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

AP/PPAS 3136 3.0 O (Winter) | Wednesday 7:00 pm | ONLINE

Syllabus

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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 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

First Nations peoples have lived on this part of Turtle Island for millennia, stewarding the land, the water, and all that contributes to life in this region. Today, the culture and presence of First Nations, Inuit, and Métis peoples enrich the lands and people of this territory.

More than two centuries ago, the Mississauga people welcomed settlers to this territory, providing sustenance and engaging in trade and commerce. Between 1781 and 1820, eight treaties were signed between the Crown and the Mississaugas of the Credit First Nation, who opened their territory to settlement. Today, York University's Keele Campus is located on Toronto Purchase Treaty, No. 13 lands and is situated on the traditional territory of the Huron-Wendat and Haudenosaunee.

Treaty history is foundational, and it is our collective responsibility to honour the land, as we honour and respect those who have gone before us, those who are here, and those who have yet to come. We are grateful for the opportunity to be learning, working, and thriving on this land, and we commit to learn the truth and be active in the process of reconciliation. See the York University Land Acknowledgment.

Course Format

This is an online course; there will be no in-person interactions or activities on campus. The course is delivered synchronously: live class sessions are held over Zoom during the scheduled course times (Wednesdays at 7 p.m.), and the course eClass site serves as the hub for readings, lecture materials, announcements, and the submission of assignments. Each session consists of a lecture during the first part of the class, with periodic breaks for short breakout discussions. The second part of the class offers an opportunity for open discussion, which we call an 'informal

tutorial.' The informal tutorial is optional, for students who wish to discuss any class-related material or issues; no new material is covered during the tutorial. Class sessions may be recorded and made available on eClass for review; please see the Student Notice of Recording for Online Teaching and Learning below.

- To best facilitate class discussion and participation, students are expected to complete the assigned readings beforehand.
- **Technical requirements:** In addition to a 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 and interaction in the live Zoom sessions is essential in achieving learning outcomes.

Several platforms will be used in this course (e.g., eClass 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 United States and Canada. Recordings done since May 1, 2022 are stored in Canada.
- 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 so that all participants are automatically notified when a session is being recorded. 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

Useful links for student computing information, resources, and help:

- Student Guide to eClass
- 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

Peter Hogg, *Constitutional Law of Canada*, Student Edition, available from the bookstore. New copies: $184.50–$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** (due online by 11:59 p.m., Apr. 5, 2027)
- **35% – Midterm Exam** (distributed Feb. 5; due online by 7 p.m., Feb. 12, 2027)
- **35% – Final Exam** (take-home/online, date TBA)

Web Resources

Supreme Court of Canada: https://www.scc-csc.ca/home-accueil/index-eng.aspx

Reported Decisions of the Supreme Court (1983–present): https://decisions.scc-csc.ca/scc-csc/en/d/s/index.do

Canadian Legal Information Institute (CanLII): https://www.canlii.org/en/

Lecture Schedule

Lecture / Date	Topic	Readings
Lecture 1 Jan. 6	Introduction to the Course	—
Lecture 2 Jan. 13	Setting Context – The Evolution of Human Rights in Canada and Pre-Charter Protection of Civil Liberties. The Bill of Rights and Provincial Human Rights	Hogg, Chapter 34
Lecture 3 Jan. 20	The Evolution of Human Rights in Canada and Pre-Charter Protection of Civil Liberties. The Bill of Rights and Provincial Human Rights (Continued)	Hogg, Chapter 35

Lecture / Date	Topic	Readings
Lecture 4 Jan. 27	The Charter of Rights and Freedoms – Application and Interpretation of the Charter	Hogg, Chapters 36, 37 and 38.1–38.12
Lecture 5 Feb. 3	The Charter of Rights and Freedoms – Charter's Critics and Limitation of Rights	Hogg, Chapters 38 and 39
Lecture 6 Feb. 10	Mid-Term Q and A Session; Case Assignment Check-In (Mid-Term due online by 7 p.m., Feb. 12)	—
READING WEEK	**Feb. 13–19 (No Classes; includes Family Day, Feb. 15)**	
Lecture 7 Feb. 24	Freedom of Religion	Hogg, Chapter 42
Lecture 8 Mar. 3	Freedom of Expression	Hogg, Chapter 43
Lecture 9 Mar. 10	Fundamental Justice I	Hogg, Chapter 47
Lecture 10 Mar. 17	Fundamental Justice II	Hogg, Chapter 47
Lecture 11 Mar. 24	Equality Rights	Hogg, Chapter 55
Lecture 12 Mar. 31	Aboriginal Rights	Hogg, Chapter 28
EXAM REVIEW	**Case Summary due online by 11:59 p.m., Apr. 5, 2027**	

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

Grade	Grade Point	Percent Range	Description
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

Citation Guidelines

Students are expected to properly cite all sources used in written work. Citations should attribute information to an identifiable source and support academic integrity. The following resources are available:

- 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 (30%)

The written assignment for this course consists of a case summary on a chosen topic drawn from the list below. Topics not specified in the list will not be accepted. The assignment is worth 30% of the final grade and should be 5–7 pages in length.

Students should select one case from the list below and write a structured summary following the guidelines of Michael MacNeil. The summary should address the following components:

- **Nature of the Case:** A brief statement of why there is a legal action before the court, the nature of that action, and what remedy is being sought. Identify who is asking the court for what.
- **The Facts:** A succinct statement of the facts relevant to the main legal issues, no longer than three or four sentences. Focus on facts that are determinative of the outcome.
- **Issue:** A clear statement of the legal issue addressed in the decision, preferably in the form of a question. If the court addresses several issues, identify the most central one.
- **Concise Rule of Law:** A declarative statement of the general principle of law that the case illustrates.

- **Holding and Decision:** An explanation of the court's rationale, including how it applied the general rule of law to the facts, and any relevant public policy considerations. Conclude with a statement of how the case was decided.

As MacNeil notes: "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 puts you in a position to start asking critical questions about a judicial decision."

List of Eligible Cases

Freedom of Religion

- R. v. Big M Drug Mart (1985)
- R. v. Edwards Books and Art (1986)
- Multani v. Commission Scolaire Marguerite-Bourgeoys (2006)
- Syndicat Northcrest v. Amselem (2004)
- Loyola High School v. Quebec (Attorney General), 2015 SCC 12
- Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations), 2017 SCC 54
- Law Society of British Columbia v. Trinity Western University, 2018 SCC 32

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)
- Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11

Freedom of Association

- Dunmore v. Ontario (2001)
- Delisle v. Canada (1999)
- Lavigne v. Ontario Public Service Employees Union (1991)
- Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia, 2007 SCC 27
- Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC 1
- Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4

Fundamental Justice

- R. v. Morgentaler (1988)
- Singh 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)
- Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44
- Canada (Attorney General) v. Bedford, 2013 SCC 72
- Carter v. Canada (Attorney General), 2015 SCC 5

Equality Rights

- Andrews v. Law Society of B.C. (1989)
- Vriend v. Alberta (1998)
- Egan v. Canada (1995)
- R. v. Kapp, 2008 SCC 41
- Fraser v. Canada (Attorney General), 2020 SCC 28

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
- Tsilhqot'in Nation v. British Columbia, 2014 SCC 44
- R. v. Desautel, 2021 SCC 17

Course Policies

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

- Student Rights & Responsibilities
- Academic Accommodation for Students with Disabilities

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.

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 (21 days) notice before the scheduled test/exam.

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. For more information, see the policies on Disruptive and/or Harassing Behaviour in Academic Situations 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 behaviours that support netiquette in virtual classrooms by consulting the Guide to Netiquette and the Student Guide to eLearning.

Student Notice of Recording for Online Teaching and Learning

Activities for this course may involve recording, in partial fulfillment of 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 for the purpose of materials review and assessment. 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 to Information and Protection of Privacy and the Freedom of Information and Protection of Privacy Act.

The University will use reasonable means to protect the security and confidentiality of recorded information but cannot provide a guarantee of such security due to factors beyond the University's control. 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. You are not permitted to disclose the link to/URL of an event or session recording to anyone, for any reason, without permission of the instructor or event coordinator.

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. Explore the links below to access these on-campus resources, or visit Student Support & Resources for a full list.

- 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.