

LAKEHEAD UNIVERSITY
DEPARTMENT OF POLITICAL SCIENCE

PS 4911
The Politics of the Charter of Rights and Freedoms
Seminar: Mondays 11:30 – 2:30 p.m.
RB 3049

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Course Description

In this course, we will examine the impact of the Charter Rights and Freedoms on Canadian politics, by evaluating its overall effects on policy-making, the political process, and on citizens. We begin by examining the pre-*Charter* history of civil rights legislation and jurisprudence, the nature of *Charter* rights and the role of the judiciary. We will proceed to focus upon a number of key *Charter* provisions, including fundamental freedoms (religion, expression), anti-terrorism laws, labour, socio-economic, and equality rights (gender, sexual identity), and Aboriginal rights.

By the end of the course, the student will have a better understanding of the politics and the impact of the Charter, debates concerning rights and freedoms as well as the role of governments, the courts, and interest groups in the understanding of rights.

Course Requirements

The final course grade will be based on the following components:

One Debate Presentation	10%	dates vary
Debate paper (following debate presentation)	15%	1250-1500 words. Due date varies
One paper (debate resolution)	15%	1250-1500 words. Due dates vary
Research Essay proposal	5%	Due Oct. 28, 2013
Case Analysis/Research Essay	35%	4500-5000 words. Due Nov.18, 2013
General Participation and Weekly forms	20%	Ongoing

Required Texts

Heather MacIvor, CANADIAN POLITICS AND GOVERNMENT IN THE CHARTER ERA, 2nd edition (Toronto: Oxford University Press, 2012)

Additional readings have been placed on reserve at the library or are available online.

Debate Presentations/ Short Papers

Each student must participate in one debate to be chosen during the first seminar (September 09), and confirmed no later than the second seminar (September 16). Debates will begin in the second week (September 16).

A debate resolution has been formulated for each week (see outline below). In order to ensure a balanced exchange, students will either choose or be assigned to the “For” or “Against” position for each presentation. Depending upon the number of students in the class, there may well be two or more people arguing each position, in which case the debate should be approached as a team exercise. Students must confer with others on their ‘team’ to avoid repetitious arguments. Each individual’s presentation should normally last 10-15 minutes, so time should be set aside for rehearsal.

Preparation for presentations includes reading all of the assigned material including some of the recommended readings (use your discretion) for the debate in question. Students can consult sources beyond those listed in the course outline. (This is optional).

Debate presentations should proceed logically from a brief statement of the position, to a coherent exposition of a series of arguments (with supporting evidence), to a succinct conclusion. A good debate presentation will show awareness of and sensitivity to counter-positions, and will anticipate and refute the opposition’s arguments.

Following the seminar debate, the student will take class comments and relevant discussion into account and revise the subject material of the presentation into an essay of 1250-1500 words (5-6 pages), to be handed in *one week later*. You will not be required to take the position you argued in the oral debate, but rather, you should argue the position that makes most sense to you. The work you have done to argue a particular side of the debate resolution will provide you with a good grounding in the various arguments, some of which you will endorse others of which you will refute. The presentation paper must be handed in within one week of the relevant oral seminar debate.

In addition, you will also select a topic from another week and submit an essay 1250-1500 words (5-6 pages) based on the required readings as well as the recommended readings (use your discretion). Again, you will be required to take a clear position, based on the debate resolution, and argue for that position. This paper should be similar in format as the presentation papers. It is due one week after the topic has been debated and discussed in class.

For the Short Papers:

The essays will respect all the rules of good essay composition: a central question the essay will address; an introduction with the plan for development of the argument; appropriate choice of method for topic development; respect for argument and evidence; clear and economical exposition; good quality and quantity of appropriate research; appropriately formatted footnotes and bibliography.

If in doubt, consult a style guide on the proper format for bibliography and footnotes. The first person (“I”) may be used.

Quotations longer than four lines should be indented without quotation marks. Do not overuse quotations.

Papers should be handed in to me directly in class, or, if late, placed in the departmental mailbox to be date-stamped. **Do not** push papers under my door.

Late papers will be penalized by 3% for each day that they are late. Weekends count as one day. The only exceptions will be in the case of documented medical excuse or death in the family.

Students must keep copies of each of their papers.

Research Paper Proposal – October 28, 2013

Each student is required to submit a research paper proposal no later than October 28, 2013.

Your proposal should cover:

- (a) Main research topic
- (b) Main research question
- (c) Tentative main argument
- (d) Evidence used to support your argument
- (e) Tentative conclusion
- (f) Bibliography

Case Analysis/ Research Essays – November 18, 2013

Students are required to choose a Charter case (heard and/or decided by the Supreme Court of Canada in the past five years). Supreme Court case decisions can be at:

<http://www.lexum.umontreal.ca/csc-scc/en/index.html>

Students are then required to write a case analysis of 4500-5000 words (18-20 pages) which provides: a short political background to the case (e.g. how the issue has or has not been dealt with in public policy); an overview of the players involved (interest groups, state actors); a synopsis of the facts of the case; where possible, a précis of the lower court decision and reasons; an analysis of the arguments and position of all the parties involved; an evaluation of the major political and constitutional issues in play; an assessment of how the court decided the case, as well as an examination of the affects the case decision had on the political movement.

The chosen topic/case **must** be approved me no later than October 28, 2013. I will not accept a paper if the topic has not been approved.

This assignment will require background research into the issue area and how it has been handled by the legislature and by the courts in the past. Secondary academic literature is available on virtually every issue area, so students should begin with the required and reserved course texts where appropriate, then search academic books and journals, especially legal journals, through CUBE and CD-ROM, and if possible, *Quick Law*.

The case analysis (or the research essay) should be a minimum of 18 and a maximum of 20 typed, double-spaced numbered pages. The essays will respect all the rules of good essay

composition: a central question the essay will address; an introduction with the plan for development of the argument; appropriate choice of method for topic development; respect for argument and evidence; clear and economical exposition; good quality and quantity of appropriate research; appropriately formatted footnotes and bibliography.

Papers should be handed in to me directly in class, or, if late, placed in the departmental mailbox to be date-stamped. **Do not** push papers under my door.

Late papers will be penalized by 3% for each day that they are late. Weekends count as one day. The only exceptions will be in the case of documented medical excuse or death in the family.

Conduct of the Seminar and Participation and Weekly Forms Grade

Students are required to attend all seminars. Attendance will be taken at the beginning of each class.

All students are expected to carefully prepare for each seminar by reading all of the required readings listed under each week's topic, and preparing, in addition to notes for private study, a list of questions and issues emerging from those readings for discussion in the seminar.

To ensure better and focused discussions, for each session, students are asked to submit two (2) written questions raised by that session's readings. The questions should speak specifically to the issues, assumptions, criticisms and so on raised by the readings and the week's debate resolution. Questions should not focus solely on a summary of an author's arguments; nor should they be overly broad, general or loosely dealing with the week's topic. The questions are to be emailed to me every Sunday by 8:00 p.m. Late submissions will not count towards your participation grade.

Students making debate presentations will necessarily have read all of the core readings and a number of additional materials. You are not required to submit questions on the day you present.

The general participation grade will be distributed over a variety of kinds of participation in the seminars over the whole length of the course: questions and comments to presenters as well as those submitted to the instructor in your weekly forms; faithfulness and steadiness in building up central ideas and themes from week to week as our base of knowledge and shared vocabulary grow (which of course requires steady attendance); contribution of information and analysis to the seminars on the basis of good preparation; and, of course, civility and collegiality in providing good questions and bridges into the discussion for others, as well as both collaborating with and arguing against other viewpoints in the development of themes.

SEMINAR TOPICS AND READINGS

Seminar 1 (September 09): Introduction

- general introduction to the course
- presentation schedule

Seminar 2 (September 16): Pre-Charter Civil Rights in Canada

Debate Resolution: *The Canadian Bill of Rights and common law rights would have been adequate human rights instruments had they not been willfully misinterpreted by the courts.*

For _____

Against _____

Required

MacIvor, ch. 2

Mandel, Michael, THE CHARTER OF RIGHTS AND THE LEGALIZATION OF POLITICS IN CANADA, pp. 1-27 **(On reserve)**

Peter Hogg, "A Comparison of the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights", in Gerald-A. Beaudoin and Ed Ratushny, THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS, 2nd edition, (Toronto: Carswell, 1989): 1-20 **(On reserve)**

Recommended

Kenneth H. Fogarty, EQUALITY RIGHTS AND THEIR LIMITATIONS IN THE CHARTER, (Carswell, Toronto, 1987) ch. 2, "The Canadian Bill of Rights and Equality Before the Law"
Dale Gibson, THE LAW OF THE CHARTER: EQUALITY RIGHTS, (Toronto: Carswell, 1990): 1-45

Seminar 3 (September 23): The Nature of Charter Rights and Access Issues

Debate Resolution: *The constitutionalization of individual rights has shackled government and curtailed state regulation; this to the detriment of democracy.*

For _____

Against _____

Required

MacIvor, chs. 1 & 6

Mandel, ch. 1: 60-74 **(On reserve)**

Brian Etherington, "Promises, Promises: Notes on Diversity and Access to Justice", (2000), 26 *Queen's Law Journal* 43-65

http://www.heinonline.org.ezproxy.lakeheadu.ca/HOL/Print?handle=hein.journals/queen26&div=7&collection=journals&set_as_cursor=6&men_tab=srchresults

F.L. Morton and R. Knopff, *THE CHARTER REVOLUTION AND THE COURT PARTY*, (Peterborough: Broadview, 2000), ch. 4, "The State Connection": 87-106 **ON reserve**

Recommended

R. Jhappan, "Charter Politics and the Judiciary", in Glen Williams and Michael Whittington, eds., *CANADIAN POLITICS IN THE 21st CENTURY*, (Scarborough: Nelson, 2007)

James B. Kelly, *GOVERNING WITH THE CHARTER: LEGISLATIVE AND JUDICIAL ACTIVISM AND FRAMERS' INTENT*, (Vancouver: U.B.C. Press, 2005):

- ch. 2, "Constitutional Politics and the Charter": 46-79
- ch. 3, "Framers' Intent and the Parliamentary Arena": 80-103
- ch. 5, "Guardians of the Constitution": 136-177

Robert J. Sharpe, K.E. Swinton, and Kent Roach, *THE CHARTER OF RIGHTS AND FREEDOMS*, 2nd ed., (Toronto: Irwin Law, 2002), ch. 6 ("Application": 85-96)

Hon. Beverley McLachlin, "Charter Myths", (1999) 33 *U.B.C. Law Review*: 23

Lukasz Petrykowski, "Sisyphean Labours in Canadian Poverty Law: *Gosselin v. Quebec (Attorney General)*", (2003) 16 *Windsor Review of Legal and Social Issues* 23

Mary Jane Mossman, "The Charter and Access to Justice in Canada", in David Schneiderman and Kate Sutherland, eds., *CHARTING THE CONSEQUENCES: THE IMPACT OF THE CHARTER OF RIGHTS ON CANADIAN LAW AND POLITICS*, (TORONTO: U. OF T. PRESS, 1997): 271-302

Robin Elliot, "The Charter Revolution and the Court Party": Sound Critical Analysis or Blinkered Political Polemic?", (2002) 35 *U.B.C. L. Rev.* 271 – 327

Ian Brodie, "Interest Group Litigation and the Embedded State: Canada's Court Challenges Program", *Can. J. of Political Science*, XXXIV: 2, 2001:

Seminar 4 (September 30): Role of the Judiciary

Debate Resolution: Parliament, not the Supreme Court of Canada, ought to determine the scope of rights and freedoms

For _____

Against _____

Required

MacIvor, chs. 3, 4

Richard Sigurdson, "Left- and Right-Wing Charterphobia in Canada: a Critique of the Critics", in *ESSENTIAL READINGS IN CANADIAN CONSTITUTIONAL POLITICS* edited by Christian Leuprecht, Peter H. Russell pg 392 **(On reserve)**

Maryka Omatsu, "The Fiction of Judicial Impartiality", (1997) 9, 1, *Can. J. of Women and the Law*: 1-16

http://www.heinonline.org.ezproxy.lakeheadu.ca/HOL/Print?handle=hein.journals/cajwol9&div=8&collection=journals&set_as_cursor=0&men_tab=srchresults

Joel Bakan, *JUST WORDS: CONSTITUTIONAL RIGHTS AND SOCIAL WRONGS*, (Toronto: University of Toronto Press, 1997), ch. 7, "Judges and Dominant Ideology": 103-113 **(On reserve)**

Recommended

Mandel, pp. 39-81

C.L. Ostberg and Matthew E. Wetstein, *ATTITUDINAL DECISION MAKING IN THE SUPREME COURT OF CANADA*, (Vancouver: UBC Press, 2007), ch. 8 (210-227)

Morton and Knopff, *THE CHARTER REVOLUTION AND THE COURT PARTY*:

- ch. 2, "Judges and the Charter Revolution": 33-58
- ch. 5, "The Jurocracy": 107-128
- ch. 6, "Power Knowledge: the Supreme Court as the Vanguard of the Intelligentsia": 129-147

James B. Kelly, *GOVERNING WITH THE CHARTER: LEGISLATIVE AND JUDICIAL ACTIVISM AND FRAMERS' INTENT*, (Vancouver: U.B.C. Press, 2005), ch. 1

Madam Justice Claire L'Heureux-Dubé, "Making a Difference: The Pursuit of a Compassionate Justice", (1997) 31 *U.B.C. L. Rev.* 1-15

Madame Justice Beverley M. McLachlin, "The Charter: A New Role for the Judiciary?", (1991) 29 *Alta. L. Rev.* (No. 3) 540

Peter McCormick and Ian Greene, *JUDGES AND JUDGING: INSIDE THE CANADIAN JUDICIAL SYSTEM*, (Toronto: Lorimer, 1990): 59-80, 228-258

Lorne Sossin, "The Sounds of Silence: Law Clerks, Policy Making and the Supreme Court of Canada", (1996) 30 *U.B.C. Law Review* 279-308

Justice Rosalie Silberman Abella (Court of Appeal for Ontario), "The Judicial Role in a Democratic State", (2001), 26 *Queen's L.J.* 573 - 583

Rob Martin, "Our judges are enemies of judicial independence", *The Lawyers Weekly*, 13:35 January 28, 1994

Seminar 5 (October 7): Economic Rights: Class, Labour, and Business

Debate Resolution: *The Charter enshrines no economic rights and is equally silent on property, social, and labour rights. Therefore, there is no inherent bias in favour of business.*

For _____

Against _____

Required

MacIvor, pp. 272-278

Mandel, ch. 5 (**On reserve**)

Judy Fudge, "Labour is not a Commodity": The Supreme Court of Canada and the Freedom of Association", (2004) 67 *Saskatchewan Law Review* 425 – 452

http://www.heinonline.org.ezproxy.lakeheadu.ca/HOL/Print?handle=hein.journals/sasklr67&div=23&collection=journals&set_as_cursor=7&men_tab=srchresults

Recommended

Richard Bauman, "Business, Economic Rights, and the Charter", in Schneiderman and Sutherland, CHARTING THE CONSEQUENCES: 58-108

Alexander Alvaro, "Why Property Rights Were Excluded from the CCRF", (1991) 24 *Can. J. of Political Science*: 319

Joel Bakan, JUST WORDS: CONSTITUTIONAL RIGHTS AND SOCIAL WRONGS, (Toronto: Univ. of Toronto Press, 1997):

- ch. 5, "Freedom of Association and the Dissociation of Workers": 77-86
- ch. 6, "Power to the Powerful": 87-94
- ch. 9, "What's Wrong with Social Rights?": 134-141

Judy Fudge, "Legally Speaking: Courts, Democracy and the Market", in J.E. Magnet, G. Beaudoin, et. al., eds. THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS: REFLECTIONS ON THE CHARTER AFTER 20 YEARS, (Toronto: LexisNexis Butterworths, 2003): 111-135

Margot Young, "Section 7 and the Politics of Social Justice", (2005) 38 *U.B.C. L. Rev.* 539 – 560

David Schneiderman, "A Comment on *RJR-MacDonald v. Canada (A.G.)*", (1996) 30 *U.B.C. Law Rev.* 165-180

(October 14): Thanksgiving, no class

Seminar 6 (October 21): Charter RIGHTS AND THE ANTI-terrorism Act

Debate Resolution: *National security and protecting the state (and individuals) from the (potential) threat of terrorism justify the suspension of certain Charter*

For _____
Against _____

Required

MacIvor Ch. 12

Kent Roach, "The Role and Capacities of Courts and Legislatures in Reviewing Canada's Anti-Terrorism Law", (March, 2008) 24 *Review of Legal and Social Issues*: 5
http://www.heinonline.org.ezproxy.lakeheadu.ca/HOL/Print?handle=hein.journals/wrlsi24&div=4&collection=journals&set_as_cursor=27&men_tab=srchresults

Faisal A. Bhabha, "Tracking 'Terrorists' or Solidifying Stereotypes?: Canada's Anti-Terrorism Act in Light of the Charter's Equality Guarantee" (2003) 16 *Windsor Review of Legal and Social Issues*: 95
http://www.heinonline.org.ezproxy.lakeheadu.ca/HOL/Print?handle=hein.journals/wrlsi16&div=8&collection=journals&set_as_cursor=0&men_tab=srchresults

Recommended

Kai Nielsen, "On the Moral Justifiability of Terrorism (State and Otherwise)", (2003) 41 *Osgoode Hall L.J.* 427 – 444

Reem Bahdi, "No Exit: Racial Profiling and Canada's War Against Terrorism" (2003) 41 *Osgoode Hall L.J.* 293 - 317

David Jenkins, "In Support of Canada's Anti-Terrorism Act: A Comparison of Canadian, British, and American Anti-Terrorism Law", (2003) 66 *Sask. L. Rev.* 419 – 454

Alysia Davies, "Invading the Mind: The Right to Privacy and the Definition of Terrorism in Canada", (2006) 3:1 *University of Ottawa Law & Technology Journal*: 249

Jonathan Shapiro, "An Ounce of Cure for a Pound of Preventive Detention: Security Certificates and the Charter", (2008) 33 *Queen's L.J.* 519 – 564

Seminar 7 (October 28): Equality Rights - Gender

Debate Resolution: *The Charter has produced diminishing returns for Canadian women because of the inherent limitations of the equality frame.*

For _____

Against _____

Required

MacIvor, ch. 11, pp. 157-161, 164-166, 168-173

Sheila McIntyre and Sanda Rodgers, eds., *DIMINISHING RETURNS: INEQUALITY AND THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS*, (Markham, Ont.: LexisNexis Butterworths, 2006):

- Sheila McIntyre, "Deference and Dominance: Equality Without Substance" **(On reserve)**

Radha Jhappan, ed., *WOMEN'S LEGAL STRATEGIES IN CANADA*, (Univ. of Toronto Press, 2002):

- R. Jhappan, "The Equality Pit or the Rehabilitation of Justice?": 175-234 **(On reserve)**

Recommended

Sheila McIntyre, "Feminist Movement in Law: Beyond Privileged and Privileging Theory": 42-100 in *WOMEN'S LEGAL STRATEGIES IN CANADA*

Daphne Gilbert and Diana Majury, "Critical Comparisons: the Supreme Court of Canada Doooms s.15", (2006) 24 *Windsor Yearbook of Access to Justice* 111

Christopher P. Manfredi, *FEMINIST ACTIVISM IN THE SUPREME COURT: LEGAL MOBILIZATION AND THE WOMEN'S LEGAL EDUCATION AND ACTION FUND*, (Vancouver: U.B.C. Press, 2004): ix-x, 63-90, 112-148, 193-197

Mandel, pp. 376-454

Seminar 8 (November 4): Equality Rights - Sexual Orientation/ Identity

Debate Resolution: *The essentialist definition of sexuality that tends to underlie the formal equality claims of lesbian and gay individuals promotes mere assimilation rather than true equality.*

For _____

Against _____

Required

MacIvor, pp. 166-168

Brenda Cossman, "Lesbians, Gay Men, and the Canadian Charter of Rights and Freedoms", (2002) 40 *Osgoode Hall L.J.* 223 – 249

http://www.heinonline.org.ezproxy.lakeheadu.ca/HOL/Print?handle=hein.journals/ohlj40&div=17&collection=journals&set_as_cursor=10&men_tab=srchresults

John Fisher, "Outlaws or In-laws?: Successes and Challenges in the Struggle for LGBT Equality", (2004) 49 *McGill L.J.* 1183 – 1208

http://www.heinonline.org.ezproxy.lakeheadu.ca/HOL/Print?handle=hein.journals/mcgil49&div=48&collection=journals&set_as_cursor=0&men_tab=srchresults

Didi Herman, "The Good, the Bad, and the Smugly: Sexual Orientation and Perspectives on the Charter", in Schneiderman and Sutherland, CHARTING THE CONSEQUENCES: 200-217 **(On reserve)**

Sheila McIntyre and Sanda Rodgers, eds., DIMINISHING RETURNS: INEQUALITY AND THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS, (Markham, Ont.: LexisNexis Butterworths, 2006):

- Shelley Gavigan: "Equal Families, Equal Parents, Equal Spouses, Equal Marriage: The Case of the Missing Patriarch" **(On reserve)**

Recommended

Carl F. Stychin, "Essential Rights and Contested Identities: Sexual Orientation and Equality Rights Jurisprudence in Canada", (1995) 8 *Can. J. of Law & Jurisprudence*: 49-66

http://www.heinonline.org.ezproxy.lakeheadu.ca/HOL/Print?handle=hein.journals/caljp8&div=8&collection=journals&set_as_cursor=4&men_tab=srchresults

Elaine Craig, "'I Do' Kiss And Tell: The Subversive Potential Of Non-Normative Sexual Expression From Within Cultural Paradigms", (Fall 2004) 27 *Dalhousie L.J.* 403

Robert Wintemute, "Religion vs. Sexual Orientation: A Clash of Human Rights?", (2002) *University of Toronto Journal of Law and Equality*, 1, 125

Bruce MacDougall, "The Separation of Church and State: Destabilizing Traditional Religion-based Legal Norms on Sexuality", (2003) 36 *U.B.C. L. Rev.* 1-27

Seminar 9 (November 11): Fundamental Freedoms (Religion)

Debate Resolution: *The right to religious freedom has been rendered virtually meaningless by the higher courts' overly secularized definition of Canadian society.*

For _____

Against _____

Required

MacIvor, pp. 249-256

David M. Brown, "Freedom from or Freedom for?: Religion as a Case Study in Defining the Content of Charter Rights", (2000) 33 *U.B.C. Law Review* 551-615

http://www.heinonline.org.ezproxy.lakeheadu.ca/HOL/Print?handle=hein.journals/ubclr33&div=37&collection=journals&set_as_cursor=4&men_tab=schresults

Shannon Ishiyama Smithey, "Religious Freedom and Equality Concerns under the Canadian Charter of Rights and Freedoms", *Can. J. of Political Science*, XXXIV, 1, 2001: 85-107

<http://journals2.scholarsportal.info.ezproxy.lakeheadu.ca/tmp/4848684197545517556.pdf>

Recommended

Mandel, pp. 405-433

Irwin Cotler, "Freedom of Conscience and Religion", in Beaudoin and Ratushny, pp. 165-194

Ayelet Shachar, "Religion, State, and the Problem of Gender: New Modes of Citizenship and Governance in Diverse Societies", (2005) 50 *McGill L.J.* 49-88

Claude Denis, "Rights and Spirit Dancing: Aboriginal Rights and the Canadian State", in Jonathan Hart and Richard Bauman, eds., *EXPLORATIONS IN DIFFERENCE: LAW, CULTURE, AND POLITICS*, (Toronto: Univ. of Toronto Press, 1996): 199-226

Zoë Oxaal, "Second-Guessing the Bishop: Section 93, the Charter, and the "religious government actor" in the Gay Prom Date Case", (2003), 66 *Sask. L. Rev.* 455 – 484

Banafsheh Sokhansanj, "Our Father Who Art in the Classroom: Exploring a Charter Challenge to Prayer in Public Schools", (1992), 56 *Sask. L. Rev.* 47

John Von Heyking, "The Harmonization of Heaven and Earth?: Religion, Politics, and Law in Canada", (2000) 33 *U.B.C. L. Rev.* 663-697

Jacquelyn Shaw, "Sacred Rites, Sacred Rights: Balancing Respect for Culture and the Health Rights of Women and Girls in Islamic Canadian Communities Seeking to Practise Female Genital Mutilation", (2004) 3 *Journal of Law and Equality* 31

Seminar 10 (November 18): Fundamental Freedoms (Expression)

Required

MacIvor, pp. 256-272

Mandel, pp. 369-376 **(On reserve)**

Jean-François Gaudreault-DesBiens, "From Sisyphus's Dilemma to Sisyphus's Duty? A Meditation on the Regulation of Hate Propaganda in Relation to Hate Crimes and Genocide", (2001) 46 *McGill L.J.* 121 – 139
http://www.heinonline.org.ezproxy.lakeheadu.ca/HOL/Print?handle=hein.journals/mcgil46&div=19&collection=journals&set_as_cursor=1&men_tab=srchresults

Ian B. McKenna, "Canada's Hate Propaganda Laws - A Critique", *Ottawa Law Review*, 26, 1, 1994: 159-185
http://www.heinonline.org.ezproxy.lakeheadu.ca/HOL/Print?handle=hein.journals/otltr26&div=11&collection=journals&set_as_cursor=3&men_tab=srchresults

David Schneiderman, FREEDOM OF EXPRESSION AND THE CHARTER, (Thompson, 1991):

- Alan Borovoy, "How Not to Fight Racial Hatred", pp. 243-248 **(On reserve)**
- Irwin Cotler, "Racist Incitement: Giving Free Speech a Bad Name", pp. 249-257 **(On reserve)**

June Ross, "The Protection of Freedom of Expression by the Supreme Court of Canada", in J.E. Magnet, G. Beaudoin, *et. al.*, eds. THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS: REFLECTIONS ON THE CHARTER AFTER 20 YEARS, (Toronto: LexisNexis Butterworths, 2003): 81-109 **(On reserve)**

Recommended

Jonathan Cohen, "More Censorship or Less Discrimination?: Sexual Orientation Hate Propaganda in Multiple Perspectives", (2000) 46 *McGill L.J.* 69-104

Luke McNamara, "Negotiating the Contours of Unlawful Hate Speech: Regulation Under Provincial Human Rights Laws in Canada", (2005) 38 *U.B.C. L. Rev.* 1-82

Seminar 11 (November 25): Aboriginal Rights

Debate Resolution: *The Charter must apply fully to Aboriginal peoples as it does to all other Canadians.*

For _____

Against _____

Required

Chartrand, Larry N., "Re-Conceptualizing Equality: A Place for Indigenous Political Identity", (2001) 19 *Windsor Yearbook of Access to Justice* 243

http://www.heinonline.org.ezproxy.lakeheadu.ca/HOL/Print?handle=hein.journals/windyrbaj19&div=11&collection=journals&set_as_cursor=2&men_tab=srchresults

Bradford W. Morse, "Twenty Years of Charter Protection: The Status of Aboriginal Peoples under the Canadian Charter of Rights and Freedoms", (2002) 21 *Windsor Yearbook of Access to Justice* 385

http://www.heinonline.org.ezproxy.lakeheadu.ca/HOL/Print?handle=hein.journals/windyrbaj21&div=23&collection=journals&set_as_cursor=2&men_tab=srchresults

John Borrows, "Contemporary Traditional Equality: the Effect of the *Charter* on First Nations Politics", in Schneiderman and Sutherland, CHARTING THE CONSEQUENCES: 169-199 **(On reserve)**

Mary Ellen Turpel, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences", in Richard Devlin, ed. CANADIAN PERSPECTIVES ON LEGAL THEORY, (Toronto: Emond Montgomery, 1991): 503-527 **(On reserve)**

Recommended

Thomas Isaac, "Canadian Charter of Rights and Freedoms: The Challenge of the Individual and Collective Rights of Aboriginal People", (2002) 21 *Windsor Yearbook of Access to Justice* 431

Patrick Macklem, INDIGENOUS DIFFERENCE AND THE CONSTITUTION OF CANADA, (University of Toronto Press, 2001), ch. 7: "Indigenous Difference and the Charter"

Patricia Monture-Angus, "A First Journey in Decolonized Thought: Aboriginal Women and the Application of the Canadian Charter", in P. Monture-Angus, THUNDER IN MY SOUL: A MOHAWK WOMAN SPEAKS, (Halifax: Fernwood, 1995): 131-151

Michael Asch, "From Calder to Vander Peet," in Paul Havemann ed., INDIGENOUS PEOPLES' RIGHTS IN AUSTRALIA, CANADA & NEW ZEALAND, (Oxford U.P., 1999)

Report of the Royal Commission on Aboriginal Peoples, vol. 2, ch. 3, pp. 226-34: "The Canadian Charter of Rights and Freedoms," including "The Commission's View."

Jennifer Koshan, "Aboriginal Women, Justice and the Charter: Bridging the Divide?" (1998) 32 *U.B.C. L. Rev.* 23-54

Michael Murphy, "Culture and the Courts: A New Direction in Canadian Jurisprudence on Aboriginal Rights?", *Can. J. of Political Science*, XXXIV: 1, 2001

Seminar 12 (December 2): Overall Consequences of the Charter

Debate Resolution: *The Charter has detracted from democratic decision-making in Canada.*

For _____

Against _____

Required

MacIvor, chs. 5, 13

Janet L. Hiebert, CHARTER CONFLICTS: WHAT IS PARLIAMENT'S ROLE?, (Montreal: McGill-Queen's, 2002): 200-228

http://books2.scholarsportal.info.ezproxy.lakeheadu.ca/viewdoc.html?id=/ebooks/ebooks0/gibson_crkn/2009-12-01/1/400040

J.E. Magnet, G. Beaudoin, *et. al.*, eds. THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS: REFLECTIONS ON THE CHARTER AFTER 20 YEARS, (Toronto: LexisNexis Butterworths, 2003):

- Rainer Knopff, "How Democratic is the Charter? And Does It Matter?": 199-218 **(On reserve)**
- Vic Toews, "The Charter in Canadian Society": 345-350 **(On reserve)**
- Rosalie Silberman Abella, "Public Opinion, the Courts, and Rights: The Charter in Context": 421-435 **(On reserve)**

Recommended

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)", (1997) 35 Osgoode Hall L.J.: 75-124

Christopher Manfredi and James Kelly, "Six Degrees of Dialogue: A Response to Hogg and Bushell", (1999) 37, 3 Osgoode Hall Law J. 513-536

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Please note, the course outline is subject to change.