



POLI 4150 Special Topics in Constitutional Law: Diversity and Democracy
Political Science Department
Fall 2025
Fridays 11:30 am - 2:30 pm via Zoom

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Office Hours: By appointment, via Zoom.

Course Description

In this course we will consider the principles that are followed and the dilemmas that are confronted in a range of Supreme Court decisions dealing with questions of diversity.

Although Canadians often express pride about diversity in our society and our constitutional arrangements, our democratic values and goals don't always stand up to the test when serious differences emerge - e.g. choices, beliefs and creeds of individuals and groups within our polity often appear irreconcilable with mainstream purposes. Questions of how to recognize Indigenous rights within a liberal constitutional framework have also posed great difficulty for our courts, along with questions of how to balance conflicting claims, or what is permissible in addressing long-term effects of historic racial discrimination. The goal of our discussions will be to give a serious and thoughtful examination of cases in which the Supreme Court has ruled on constitutional and especially *Charter* claims in these contentious areas; with a view to appreciating all sides to these difficult legal disputes, we will often look at dissenting or concurring opinions as well.

Along with these objectives to better understand how Canadian law reacts to questions of diversity, several more specific skills will be advanced in this class: Through class discussions, assignments and presentations, students will have the opportunity to (a) engage in clear and respectful dialogue with their peers about important matters of disagreement; (b) craft convincing and well-reasoned legal arguments for opposing constitutional claims; and (c) compose insightful, cogent and clear writings analyzing difficult political questions.

Course Requirements

Required Texts:

All required course readings will be posted on d2l; the vast majority will be Supreme Court opinions; sometimes these will be abridged, other times there may be some supplemental discussion or excerpts provided with the cases. Although you are free to look up the full text yourself, and I

would encourage you to explore additional materials such as oral arguments or briefs that were significant in the decisions, the main focus of our class discussions will be the versions that I provide. You must bring either paper or digital copies with you for our Zoom sessions (if the latter, you must ensure that you have a secondary device or other means to access the digital files without disrupting your full access to our Zoom seminars.

(Cost for texts = free)

Grading:

Participation: 20%

Assignment 1: Oral Argument Commentary 15%

Assignment 2: Lead Council Presentation 15%

Paper: 25%

Final Exam: 25%

Course Delivery: This course is a seminar rather than a lecture-based course. As it is a discussion-based class being offered over Zoom, in order to take part as expected in the sessions, you will have to have regular computer (with web cam) access and a stable internet connection. Although occasional technical difficulties may arise beyond your control, you are expected to have your web cam on and in working order because student engagement and interaction are crucial to learning in this format. (Please feel free to get in touch if you have questions about this.)

Please start class with your camera on and your microphone muted. When you have a question or comment to share with the class, please use the “raise hand” feature to get my attention (unless there is already a pause); once called upon, you should unmute your mic and join the discussion. (Contributions through the written chat function tend to undermine the possibility of a single conversation in which we are all taking part and learning from one another; I would prefer that you avoid using this function, and I may disable it.)

Unless you have an accommodation and prior permission through Student Accessibility Services to record lectures, **you are absolutely prohibited from making any type of recording of our lectures/discussions.** Access to lectures is restricted to students properly enrolled in the course.

Participation: All students are expected to:

- 1) Read assigned material carefully.
- 2) Have working web cameras and turn them on throughout the entirety of our class sessions.
- 3) Be prepared to discuss or answer questions about the readings over Zoom.
- 4) Have hard copies of the readings with them during the Zoom seminar.
- 5) Avoid: (a) excessive absences from or lateness to our seminars; (b) being or appearing inattentive to seminars; (c) engaging in conversations with others outside of the Zoom seminar during class time.

Participation marks are not free:

- Consistently meeting these expectations will earn a mark in the B range (70-79%).
- Consistently meeting these expectations AND regularly participating thoughtfully in our discussions will be required for a mark in the A range (80-100%).
- Failure to follow even one of the expectations may result in an extremely low grade.

Assignment 1: Oral Argument Commentary You will independently locate and watch/listen to an hour or more of the oral submissions associated with a case heard at the Supreme Court of Canada corresponding to one of the topic areas we are studying in class on or before October 10 (see list of possible cases posted separately on d2l). If possible, choose to listen to oral arguments on behalf of the party to the case who you initially consider to be wrong. You will write a 4 page commentary, explaining with clear and well-supported arguments whether and how the oral submission you observed influenced your view of the case in question, and reflecting on high and low points in what you observed. Assignment is due October 11th at 11:59 pm.

Assignment 2: Lead Counsel Presentation By October 1st, students will each choose one of the cases assigned between October 10 and November 14 for their presentation. Once these choices have been made, I will (randomly) assign you to be lead counsel for one of the parties of your chosen case. To complete this assignment, you will read (at minimum) the briefs submitted by the party you are representing, along with the case itself. On the basis of your reading, you will prepare an original well-structured, clear and persuasive 10 minute presentation that you will give on the day we discuss the case in question. Avoid focusing on general facts/history of the case; only outline these as they are necessary to make your arguments. (For this assignment, you should avoid modeling your own presentation on the actual oral arguments delivered in this case; I expect your style and method of presentation to be different from the actual oral arguments for the case.) **Except for very serious reasons, students who miss their scheduled oral presentation and present late will receive a 50% late deduction on the assignment.**

Paper: Papers are due Tuesday Dec. 2 @ 5 pm; They will be 6-8 pages, discussing tensions we have explored in the class and relating several cases we have studied. (Further instructions to be provided on d2l in October). Late papers will see a grade deduction of 2% per day. Extensions may be requested well in advance of the due date, but not afterwards.

Other Important Policies

Academic Honesty: Academic honesty is expected of all Lakehead University students. It should go without saying that cheating, collusion, and plagiarism will not be tolerated. Students are expected to make themselves fully familiar with Lakehead's policies in this area. You should familiarize yourself with the Student Code of Conduct – Academic Integrity – and, in particular, sections 26 and 83 through 85. All of these policies will be enforced in full in this course, and the Code will be adhered to in terms of disciplinary action. It is worth emphasizing the following:

PLAGIARISM INVOLVES PRESENTING ANOTHER'S WORK, IDEAS, THEORIES, OR INTERPRETATION AS ONE'S OWN.

To avoid plagiarism, always:

- 1) Put quotation marks around any words taken from sources.
- 2) Paraphrase material completely; do not simply rearrange words from a source or change them using a thesaurus, etc.
- 3) Whether it is being quoted or paraphrased in your work, always give accurate and complete citations for all material that comes from another source.
- 4) Avoid borrowing entire arguments or ideas from another writer. Your arguments should be original to you.

GenAI Use Prohibited:

Generative artificial intelligence (Generative AI or GenAI) is a category of AI systems capable of

generating text, images, or other media in response to prompts. These systems include ChatGPT and its variants Bing (built by OpenAI) and Bard (built by Google) among several others. Other Generative AI models include artificial intelligence art systems such as Stable Diffusion, Midjourney, and DALL-E.

Any use of GenAI systems to produce assignments for this course is not permitted. All work submitted for evaluation in this course must be the student's original work. The submission of any work containing AI generated content will be considered a violation of academic integrity ("Use of Unauthorized Materials").

Academic Accommodations: Lakehead University is committed to achieving full accessibility for persons with disabilities/medical conditions. Part of this commitment includes arranging academic accommodations for students with disabilities/medical conditions to ensure they have an equitable opportunity to participate in all of their academic activities. If you are a student with a disability/medical condition and think you may need accommodations, you are strongly encouraged to contact Student Accessibility Services (SAS) and register as early as possible. For more information, please email sas@lakeheadu.ca or visit <https://www.lakeheadu.ca/faculty-and-staff/departments/services/sas>.

Course Outline

NOTE: Minor adjustment may be made to readings and schedule, though they will not impact assigned presentation dates.

Sept 5	Course outline/introduction; Excerpts of J.S. Mill on liberty
Sept 12	Introduction to the Supreme Court's interpretation of the <i>Charter</i> The <i>Oakes</i> case; <i>Oakes</i> test handout; Additional excerpts on judicial review/interpretation
Sept 19	Free expression in a diverse society R v Keegstra [1990]; R v Zundel [1992]
Sept 26	Obscenity and Censorship R v Butler [1992]; Little Sisters Book and Art Emporium v. Canada [2000]; R v Sharpe [2001]
Oct 3	Religious accommodations Syndicat Northcrest v. Amselem [2004]; Mouvement laïque québécois v. Saguenay [2015]
Oct 10	Secular and Religious Education: Zylberberg v. Sudbury Board of Education [1988]; Loyola High School and John Zucchi v. Minister of Education, Recreation and Sports [2015]
Oct 13-17	FALL STUDY WEEK: No Classes
Oct 24	Conflicts between state objectives and religious conduct:

	B.(R.) v. Children's Aid Society of Metropolitan Toronto [1995]; AC v Manitoba [2009]; Law Society of British Columbia v. Trinity Western University [2018]
Oct 31	Administrative Law vs. Religious Claims Multani v. Commission scolaire Marguerite-Bourgeoys [2006]; Ktunaxa Nation v. British Columbia [2017]
Nov 7	Distinctive Indigenous Rights and Culture Delgamuukw v. British Columbia [1997]; Reference re: An Act respecting First Nations, Inuit and Métis children, youth and families [2024]
Nov 14	Distinctions between Aboriginal Groups and Rights R v. Powley (2003); Dickson v Vuntut Gwitchin First Nation [2024]
Nov 21	When is difference in treatment constitutional? R. v Andrews [1990]; R. v. Kapp [2008]
Nov 28	Makeup Day
TBD	FINAL EXAM