

Law, Politics, and the *Charter of Rights and Freedoms*
POL3332F
The University of Western Ontario
Fall 2016

Professor: Caroline Dick
Time: Monday 1:30-3:20 p.m.
Classroom: SSC 2032

Office: SSC 4088
Email: cdick4@uwo.ca
Office Hours: Monday 12:10-1:10 p.m.
Tuesday 1:30-2:30 p.m.

Prerequisite(s): Political Science 2230E or Sociology 2260A/B
Antirequisite(s): The former Political Science 403F/G

IMPORTANT NOTICE RE PREREQUISITES/ANTIREQUISITES

You are responsible for ensuring that you have successfully completed all course prerequisites, and that you have **not** taken an antirequisite course. Lack of prerequisites may not be used as a basis for appeal. If you are found to be **ineligible** for a course, you may be removed from it at any time and you will receive no adjustment to your fees. **This decision cannot be appealed.** If you find that you do not have the course requisites, it is in your best interest to drop the course well before the end of the add/drop period. Your prompt attention to this matter will not only help protect your academic record, but will ensure that spaces become available for students who require the course in question for graduation.

Course Description

The *Canadian Charter of Rights and Freedoms* has been described as the single most important innovation of the constitutional changes of 1982 and the most radical break ever made with the Canadian constitutional and legal order, which previously had been characterized by continuity and incremental development. The *Charter* assigns the judiciary the authority and responsibility to review legislative and executive decisions to determine whether they are consistent with the protected rights and freedoms enshrined in the *Charter*. However, judicial interpretations of the *Charter*, the respective roles of Parliament and the judiciary in the political process, and *Charter* litigation commenced by competing social interests are subjects that evoke considerable controversy. This course will examine these controversies in assessing the political significance of the *Charter*.

Learning Objectives

By the end of the course, students should acquire an in-depth understanding of the operation of the *Charter* and its impact on and relationship to the political realm. Students should also be able to apply that knowledge to public policy issues by producing their own *Charter* analyses to

resolve rights-based, public policy controversies and by critically evaluating Charter jurisprudence.

Required Readings

The vast majority of the readings are available electronically through the library catalogue. Abbreviated versions of the Supreme Court of Canada cases that have been designated as required readings are available in the course web site. The remainder of the readings are available in a course package that is available at the UWO bookstore. Readings included in the course package are marked with an asterisk (*). Students are not required to do the recommended readings. However, the instructor may refer to materials from those readings in the lecture.

Other Sources

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.

<http://laws-lois.justice.gc.ca/eng/const/page-15.html>

Full text legal decisions of the Supreme Court of Canada are available electronically at:

<http://scc.lexum.org/decisia-scc-csc/scc-csc/en/nav.do>

Format

This is a lecture-based course. Students are expected to attend all lectures, to do the required readings each week, and to participate in class discussions.

Evaluation

In-Class Exam 20% (October 17, 2016)

Case Analysis or Position Paper 40% (DUE: November 28, 2016)

Final Examination 40%

In-Class Exam

The exam will examine materials covered in weeks 2-4. Students should use the lecture outlines to guide their exam preparation. All information presented in lectures and all required readings are examinable. Students who miss the in-class exam and who receive academic accommodation will complete a written assignment in lieu of the exam.

Case Analysis/Position Paper

See instructions below.

Final Exam

The final examination will take place during the scheduled exam period in December. The exam will consist of short answer and longer, essay questions. Students should use the lecture outlines to guide their exam preparation. All information presented in the lecture and all required readings are examinable.

Email

The Professor will respond to email and will do her best to reply within 48 hours (excluding weekends). Please do not send email messages via OWL. Do note that university policy precludes Professors from responding to email messages that were not sent from a UWO email account. Note, also, that grades may not be discussed via email.

Web Site

There is a web site set up for this course, available at: <https://owl.uwo.ca>. The course syllabus and abbreviated case law materials will be posted on the web site as will important class announcements and links to turnitin.com. Accordingly, students should check the web site regularly.

IMPORTANT POLICIES

Academic Offences

Scholastic offences are taken seriously and students are directed to read the appropriate policy, specifically, the definition of what constitutes a Scholastic Offence, at the following web site: http://www.uwo.ca/univsec/appeals_discipline/index.html

Turnitin

All assignments are subject to submission for textual similarity review to the commercial plagiarism detection software under license to the University for the detection of plagiarism. All papers submitted for such checking will be included as source documents in the reference database for the purpose of detecting plagiarism of papers subsequently submitted to the system. Use of the service is subject to the licensing agreement, currently between The University of Western Ontario and Turnitin.com (<http://www.turnitin.com>).

Submission of Assignments

Assignments are due at the start of class (the lecture) at 1:30 p.m. Assignments may not be submitted by fax or email, outside of class time (the lecture) or while the lecture is in progress.

Assignments also must be submitted electronically to turnitin.com prior to being submitted in hard copy form at the lecture. A link to turnitin.com can be found in the course web site. Note that assignments have not been submitted “on time” unless they have been submitted in hard copy form at the lecture **with a copy of the receipt generated by turnitin.com attached.**

Students may submit their assignments to turnitin one time only. Multiple submissions are not allowed. Students may not submit their papers to turnitin using other course web sites prior to submitting their assignments in 3332. **Students who do submit 3332 assignments to turnitin using other course web sites will receive a grade of zero on the assignment.**

Late penalty

Late case analyses/position papers may be handed in 1 week following the original due date with a 10% deduction. Late assignments may be submitted via email and must be submitted by **1:20**

p.m. (both via email and turnitin.com) on **December 5, 2016** to be considered on time.
Assignments that are more than 1 week late will not be accepted for grading.

Extensions

Extensions are not given. However, when there are genuine and unavoidable family or medical circumstances, students may seek academic accommodation, as detailed below. If you fail to hand in an assignment but are pursuing academic accommodation, please advise your Professor of this fact.

Computer Problems

Students are expected to back up their written work and lecture/tutorial notes. Furthermore, students will be responsible for finding replacement lecture/tutorial notes where they fail to back-up their files. Extensions are not granted for computer-related problems.

Academic Accommodation

If a situation should arise where a student requires accommodation because of a medical or personal issue, the student should visit his or her faculty's Academic Counselling office so that an academic counsellor can make a recommendation for academic accommodation to the student's Professor(s).

This procedure means that you do not provide your instructor with any details of your situation. It is your responsibility to speak with a counsellor as soon as possible after an issue arises. Academic accommodation ONLY will be provided if you speak with an Academic Counsellor and provide them with documentation of your issue, and if the issue is brought to their attention in a timely fashion.

Academic Counseling **for the Faculty of Social Sciences** is located at SSC 2105
Telephone: 519 661-2011
Recorded information: 519 661-2052
Fax: 519 661-3384
Email: ssaco@uwo.ca

Medical Illness

Please be aware that the policies regarding medical documentation have changed. The following is an excerpt from the Policy on Accommodation for Medical Illness.

Undergraduate Students

Documentation from Family Physicians and Walk-In Clinics

A UWO Student Medical Certificate (SMC) is required where a student is seeking academic accommodation. This documentation should be obtained at the time of the initial consultation with the physician or walk-in clinic. An SMC can be downloaded hereL

https://www.uwo.ca/univsec/pdf/academic_policies/appeals/medicalform_15JUN.pdf

Hard copies are available from Academic Counselling in the Faculties.

Documentation from Student Health Services

Students obtaining documentation from Student Health Services should sign a “release of information.” This form authorizes Student Health Services to provide information to the student’s home Faculty. Release of information forms are available from, and can be arranged through, the student’s home Faculty Academic Counseling service.

Documentation from Hospital Urgent Care Centres or Emergency Departments

Students should request that an SMC be filled out. Students may bring this form with them, or request alternative Emergency Department documentation. Documentation should be secured at the time of the initial visit to the Emergency Department. Where it is not possible for a student to have an SMC completed by the attending physician, the student must request documentation sufficient to demonstrate that his/her ability to meet his/her academic responsibilities was seriously affected.

Support Services

Students who are in emotional/mental distress should refer to Mental Health@Western <http://www.uwo.ca/uwocom/mentalhealth/> for a complete list of options about how to obtain help.

Grade Appeals

If you are concerned that your assignment was not graded fairly, you may ask to have your assignment reviewed. To request a review of your assignment, you must provide a 1 page statement explaining why you think your assignment was improperly graded (i.e. what do you think you did that should have been given more weight?). The explanation, the original assignment and a clean copy of the assignment, all in hard copy form, must be submitted to the Professor no later than 3 weeks after the assignment was **made available for return**.

NOTE: Students must take responsibility for picking up their marked work in a timely manner. **No appeals will be considered more than 3 weeks after the assignment/exam was made available for return.** Grades may be either **raised or lowered** on appeal.

Students who wish to appeal an examination grade should follow the same procedure noted above for assignments.

Use of Electronic Devices:

Students are not permitted to use any electronic devices during exams. Students are asked to turn off their cell phones during lectures and tutorials. Laptops are permitted during lectures and tutorials only for the purpose of note taking.

Assignment Instructions

Case Analysis/Position Paper

All students will complete *either* the case analysis assignment *or* the position paper assignment.

Written assignments must include footnotes, endnotes or parenthetical citation and a bibliography organized according to the Chicago style. Note that all citations must include references to **specific page numbers**. Help with using the Chicago Style can be found at the following UWO library web source: <http://www.lib.uwo.ca/files/styleguides/Chicago.pdf>.

NOTE: Students *will* be penalized for incorrect citation style.

Option 1: Position Paper

Students will write a 2500 word case analysis, typed and double-spaced, using a standard 12 point font and standard (1"/2.54 cm) margins that offers a principled resolution to the fact situation set out below. Students should identify the Charter rights at risk of violation and answer the question posed below.

No fewer than five (5) academic sources must be incorporated into the paper, in addition to the *Charter*, which should be properly cited. The suggested sources below are intended to provide you with some ideas to help you construct the Charter claims that will be advanced by Ali and the Crown. Should you choose to incorporate these sources into your position paper, they *will* count towards your source total. Students are also encouraged to cite the class readings, or leading case, when referring to specific legal tests to be applied in the paper, such as the test for determining s.15 equality claims.

The Facts:

Jenny Wilson is a male to female pre-operative transsexual who has been found guilty of second degree murder for killing her roommate. Jenny has been taking female hormones and living as a woman for many years under the guidance of a certified gender specialist. The only step that Jenny has yet to take in order to complete her transition is sexual reassignment surgery (SRS). Jenny argues that the principles of equality demand that she serve her sentence in a women's prison. Correctional services disagrees. They argue that Jenny's pre-operative status renders her a threat to the physical and psychological well-being of female inmates.

Question: *What are the competing Charter rights at stake in the dispute and how would you resolve the conflict?*

Assumptions and Directions: Assume that the facts set out above represent current prison policy in Canada. Do not assume any new facts. Your job is *not* to conduct legal research in an effort to find the 'correct' answer at law to the question posed. Instead, your job is to

undertake your own Charter analysis and come to what *you* think is a just decision.

Suggested Sources:

Chambers, Lori. “Unprincipled Exclusions: Feminist Theory, Transgender Jurisprudence and Kimberly Nixon.” *Canadian Journal of Women and the Law* 19, no. 2 (2007): 305-334. (especially 311-317)

National Association of Women and the Law. “Transgender and Women’s Substantive Equality.” September 2003 (especially 7-31).

http://www.nawl.ca/ns/en/documents/Pub_Report_Trans03_en.pdf

OR

Option 2: Case Analysis

Students will write a 2500 word case analysis, typed and double-spaced, using a standard 12 point font and standard (1"/2.54 cm) margins, of the Supreme Court of Canada decision listed below. Students should evaluate **both the majority and minority (dissenting) opinions** in completing the assignment.

The case analysis should provide the following: a brief discussion of the litigation’s political background (ie. how the issue has been dealt with in public policy); an overview of the parties to the case (state and societal actors); a synopsis of the facts of the case; a discussion of the position and arguments of the parties; an explanation of how the case was decided; and an evaluation of the major issues raised by the case and by members of the court concerning **the relationship between courts and legislatures** when it comes to interpreting Charter rights and placing reasonable limits on those rights.

Students need not undertake additional research to complete their case analysis. However, they **must cite class readings** when discussing the relationship between courts and legislatures to provide scholarly explanations of, and support for, concepts and ideas raised. All legal cases raised and all statutes raised, including the *Charter*, should be cited in correct form. Students should also cite class readings or legal cases when raising legal tests and concepts that are relevant to the dispute more generally.

Assignments must be submitted in hard copy form. Email submissions will not be accepted. To be accepted and considered ‘on time’ your turnitin receipt must be attached to the hardy copy of your assignment at the time of submission.

The Case

Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519 (S.C.C.). This case involved a challenge to a provision of the *Canada Elections Act* disqualifying persons serving two years or more in prison from voting in federal elections.

Note on Citing Court Cases

Proper legal citation is required.

Your bibliographical entry should appear as follows:

Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519.

Students should use **paragraph numbers** when referring to the decision (**ie. students may not cite or quote the unnumbered headnote that summarizes the decision at the start of the judgement**).

For students using footnotes or endnotes, the first citation should appear as follows:

Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519 at para. 55.

Subsequent citations may appear as follows:

Sauvé v. Canada at para. 44.

Sauvé v. Canada at paras. 16-21. (for referencing more than one paragraph)

Class Schedule

Week 1: September 12

Introduction

Week 2: September 19

The Application of the *Charter*

Required:

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11.

http://laws.justice.gc.ca/en/charter/Charter_index.html(<http://laws.justice.gc.ca/en/charter/>
<http://laws.justice.gc.ca/en/charter/1.html>)

Patricia Hughes. “The Intersection of Public and Private Under the *Charter*.” *University of New Brunswick Law Journal*.” 52 (2003): 201-14.

Hutchinson, Allan C., and Andrew Petter. “Private Rights/Public Wrongs: The Liberal Lie of the *Charter*.” *University of Toronto Law Journal* 38 (1988): 278-97.

Recommended:

Petter, Andrew. "Look Who's Talking Now: Dialogue Theory and the Return to Democracy." In *The Politics of the Charter: The Illusive Promise of Constitutional Rights*, 149-66, Toronto: University of Toronto Press, 2010.

Bakan, Joel. "Power to the Powerful." In *Just Words: Constitutional Rights and Social Wrongs*, 87-100. Toronto: University of Toronto Press, 1997.

Brodsky, Gwen, and Shelagh Day. "Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty." *Canadian Journal of Women and the Law* 14 (2002): 185-220.

Week 3: September 26

The Charter's Democratic Implications: The Supreme Court of Canada as Policy Maker

Required:

*Morton, F. L., and Rainer Knopff. "The Supreme Court as the Vanguard of the Intelligentsia: The Charter Movement as Postmaterialist Politics." In *Canadian Constitutionalism 1791-1991*, ed. Janet Aizenstat, 57-80. Ottawa: Canadian Study of Parliament Group, 1992. **(pages 57-64 only)**

*Knopff, Rainer, and F. L. Morton. "The Politics of Interpretation." In *Charter Politics*, 98-119, Scarborough: Nelson, 1992.

Kelly, James B., and Michael Murphy. "Confronting Judicial Supremacy: A Defence of Judicial Activism and the Supreme Court of Canada's Legal Rights Jurisprudence." *Canadian Journal of Law and Society* 16, no. 1 (2002): 3-27.

Recommended:

Roach, Kent. "Dialogue or Defiance: Legislative Reversals of Supreme Court Decisions in Canada and the United States." *International Journal of Constitutional Law* 4, no. 2 (2006): 347-70.

Manfredi, Christopher. *Judicial Power and the Charter: Canada and the Paradox of Liberal Constitutionalism*, 2d ed., Oxford University Press, 2001.

Knopff, Rainer. "How Democratic is the Charter? And Does it Matter?" *Supreme Court Law Review*, 2d ser., 19 (2003): 199-217.

Mandel, Michael. "The Charter and Democracy." In *The Charter of Rights and the Legalization of Politics in Canada*, rev. ed., 39-61. Toronto: Thompson Publishing, 1994.

Week 4: October 3

Parliament and the Courts: Who Determines the Meaning of the *Charter*?

Required:

Hogg, Peter H., and Allison Bushell. "The Charter Dialogue Between Courts and Legislatures (Or Perhaps the *Charter Of Rights* Isn't Such a Bad Thing)." *Osgoode Hall Law Journal* 35 (1997): 75-124. (pages 75-105 only) ****You do not need to print/read the appendix.**

Manfredi, Christopher, and James B. Kelly. "Six Degrees of Dialogue: A Response to Hogg and Bushell." *Osgoode Hall Law Journal* 37 (1999): 513-27.

Recommended:

Huscroft, Grant. "Rationalizing Judicial Power: The Mischief of Dialogue Theory," In James B. Kelly and Christopher P. Manfredi eds., *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, 50-65. Vancouver: UBC Press, 2009.

Hogg, Peter W., Allison A. Bushell Thornton, and Wade K. Wright. "Charter Dialogue Revisited – or 'Much Ado About Metaphors'," *Osgoode Hall Law Journal* 45 (2007): 1-65.

Manfredi, Christopher P., and James B. Kelly. "Misrepresenting the Supreme Court's Record? A Comment on Sujit Choudhry and Claire E. Hunter, 'Measuring Judicial Activism on the Supreme Court of Canada'." *McGill Law Journal* 49 (2004): 741-64.

Roach, Kent. *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue*. Toronto: Irwin Law, 2001.

Week 5: October 10

No Lecture (Thanksgiving)

Week 6: October 17

In-Class Test on Weeks 2-4

Week 7: October 24

The *Charter*, Executive Power and Federalism

Required:

*Kelly, James, B. "Governing with the Charter of Rights and Freedoms." *Supreme Court Law Review*, 2d ser., 21 (2003): 299-337.

Kelly, James, B. "Reconciling Rights and Federalism during Review of the Charter of Rights and Freedoms: The Supreme Court of Canada and the Centralization thesis, 1982 to 1999." *Canadian Journal of Political Science* 34, no. 2 (2001): 325-55.

Recommended:

Radmilovic, Vuk. "Governmental Interventions and Judicial Decision Making: The Supreme

Court of Canada in the Age of the Charter.” *Canadian Journal of Political Science* 46, no. 2 (2013): 323-344.

Wright, Wade K. “Facilitating Intergovernmental Dialogue: Judicial Review of the Division of Powers in the Supreme Court of Canada.” *Supreme Court Law Review* 51 (2010): 629-93.

Russell, Peter H. “The *Charter* and Canadian Democracy.” In James B. Kelly and Christopher P. Manfredi eds., *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, 287-306. Vancouver: UBC Press, 2009.

Hogg, Peter W. “Federalism Fights the Charter of Rights.” In David P. Shugarman and Reg Whitaker eds., *Federalism and Political Community: Essays in Honour of Donald Smiley*, 249-66. Peterborough: Broadview Press, 1989.

Cairns, Alan C. *Charter versus Federalism: The Dilemmas of Constitutional Reform*. Montreal & Kingston: McGill-Queen’s Press, 1992.

Week 8: October 31

Interest Groups and the Court Party Thesis

Required:

Morton, F. L. “The Charter Revolution and the Court Party.” *Osgoode Hall Law Journal* 30 no. 3 (1992): 627-52.

Hein, Gregory. “Interest Group Litigation and Canadian Democracy.” *IRPP Choices* 6 (2000): 1-30.

Recommended:

Ryder, Bruce, Cidalia Faria, and Emily Lawrence, “What’s *Law* Good For? An Empirical Overview of Charter Equality Rights Decisions.” *Supreme Court Law Review* 24 (2004):103-36.

Martin, Robert I. *The Most Dangerous Branch: How the Supreme Court Has Undermined Our Law and Our Democracy*. Kingston: McGill-Queen’s University Press, 2003.

Smith, Miriam. “Ghosts of the Judicial Committee of the Privy Council: Group Politics and Charter Litigation in Canadian Political Science.” *Canadian Journal of Political Science* 35, no. 1 (2002): 3-29.

Elliot, Robin. “The Charter Revolution and the Court Party: Sound Critical Analysis or Blinkered Political Polemic?” *University of British Columbia Law Review* 35 (2002): 271-327.

Morton, F. L., and Rainer Knopff. “The Court Party.” In *The Charter Revolution and the Court Party*, 59-86. Peterborough: Broadview Press, 2000.

Morton, F. L., and Avril Allen. "Feminists and the Courts: Measuring Success in Interest Group Litigation in Canada." *Canadian Journal of Political Science* 34 (2001): 55-84.

Week 9: November 7

Rights and Limits: Sections 1 and 33

Required:

*Hiebert, Janet L. "The Supreme Court on Section 1." *Limiting Rights: The Dilemma of Judicial Review*, 52-88. Montreal & Kingston: McGill-Queen's University Press, 1996.

Cameron, Jamie. "The Charter's Legislative Override: Feat or Figment of the Constitutional Imagination?" *Supreme Court Law Review*, 2d ser., 23 (2004): 136-67.

Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1623789

Recommended:

Antaki, Mark. "The Turn to 'Values' in Canadian Constitutional Law: Critical Essays on R. v. Oakes," In Luc. B. Tremblay and Grégoire C. N. Webber eds., *The Limitation of Charter Rights: Critical Essays on R. v. Oakes*, 155-80. Montreal: Thémis, 2009.

Bredt, Christopher D., and Adam M. Dodek. "The Increasing Irrelevance of Section 1 of the Charter." *Supreme Court Law Review*, 2d ser., 14 (2001): 175-88.

Lajoie, Andrée, and Henry Quillinan. "Emerging Constitutional Norms : Continuous Judicial Amendment of the Constitution - the Proportionality Test as a Moving Target." *Law and Contemporary Problems* 55 (1992): 285-302.

Hiebert, Janet L. "Compromise and the Notwithstanding Clause: Why the Dominant Narrative Distorts Our Understanding," In James B. Kelly and Christopher P. Manfredi eds., *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, 107-25. Vancouver: UBC Press, 2009.

Russell, Peter H. "Standing Up for Notwithstanding." *Alberta Law Review* 29 (1991): 293-309.

Kahana, Tsvi. "Understanding the Notwithstanding Mechanism." *University of Toronto Law Journal* 52 (2002): 221-74.

Hiebert, Janet L. "Is it Too Late to Rehabilitate Canada's Notwithstanding Clause?" *Supreme Court Law Review*, 2d ser., 23 (2004): 169-89.

Week 10: November 14

Fundamental Freedoms (Expression)

Required:

Elliot, Robin. "Back to Basics: A Critical Look at the *Irwin Toy* Framework for Freedom of

Expression.” *Review of Constitutional Studies* 15, no.2 (2011): 205-248. (pages 205-212; 217-221 and 235-237 only)

Harper v. Canada (Attorney General), [2004] 1 S.C.R. 827.
(abbreviated version available in course web site)

Recommended:

Ross, June. “The Protection of Freedom of Expression by the Supreme Court of Canada.” *Supreme Court Law Review*, 2d ser., 19 (2003): 81-109.

Cameron, Jamie. “Anticipation: Expressive Freedom and the Supreme Court of Canada in the New Millennium.” *Supreme Court Law Review*, 2d ser., 14 (2001): 67-86.

Hiebert, Janet L. “Money and Elections: Can Citizens Participate on Fair Terms amidst Unrestricted Spending?” *Canadian Journal of Political Science* 31, no. 1 (1998): 91-111.

Week 11: November 21
Equality Rights (Women)

Required:

Dobrowolsky, Alexandra. “Beyond Winners and Losers? What has happened to women’s equality after 25 years of Charter struggles?” Paper delivered at the Annual Meeting of the Canadian Political Science Association, Vancouver, British Columbia, 4-6 June 2008.
www.cpsa-acsp.ca/papers-2008/Dobrowolsky.pdf

Newfoundland Treasury Board v. N.A.P.E., [2004] 3 S.C.R. 381.
(abbreviated version available in course web site)

Recommended:

Majury, Diana. “The Charter, Equality Rights, and Women: Equivocation and Celebration.” *Osgoode Hall Law Journal* 40 (2002): 297-336.

Sheppard, Colleen. “Grounds of Discrimination: Towards an Inclusive and Contextual Approach.” *Canadian Bar Review* 80 (2001): 893-916.

Sampson, Fiona. “The Law Test for Discrimination and Gendered Disability Inequality.” In *Making Equality Rights Real: Securing Substantive Equality under the Charter*, ed. Fay Faraday, Margaret Denike and M. Kate Stephenson, 245-73. Toronto: Irwin Law, 2006.

McIntyre, Sheila. “The Supreme Court and Section 15: A Thin and Impoverished Notion of Judicial Review.” *Queen’s Law Journal* 31, no. 2 (2005-2006): 731-69.

Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497.

Week 12: November 28 (Case Analysis/Position Paper Due**)**
Legal Rights (National Security Post-9/11)

Required:

Roach, Kent. "Must We Trade Rights for Security? The Choice Between Smart, Harsh, or Proportionate Security Strategies in Canada and Britain." *Cardozo Law Review* 27 (2006): 2151-2221. (pages 2151-57 and 2172-96 only)

Charkaoui v. Canada (Citizenship and Immigration), [2007] 1. S.C.R. 350.
(abbreviated version available in course web site)

Recommended:

Jenkins, David. "In Support of Canada's Anti-Terrorism Act: A Comparison of Canadian, British and American Anti-Terrorism Law." *Saskatchewan Law Review* 66 (2003): 419-54.

Pue, Wesley. "The War on Terror: Constitutional Governance in a State of Permanent Warfare?" *Osgoode Hall Law Journal* 41 (2003): 267-92.

Stewart, Hamish. "Is Indefinite Detention of Terrorist Suspects Really Constitutional?" *University of New Brunswick Law Journal* 54 (2005): 235-50.

Daniels, Ronald J., Patrick Macklem, and Kent Roach eds. *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*. Toronto: University of Toronto Press, 2001.

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

Week 13: December 5
Socioeconomic Rights

Required:

*Jackman, Martha. "Reality Checks: Presuming Innocence and Proving Guilt in Charter Welfare Cases." In Margot Young, Susan B. Boyd, Gwen Brodsky, and Shelagh Day ed. *Poverty: Rights, Social Citizenship and Legal Activism*, 23-39. Vancouver: UBC Press, 2007.

Gosselin v. Quebec (Attorney General), [2002] 4 S.C.R. 429.
(abbreviated version available in course web site)

Recommended:

Petter, Andrew. "Wealthcare: The Politics of the Charter Revisited," In *The Politics of the Charter: The Illusive Promise of Constitutional Rights*, 167-89, Toronto: University of Toronto Press, 2010.

Brodsky, Gwen, and Shelagh Day. "Women's Poverty is an Equality Violation." In *Making Equality Rights Real: Securing Substantive Equality under the Charter*, ed. Fay Faraday,

Margaret Denike and M. Kate Stephenson, 319-44. Toronto: Irwin Law, 2006.

Langford, Malcolm. *Social Rights Jurisprudence*. Cambridge: Cambridge University Press, 2009.

Wiseman, David. "The Charter and Poverty: Beyond Injusticiability." *University of Toronto Law Journal* 51 (2001): 425-58.

**APPENDIX TO UNDERGRADUATE COURSE OUTLINES
DEPARTMENT OF POLITICAL SCIENCE**

Prerequisite checking - the student's responsibility

"Unless you have either the requisites for this course or written special permission from your Dean to enroll in it, you may be removed from this course and it will be deleted from your record. This decision may not be appealed. You will receive no adjustment to your fees in the event that you are dropped from a course for failing to have the necessary prerequisites."

Essay course requirements

With the exception of 1000-level courses, most courses in the Department of Political Science are essay courses. Total written assignments (excluding examinations) will be at least 3,000 words in Politics 1020E, at least 5,000 words in a full course numbered 2000 or above, and at least 2,500 words in a half course numbered 2000 or above.

Use of Personal Response Systems ("Clickers")

"Personal Response Systems ("clickers") may be used in some classes. If clickers are to be used in a class, it is the responsibility of the student to ensure that the device is activated and functional. Students must see their instructor if they have any concerns about whether the clicker is malfunctioning.

Students must use only their own clicker. If clicker records are used to compute a portion of the course grade:

- the use of somebody else's clicker in class constitutes a scholastic offence,
- the possession of a clicker belonging to another student will be interpreted as an attempt to commit a scholastic offence."

Security and Confidentiality of Student Work (refer to current *Western Academic Calendar* (<http://www.westerncalendar.uwo.ca/>))

"**Submitting or Returning Student Assignments, Tests and Exams** - All student assignments, tests and exams will be handled in a secure and confidential manner. Particularly in this respect, leaving student work unattended in public areas for pickup is not permitted."

Duplication of work

Undergraduate students who submit similar assignments on closely related topics in two different courses must obtain the consent of both instructors prior to the submission of the assignment. If prior approval is not obtained, each instructor reserves the right not to accept the assignment.

Grade adjustments

In order to ensure that comparable standards are applied in political science courses, the Department may require instructors to adjust final marks to conform to Departmental guidelines.

Academic Offences

"Scholastic offences are taken seriously and students are directed to read the appropriate policy, specifically, the definition of what constitutes a Scholastic Offence, at the following Web site:

http://www.uwo.ca/univsec/pdf/academic_policies/appeals/scholastic_discipline_undergrad.pdf

Submission of Course Requirements

ESSAYS, ASSIGNMENTS, TAKE-HOME EXAMS MUST BE SUBMITTED ACCORDING TO PROCEDURES SPECIFIED BY YOUR INSTRUCTOR (I.E., IN CLASS, DURING OFFICE HOURS, TA'S OFFICE HOURS) OR UNDER THE INSTRUCTOR'S OFFICE DOOR.

THE MAIN OFFICE DOES NOT DATE-STAMP OR ACCEPT ANY OF THE ABOVE.

Attendance Regulations for Examinations

EXAMINATIONS/ATTENDANCE (Sen. Min. Feb.4/49, May 23/58, S.94, S.3538, S.3632, S.04-097) A student is entitled to be examined in courses in which registration is maintained, subject to the following limitations: 1) A student may be debarred from writing the final examination for failure to maintain satisfactory academic standing throughout the year. 2) Any student who, in the opinion of the instructor, is absent too frequently from class or laboratory periods in any course will be reported to the Dean of the Faculty offering the course (after due warning has been given). On the recommendation of the Department concerned, and with the permission of the Dean of that Faculty, the student will be debarred from taking the regular examination in the course. The Dean of the Faculty offering the course will communicate that decision to the Dean of the Faculty of registration.

Medical Policy, Late Assignments, etc.

Students registered in Social Science should refer to

http://counselling.ssc.uwo.ca/procedures/having_problems/index.html for information on Medical Policy, Term Tests, Final Examinations, Late Assignments, Short Absences, Extended Absences, Documentation and other Academic Concerns. Non-Social Science students should refer to their home faculty's academic counselling office.

University Policy on Cheating and Academic Misconduct

Plagiarism: Students must write their essays and assignments in their own words. Whenever students take an idea, or a passage from another author, they must acknowledge their debt both by using quotation marks where appropriate and by proper referencing such as footnotes or citations. Plagiarism is a major academic offence." (see Scholastic Offence Policy in the Western Academic Calendar).

Plagiarism Checking: "All required papers may be subject to submission for textual similarity review to the commercial plagiarism detection software under license to the University for the detection of plagiarism. All papers submitted for such checking will be included as source documents in the reference database for the purpose of detecting plagiarism of papers subsequently submitted to the system. Use of the service is subject to the licensing agreement, currently between The University of Western Ontario and Turnitin.com (<http://www.turnitin.com>)."

Multiple-choice tests/exams: "Computer-marked multiple-choice tests and/or exams may be subject to submission for similarity review by software that will check for unusual coincidences in answer patterns that may indicate cheating."

Note: Information excerpted and quoted above are Senate regulations from the Handbook of Scholarship and Academic Policy. http://www.uwo.ca/univsec/academic_policies/index.html

PLAGIARISM*

In writing scholarly papers, you must keep firmly in mind the need to avoid plagiarism. Plagiarism is the unacknowledged borrowing of another writer's words or ideas. Different forms of writing require different types of acknowledgement. The following rules pertain to the acknowledgements necessary in academic papers.

A. In using another writer's words, you must both place the words in quotation marks and acknowledge that the words are those of another writer.

You are plagiarizing if you use a sequence of words, a sentence or a paragraph taken from other writers without acknowledging them to be theirs. Acknowledgement is indicated either by (1) mentioning the author and work from which the words are borrowed in the text of your paper; or by (2) placing a footnote number at the end of the quotation in your text, and including a correspondingly numbered footnote at the bottom of the page (or in a separate reference section at the end of your essay). This footnote should indicate author, title of the work, place and date of publication, and page number.

Method (2) given above is usually preferable for academic essays because it provides the reader with more information about your sources and leaves your text uncluttered with parenthetical and tangential references. In either case words taken from another author must be enclosed in quotation marks or set off from your text by single spacing and indentation in such a way that they cannot be mistaken for your own words. Note that you cannot avoid indicating quotation simply by changing a word or phrase in a sentence or paragraph which is not your own.

B. In adopting other writers' ideas, you must acknowledge that they are theirs.

You are plagiarizing if you adopt, summarize, or paraphrase other writers' trains of argument, ideas or sequences of ideas without acknowledging their authorship according to the method of acknowledgement given in 'A' above. Since the words are your own, they need not be enclosed in quotation marks. Be certain, however, that the words you use are entirely your own; where you must use words or phrases from your source, these should be enclosed in quotation marks, as in 'A' above.

Clearly, it is possible for you to formulate arguments or ideas independently of another writer who has expounded the same ideas, and whom you have not read. Where you got your ideas is the important consideration here. Do not be afraid to present an argument or idea without acknowledgement to another writer, if you have arrived at it entirely independently. Acknowledge it if you have derived it from a source outside your own thinking on the subject.

In short, use of acknowledgements and, when necessary, quotation marks is necessary to distinguish clearly between what is yours and what is not. Since the rules have been explained to you, if you fail to make this distinction your instructor very likely will do so for you, and they will be forced to regard your omission as intentional literary theft. Plagiarism is a serious offence which may result in a student's receiving an 'F' in a course or, in extreme cases in their suspension from the University.

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Adopted by the council of the Faculty of Social Science, October, 1970; approved by the Dept. of History August 13, 1991

Accessibility at Western: Please contact poliscie@uwo.ca if you require any information in plain text format, or if any other accommodation can make the course material and/or physical space accessible to you.

SUPPORT SERVICES

The Registrar's office can be accessed for Student Support Services at <http://www.registrar.uwo.ca>

Student Support Services (including the services provided by the USC listed here) can be reached at:
<http://westernusc.ca/services/>

Student Development Services can be reached at: <http://www.sdc.uwo.ca/>

Students who are in emotional/mental distress should refer to Mental Health@Western
<http://www.uwo.ca/uwocom/mentalhealth/> for a complete list of options about how to obtain help.