*The Constitution of Canada and the Charter of Rights and Freedoms* – University of Toronto Scarborough – POLC68

Fall 2014

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Office hours: Tues. and Thurs. 11:00- 1:00

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Lecture: Thurs. 9-11

Location: MW 120

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**Course Description**

The overall objective of the course is for students to acquire a thoroughunderstanding of the place of the *Canadian Charter of Rights and Freedoms* (*Charter*) within Canada’s constitutional framework, through a critical examination of Canada’s *Constitution Act, 1982*. This undertaking will include an examination of the *Charter*’s evolution from the failed ‘Victoria Charter’, through to the *Charter*’s patriation. This course will focus in particular upon the evolution through judicial implementation of the following key areas: section 2 *fundamental freedoms* (in particular religion, expression and association), section 15 *equality rights*, sections 7-14 *legal rights*, and section 35 *Aboriginal rights*.

The course material will be delivered through a combination of lecture and interactive student discussions. Students will be assigned readings as well as excerpts from leading case law on the above topics and are expected to come to class prepared to answer basic questions about the assigned readings, and to respond thoughtfully to some of the difficulties posed by the readings.

**Required Text**

**\*MacIvor, Heather. 2013. *Canadian Politics and Government in the Charter Era*. 2nd ed. Oxford University Press. (for purchase in bookstore).**

**All other required readings will be made available to students via the course website.**

**Learning Outcomes**

1. To comprehend the institutions and key actors that frame constitutional law, including the distribution of powers among the entrenched levels of government and the judiciary;

2. To acquire in-depth knowledge of the *Charter* and leading caselaw;

3. To analyze and summarize reading material in order to identify key points and arguments;

4. To acquire scholarly research skills and familiarity with relevant scholarly sources;

5. To apply key concepts and knowledge of material to specific fact scenarios;

6. To evaluate and defend particular positions with reference to key concepts and facts.

**Assessment**

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| --- | --- | --- |
| ASSIGNMENT | VALUE | DUE DATE |
| Weekly Reading Notes | 30% | Weekly from Sept 11th-Nov. 20th (except Oct. 9th) |
| Attendance/participation at ‘writing skills’ session | 5% | Oct. 9th |
| Critical Review | 10% | Oct. 23rd |
| Essay Outline with annotated bibliography | 10% | Nov. 13th |
| Analytic Essay | 20% | Nov. 27th (last class) |
| Exam | 25% | Final Exam Period (Dec. 5-19) |

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| **Assignment Details** |

Please see separate assignment sheet for details.

# **Course Logistics and Policies**

Please ensure that you know and abide by all the requirements contained in this outline. Ignorance of such will not be considered a reasonable ground for any dispensation.

**Accommodation**

If you require accommodation owing to a disability of an *ongoing nature* (this includes both physical and mental health issues), then please be referred to Access*Ability* Services.

http://www.utsc.utoronto.ca/~ability/

If you require accommodation (such as an extension or make-up exam) for any other reason (e.g. short-term medical (less than 7 days), religious observance) you must approach the instructor. Please note that you should make every reasonable effort to complete all assignments so as to hand-them in at the prescribed time. Please also note that flexibility has already been built-into the construction of many of the assignment deadlines. If you still require an accommodation, however, please do the following:

1. **Short-Term (ie., less than 7 days) Medical Reasons**

If you are too sick to attend lecture and thus to hand-in your weekly reading report or any other assignment that is due, you will be required to do the following: contact me as soon as you realize that you will not be able to attend class, and provide me with a timeline in which you feel that you can complete and hand-in the required assignment. I will respond ASAP to either approve your requested timeline or provide a different option. Please note, I will not normally require documentation for the first accommodation request owing to short-term illness. However, I will require complete documentation for any subsequent request.

1. **Non-Medical Reasons**

Notify the instructor as soon as you become aware of the conflict! Ordinarily, the longer you wait, the less likely your request is to be granted.

Please note that except for exceptional circumstances, work schedules will not normally be the basis for an accommodation. While I appreciate that it is unfortunate, perhaps even unfair, that some students must maintain paid employment while others are not so required, part of managing your life means being able to juggle certain kinds of responsibilities. Again, I have constructed the syllabus in such a way so as to respect the juggling act that many students are required to perform.

Please note that if you are feeling distressed, depressed or overwhelmed you should first be referred to the campus Health and Wellness Centre.

http://www.utsc.utoronto.ca/~wellness/

**Correspondence**

Please feel free to correspond with me outside of office hours, at the above email address. Please be sure that you use only a valid 'utoronto' email address when doing so.

Announcements such as a class cancellation due to illness, or an unanticipated change in the readings schedule etc… will be posted on the Blackboard course website. It is advised that you check the website prior to class and on a regular basis in order to receive any pertinent information in a timely manner.

**Maintaining a Respectful Learning Environment**

Meaningful discussions will likely result in disagreements between contending parties. Please try to contend with others’ opinions in a mature and respectful manner and listen to them fully before responding. Please do not talk over other people, interrupt, or hold side conversations.

## **Laptops, Cellphones, and Other Technology**

Students are welcome to use laptops in class *only* for purposes related to the course at hand, that is, to view materials on the course website and/or to take notes. They are not, however, permitted to surf the Internet, check email, send messages or otherwise use devices that may disrupt the classroom environment. This is not a question of paternalism, but of respect as it is very distracting to the instructor. (Believe me, it is easy to tell from the front of the room who is and who is not paying attention.) Furthermore, **studies reveal** that the use of devices for other than educational purposes is distracting to students **around** you (so, no it is not just 'your business') and that note-taking by hand (yes, with a pen and paper) is a **superior** means of both **comprehending and retaining** relevant information. (In other words, if you take notes the old-fashioned way you will be smarter). You heard it here first!

Cellphones must be turned off (not switched to vibrate) in class and may not be used during class time. Exceptions are permitted for urgent situations (e.g., health or other urgent matters). You are asked to notify the instructor in advance if you are experiencing such exigent circumstances.

Absolutely no digital (video or audio) recording of the lectures is permitted, except for the private use of recordings for students with disabilities. Persons requiring such accommodation are asked to confidentially notify the instructor in advance of class.

## **Submission of Written Work**

All written assignments (save the exam) are due in lecture. Students may hand them in *before* lecture begins, or as soon as lecture *ends*. Students are not permitted to hand them in *during* the lecture. If you are late for lecture, please take a seat quickly and quietly and hold onto your assignment until lecture has finished.

All assignments must be presented in hard copy by the student herself/himself. Students may **not** drop off or pick up assignments for other students, except owing to exceptional circumstances and with the **prior approval** of the instructor.

Weekly readingnotes that are handed in for a class for which the student does not stay for the remaining class time or for which the student arrived more than 20 minutes late, can only receive a total of 50%.

\*In an effort to allow students the flexibility they need in order to co-ordinate assignments for this class with their other course work, all deadlines for written work (save that of the final exam and weekly reading reports) are subject to a one week ‘extension.’ What this means is that **you** are expected to manage your work schedule appropriately, so that you can hand in all your course work on time. Since only you know what assignments you have due and when, you have the opportunity of submitting your work on **either** the day that I assign as the deadline, **or** the following lecture one week later. If you choose to take the ‘extension’ I do not need to know the reason why. Be advised, however, that after the second ‘deadline’ has passed, **no papers will be accepted** and students who have submitted no essay will receive a “zero” for that assignment. The professor **may** accept late submissions that are owing to “serious and unforeseeable” mitigating circumstances (and no, a computer failure does not count as unforeseeable given how easily work can be ‘backed up’) as per the accommodation policy outlined above. Please note that if you hand-in the outline with annotated bibliography by the deadline you will receive substantive feedback.

**ACADEMIC INTEGRITY MATTERS**

**Plagiarism**

Plagiarism is an intentional act of academic dishonesty and intellectual theft. “Flagrant plagiarism” occurs when complete portions of one or more written texts are copied, but no quotation marks are used to indicate that the words have been borrowed even if a citation of the source has been included. “Disguised plagiarism” happens when the original text is “disguised” by changing only a few words, even if a citation is included. Whether flagrant or disguised, plagiarism is a serious academic offence. The texts and materials (including web-based materials) borrowed from others must be acknowledged. The acknowledgment must include quotation marks around the material used, and a notation giving **specific** source information. Other examples of academic dishonesty include handing-in substantially the same material for two different classes without permission, or aiding other students to engage in academic dishonesty by doing portions of their work for them.

Please visit the following:

http://www.utsc.utoronto.ca/~vpdean/academic\_integrity.html

http://www.utsc.utoronto.ca/~vpdean/student\_faq.html

The best ways to avoid plagiarism are:

1) To be certain about what it is (if you don't know, ask)

2) To be certain about why it cheats both yourself and those around you who have not employed dishonest methods

3) To engage in effective time-management from the beginning of term.

If you are feeling confused about class material do not wait until a week before an assignment is due. Rather, come and see me, right away. Students who become overwhelmed are more likely to compromise academic honesty. I am required to report any instances wherein I suspect plagiarism. And a finding of guilt can be met with grave and long-lasting consequences.

**Class Schedule and Required Readings**

Week 1

**Sept. 4th – Overview of the course**: introductions, orientation to method and purpose, and explanation of assignments

Week 2

**Sept. 11th – Introducing the *Charter***

**Required Readings:**

* Chapter 2 -- *The Origins and Development of the Charter*
* *Peter H. Russell. 2011. "*The *Patriation* and *Quebec Veto References*: The Supreme Court

Wrestles with the Political Part of the Constitution." found here:

http://pi.library.yorku.ca/ojs/index.php/sclr/article/viewFile/34629/31489

* *The Constitution Act, 1982*. Found here:

http://www.solon.org/Constitutions/Canada/English/ca\_1982.html

Week 3

**Sept. 18th – Application of the Charter**

**Required Readings:**

* Hutchison, Allan and Andrew Petter. 1988. "Private Right/Public Wrongs. The Liberal Lie of the Charter." *University of Toronto Law Journal* 38: 278-97.
* Hughes, Patricia. 2003. "The Intersection of the Public and Private Under the Charter." *University of New Brunswick Law Journal* 52: 201-14.

Week 4

**Sept. 25th** – **Three Branches Walk into a Bar...The Judicial, the Legislative and the Executive**

**Required Readings:**

* Chapter 6 -- pps. 130-162.
* Chapter 7 -- pps. 163-178.

Week 5

**Oct. 2nd** – **Judicial Review: Dialogue, Monologue or the Chattering Classes?**

**Required Readings:**

* Hogg, Peter H and Alison Bushell. 1997. "The Charter Dialogue between Courts and Legislatures." *Osgoode Hall Law Journal 35*: 75-105.
* Manfredi, Christopher. 2009. "Six Degrees of Dialogue: a Response to Hogg and Bushell." *Osgoode Hall Law Journal 37*: 513-27.
* R. *v.* Oakes, [1986] 1 S.C.R. 103 **(paragraphs 61-82 only).** Full decision can be found here:

http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/117/index.do

Week 6

**Oct. 9th – Assignment Prep**

**Required Reading:**

* Henderson, Eric. 2009. *The Active Reader*, chapter 4. Oxford University Press**.**

**NO READING NOTE DUE TODAY**

Week 7

**Oct. 16th**

**NO CLASSES HELD. FALL READING WEEK**

Week 8

**Oct. 23rd-- The Charter in-Depth:** Fundamental Freedoms (Religion and Conscience)

**Required Readings:**

* Chap.10 -- pps. 224-250.
* *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 **(paragraphs 39-56 only). Decision can be found here:**

http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2161/index.do

**Critical Review is due today in class!!!**

Week 9

**Oct. 30 -- The Charter in-Depth:** Fundamental Freedoms (Expression and Association)

**Required Reading:**

* Elliot, Robin. 2010-2011. Back to Basics: A Critical Look at the Irwin Toy Framework for Freedom of Expression. 15 *Rev. Const. Stud*: 205-248.

Week 10

**Nov. 6th --** **The Charter in Depth**: Legal Rights

**Required Readings:**

* Chap. 12 -- pps. 267-301.

Week 11

**Nov. 13th** -- **The Charter in Depth:** The Equality Clause

**Required Readings:**

* Chap. 13 -- pps. 302-330.

**Outline with Annotated Bibliography for feedback is due today in class!**

Week 12

**Nov. 20th -- The Charter in Depth:** The Equality Clause. Are Social and Economic Rights Justiciable?

**Required Readings:**

* Veel, Paul-Erik. 2008-2009. A New Direction in the Interpretation of Section 15(1)? A Case Comment on R. v Kapp. 6 *J. L. and Equal*: 33-50.
* Shaw, Mary. 2007. Why the Charter does not Protect Welfare Rights. Appeal 12: 1-9.
* The Women's Court of Canada. 2006. *Gosselin v. Quebec*. Canadian Journal of Women and the Law: (2006) 18 C.J.W.L. 27. **(paragraphs 30-63 only.) Please note this is NOT the actual case, rather it is a re-writing of it by a group of academics and lawyers that reflects how they believe the case *ought* to have been decided. It is part of the Women's Court of Canada project:**

**http://womenscourt.ca/home/**

Week 13

**Nov. 27th -- Aboriginal Rights and Constitution Act, 1982.**

**Required Readings:**

* Aki-Kwe and Mary Ellen Turpel. 1989. Aboriginal Peoples and the Canadian Charter of Rights and Freedoms *Contradictions and Challenges.* Found here:

**http://pi.library.yorku.ca/ojs/index.php/cws/article/viewFile/11196/10285**

* Panagos, Dimitros. 2007. The Plurality of Meanings Shouldered by the Term “Aboriginality”: An Analysis of the Delgamuukw Case. Canadian Journal of Political Science 40:3: 591–613

**Argumentative Essay is due today in class!!**