

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

AP/PPAS 3136 3.0 A
Fall 2022
Wednesday 2:30-5:30 PM
Accolade East (ACE) 007

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Office Hours: Wednesday 12:30-1:20 PM or by appointment

Office Location: McLaughlin College (McL) 127

Course Description:

This course provides an overview of the law of human rights and civil liberties in Canada. Readings and lectures will explore the politics of judicial review and the leading 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. Students can expect to learn basic legal research and writing skills while developing 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.

Expected Learning Outcomes:

Upon successful completion of the course, students will have gained:

1. Background knowledge of the history of human rights in Canada and the conditions which led up to the entrenchment of the *Canadian Charter of Rights and Freedoms* in the Constitution of Canada.
2. A critical understanding of judicial review and the role of the Supreme Court of Canada in the interpretation of the *Charter* and the protection and promotion of *Charter* rights.
3. Knowledge of the key provisions of the *Charter* and their interpretation by the Supreme Court of Canada.

4. An understanding of the origins and *sui generis* character of Aboriginal and treaty rights.
5. Analytical skills, including the ability to read and comprehend case law (in particular, Supreme Court of Canada decisions involving *Charter* interpretation and remedies for the violation of *Charter* rights).
6. Legal research and writing skills that will provide a useful foundation for further study in the fields of law, politics, and/or public administration.

Required and Recommended Readings:

There is one required textbook for the course:

Robert J. Sharpe and Kent Roach, *The Charter of Rights and Freedoms*, 7th 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](#).

Further required and recommended readings – which will consist mostly of Supreme Court of Canada (SCC) judgments as well as the odd law review article – can be accessed through the hyperlinks on this syllabus.

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 \(University of Toronto\)](#)

[Indigenous Foundations \(University of British Columbia\)](#)

[First Peoples Law Report \(weekly news update on developments in Aboriginal law\)](#)

Evaluation:

Attendance and Participation:	10%
In-Class Midterm Test (October 26):	30%
Case Comment (8-10 pp., due December 2):	30%
Final Exam (Fall Examination Period):	30%

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 announced due date through the course eClass page. Late submissions will be assessed a penalty of five percent (i.e., one half-letter grade) per day. Extensions 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. Any take-home test or exam submitted after the announced due date will not receive a grade.

Academic Honesty:

Students should familiarize themselves with their rights and responsibilities regarding academic honesty. These are clearly set out in the [Senate Policy on Academic Honesty](#) and the [Student Code of Conduct](#) as well as the [Academic Integrity Module](#) provided through the York Libraries’ 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 register with Student Accessibility Services and provide the Course Director with a Letter of Accommodation.

Lecture Schedule and Readings:

Week 1 (September 7): Introduction to the course

Week 2 (September 14): Human rights before the *Charter*

Sharpe and Roach, Ch. 1, “Historical Context”

[Saumur v. City of Quebec, \[1953\] 2 S.C.R. 299](#)

[Switzman v. Elbling and A.G. of Quebec, \[1957\] S.C.R. 285](#)

[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, \[1974\] S.C.R. 1349](#)

Week 3 (September 21): The politics of the *Charter*

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

[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 \(2007\)](#)

Week 4 (September 28): Application of the *Charter*; *Charter* interpretation; The limitation of *Charter* rights; The notwithstanding clause

Sharpe and Roach, Ch. 6, “Application”, Ch. 3, “Interpretation of the *Charter of Rights and Freedoms*”, Ch. 4, “Limitation of *Charter* Rights”; and Ch. 5, “The Legislative Override”

[Operation Dismantle v. The Queen, \[1985\] 1 S.C.R. 441](#)

[RWDSU v. Dolphin Delivery Ltd., \[1986\] 2 S.C.R. 573](#)

[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 (October 5): 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](#)

[Ktunaxa Nation v. British Columbia \(Forests, Lands and Natural Resource Operations\), 2017 SCC 54, \[2017\] 2 S.C.R. 386](#)

Fall reading week (October 12): No class!

Week 6 (October 19): Fundamental freedoms II: Freedom of expression

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

[Irwin Toy Ltd. v. Quebec \(Attorney General\), \[1989\] 1 S.C.R. 927](#)

[Dagenais v. Canadian Broadcasting Corp., \[1994\] 3 S.C.R. 835](#)

[Hill v. Church of Scientology of Toronto, \[1995\] 2 S.C.R. 1130](#)

[R. v. Lucas, \[1998\] 1 S.C.R. 439](#)

[WIC Radio Ltd. v. Simpson, \[2008\] 2 S.C.R. 420, 2008 SCC 40](#)

[Grant v. Torstar Corp., 2009 SCC 61, \[2009\] 3 S.C.R. 640](#)

In-class midterm test (October 26)

Week 7 (November 2): 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 (November 9): Legal rights I

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

[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](#)

[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 (November 16): Legal rights II

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

[R. v. Collins, \[1987\] 1 S.C.R. 265](#)

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

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

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

[R. v. Le, 2019 SCC 34, \[2019\] 2 S.C.R. 692](#)

[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 (November 23): 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](#)

[Corbiere v. Canada \(Minister of Indian and Northern Affairs\), \[1999\] 2 S.C.R. 203](#)

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

[Kahkewistahaw First Nation v. Taypotat, 2015 SCC 30, \[2015\] 2 S.C.R. 548](#)

Week 11 (November 30): 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](#)

[R. v. Marshall, \[1999\] 3 S.C.R. 533](#)

[R. v. Marshall; R. v. Bernard, \[2005\] 2 S.C.R. 220, 2005 SCC 43](#)

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

[Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, \[2014\] 2 S.C.R. 256](#)