Law, Politics, and the *Charter of Rights and Freedoms*

POL3332F

The University of Western Ontario

Fall 2015

Professor: Caroline Dick

Time: Monday 1:30-3:20 p.m.

Classroom: KB K203

Office: SSC 4088

Email: cdick4@uwo.ca

Office Hours: Monday 12:10-1:10 p.m.

Tuesday 1:30-2:30 p.m.

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**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**

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

**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 19, 2015)
Case Analysis or Position Paper 40% (DUE: November 30, 2015)
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 7, 2015 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 Counselling 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 (S.08-113).
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 under the Medical Documentation heading of the following website: https://studentservices.uwo.ca/secure/index.cfm.

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 Counselling 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 four (4) academic sources must be incorporated into the paper. 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.

The Facts:
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. Imad 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.

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:
Bennett, Katherine. “Constitutional Issues in Cross-Gender Searches and Visual Observation

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 evaluation of the major political and constitutional issues raised by the case (including issues raised 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); and an assessment of how the case was decided. 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.

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**


This case involved a corporation’s challenge to federal legislation aimed at limiting tobacco advertising. Please confine your assignment to the Charter issues at stake in the litigation. This means that the Court’s discussion of the criminal law power is outside the scope of the assignment.
Note on Citing Court Cases

Proper legal citation is required.

Your bibliographical entry should appear as follows:

Students should use **paragraph numbers** when referring to the decision (i.e. 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: RJR-MacDonald v. Canada (Attorney General), [1995] 3 S.C.R. 199 at para. 55.

Subsequent citations may appear as follows:
RJR-MacDonald v. Canada at paras. 44-46. (for referencing more than one paragraph)

Class Schedule

**Week 1: September 14**
Introduction

**Week 2: September 21**
The Application of the *Charter*

**Required:**


**Recommended:**


**Week 3: September 28**
The Charter’s Democratic Implications: The Supreme Court of Canada as Policy Maker

**Required:**


**Recommended:**


**Week 4: October 5**
Parliament and the Courts: Who Determines the Meaning of the Charter?

**Required:**


**Recommended:**


Week 5: October 12
No Lecture (Thanksgiving)

Week 6: October 19
In-Class Test on Weeks 2-4

Week 7: October 26
The Charter, Executive Power and Federalism

**Required:**


**Recommended:**

Wright, Wade K. “Facilitating Intergovernmental Dialogue: Judicial Review of the Division of


**Week 8: November 2**

**Interest Groups and the Court Party Thesis**

**Required:**


**Recommended:**


**Week 9: November 9**  
**Rights and Limits: Sections 1 and 33**

**Required:**  


**Recommended:**  


**Week 10: November 16**  
**Fundamental Freedoms (Expression)**

**Required:**  

Recommended:


**Week 11: November 23**

**Equality Rights (Women)**

Required:

(abbreviated version available in course web site)

Recommended:


**Week 12: November 30 (***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 2151-2157 and 2172-2196 only)


Recommended:


Week 13: December 7
Socioeconomic Rights

Required:


Recommended:


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/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.

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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
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.