="list-style-type: none">• "Guide to the Canadian Charter of Rights and Freedoms" https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html
Course Introduction	

	<ul style="list-style-type: none"> Greene, “Chapter 2: The Charter” in <i>The Charter of Rights and Freedoms</i>
<p>January 18, 2022</p> <p>What Are Rights?</p>	<ul style="list-style-type: none"> Greene, <i>The Charter of Rights and Freedoms</i>, pg 9-27 Karl Marx, “On the Jewish Question” https://www.marxists.org/archive/marx/works/1844/jewish-question/ Eva Nanopoulos, “All Too Relevant: Marx’s Critique of Rights and Neoliberal Human Rights”, https://mronline.org/2020/03/15/all-too-relevant-marxs-critique-of-rights-and-neoliberal-human-rights/ <p>Sign Up for Case Study Presentation Dates</p>
<p>January 25, 2022</p> <p>Rights in Canada Before the Charter</p>	<ul style="list-style-type: none"> Dominique Clement, Will Silver, Daniel Trottier. <i>The Evolution of Human Rights in Canada</i>, Canadian Human Rights Commission, 2012. Chapters 4-6. Greene, <i>The Charter of Rights and Freedoms</i>, pg 28-54 Peter H. Russell, “The Political Purposes of the Canadian Charter of Rights and Freedoms” Canadian Bill of Rights <p>Final Paper Assigned</p>
<p>Cases: Robertson and Rosetanni v. The Queen, The Queen v. Drybones, Lavell v. The Queen, Bedard v. The Queen</p>	
<p>February 1, 2022</p> <p>The Charter: Fundamental Freedoms</p>	<ul style="list-style-type: none"> Greene, “Chapter 3: The Fundamental Freedoms” in <i>The Charter of Rights and Freedoms</i> David Schneiderman, “A Comment on RJR-MacDonald v. Canada (A.G.)”
<p>Cases: The Queen v. Big M Drug Mart Ltd, Multani v. Commission scolaire Marguerite-Bourgeoys, Alberta v. Hutterian Brethren of Wilson Colony, Wholesale and Department Store Union v. Dolphin Delivery, BCGEU v. British Columbia (Attorney General), Alberta Labour Reference, Health Services and Support – Facilities Subsector Bargaining Assn v. British Columbia, Devine v. Quebec, Ford v. Quebec, RJR-MacDonald v. Attorney General of Canada, R. v. Keegstra, R. v. Zundel, R. v. Butler, R. v. Ross, R. v. Sharpe, Saskatchewan Federation of Labour v. Saskatchewan</p>	
<p>February 8, 2022</p> <p>The Charter: Democratic Rights Part 1</p>	<ul style="list-style-type: none"> Greene, “Chapter 4: Democratic Rights” in <i>The Charter of Rights and Freedoms</i> <p>Guest Lecture: Miguel Figueroa</p>

<p>February 15, 2022</p> <p>The Charter: Democratic Rights Part 2, Mobility Rights</p>	<ul style="list-style-type: none"> • Gil Remillard, “The Constitution Act, 1982: An Unfinished Compromise” <p>Paper Proposals Due</p>
<p>Cases: Reference Re: Provincial Electoral Boundaries (Saskatchewan), Reference Re: Secession of Quebec, Sauve v. Canada (1993), Sauve v. Canada (2002), Harper v. Canada, Opitz v. Wrzesnewskyj, Figueroa v. Canada, R. v. McLean, Law Society of Upper Canada v. Skapinker</p>	
<p>February 23, 2022 *** NO CLASS***</p>	
<p>March 1, 2022</p> <p>The Charter: Legal Rights</p>	<ul style="list-style-type: none"> • Greene, “Chapter 5: Legal Rights” in <i>The Charter of Rights and Freedoms</i> • Omatsu, “The Fiction of Judicial Impartiality”
<p>Cases: Hunter v. Southam, Singh v. Minister of Employment and Immigration, R. v. Mills, Operation Dismantle Inc v. The Queen, R. v. Therens, R. v. Collins, Valente v. The Queen, Provincial Court Judges Reference, R. v. Oakes, Morgentaler v. The Queen, R. v. Seaboyer, R. v. Mills, United States v. Burns, Chaoulli v. Quebec, Charkaoui v. Canada, Khadr v. Canada, INSITE, Canada (Attorney General) v. Bedford, Reference Re: BC Motor Vehicle Act</p>	
<p>March 8, 2022</p> <p>The Charter: Equality Rights</p>	<ul style="list-style-type: none"> • Greene, “Chapter 6: Equality” in <i>The Charter of Rights and Freedoms</i> • Miriam Smith, “The Impact of the Charter: Untangling the Effects of Institutional Change” • Judy Fudge, “The Canadian Charter of Rights: Recognition, Redistribution, and the Imperialism of the Courts”
<p>Cases: Andrews v. Law Society of British Columbia, R. v. Turpin, Reference Re: Bill 30, Borowski v. Minister of Justice Canada, Temblay v. Dagle, McKinney v. University of Guelph, Shachter v. Canada, Symes v. Canada, Eldridge v. British Columbia (Attorney General), Law v. Canada, Egan v. Canada, Vriend v. Alberta, M. v. H., Reference Re: Same Sex Marriage, Gosselin v. Quebec, Auton v. BC, Newfoundland v. NAPE, R. v Kapp</p>	
<p>March 15, 2022</p> <p>The Charter: Language Rights, Application Section</p>	<ul style="list-style-type: none"> • Greene, “Chapter 7: Language Rights” in <i>The Charter of Rights and Freedoms</i> • Jon Whyte, “On Not Standing for Notwithstanding” • Peter H Russell, “Standing Up for Notwithstanding” <p>Paper Proposal Edits Due</p>

Cases: A.G. (Que.) v. Quebec Protestant School Boards, Société des Acadiens v. Association of Parents, Manitoba Language Rights Reference, MacDonald v. City of Montreal, Bilodeau v. A.G. (Man.), R. v. Mercure, Mahe v. Alberta, Doucet-Boudreau v. Nova Scotia, The Queen v. Oakes	
March 23, 2022 The Charter's Supporters and its Critics	<ul style="list-style-type: none"> • Greene, "Chapter 9: The Charter and Human Rights" in <i>The Charter of Rights and Freedoms</i> • Richard Sigurdson, "Left-and Right-Wing Charterphobia in Canada: A Critique of the Critics" • Morton and Knopff, "What's Wrong with the Charter Revolution and the Court Party?" in <i>The Charter Revolution and the Court Party</i> • Petter, "Conclusion" in <i>The Politics of the Charter</i>
March 30, 2022 The Charter and Neoliberalism	<ul style="list-style-type: none"> • Alvaro, "Why Property Rights Were Excluded from the Charter of Rights and Freedoms" • Richard W. Bauman, "Business, Economic Rights, and the Charter" in David Schneiderman, <i>Charting the Consequences: The Impact of Charter Rights on Canadian Law and Politics</i> • Leonard Halladay, "Recognition as Regulation: Liberal Democracy and Sexual Citizenship in Canada" in <i>Constant Struggle: Histories of Canadian Democratization</i>
April 5, 2022 Review	***NO READINGS***

Evaluation

- Case Study Presentation – 25%
- Paper Proposal – 25%
- Paper Proposal Edits – 10%
- Reading the Syllabus – 10%
- Final Paper – 30%

Assignments

Case Study Presentation – 25%

Pick one of the cases listed in the syllabus. In groups of 2 or 3, you will prepare a 15-20 minute presentation on that case. Your presentation should include:

- Relevant background information
- Initial rulings and reasoning if relevant

- Supreme Court ruling and legal reasoning
- Relevant precedents cited by the courts
- A discussion of the Charter section in question
- The effects of the Supreme Court ruling
- A critical discussion of whether or not you agree with the decision, based both on legal reasoning and your own moral reasoning
- A discussion question based on the ruling

The presentation must include a visual component.

(For the “Reading the Syllabus” component of your grade, send me an email with your favourite way to eat potatoes. You will get 10% of the final grade for sending the email.)

There will be no written component for this assignment; the grade will be determined by the quality of your presentation.

Paper Proposal – 25%

In preparation for your final paper, you will submit a proposal. Your proposal should include:

- Topic of choice
- Thesis statement
- Rough outline
- An annotated bibliography of 7 sources
- Potential difficulties you foresee in writing the paper
- Timeline to completion

Once the paper proposals are reviewed, they will be handed back with comments. You will be given the opportunity to resubmit them for a further 10% of your final grade.

Final Paper – 30%

More information TBA.

Important Course Information for Students

All students are expected to familiarize themselves with the following information, available on the Senate Committee on Academic Standards, Curriculum & Pedagogy webpage (see Reports, Initiatives, Documents)

- Senate Policy on Academic Honesty and the Academic Integrity Website
- Ethics Review Process for research involving human participants
- Course requirement accommodation for students with disabilities, including physical, medical, systemic, learning and psychiatric disabilities
- Student Conduct Standards
- Religious Observance Accommodation

Accommodations and Accessibility

If you need any accommodations to successfully complete this course, please do not hesitate to let me know. I do not require you to disclose your particular circumstances; I am happy to do my best to accommodate you regardless. This can include requests for assignment due-date extensions. I'm generally pretty relaxed about course-related things, and I recognize that this is a difficult time for everyone.

While all students are expected to satisfy the requirements of their program of study and to aspire to achieve excellence, the university recognizes that persons with disabilities may require reasonable accommodation to enable them to perform at their best. For more information about this policy, please refer to these guidelines and procedures: *Academic Accommodation for Students with Disabilities*. The university encourages students with disabilities to register with Student Accessibility Services to discuss their accommodation needs as early as possible in the term. An Accessibility Counsellor will help you establish recommended academic accommodations, which will then need to be communicated to your course instructor(s) as necessary. Please let the course instructor(s) know as early as possible in the term if you anticipate requiring academic accommodation, so that your accommodation needs can be discussed and considered within the context of this course.

Academic Integrity

The university takes academic integrity very seriously. The policy can be seen at: <https://www.yorku.ca/secretariat/policies/policies/academic-honesty-senate-policy-on/>