

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

AP/PPAS 3136 A S1 3.0 A Public Law II – Monday and Wednesday 7-10 pm

Syllabus

Course Director: Danny O'Rourke-DiCarlo

Email: rourke@yorku.ca

Virtual Office Hours: By Appointment

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 religion, freedom of expression, legal rights, equality 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.

Format

The course will consist of in-class lectures, interactive discussions of the readings, and occasional additional audio-visual on-line material. The lecture takes place during the first part of class. We will take breaks periodically during the first half to allow for some stretching-out and breakout discussions. During the second part of class there will be an opportunity for class discussion which we call an 'informal tutorial.' The 'informal tutorial' is optional for those students who wish to discuss any class related material/issues. No new material will be covered during the tutorial.

In order to facilitate class discussion and participation, students are expected to read the assigned readings beforehand.

Expected Learning Outcomes:

After the completion of the course students will:

- Acquire comprehensive knowledge of the distinctive contents within the Canadian Charter Of Rights and Freedoms (CCoRF)
- Gain a critical understanding of the historical, cultural and political context(s) in which SCC Charter decisions are made

- Gain a foundational understanding of judicial review (judicial interpretation and decision-making capacities) through an extensive examination of relevant case/common law
- 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
- Develop analytical and research skills that are essential to pursuing advanced studies in the field of public policy and administration

Required Readings:

Peter W. Hogg, Constitutional Law of Canada, Student Edition, available from the Bookstore.

There will be no course-pack for this course, but you can expect up to three additional readings each week, along with the appropriate sections of the textbook. Please note that this course requires extensive and dedicated reading of the course material.

Evaluation:

Grades will be assigned as follows:

- 30% – Case Summary (written assignment due TBA)
- 35% – Midterm Exam (distributed June 1 and due TBA)
- 35% – Final Exam (TBA)

Web Resources:

Supreme Court of Canada homepage:

<https://www.scc-csc.ca/home-accueil/index-eng.aspx>

Reported Decisions of the Supreme Court 1983 to Present:

<https://decisions.scc-csc.ca/scc-csc/en/d/s/index.do>

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

<https://www.canlii.org/en/>

Lecture Schedule:

May 9: Lecture 1

Introduction to the Course

May 11: Lecture 2

Setting Context – The Evolution of Human Rights in Canada and Pre-charter protection of Civil Liberties. The Bill of Rights and Provincial Human Rights

Required Reading:

Hogg, Chapter 34

May 16: Lecture 3

The Evolution of Human Rights in Canada and Pre-charter protection of Civil Liberties. The Bill of Rights and Provincial Human Rights (Continued)

Required Readings;

Hogg, Chapter 35

May 18: Lecture 4

The Charter of Rights and Freedoms - Application and Interpretation of the Charter

Required Reading:

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

May 25: Lecture 5

The Charter of Rights and Freedoms – Charter’s Critics and Limitation of Rights

Required Readings:

Hogg, Chapter 38 and Chapter 39

May 30: Lecture 6 (Mid-Term Distributed)

Mid-Term Q and A session

Case Assignment Check-in

June 1: Lecture 7

Freedom of Religion

Readings:

Hogg, Chapter 42

June 6: Lecture 8

Freedom of Expression

Readings:

Hogg, Chapter 43

June 8: Lecture 9 (Mid Term Due online by 7pm)

Fundamental Justice I

Required Readings:

Hogg, Chapter 47

June 13: Lecture 10**Fundamental Justice II****Required Readings:**

Hogg, Chapter 47

June 15: Lecture 11**Equality Rights****Required Readings:**

Hogg, Chapter 55

June 20 EXAM REVIEW***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**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 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.”

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:

Freedom of Religion:

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)

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+ = 5, 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 90, B+ = 75 to 79, etc.) For a full description of York grading system see the York University Undergraduate Calendar.

Assignment Submission: Assignments for this course must be received on the due date specified for the assignment. Assignments are to be handed in to your TA in tutorial. Email submissions will not be accepted.

Lateness Penalty: Assignments received later than the due date will be penalized at the rate of 2.5% daily, including weekends. Exceptions to the lateness penalty for valid reasons such as illness, compassionate grounds, etc., may be entertained by the Course Director, but will require supporting documentation (e.g., a doctor's letter).

Missed Tests: Students with a documented reason for missing a course test, such as illness, compassionate grounds, etc., which is confirmed by supporting documentation (e.g., doctor's letter) may request accommodation from the Course Instructor. Further extensions or accommodation will require students to submit a formal petition to the Faculty.

Important Additional Information

All students are expected to familiarize themselves with the following information, available on the Senate Committee on Curriculum & Academic Standards webpage (http://www.yorku.ca/secretariat/senate_cte_main_pages/ccas.htm):

York's Academic Honesty Policy and Procedures/Academic Integrity Website

<https://secretariat-policies.info.yorku.ca/policies/academic-honesty-senate-policy-on/>

Policy on Research Involving Human Participants

<https://secretariat-policies.info.yorku.ca/policies/ethics-review-process-for-research-involving-human-participants-policy/>

Policy on accommodation for students with disabilities

<https://secretariat-policies.info.yorku.ca/policies/academic-accommodation-for-students-with-disabilities-policy/>

Student Conduct Standards

<https://oscr.students.yorku.ca/csrr/standards>

Religious Observance Accommodation

<https://secretariat-policies.info.yorku.ca/policies/academic-accommodation-for-students-religious-observances-policy-guidelines-and-procedures/>

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.