

**Law, Politics, and the *Charter of Rights and Freedoms***  
**POL3332F**  
**The University of Western Ontario**  
**Fall 2023**

Professor: Caroline Dick

Email: cdick4@uwo.ca

**Prerequisite(s):** Political Science 2230E or Political Science 2530F/G or Sociology 2260A/B or Sociology 3260A/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.

**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 and are most easily retrieved by searching the library database using the “Catalogue.” Searching by the journal title is often the easiest way to retrieve articles. However, some course readings are not readily available via the library. These course readings are marked with an asterisk (\*) and are posted in the resources section of OWL. Abbreviated versions of the Supreme Court of Canada cases that have been designated as required readings are also available in the course website. Students are not required to do the recommended readings. However, the instructor may refer to materials from those readings during lectures.

## **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.

[https://www.mcgill.ca/dise/files/dise/cdn\\_rights.pdf](https://www.mcgill.ca/dise/files/dise/cdn_rights.pdf)

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 and to do the required readings each week. Weekly lecture outlines will be posted on OWL prior to the lecture to assist students with note taking and organizing lecture content.

## **Technical requirements**

Reliable access to a high-speed internet connection and a computer or other device that can be used to complete OWL quizzes is required to complete the course. Optimally, students will also have a computer with a microphone and/or webcam (or a smart device with these features) so that they can attend office hours via Zoom.

## **Evaluation:**

1. Quiz 20% (covering weeks 2, 3 and 4) (Details below)
2. Case Analysis/Position Paper 35% (DUE: Monday, November 27 @ 11:00 am)
3. Final Examination 45% (covering week 6 on)

## **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.

## **OWL Website**

The course syllabus, lecture outlines, some required readings and abbreviated case law materials will be posted on the web site as will class announcements and links to turnitin.com. Accordingly, students should check the website regularly.

## IMPORTANT POLICIES

### **Academic Offences**

Scholastic offences are taken seriously. Students are directed to read the policy on Scholastic Offences at the following web site:

[https://www.uwo.ca/univsec/pdf/academic\\_policies/appeals/scholastic\\_discipline\\_undergrad.pdf](https://www.uwo.ca/univsec/pdf/academic_policies/appeals/scholastic_discipline_undergrad.pdf)

### **Missed Classes and Lecture Notes**

Getting a set of lecture notes for missed classes is important to ensuring success in the course. However, **the instructor does not procure lecture notes for students; nor does academic counselling ask instructors to find lecture notes for students or give them the lecture.** Where a student is unable to attend class, it is the student's responsibility to ask a classmate for lecture notes. **If you don't know anyone in the class, make contact with a couple of classmates early in the term for the explicit purpose of sharing lecture notes.**

### **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>).

### **AI Use Prohibited**

The use of generative AI tools (such as ChatGPT, DALL-E, etc.) is not permitted in this class; therefore, any use of AI tools for work in this class may be considered a violation of the University of Western Ontario's [Academic Misconduct](#) which may constitute a [Scholastic Offence](#). The use of unauthorized AI tools will result in: a failure to receive full grades, the need to resubmit the assignment, need to orally present the assignment in office hours, or a failure to complete the requirements of the course.

### **Submission of Assignments**

Written assignments must be submitted electronically to turnitin.com through the course OWL website. 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 for Written Assignments**

Late case analyses/position papers will be accepted for one week after the due date with a late penalty of 2% per day. **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 the Professor of this fact.

### **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 consideration to the student's Professor.

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 or as soon as you become aware that you will not be completing a course component on time. Academic accommodation will ONLY be provided where the instructor 1) receives a recommendation from Academic Counselling or Accessible Education and 2) where accommodation is sought in a timely fashion (as soon as you realize you will not be completing a course component on time). **Students may not approach the instructor directly for accommodation.**

Academic Counselling for the Faculty of **Social Science** is located at SSC 2105

Telephone: 519 661-2011

Recorded information: 519 661-2052

Fax: 519 661-3384

Email: [ssaco@uwo.ca](mailto:ssaco@uwo.ca)

### **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.

Western is committed to reducing incidents of gender-based and sexual violence and providing compassionate support to anyone who has gone through these traumatic events. If you have experienced sexual or gender-based violence (either recently or in the past), you will find information about support services for survivors, including emergency contacts at:

[https://www.uwo.ca/health/student\\_support/survivor\\_support/get-help.html](https://www.uwo.ca/health/student_support/survivor_support/get-help.html).

### **Computer Problems**

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

### **Grade Appeals**

After grades are posted, **students must wait 48 hours before contacting the instructor about their grade.**

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 an appeal statement (one page maximum) explaining why you think your assignment was improperly graded (i.e. what comments that were provided to explain the grade do you take issue with?).

The appeal statement, 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 returned electronically or made available for return if hard copies were graded. Grades may be either **raised or lowered** on appeal. Where an exam is held, students should follow the same appeal procedure.

### **Requests for Grade Changes, Grade Bumps and Make-Up Work**

Students are often concerned with meeting certain grade thresholds, especially when they are hoping to gain entry into programs after graduating. As a former student who also sought entry to these programs, I do understand the desire to perform well and meet entry requirements. However, **I do not entertain requests for changing grades, bumping grades or make-up work.** In my view, these requests are not fair to other students who accept their grades respectfully and who are also competing for spots in post-graduation programs. All students will receive the grade that they earned in the class once assignment marks are totalled.

## **Evaluation Details**

### **1. Quiz**

The Quiz will consist of **27 multiple choice questions** and will be divided into 3 parts that align with the 3 weeks covered by the quiz. Students will have **23 minutes** in which to complete the quiz. The **Quiz will open on OWL on October 10 @ 9:00am and close on October 12 @ 11:00\*am\***

Please note that this is a “rapid recall” quiz. Students must know the answers; there is no time to look answers up. The time limit is set to preclude this.

Students will be given a 50 hour period in which to take a quiz and must complete quizzes during that time frame. Students will not be allowed to take a quiz that they missed without academic consideration. Students who log in to a make-up quiz without having academic consideration in place will be treated as having committed an academic offence.

### **2. Case Analysis/Position Paper**

Students will complete either a case analysis or a position paper according to the instructions below.

#### Option 1: Case Analysis

Written assignments must include footnotes, endnotes, or parenthetical (in-text) citation and a bibliography organized according to the Chicago style. Note that **all citations must include references to specific page/paragraph numbers.** Help with using the Chicago Style can be found at the following UWO library web source: <https://www.lib.uwo.ca/essayhelp/index.html>

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

#### *Format*

Students will write a case analysis of the Supreme Court of Canada decision identified below. Papers must be typed and double-spaced, using a standard 12 point font and standard (1"/2.54

cm) margins. The case analysis has a **2500 word limit, which includes the title page, notes, and bibliography**. Papers that are over the word limit will be penalized.

Papers must include a bibliography or works cited page. Footnotes, endnotes or in-text citations are acceptable, though they must be in Chicago style format. As per the Chicago style, **cites must include pinpoints** where page numbers or paragraph numbers are available in the source being cited. **Failing to format assignments in correct Chicago format will lead to deductions. Failing to provide pinpoints will result in a significant deduction.**

### *Content*

Split decisions in the Supreme Court of Canada reveal staunch disagreements about the application of legal principles. But they can also point to disagreements about the appropriate relationship between courts and legislatures, approaches to constitutional interpretation, the limits that ought to be placed on the judicial role, and the meaning of key concepts (etc.) - things that we have discussed throughout the course.

This assignment not only asks students to summarize key aspects of a SCC judgement; it requires students to identify where and how course concepts, theories, and debates fuel the arguments of the majority and minority **regarding the appropriate role of the judiciary in a democratic polity**.

Because students will be connecting weekly readings to a Supreme Court of Canada judgement, students must cite class readings to provide scholarly explanations of, and support for, the concepts, arguments and theories that they raise. **Students may NOT cite their lecture notes.**

Students are **required to use the five headings identified below in completing the case analysis components**. Students do not need to incorporate a formal introduction or conclusion into their case analysis. Do note that the assignment does **not** ask students to offer their own personal assessments or critiques of the judgement as there is no space to do so.

The case analysis has **five parts** and case analyses must use these five headings:

#### 1) **Parties, Intervenors and Majority/Minority:**

- Correct identification is the task here.
- Identify the parties to the case
- Identify the intervenors. If there are voluminous intervenors, it is acceptable to talk about the *kinds* of interests that participated as intervenors and provide a couple of examples of groups representing those interests, rather than listing every one.
- Identify which SCC judges constituted the majority and which judges made up the minority.

#### 2) **Facts:**

- Provide a brief synopsis of the facts of the case and identify the central Charter issue before the Court.

- This is the who, what, when, where, why part of the analysis. Who is the claimant?
- What legislation in the Charter claimant contesting?
- Which section(s) of the *Charter* does the claimant believe has been breached and why? You will be explaining why the claimant believes the Charter has been breached in more detail later, so provide a bare bones explanation here.
- Note that there is no need to discuss lower court rulings in setting out the facts of the case (or anywhere else).

### 3) Arguments of the Parties:

- Provide a brief discussion of the arguments advanced by the **parties** concerning the central Charter issue before the Court.
- While you should have identified the nature of the alleged Charter breach in part 2, this is where you spend some more time fleshing the claimant's argument out. What arguments is the Charter claimant advancing to establish the rights violation?
- What arguments is the government offering to dispute the claim that the *Charter* has been breached?
- Make sure that you are talking about the **parties' arguments**. In some judgments, this requires us to deduce what the parties' arguments were from the Court's decision.

### 4) The Relationship between Courts and Legislatures:

- Provide a **detailed discussion** identifying where and how disagreements about the **appropriate relationship between courts and legislatures** arise in the judgment and pit the majority and minority against one another. **This is the most important part of the assignment and should receive the most space and attention.**
- If you've been paying attention to where key concepts and arguments are housed in the required readings, this will be much easier.
- The case you have been given contains a disagreement about how a Charter rights case ought to be resolved. But for the purposes of this section, there is a much more important judicial disagreement that you must find.
- The case was selected because there is also a debate going on between the majority and minority concerning the **appropriate role of judges and the appropriate limits of judicial review** in a democratic polity. These issues include but are not limited to the way in which judges approach constitutional interpretation and the impact their decisions have on the democratic process.
- Students should identify and **cite specific passages from the judgment** that point to the judicial debate going on about the appropriate relationship between courts and

legislatures. Students should then explain how the judicial debate exemplifies ideas, concepts and debates discussed in the class readings by **citing those readings**. How does the dispute going on between the judges in the case reflect ideas and debates concerning the appropriate judicial role? **It is not acceptable to cite your lecture notes**; you must cite the peer-reviewed scholarly literature.

#### 5) Case Outcome:

- This need not be a long discussion.
- Provide a brief discussion of the outcome of the case, including the majority and minority's reasons for deciding as they did.
- Why did one side find a rights violation? Why did the other side think that the legislation was constitutional? This should include some reference to section 1 analysis. Where did the government fail the section 1 test in the eyes of some judges?

#### The Case

*Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791. Available at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2237/index.do>

This case involves a challenge to provincial legislation prohibiting Quebec residents from taking out insurance to obtain private sector health care services where those services are available through the public health care system.

#### Note on Citing Court Cases

Proper legal citation is required. Please note that it is **not acceptable** to cite from the case summary/headnote. Only paragraphs with assigned paragraph numbers may be cited.

Your bibliographical entry should appear as follows:

*Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791.

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

For students using footnotes or endnotes, the first citation should appear as follows:  
*Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791 at para. 55.

Subsequent citations may appear as follows:

*Chaoulli v. Quebec* at para. 44.

*Chaoulli v. Quebec* at paras. 14-15. (when referencing more than one paragraph)

Students may choose to use Chicago's Author-Date system if they wish to.  
(*Chaoulli v. Quebec* 2005 at para. 54).



## OR

### Option 2: Position Paper

Students will write a 2500 word position paper, 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 right(s) at risk of violation for all affected individuals/groups** in the fact scenario and answer the question posed below.

No fewer than four (4) scholarly sources must be incorporated into the paper.

### **Fact Scenario:**

Imad Ali is an inmate in a federal penitentiary. He is a practising Muslim. Prison policy allows female prison guards to conduct frisk searches (over clothing) of male inmates and to undertake surveillance in all areas of the prison. Cross-gender frisk searches and surveillance by male prison guards are not allowed in women's prisons. Mr. Ali claims that this gender-based prison policy violates his Charter rights. The Crown contends that the policy supports the Charter rights of female inmates and female prison guards.

It is imperative that students consider the fact scenario carefully. Students are limited to the facts provided. Students may not assume additional facts into existence to aid their analyses.

Additionally, existing Canadian statutes and regulations that speak to the case may not be relied on to resolve the Charter dispute. The same goes for legal precedent. The task is not to find the 'right answer at law'; it is to work your own way through the legal problem. Legal cases can be raised where a student wants to rely on reasoning in the decision, but no case should be treated as binding precedent that has already decided the rights conflict.

Finally, any assumptions that students rely on to resolve the case should be clearly stated, but as noted above, students should not make up new facts that help them resolve the problem. For example, it would not be appropriate to assume that Mr. Ali is not a devout Muslim because he was found guilty of breaking the law.

## Class Schedule

### **Week 1: September 11**

#### **Introduction**

### **Week 2: September 18**

#### **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.

[https://www.mcgill.ca/dise/files/dise/cdn\\_rights.pdf](https://www.mcgill.ca/dise/files/dise/cdn_rights.pdf)

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 25**

**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 Ajenstat, 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. **(pages 98-101 and 108-114 only)**

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 (2001): 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 2**

### **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 9 \*\*\*Quiz opens at 9:00 am tomorrow\*\*\***

**No class (Thanksgiving)**

## **Week 6: October 16**

### **The *Charter*, Executive Power and Federalism**

#### **Required:**

\*Kelly, James, B. "Governing with the Charter of Rights." In *Governing with the Charter: Legislative and Judicial Activism and Framers' Intent*. Vancouver: UBC Press, 2005.

Clarke, Jeremy A. "Beyond the Democratic Dialogue, and Towards a Federalist One: Provincial Arguments and Supreme Court Responses in Charter Litigation." *Canadian Journal of Political Science* 39, no.2 (2006): 293-314. (293-300; 305-308 only)

#### **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): 323-44.

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 7: October 23**

#### **Interest Groups and the Court Party Thesis**

##### **Required:**

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

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

##### **Recommended:**

Callaghan, Geoffrey D. "Intervenors at the Supreme Court of Canada." *Dalhousie Law Journal* 43 (2020): 22-61.

McGill, Jena and Daphne Gilbert. "Of Promise and Peril: The Court and Equality Rights." *Supreme Court Law Reports* (2d) 78 (2017): 235-57.

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.

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): 323-44.

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

### **Week 8: October 30**

#### **No Lecture (Reading Week)**

**Week 9: November 6**  
**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.

**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 13**  
**Equality Rights (Women)**

**Required:**

\*McGill Jena, and Daphne Gilbert. "Of Promise and Peril: The Court and Equality Rights." *Supreme Court Law Review* (2d) 78 (2017): 235-257.

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

**Recommended:**

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](http://www.cpsa-acsp.ca/papers-2008/Dobrowolsky.pdf)

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 11: November 20  
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): 205-48. **(pages 205-12; 217-21 and 235-37 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 12: November 27 \*\*\*CA/PP Due Today by 11:00 am today\*\*\*  
Socioeconomic Rights**

**Required:**

Jackman, Martha. "One Step Forward and Two Steps Back: Poverty, the *Charter* and the

Legacy of *Gosselin*.” *National Journal of Constitutional Law* 39 (2019): 87-121. (pages 85-94 and 100-121 only)

\**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.

**Week 13: December 4 \*\*\*Final Day for late submission of CA/PP by 11:00 am\*\*\*  
Catch Up if Necessary**

**APPENDIX A: 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*

[\(http://www.westerncalendar.uwo.ca/\)](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/handbook/appeals/scholoff.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.**

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

**Students registered in Social Science should refer to <http://counselling.ssc.uwo.ca/> <http://counselling.ssc.uwo.ca/procedures/havingproblems.asp> 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.**

## **Plagiarism**

"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/handbook/>

### **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](mailto: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

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.

## Appendix B - Procedures for Requesting Academic Consideration

Students who experience an extenuating circumstance (illness, injury, or other extenuating circumstance) sufficiently significant to temporarily render them unable to meet academic requirements may submit a request for academic consideration through the following routes:

- For medical absences, submitting a Student Medical Certificate (SMC) signed by a licensed medical or mental health practitioner in order to be eligible for Academic Consideration; or
- For non-medical absences, submitting appropriate documentation (e.g., obituary, police report, accident report, court order, etc.) to Academic Counselling in their Faculty of registration in order to be eligible for academic consideration. Students are encouraged to contact their Academic Counselling unit to clarify what documentation is appropriate.

Students seeking academic consideration:

- are advised to consider carefully the implications of postponing tests or midterm exams or delaying handing in work;
- must communicate with their instructors **no later than 24 hours** after the end of the period covered by an SMC, or immediately upon their return following a documented absence.

Academic consideration **is not** normally intended for the following circumstances:

- Students who require academic accommodation based on an ongoing physical or mental illness (recurring or chronic) or an existing disability. These students are expected to seek and arrange reasonable accommodations with Student Accessibility Services (SAS) as soon as possible in accordance with the Policy on Academic Accommodation for Students with Disability.
- Students who experience high levels of stress related to academic performance (including completing assignments, taking part in presentations, or writing tests or examinations). These students should access support through Student Health and Wellness and Learning Skills Services in order to deal with this stress in a proactive and constructive manner.

### Request for Academic Consideration for a Medical Absence

Students seeking academic consideration for a medical absence not covered by existing Student Accessibility Services (SAS) accommodation, will be required to provide documentation in person to Academic Counselling in their Faculty of registration in the form of a completed, signed Student Medical Certificate (SMC).

### Request for Academic Consideration for a Non-Medical Absence

Students seeking academic consideration for a non-medical absence will be required to provide appropriate documentation to Academic Counselling in their Faculty of registration.