

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

AP/PPAS 3136 3.0 S2 Public Law II – Tues/Thurs 2:30pm

DB1016

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.

Land Acknowledgment

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 care taken 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 ([LA&PS Land Acknowledgement](#)).

Format

The course will consist of on-campus 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.

** To best facilitate class discussion and participation, students are expected to read the assigned readings beforehand.

***** Technical requirements for taking the course:** In addition to stable, higher-speed Internet connection, students, optimally, will have a computer with a microphone and/or webcam (or a smart device with these features.) These devices will allow students to directly interact with the Course Director during and after the formal lecture/discussion for any online content. If you do not have access to a microphone or webcam you will still be able to participate via a text screen on our Zoom platform. While there are no participation grades assigned in Public Law II, your regular attendance/interaction in-class (and online when/if necessary) with your Course Director and classmates is essential in achieving learning outcomes.

Several platforms will be used in this course (e.g., Moodle and Zoom,) through which students will interact with the course material and the course director, as well as with one another.

Students shall note the following:

Zoom is hosted on servers in the U.S. This includes recordings done through Zoom.

If you have privacy concerns about your data, provide only your first name or a nickname when you join a session.

The system is configured in a way that all participants are automatically notified when a session is being recorded. In other words, a session cannot be recorded without you knowing about it.

Technology requirements and FAQs for EClass can be found here -
<http://www.yorku.ca/moodle/students/faq/index.html>

Here are some useful links for student computing information, resources and help:

[Student Guide to Moodle](#)
[Zoom@YorkU Best Practices](#)
[Zoom@YorkU User Reference Guide](#)
[Computing for Students Website](#)
[Student Guide to eLearning at York University](#)

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:

Required readings: Peter Hogg *Constitutional Law of Canada*, Student Edition, available from the bookstore. New Copies: \$184.50 to \$246.00. *Pre-owned or online copies from 2017-2023 are perfectly suitable.*

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

35% – Midterm Exam

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:

Lecture 1

Introduction to the Course

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

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

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

Lecture 5

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

Required Readings:

Hogg, Chapter 38 and Chapter 39

Lecture 6 (Mid-Term Distributed)**Mid-Term Q and A session****Case Assignment Check-in****Lecture 7**

Freedom of Religion

Readings:

Hogg, Chapter 42

Lecture 8

Freedom of Expression

Readings:

Hogg, Chapter 43

Lecture 9 (Mid Term Due online by 7pm)

Fundamental Justice I

Required Readings:

Hogg, Chapter 47

Lecture 10

Fundamental Justice II

Required Readings:

Hogg, Chapter 47

Lecture 11

Equality Rights

Required Readings:

Hogg, Chapter 55

Lecture 12

Aboriginal Rights

Required Readings:

Hogg, Chapter 28

Exam Review (Case Summary Due online by 11:59)

Grading

The grading scheme for this course conforms to the 9-point system used in undergraduate programs at York University. For a full description of the York grading system, visit the [York University Academic Calendar](#).

GRADE	GRADE POINT	PERCENT RANGE	DESCRIPTION
A+	9	90-100	Exceptional
A	8	80-89	Excellent
B+	7	75-79	Very Good
B	6	70-74	Good
C+	5	65-69	Competent
C	4	60-64	Fairly Competent
D+	3	55-59	Passing
D	2	50-54	Marginally Passing
E	1	(marginally below 50%)	Marginally Failing
F	0	(below 50%)	Failing

[If your course does not use this grading system, please replace the above text with a full description.]

How to Use Citations

[Provide citation expectations in the course assignments and links to appropriate citation references and guidelines. Explain why citation practices are important, and how they support academic integrity by linking information back to an identifiable source. Specify what kinds of citation format students should use and list available resources to support research and citation. For example:

- [SPARK Student Papers & Academic Research Kit](#)
- [Chicago Style Overview, YorkU Libraries](#)
- [MLA Style Overview, YorkU Libraries](#)
- [APA Style Overview, YorkU Libraries](#)
- [Drop-in Research Support, YorkU Libraries](#)
- [Writing Centre](#)

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)

Course Policies

All students are expected to familiarize themselves with the following information:

- [Student Rights & Responsibilities](#)
- [Academic Accommodation for Students with Disabilities](#)

Please also review the following course policies:

Academic Integrity

In this course, we strive to maintain academic honesty to the highest extent possible. Please familiarize yourself with the meaning of academic integrity by completing [SPARK's Academic Integrity module](#) at the beginning of the course. Breaches of academic honesty range from cheating to plagiarism (i.e., the improper crediting of another's work, the representation of another's ideas as your own, etc.). All instances of academic dishonesty in this course will be reported to the appropriate University authorities and can be punishable according to the [Senate Policy on Academic Honesty](#).

Accessibility

While all individuals 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. The University encourages students with disabilities to register with [Student Accessibility Services](#) to discuss their accommodation needs as early as possible in the term to establish the recommended academic accommodations that will be communicated to Course Directors through their Letter of Accommodation (LOA).

Please let your instructor know as early as possible in the term if you anticipate requiring academic accommodation so that we can discuss how to consider your accommodation needs within the context of this course. Sufficient notice is needed so that reasonable steps for accommodation can be discussed. Accommodations for tests/exams normally require three (3) weeks (or 21 days) before the scheduled test/exam to arrange.

Religious Observance Accommodation

York University is committed to respecting the religious beliefs and practices of all members of the community, and making reasonable and appropriate [accommodations to adherents for observances of special significance](#). Should any of the dates specified in this syllabus for course examinations, tests, or deadlines conflict with a date of religious significance, please contact the instructor within the first three (3) weeks of class. If the date falls within the formal examination periods, you must complete and submit a [Religious Accommodation for Examination Form](#) at least three (3) weeks before the start of the exam period.

Intellectual Property

Course materials are designed for use as part of this particular course at York University and are the intellectual property of the instructor unless otherwise stated. Third-party copyrighted materials (such as book chapters, journal articles, music, videos, etc.) have either been licensed for use in this course or fall under an exception or limitation in Canadian copyright law. Students may not publish, post on an Internet site, sell, or otherwise distribute any course materials or work without the instructor's express permission. Course materials should only be used by students enrolled in this course.

Copying this material for distribution (e.g., uploading material to a commercial third-party website) may lead to a charge of misconduct according to York's [Code of Student Rights and Responsibilities](#), the [Senate Policy on Academic Honesty](#), and/or legal consequences for copyright violations.

Student Conduct in the Learning Environment

York University is committed to fostering teaching and learning environments that are free of disruptive and/or harassing behaviour, are physically safe, and conducive to effective teaching and learning. Students and instructors are expected to maintain a professional relationship characterized by courtesy, civility, and mutual respect and to refrain from actions disruptive to such a relationship. Individuals who fail to adhere to such standards and who violate University or public law may be subject to disciplinary action by the University.

For more information, see the policies on [Disruptive and/or Harassing Behaviour in Academic Situations](#), the [Student Conduct and Responsibilities](#), and the [Code of Student Rights & Responsibilities](#).

Netiquette for eClass and Online Learning

Students and instructors have a joint responsibility to create and maintain a welcoming and inclusive learning environment. All students are expected to conduct themselves in accordance with the [Code of Student Rights and Responsibilities](#). Please review and familiarize yourself with behaviours that support “netiquette” in virtual classrooms by consulting the [Guide to Netiquette](#) and [Student Guide to eLearning](#).

Student Notice of Recording for Online Teaching and Learning

Activities for this course involve recording, in partial fulfillment of the course learning outcomes. Images, audio, text/chat messaging that have been recorded may be used and/or made available by the University to students enrolled in the course and those supporting the course for the purpose of materials review, for assessment, etc. Recordings will be managed according to the University’s Common Record Schedule and will be securely destroyed when no longer needed by the University. Your personal information is protected in accordance with York University’s [Guidelines on Access of Information and Protection of Privacy](#) and the [Freedom of Information and Protection of Privacy Act](#). Access to online materials, including recordings or live meetings, is subject to York University’s [Senate Policy on Computing and Information Technology Facilities](#).

The University will use reasonable means to protect the security and confidentiality of the recorded information, but cannot provide a guarantee of such due to factors beyond the University’s control, such as recordings being forwarded, copied, intercepted, circulated, disclosed, or stored without the University’s knowledge or permission, or the introduction of malware into computer system which could potentially damage or disrupt the computer, networks, and security settings. The University is not responsible for connectivity/technical difficulties or loss of data associated with your hardware, software, or Internet connection.

By engaging in course activities that involve recording, you are consenting to the use of your appearance, image, text/chat messaging, and voice and/or likeness in the manner and under the conditions specified herein. In the case of a live stream recording, if you choose not to have your image or audio recorded, you may disable the audio and video functionality. If you choose to participate using a pseudonym instead of your real name, you must disclose the pseudonym to your instructor in advance to facilitate class participation.

You are not permitted to disclose the link to/URL of an event or an event session recording or copies of recording to anyone, for any reason. Recordings are available only to authorized individuals who have been directly provided the above instructions/link for their use. Recordings for personal use, required to facilitate your learning and preparation of personal course/lecture notes, may not be shared

with others without the permission of the instructor or event coordinator, and may not be published, posted, linked to, or otherwise made available online, including on social media feeds, even if those feeds are private.

Health and Safety

All York students and instructors share responsibility for the safety and well-being of the community while on York's campuses. Please continue to check [YUBetter Together](#) for the latest information on health and safety.

Student Support and Resources

To help you succeed academically, York University offers a wide range of resources and services. Everything from writing workshops and peer mentorship to wellness support and career guidance is available to fulfill our LA&PS students' needs. Explore the links below to access these on-campus resources:

- [Academic Advising](#) is available to provide students support and guidance in making academic decisions and goals.
- [Student Accessibility Services](#) are available for support and accessibility accommodation when required.
- [Student Counselling, Health & Wellbeing](#) offers workshops, resources, and counselling to support your academic success.
- [Peer-Assisted Study Sessions \(PASS\) Program](#) provides student study sessions for students to collaborate and enhance their understanding of course content in certain courses.
- [Student Numeracy Assistance Centre at Keele \(SNACK\)](#) supports students in courses involving math, stats, and Excel.
- [The Writing Centre](#) provides multiple avenues of writing-based support including drop-in sessions, one-to-one appointments, a Multilingual Studio, and an Accessibility Specialist.
- [ESL Open Learning Centre \(OLC\)](#) supports students with building proficiency in reading, writing, and speaking English.
- [Learning Skills Services](#) provides tips for time management, effective study and learning habits, keeping up with coursework, and other learning-related supports.
- [Learning Commons](#) provides links to supports for time management, writing, study skills, preparing for exams, and other learning-related resources.
- [Roadmap to Student Success](#) provides students with timely and targeted resources to help them achieve academic, personal, and professional success.
- [Office of Student Community Relations \(OSCR\)](#) is responsible for administering the [Code of Student Rights & Responsibilities](#) and provides critical incident support.
- [goSAFE](#) is staffed by York students and can accompany York community members to and from any on-campus location, such as the Village Shuttle pick-up hub, parking lots, bus stops, or residences.

For a full list of academic, wellness, and campus resources visit [Student Support & Resources](#).

