

THE CHARTER OF RIGHTS AND FREEDOMS

WINTER 2021

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Lecture: Content – Avenue to Learn;
Q & A – Tue & Fri. 12:30 - 1:20

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Course Description

The introduction of the Charter of Rights and Freedoms into the Canadian constitutional landscape in 1982 dramatically altered the relationship between Canadians and their governments as well as the interaction between elected legislatures and governments and the courts. Almost forty years later, and in an era of a rights culture, citizens are as likely to look to the courts to protect or pursue their policy goals as they are to their elected legislatures and the ability of the state to govern in historic and/or traditional ways has been greatly altered. Underlying these changes is an ongoing debate (both academic and in the practices of politics) concerning judicial activism and the appropriate role of the judiciary in democratic states versus the actions of seemingly more legitimate elected governments.

The course is intended to give students a greater understanding of the interaction between politics, the courts and the law and to provide insight into some of the legal and political limitations faced by governments in attempting to make public policy in Canada as a result of the Charter of Rights and Freedoms.

The course will employ an explicitly legal-based approach to the course content through an examination of the law and legal tests used by the courts in determining whether government action violates the Charter of Rights and Freedoms.

Course Objectives

By the end of the course students should be able to:

- Have a greater understanding of the interaction between the legislative and executive branches of government and the judiciary in the context of a constitutional bill of rights;
- Be able to describe the constituent elements of and the key legal and political rights set out in the Charter of Rights and Freedoms;
- Analyze current political and public policy issues from a legal and civil rights perspective;
- Apply the knowledge they have gained to generate arguments on either side of an issue and appraise the validity and legitimacy of arguments advanced in public by politicians and the media in relation to claims from citizens under the Charter of Rights and Freedoms;
- Able to present arguments and case summaries in written format in a brief, clear and concise manner supported by evidence and theory.

Required Materials and Texts

Various journal articles and other assigned readings available through McMaster University libraries and as provided on Avenue to Learn.

Please note that the readings are optional and designed to provide further introduction and background to the relevant course material and the academic debates surrounding the relevant legal issues. They are for information only and will only be partially related to assessable course content.

Class Format

Primary course content will be delivered through on-line, pre-recorded lectures available on Avenue to Learn.

In addition to the pre-recorded lectures, the class is scheduled for two one-hour question and answer sessions with the instructor per week. Those sessions (Tuesday and Friday) will be used to clarify and answer any questions arising out of lecture content and will be held every week.

The third hour of class time (Wednesday) will be used as office hours dedicated to this course only and will be held weekly.

The instructor will remain available during the online session for however long that there are students present and/or waiting.

As the course content and assessable material will be delivered through pre-recorded lectures, there is no requirement that students keep current with the course schedule. However, the question and answer sessions will follow the course schedule and will be dedicated to clarifying course materials related to the topics associated with each specific week as outlined on the course outline. The instructor led sessions will not re-visit course content that has been previously discussed and is no longer current with the course schedule.

In addition, assessments will also be based on and graded on the course material relevant to the assignment as set out in the weekly course schedule.

Course Evaluation – Overview

1. Case Decision Assignments - 25% each
 - February 05, 2021
 - March 09, 2021
 - April 06, 2021
2. Final Exam - 25%, April Exam Period

Course Evaluation – Details

Case Decisions (25% each)

Assignment 1 - Feb 05, 2021

Assignment 2 - Mar 09, 2021

Assignment 3 - Apr 06, 2021

Students will submit three (3) brief papers (maximum length to be set out in each assignment) based on a hypothetical set of facts associated with Supreme Court of Canada cases dealing with a Charter of Rights and Freedom issue. Students will be asked to write a judicial decision of their own concerning a hypothetical set of facts with an identification, explanation and application of the appropriate law as taught in the lecture materials.

Students may write the paper solely or jointly with one other student in the class. Unless agreed to in advance by all students in the group and the instructor, students will both receive the same grade for the assignment and both are responsible for ensuring that the assignment conforms to the Academic Integrity Policy.

Students will be provided with the details of each particular assignment during class at least one week prior to the assignment being due. Assignments will be graded on the basis that the assignment identifies and applies the appropriate legal test to the fact scenario and the extent to which it demonstrates an understanding of course content. Assignments will be graded solely on the basis of course content.

Final Take Home Exam (25%)

April Exam Period

The final exam will follow a similar format to the assignments, but will be based on the materials in the last section of the course. The take home will be released in accordance with the date scheduled by the registrar for the final exam and will provide students with a minimum of seven days to complete the exam.

PLEASE NOTE THAT THE FINAL EXAM WILL BE SCHEDULED BY THE REGISTRAR'S OFFICE AND, AS SUCH, THE UNIVERSITY POLICY WITH RESPECT TO MISSED EXAMS WILL APPLY. ANY STUDENT WHO IS UNABLE TO MEET THE DEADLINE FOR THE EXAM SHOULD SEEK A DEFERRED EXAM ACCORDINGLY. THE INSTRUCTOR WILL NOT PROVIDE OR ALLOW FOR EXTENSIONS OF ANY KIND IN RELATION TO THE EXAM.

Weekly Course Schedule and Required Readings

Week 1 – January 11, 2021

Introduction to the course

The Legal Approach to Studying the Charter

Understanding the Judicial Role and the Rule of Law in Democratic States

Answering Questions Using a Legal Approach

Hogg, Peter and Cara F. Zwibel. 2005. "The Rule of Law in the Supreme Court of Canada" *University of Toronto Law Journal*, 55(3), 715-732.

THE APPLICATION OF THE CHARTER

Week 2 – January 18, 2021

The Structure of the Charter and Secs. 32 and 33

Section 33 – The Notwithstanding Clause

Section 32 – *Dolphin Delivery* and the Public versus Private Distinction

Hogg, Peter. 1986. "The *Dolphin Delivery* Case: The Application of the Charter to Private Action" *Saskatchewan Law Review* (1986-1987), 273.

Week 3 – January 25, 2021

Section 32 – The Public Application – *Pridgen v. Calgary*

Section 32 – The Legislature

Section 32 – The Government

Feasby, Colin. 2013. "Failing Students by Taking a Pass on the Charter in *Pridgen v. University of Calgary*" *Constitutional Forum* 22(1), 19-30.

Assignment 1 to be released on Avenue on January 26, 2021.

Week 4 – February 01, 2021

Slack Week – No Lectures or Assigned Course Content

Assignment 1 due in Avenue Drop Box by February 05, 2021.

THE RIGHTS AND POTENTIAL RIGHTS VIOLATIONS

A. LEGAL RIGHTS

Week 5 – February 08, 2021

Section 7 and the Right to Life, Liberty and Security of the Person

The Meaning of “Life”

“Liberty” and What it Means to Be Free

Manfredi, Christopher. 1990. “Fundamental Justice in the Supreme Court of Canada: Decisions under Section 7 of the Charter of Rights and Freedoms, 1984-1988” *The American Journal of Comparative Law* 38(3), 653-682.

Week 6 – February 15, 2021

Reading Week

Week 7 – February 22, 2021

Section 7 and Security of the Person

The Principles of Fundamental Justice

Hasan, Nader R. 2013. “Three Theories of “Principles of “Fundamental Justice”” *Supreme Court Law Review* 63, 339-375.

Assignment 2 to be released on Avenue on February 23, 2021.

Week 8 – March 01, 2021

Section 8 and the Right Against an Unreasonable Search and Seizure

Ostberg, C.L. 2000. “Charting New Territory? Fifteen Years of Search and Seizure Decisions of the Supreme Court of Canada, 1982-1997” *American Journal of Canadian Studies*, 30(1), 35-54.

Week 9 – March 08, 2021

Slack Week

Optional Content - Section 10 and the Rights on Arrest and Detention

Assignment 2 due in Avenue Drop Box by March 09, 2021.

B. FUNDAMENTAL FREEDOMS

Week 10 – March 15, 2021

Freedom of Religion

Moon, Richard. 2012. "Freedom of Religion Under the *Charter of Rights*: Limits to State Neutrality" *UBC Law Review*, 45(2), 497-550.

Week 11 – March 22, 2021

Freedom of Expression

Roach, Kent and David Schneiderman. 2013. "Freedom of Expression in Canada" *Supreme Court Law Review* 61(2), 429-525.

Assignment 3 to be released on Avenue on March 23, 2021.

C. EQUALITY RIGHTS

Week 12 – March 29, 2021

Equality Rights

Young, Margot. 2010. "Unequal to the Task: 'Kapp'ing the Potential of Section 15" *Supreme Court Law Review* 50(2), 183-219.

THE JUSTIFICATION OF RIGHTS VIOLATIONS

Week 13 – April 05, 2021

Section 1 and the Justification of Rights Violations

Prescribed by Law

Reasonably Justifiable in a Free and Democratic Society and the Oakes Test

Choudhry, Sujit. 2006. "So What Is the Real Legacy of Oakes? Two Decades of Proportionality Analysis under the Canadian Charter's Section 1" *Supreme Court Law Review* 34(2), 501-535.

Assignment 3 due in Avenue to Learn Drop Box on April 06, 2021.

Week 14 – April 12, 2021

Conclusion and Exam Preparation and Review

Course Policies

Submission of Assignments

Assignments should be submitted to the drop box on Avenue to Learn by the beginning of class on the respective due date.

Papers received by e-mail or any other means other than through submission on Avenue to Learn not be accepted without the prior express permission of the instructor on each specific assignment.

Grades

Grades will be based on the McMaster University grading scale:

MARK	GRADE
90-100	A+
85-90	A
80-84	A-
77-79	B+
73-76	B
70-72	B-
67-69	C+
63-66	C
60-62	C-
57-59	D+
53-56	D
50-52	D-
0-49	F

Late Assignments

Students should make all reasonable attempts to submit papers on the due date. In the event that a legitimate extension is required, students should contact the instructor **in advance** of the due date to make the appropriate arrangements for such an extension.

Examinations and/or assignments related to this and other courses do not constitute or qualify as exceptional circumstances or legitimate excuses.

Grading of papers will be done online and feedback submitted to students through a grading rubric. Once feedback has been provided to students in the class, no further assignments will be accepted from any other student. In most circumstance, the time period between the due date and the date that feedback will begin to be provided to

students is likely no more than three days and may be less than that length of time. Any assignment not submitted before feedback has been provided to members of the class will be given a zero.

Any accepted late papers may be penalized at the rate of five percentage points per working day for each day of delay, up to a maximum of one week. After one week and if no feedback has been given to the class, the instructor may refuse to accept any late assignments in the absence of proper medical certification justifying an inability to fulfill academic requirements on a prolonged basis. Papers expressly accepted by the instructor after one week of lateness, in addition to the daily deduction, will be subject to a further deduction of one full letter grade (ie. A to B, B to C) per each week of lateness beginning on the first day of the week.

The instructor reserves the right to not provide any comments or feedback on papers submitted after the original deadline, whether an extension is granted or not and whether any other late penalties are applied.

Absences, Missed Work, Illness

McMaster Student Absence Form (MSAF): In the event of an absence for medical or other reasons, students should review and follow the Academic Regulation in the Undergraduate Calendar “Requests for Relief for Missed Academic Term Work”.

Under no circumstances does an MSAF relieve a student of the requirement to complete the assigned work.

Courses with an On-Line Element

Some courses may use on-line elements (e.g. e-mail, Avenue to Learn (A2L), LearnLink, web pages, capa, Moodle, ThinkingCap, etc.). Students should be aware that, when they access the electronic components of a course using these elements, private information such as first and last names, user names for the McMaster e-mail accounts, and program affiliation may become apparent to all other students in the same course. The available information is dependent on the technology used. Continuation in a course that uses on-line elements will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

Online Proctoring

Some courses may use online proctoring software for tests and exams. This software may require students to turn on their video camera, present identification, monitor and record their computer activities, and/or lock/restrict their browser or other applications/software during tests or exams. This software may be required to be installed before the test/exam begins.

Authenticity / Plagiarism Detection

Some courses may use a web-based service (Turnitin.com) to reveal authenticity and ownership of student submitted work. For courses using such software, students will be expected to submit their work electronically either directly to Turnitin.com or via an online learning platform (e.g. A2L, etc.) using plagiarism detection (a service supported by Turnitin.com) so it can be checked for academic dishonesty.

Students who do not wish their work to be submitted through the plagiarism detection software must inform the Instructor before the assignment is due. No penalty will be assigned to a student who does not submit work to the plagiarism detection software. **All submitted work is subject to normal verification that standards of academic integrity have been upheld** (e.g., on-line search, other software, etc.). For more details about [McMaster's use of Turnitin.com](#) please go to www.mcmaster.ca/academicintegrity.

Copyright and Recording

Students are advised that lectures, demonstrations, performances, and any other course material provided by an instructor include copyright protected works. The Copyright Act and copyright law protect every original literary, dramatic, musical and artistic work, **including lectures** by University instructors

The recording of lectures, tutorials, or other methods of instruction may occur during a course. Recording may be done by either the instructor for the purpose of authorized distribution, or by a student for the purpose of personal study. Students should be aware that their voice and/or image may be recorded by others during the class. Please speak with the instructor if this is a concern for you.

Under no circumstances should students share the recorded lectures outside of the course without the express and prior approval of the instructor.

Academic Accommodation for Religious, Indigenous or Spiritual Observances (RISO)

Students requiring academic accommodation based on religious, indigenous or spiritual observances should follow the procedures set out in the [RISO](#) policy. Students should submit their request to their Faculty Office **normally within 10 working days** of the beginning of term in which they anticipate a need for accommodation or to the Registrar's Office prior to their examinations. Students should also contact their instructors as soon as possible to make alternative arrangements for classes, assignments, and tests.

Academic Integrity Statement

You are expected to exhibit honesty and use ethical behaviour in all aspects of the learning process. Academic credentials you earn are rooted in principles of honesty and academic integrity. **It is your responsibility to understand what constitutes academic dishonesty.**

Academic dishonesty is to knowingly act or fail to act in a way that results or could result in unearned academic credit or advantage. This behaviour can result in serious consequences, e.g. the grade of zero on an assignment, loss of credit with a notation on the transcript (notation reads: “Grade of F assigned for academic dishonesty”), and/or suspension or expulsion from the university. For information on the various types of academic dishonesty please refer to the [Academic Integrity Policy](https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/), located at <https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/>

The following illustrates only three forms of academic dishonesty:

- plagiarism, e.g. the submission of work that is not one’s own or for which other credit has been obtained.
- improper collaboration in group work.
- copying or using unauthorized aids in tests and examinations.

Conduct Expectations

As a McMaster student, you have the right to experience, and the responsibility to demonstrate, respectful and dignified interactions within all of our living, learning and working communities. These expectations are described in the [Code of Student Rights & Responsibilities](#) (the “Code”). All students share the responsibility of maintaining a positive environment for the academic and personal growth of all McMaster community members, **whether in person or online**.

It is essential that students be mindful of their interactions online, as the Code remains in effect in virtual learning environments. The Code applies to any interactions that adversely affect, disrupt, or interfere with reasonable participation in University activities. Student disruptions or behaviours that interfere with university functions on online platforms (e.g. use of Avenue 2 Learn, WebEx or Zoom for delivery), will be taken very seriously and will be investigated. Outcomes may include restriction or removal of the involved students’ access to these platforms.

Academic Accommodation of Students with Disabilities

Students with disabilities who require academic accommodation must contact [Student Accessibility Services](#) (SAS) at 905-525-9140 ext. 28652 or sas@mcmaster.ca to make arrangements with a Program Coordinator. For further information, consult McMaster University’s [Academic Accommodation of Students with Disabilities](#) policy.

Faculty of Social Sciences E-mail Communication Policy

Effective January 1, 2010, it is the policy of the Faculty of Social Sciences that all e-mail communication sent from students to instructors (including TAs), and from students to staff, must originate from the student’s own McMaster University e-mail account. This policy protects confidentiality and confirms the identity of the student. It is the student’s responsibility to ensure that communication is sent to the university from a McMaster

account. If an instructor becomes aware that a communication has come from an alternate address, the instructor may not reply at his or her discretion.

Course Modification

The instructor and university reserve the right to modify elements of the course during the term. The university may change the dates and deadlines for any or all courses in extreme circumstances. If either type of modification becomes necessary, reasonable notice and communication with the students will be given with explanation and the opportunity to comment on changes. It is the responsibility of the student to check his/her McMaster email and course websites weekly during the term and to note any changes.

Extreme Circumstances

The University reserves the right to change the dates and deadlines for any or all courses in extreme circumstances (e.g., severe weather, labour disruptions, etc.). Changes will be communicated through regular McMaster communication channels, such as McMaster Daily News, A2L and/or McMaster email.