

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

AP/PPAS 3136 3.0 M

Summer (S2) 2023

Tuesday and Thursday, 14:30-17:30

Victor Phillip Dahdaleh Building (DB) 1016

**Course Director:** Adam Schachhuber

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

**Office Hours:** By appointment

**Office Location:** McLaughlin College (McL) 127

*York University recognizes that many Indigenous Nations have longstanding relationships with the territories upon which York University campuses are located that precede the establishment of York University. York University acknowledges its presence on the traditional territory of many Indigenous Nations. The area known as Tkaronto has been cared for by the Anishinabek Nation, the Haudenosaunee Confederacy, and the Huron-Wendat. It is now home to many First Nation, Inuit, and Métis communities. We acknowledge the current treaty holders, the Mississaugas of the Credit First Nation. This territory is subject of the Dish with One Spoon Wampum Belt Covenant, an agreement to peaceably share and care for the Great Lakes region.*

## Course Description:

This course is an introduction to the law of human rights and civil liberties in Canada. Lectures and readings will explore the politics of judicial review and the key 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.

## Format:

This section of Public Law II will meet in person.

## Expected Learning Outcomes:

Upon successful completion of the course, students will better understand:

1. The history of human rights and civil liberties in Canada, including the conditions that led to the entrenchment of the *Canadian Charter of Rights and Freedoms* in the Constitution of Canada.
2. The politics 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. The *Charter's* key provisions, including the fundamental freedoms (e.g., freedom of conscience and religion, freedom of expression, and freedom of association), legal rights, and equality, as well as the reasonable limits clause and the notwithstanding clause.
4. The sources and *sui generis* character of Aboriginal and treaty rights.
5. How to read and comprehend case law.
6. Basic legal research and writing skills that will be useful to those pursuing further studies in 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, 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](#).

Further required and recommended readings – which will consist mostly of Supreme Court of Canada (SCC) judgments– 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%
Case brief (~2-3 pp., due July 17)	15%
In-class midterm test (July 25):	20%
Case comment (~8-10 pp., due August 14):	35%
Final exam (S2 examination period):	20%

## Grades:

Grades for this course will be calculated according to the standard nine-point grading scheme used in all undergraduate programs at York University (i.e., 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 must 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 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 (July 4): Introduction to the course

### Week 2 (July 6): Human rights and civil liberties in the pre-*Charter* era

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

[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](#)

[Bliss v. Attorney General of Canada, \[1979\] 1 S.C.R. 183](#)

### Week 3 (July 11): 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 \(1997\)](#)

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

### Week 4 (July 13): Application; *Charter* interpretation; The reasonable limits clause; 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 (July 18): 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](#)

### **Week 6 (July 20): 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 (July 25)**

### **Week 7 (July 27): 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 (August 1): 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](#)

[Canada \(Attorney General\) v. PHS Community Services Society, 2011 SCC 44, \[2011\] 3 S.C.R. 134](#)

[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 (August 3): 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. 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 (August 8): 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](#)

**Week 11 (August 10): 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. Powley, \[2003\] 2 S.C.R. 207, 2003 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](#)