

**POLS\*3140**  
**The Charter of Rights and Freedoms (Section 01)**

**UNIVERSITY OF GUELPH**  
**Department of Political Science**  
**Winter 2020**

Instructor: Professor Dave Snow

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**Course Description:**

The introduction of the 1982 *Canadian Charter of Rights and Freedoms* has changed the Canadian political landscape dramatically. This course will introduce students to the political implications of the Charter through a combination of historical material, judicial decisions, and scholarly debates. The early weeks of the course will situate the Charter in its historical context, exploring the debates surrounding Patriation and the effect of the Charter on society. The course will then shift to judicial decisions themselves, as students will become familiar with the development of judicial decision-making over the past three decades, and examine how the Supreme Court of Canada has shaped public policy in the post-Charter era. The course will conclude by moving from the courts to other political institutions, exploring the Charter's continuing influence on executives, legislatures, bureaucrats, electoral politics, interest groups, and society.

By the end of this course, students should be able to identify and critically evaluate the relevant political and scholarly debates, past and present, that surround the *Canadian Charter of Rights and Freedoms*. Students should be familiar with the historical development of the Charter, including the reasons for its successful entrenchment, its influence and popularity, and its continued significance in shaping public policy. Finally, students should be able to effectively communicate, in both oral and written form, how the Charter has changed the way Canadians govern and are governed, particularly with respect to the “judicialization of politics” and the “politicization of the judiciary.”

**Course Requirements:**

Short Paper	(January 23, via CourseLink)	15%
Midterm	(February 13, in class)	25%
Final Paper	(March 19, via CourseLink)	30%
Final Exam	(April 15, location TBA)	30%

**Required Texts:**

Bateman, Thomas M.J., Janet L. Hiebert, Rainer Knopff, and Peter H. Russell. 2017. *The Court and the Charter: Leading Cases*. **2<sup>nd</sup> edition**. Toronto: Emond Montgomery Press. [BHKR]

Morton, F.L., and Dave Snow. 2018. *Law, Politics, and the Judicial Process in Canada*. **4<sup>th</sup> Edition**. Calgary: University of Calgary Press. [LPJPC]

## **GRADED COMPONENTS**

### **SHORT PAPER (15%)**

For this assignment, students will complete a short paper on a recent Charter issue based on an analysis of 1-2 academic articles and several news sources. Students will not be required to use sources outside of those assigned. Extensions will only be granted for emergency circumstances and will not be granted after the deadline, so budget your time effectively. The paper will be **1,000-1,200 words**.

Your short paper must be uploaded to Dropbox on CourseLink by **11:59 pm on Thursday, January 23**. Late papers will receive a **5% reduction per day late** (including weekends).

Papers that reveal evidence of academic misconduct (such as not properly citing sources) will be dealt with according to the guidelines in the University Calendar. As noted above, the paper assignments will be submitted to Turnitin.com to check for plagiarism. You are encouraged to screen your papers at the site ahead of time to assist you in determining whether you have properly sourced material for your paper. More detail about the papers will be provided in class, and will also be available on CourseLink.

### **FINAL PAPER (30%)**

Students will be required to select from a list of topics supplied midway through the semester. Extensions will only be granted for emergency circumstances and will not be granted after the deadline, so budget your time effectively during the semester. The paper will be **1,500-1,750 words**.

Your paper must be uploaded to Dropbox on CourseLink by **11:59 pm on Thursday, March 19**. Late papers will receive a **5% reduction per day late** (including weekends).

Papers that reveal evidence of academic misconduct (such as not properly citing sources) will be dealt with according to the guidelines in the University Calendar. As noted above, the paper assignments will be submitted to Turnitin.com to check for plagiarism. You are encouraged to screen your papers at the site ahead of time to assist you in determining whether you have properly sourced material for your paper. More detail about the papers will be provided in class, and will also be available on CourseLink.

### **MIDTERM (25%)**

The midterm will take place in class on **Thursday, February 13**. The midterm will be a combination of multiple choice and short answer questions, and it will compromise material covered up to the previous lecture.

### **FINAL EXAM (30%)**

The final exam date is **TBA**. Final details will be posted in class as soon as they are available. The exam will be a combination of multiple choice and short answer questions. The final exam will be **cumulative**, covering material from the entire semester.

## **POLICIES**

### **TESTS AND EXAMS**

Tests and exams will cover material from both the lectures and the readings. Special arrangements for writing tests will only be made for a compelling reason (serious illness, family crisis, etc.) and if notification has been given **PRIOR** to the test (or in case of emergency as soon as possible).

All **Papers and Exams** are to be completed **individually** – i.e., **without collaboration**. Students must write assignments in their own words, and all written assignments must be completed independently unless the instructor indicates otherwise. Failure to do so constitutes academic misconduct. Please see the University of Guelph Undergraduate Calendar for academic regulations, including rules surrounding **academic misconduct** (<https://www.uoguelph.ca/registrar/calendars/undergraduate/current/c08/c08-amisconduct.shtml>).

### **LATE PAPERS AND APPEALS**

The penalty for **LATE PAPERS and ASSIGNMENTS** will be **5% per day**, including weekends, and extensions will only be granted for emergency circumstances. Papers will not be accepted ten days after the initial due date. Extensions requested **AFTER** the assignment deadline will not be granted.

Students have the option of appealing their assignment grades to the instructor, whether those grades were graded by the instructor or a teaching assistant. To appeal, the student must email the professor a one-paragraph statement explaining why the grade should be changed, and subsequently meet with the professor. This email must occur within seven days of receiving the initial grade. On an appeal, the professor will grade the assignment independently, which means that **the original grade can go up or down**.

### **COURSELINK**

This course uses **CourseLink**. The site will be used as a course administration tool; detailed assignment guidelines and course resources will be posted. Please see CourseLink for course outline, assignments, lecture notes, announcements, supplementary course material, and grade-related items. Students must check this site regularly. All written assignments will be submitted through CourseLink.

### **TURNITIN**

In this course, your instructor will be using Turnitin, integrated with the CourseLink Dropbox tool, to detect possible plagiarism, unauthorized collaboration or copying as part of the ongoing efforts to maintain academic integrity at the University of Guelph.

All submitted assignments will be included as source documents in the Turnitin.com reference database solely for the purpose of detecting plagiarism of such papers. Use of the Turnitin.com service is subject to the Usage Policy posted on the Turnitin.com site.

A major benefit of using Turnitin is that students will be able to educate and empower themselves in preventing academic misconduct. In this course, you may screen your own assignments through Turnitin as many times as you wish before the due date. You will be able to see and print reports that show you exactly where you have properly and improperly referenced the outside sources and materials in your assignment.

## LEARNING OUTCOMES

This course will contribute to each of the Department of Political Science's five learning outcomes: critical and creative thinking, literacy, communicating, global understanding, and professional and ethical behaviour. Critical and creative thinking skills will be developed by applying knowledge of judicial review of the *Charter* to historical and recent controversies in Canadian politics. Literacy will be improved by written assignments and by the instructor's written feedback on those assignments. Communicating will be improved through a strong focus on in-class activities, group discussion, and larger class discussions. Studying the role of judicially-enforceable bills of rights with an eye to provincial, national, and comparative variations will enhance students' global understanding of similarities and differences. Finally, professional and ethical behaviour will be fostered through lectures and activities that focus on teamwork, thoughtful inquiry, and understanding of diverse perspectives.

## EMAIL POLICY

Emails are to be treated as a form of professional communication with your instructor and teaching assistants. Please treat emails formally, using proper grammar and etiquette. Email should be used sparingly, and is **NOT** a substitute for coming to lecture or understanding the readings. If you have a substantive question regarding the material or the assignments, you will be instructed to meet with the instructor or teaching assistants during office hours. **Please consult the course outline and CourseLink before emailing your instructor.**

## WRITING GUIDE

Written assignments must conform to the Department of Political Science Writing Guide, which is available on CourseLink. The Department of Political Science Writing Guide sets out basic rules for academic writing and all students taking political science courses are required to be familiar with and follow these instructions for their written assignments.

## CLASSROOM CONDUCT

Questions and discussion are encouraged in the classroom. All students are expected to demonstrate respect toward other class members and the instructor.

The following is not permitted in the classroom, either during lecture or during group work: listening to music, speaking on the phone, reading the newspaper, surfing the web, watching streaming online content, talking during instructions, and other distracting behaviour. Cell phones must be turned off or switched to airplane mode during class. Headphones must not be worn. Laptop computers should be on silent.

## **GROUP WORK**

Many lectures will be organized to incorporate group work. On many occasions, students will be divided into groups of 3-4 and will be asked to discuss questions based on readings and lecture material. We will then discuss the questions as a class. Groups will often be asked to write or type responses to questions in order to facilitate discussion.

## **INTELLECTUAL PROPERTY OF COURSE MATERIALS**

Course materials from lectures and on CourseLink (e.g. syllabus, assignment, hand-outs) cannot be redistributed without the prior consent of the instructor. You may not make a visual and/or audio recording, openly or surreptitiously, of any seminar material delivered in a course without the written permission of the course instructor.

## **Course Schedule and Required Readings (subject to change):**

### **Unit 1 (January 7, 9, and 13) Patriation and the Charter**

1. **BHCR:** “Introduction” [part one] (pp. 1-11).
2. Peter H Russell et al. 2008. “The Patriation Reference, 1981.” In *The Court and the Constitution: Leading Cases*. (Chapter 46). Toronto: Emond Montgomery, pp. 464-501.
3. **LPJPC, 2.4:** Michael Mandel, “*Re Constitution of Canada, 1981: The Patriation Reference*” (pp. 64-73).
4. **BHCR:** “Appendix: *The Constitution Act, 1982*”.
5. **LPJPC, 12.3:** F.L. Morton, “Judicial Review and Civil Liberties,” (Only read up to “Constitutional Interpretation: Originalism vs. the Living Tree,” pp. 589-598).
6. **LPJPC, 1.5:** Rainer Knopff, Rhonda Evans, Dennis Baker and Dave Snow, “Strong- and Weak-Form Judicial Review” (pp. 22-23).

### **Unit 2 (January 16 and 21) The Legitimacy and Activism Debates**

1. **BHCR:** “Introduction” [part two] (pp. 12-21).
2. Russell, Peter H. 1983. “The Political Purposes of the Canadian Charter of Rights and Freedoms.” *Canadian Bar Review* 61: 30-54.
3. **LPJPC, 12.4:** F.L. Morton and Rainer Knopff, “What’s Wrong with the *Charter* Revolution and the Court Party?” (pp. 601-605).
4. Weinrib, Lorraine. 1999. “The Activist Constitution.” *Policy Options* 20(3): 27-30.
5. Wilson, Bertha. 1999. “We Didn’t Volunteer.” *Policy Options* 20(3): 8-11.

### **Unit 3 (January 23)**

#### **The Dialogue Debate**

1. **LPJPC 12.7:** “Dialogue or Monologue? Hogg and Thornton versus Morton” (pp. 616-627).
2. Macfarlane, Emmett. 2013. “Dialogue or Compliance? Measuring Legislatures’ Policy Responses to Court Rulings on Rights.” *International Political Science Review* 32(1): 39-56.

**[Short Paper Due: Thursday, January 23]**

### **Unit 4 (January 28 and 30)**

#### **The Notwithstanding Clause**

1. **BHCR:** “Chapter 5: *Quebec v. Ford et al.* (Quebec Sign Case), 1988”
2. Leeson, Howard. 2000. “Section 33, The Notwithstanding Clause: A Paper Tiger?” *Choices* 6(4): 1-24.
3. **LPJPC, 12.5:** Peter H. Russell, “The Notwithstanding Clause: The Charter’s Homage to Parliamentary Democracy” (pp. 605-611).
4. **LPJPC, 12.6:** “Saskatchewan Uses the Notwithstanding Clause: Dwight Newman (Pro) and Leonid Sirota (Con)” (pp. 611-616).
5. Morton, Ted. 2018. “Provinces demanded ‘notwithstanding’ powers for good reason. They should use them.” *National Post*. September 14. <https://nationalpost.com/opinion/ted-morton-provinces-demanded-notwithstanding-powers-for-good-reason-they-should-use-them>
6. Mathen, Carissima. 2018. “Doug Ford’s powers are not limitless - thanks to a system he neither understands nor values.” *Globe and Mail*. September 10: <https://www.theglobeandmail.com/opinion/article-doug-fords-powers-are-not-limitless-thanks-to-a-system-he-neither/>
7. Wells, Paul. 2019. “The Battle Against Quebec’s Bill 21.” *Maclean’s*, November 8. <https://www.macleans.ca/news/canada/the-teachers-taking-on-quebecs-bill-21/>
8. Brown, Silas. 2019. “Inclusion of notwithstanding clause endangering New Brunswick mandatory vaccination bill.” *Global News*, November 27. <https://globalnews.ca/news/6225053/notwithstanding-clause-new-brunswick-vaccination-bill/>

**Unit 5 (February 4)**  
**Framer's Intent, the Oakes Test, and Reasonable Limits**

1. **BHCR:** "Chapter 20: *Re B.C. Motor Vehicle Act*, 1985"
2. **LPJPC, 12.3:** F.L. Morton, "Judicial Review and Civil Liberties"  
(Only section "Constitutional Interpretation: Originalism vs. the Living Tree," pp. 598-600).
3. **BHCR:** "Chapter 14: *The Queen v. Oakes*, 1986"

**Unit 6 (February 6 and 11)**  
**Freedom of Expression**

1. *R. v. Keegstra*, [1990] 3 S.C.R. 697 (available on CourseLink).
2. **BHCR:** "Chapter 6: *R. v. Butler*, 1992"
4. **BHCR:** "Chapter 7: *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995"
5. Hiebert, Janet. 2002. "Tobacco Advertising." In *Charter Conflicts: What is Parliament's Role?* (chapter 4). Montreal/Kingston: McGill-Queen's University Press, pp. 73-90.

**[Midterm: Thursday, February 13]**

**[READING WEEK: February 17-21]**

**Unit 7 (February 25 and 27)**  
**Equality Rights**

1. **BHCR:** "Chapter 27: *Andrews v. Law Society of British Columbia*, 1989"
2. *Law v. Canada (Minister of Employment and Immigration)* [1999] 1 S.C.R. 497 (available on CourseLink).
3. **BHCR:** "Chapter 30: *R. v. Kapp*, 2008"
4. Bateman, Thomas M.J. 2012. "Human Dignity's False Start in the Supreme Court of Canada: Equality Rights and the Canadian Charter of Rights and Freedoms." *International Journal of Human Rights* 16(4): 577-597.



**Unit 8 (March 3 and 5)**  
**Equality Rights and the Changing Family**

1. **BHCR:** “Chapter 28: *M v. H.*, 1999”
2. *Reference re Same-Sex Marriage* [2004] 3 S.C.R. 698 (available on CourseLink).
3. Hennigar, Matthew. 2009. “*Reference re Same-Sex Marriage*: Making Sense of the Government’s Litigation Strategy.” In *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, eds. James B. Kelly and Christopher P. Manfredi. Vancouver: UBC Press, 209-231.
4. Smith, Miriam. 2005. “Social Movements and Judicial Empowerment: Courts, Public Policy, and Lesbian and Gay Organizing in Canada.” *Politics & Society* 33 (2): 327-353.

**Unit 9 (March 10 and 12)**  
**Life, Liberty and Security of the Person (1)**

1. **BHCR:** “Chapter 21: *Morgentaler v. The Queen*, 1988”
2. Johnstone, Rachael, and Emmett Macfarlane. 2015. “Public Policy, Rights, and Abortion Access in Canada.” *International Journal of Canadian Studies* 51(1): 97-120.
3. **BHCR:** “Chapter 23: *Chaoulli v. Quebec (Attorney General)*, 2005”
4. Bateman, Thomas M.J. 2008. “Just What the Doctor Ordered: Private Health Care and the Charter.” *Braving the New World: Readings in Contemporary Politics*, eds. Thomas M.J. Bateman, Richard Myers, and Roger Epp. 4th Edition. Toronto: Thomson Nelson.
5. Grant, Kelly. 2019. “Universal health care on trial: What you need to know about a historic Charter challenge in B.C.” *Globe and Mail*, November 13.  
<https://www.theglobeandmail.com/canada/article-universal-health-care-on-trial-what-you-need-to-know-about-a-historic/>

**Unit 10 (March 17, 19, and 24)**  
**Life, Liberty and Security of the Person (2)**

1. **BHCR**: “Chapter 24: *Canada (Attorney General) v. PHS Community Services Society*, 2011”
2. Dubinski, Kate. 2018. “Ontario to keep funding supervised drug consumption sites, health minister says.” *CBC News*. October 22. <https://www.cbc.ca/news/canada/london/ontario-supervised-drug-consumption-sites-christine-elliott-1.4872595>
3. **BHCR**: “Chapter 25: *Canada v. Bedford*, 2013”
4. Dubinski, Kate. 2019. “Selling sex is 'a societal blight,' Crown argues in prostitution charter challenge.” *CBC News*. June 13. <https://www.cbc.ca/news/canada/london/sex-trade-charter-challenge-london-ontario-fantasy-world-escorts-1.5172469>
5. **BHCR**: “Chapter 26: *Carter v. Canada (Attorney General)*, 2015”
6. **LPJPC**, 7.5: “Chelsea Ogilvie, “Stare Decisis and Social Facts in the Charter Era” (pp. 361-369).

**[Final Paper Due: Thursday, March 19]**

**Unit 11: (March 26, 31, and April 2)**  
**Does the Charter Matter? Harper, the Supreme Court, and Political Culture**

1. **LPJPC**, 11.0: “The Harper Conservatives and the Canadian Judiciary” (pp. 504-513).
2. **LPJPC**, 11.9: Christopher Manfredi, “Conservatives, the Supreme Court of Canada, and the Constitution: Judicial-Government Relations, 2006–2015” (pp. 562-571)
3. **LPJPC**, 8.4: Dave Snow and Mark S. Harding, “The Three Waves of Post-Charter Supreme Court Scholarship” (pp. 396-403).
4. **LPJPC**, 6.9: Charles Epp, “Do Bills of Rights Matter?” (pp. 310-323).
5. **LPJPC**, 6.10: Donald R. Songer, “Do Constitutions Matter?” (pp. 323-328).
6. **LPJPC**, 12.9: Chief Justice Glenn D. Joyal, “The Charter and Canada’s New Political Culture: Are We All Ambassadors Now?” (pp. 634-649)