

**Department of Political Science
Dalhousie University
POLI 3206 Winter 2013
Constitutional Issues in Canadian Politics**

Instructor: Michelle Coffin
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Class Time: Wednesday 11:35-2:25
Location: Killam Library 4106
Office Hours: Wednesdays, 3:00-4:00 or by appointment
Room 357, Henry Hicks

Course description

The course focuses on the Charter of Rights and Freedoms. The objective of the course is to evaluate the political significance of the Charter. Specifically, we will examine the impact of the Charter on political culture, the development of public policy and the relationship between political and judicial actors. The course relies heavily on relevant cases of the Supreme Court of Canada.

This is not a lecture-based course. This is a seminar. Students are expected to come to class prepared to participate and actively engage in class discussion.

Required reading

- Heather MacIvor, *Canadian Politics and Government in the Charter Era, second edition* (Don Mills, ON: Oxford University Press, 2013)
- The decisions of the Supreme Court of Canada we examine are online at <http://scc.lexum.org/en/index.html>, where they can be accessed by year or name.
- Required readings listed throughout the course are available on-line and/or Blackboard.

Course evaluation

- **Grading**

Case/article synopsis:	20 per cent
Mid-term test:	25 per cent
Take home exam:	30 per cent
Final Exam:	25 per cent

- **Case/article synopsis**

During the term each student will present a synopsis of either a case heard by the Supreme Court of Canada or an article from the required readings. The article synopses should focus on the main themes and perspectives put forward by the authors. Case discussions will follow the format provided by MacIvor (p. xi of the text). Presentations are to be no longer than 20 minutes and will conclude with three questions to stimulate class discussion and debate.

- **Mid-term test**

Approximately halfway into the course there will be an in class test that evaluates your understanding of the material to date. You will have an hour-and-a-half to complete the test. The mid-term will take place on **February 13**.

- **Take home exam**

Students will be given 48 hours to respond to a question that focuses on one of the major themes of the course.

Submission guidelines for take home exams: students are required to email their response to the take home exam question to the course instructor. Late assignments will be penalized at a rate of 2 per cent per day, including weekends.

WEEKDAY TAKE HOME: **March 6-8**

WEEKEND TAKE HOME: **March 9-10**

- **Final exam**

A final exam will take place during the last class and will focus on the major themes of the course. You will have three hours to complete the exam.

To achieve a passing grade students must complete all four assignments.

Student Accessibility and Accommodation

Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require academic accommodation for either classroom participation or the writing of tests and exams should make their request to the Office of Student Accessibility & Accommodation (OSAA) prior to or at the outset of each academic term (with the exception of X/Y courses). Please see www.studentaccessibility.dal.ca for more information and to obtain the Request for Accommodation – Form A. A note taker may be required to assist a classmate. There is an honorarium of \$75/course/term. If you are interested, please contact OSAA at 494-2836 for more information. Please note that your classroom may contain specialized accessible furniture and equipment. It is important that these items remain in the classroom so that students who require their usage will be able to participate in the class.

Academic Integrity and Plagiarism

All students in this class are to read and understand the policies on academic integrity and plagiarism referenced in the Policies and Student Resources sections of the academicintegrity.dal.ca website. Ignorance of such policies is no excuse for violations. Any paper submitted by a student at Dalhousie University may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the University, or even to the revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. At Dalhousie there are University Regulations which deal with plagiarism and, prior to submitting any paper in a course, students should read the Policy on Intellectual Honesty contained in the Calendar or on the Online Dalhousie website. The Senate has affirmed the right of any instructor to require that student papers be submitted in both written and computer-readable format, and to submit any paper to be checked electronically for originality.

Course Organization

Jan 9

Seminar 1: Organization

Introduction and review of the course outline.

Jan 16

Seminar 2: The Canadian Charter of Rights and Freedoms

- Chapters 1 and 2
 - Charter of Rights and Freedoms and Bill of Rights (found in text)
- Peter Russell, “The Political Purposes of the Canadian Charter of Rights and Freedoms,” *Canadian Bar Review*, Volume 61, 1983, pp. 30-54.
- Richard Sigurdson, “Left- and Right-Wing Charterphobia in Canada: A Critique of the Critics,” in Christian Leuprecht and Peter H Russell (eds), *Essential Readings in Canadian Constitutional Politics*, (Toronto: University of Toronto Press, 2011), pp. 392-406.

Jan 23

Seminar 3: The Courts and the Charter

- Chapters 3 and 4
- Supreme Court of Canada at <http://www.scc-csc.gc.ca/court-cour/index-eng.asp>
 - Role of the Court
 - Canadian Judicial System
- Ian Greene, “Canada’s Courts in Context” in his *The Courts* (Vancouver: UBC Press, 2006), 3-17 <http://www.ubcpres.ca/books/pdf/chapters/2006/courts.pdf>
- *R. v. Oakes* [1986] 1 S. C. R. 103

Jan 31

Seminar 4: The Scope of the bench

- Chapter 5
- Nadia Verrelli, “Reforming the SCC: Rethinking Legitimacy & the Appointment Process,” *Institute of Intergovernmental Relations*, School of Policy Studies, Queen’s University, SC Working Paper 2009 – 03.
- Lorne Sossin, “Should Canada Have a Representative Supreme Court?” *Institute of Intergovernmental Relations*, School of Policy Studies, Queen’s University, SC Working Paper 2009 – 07.

Supplemental Readings:

- Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada, “The Relationship Between the Courts and the Media,” speech given January 2012. Found at: <http://www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm2012-01-31-eng.asp>
- Andrew Petter, “The Politics of the *Charter*,” in Petter, *The Politics of the Charter: The Illusive Promise of Constitutional Rights*, (Toronto: University of Toronto Press, 2010), pp. 17-49.
- Andrew Petter, “Charter Legitimacy on Trial: The Resistible Rise of Substantive Due Process,” in Petter, *The Politics of the Charter: The Illusive Promise of Constitutional Rights*, (Toronto: University of Toronto Press, 2010), pp. 50-76.

- Matthew Shoemaker, “Bilingualism and Bijuralism at the Supreme Court of Canada,” *Canadian Parliamentary Review*, Summer 2012, pp. 30-35. Found at: <http://www.revparl.ca/english/issue.asp?param=210&art=1482>
- Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada, “The Impact of the Supreme Court of Canada on Bilingualism and Biculturalism,” speech given February 2008. Found at: <http://www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm2008-02-06-eng.asp>
- Rainer Knopff, Dennis Baker and Sylvia LeRoy, “Courting Controversy: Strategic Judicial Decision Making” in James B Kelly and Christopher P Manfredi, (eds.) *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, (Vancouver: University of British Columbia Press, 2009), pp. 66-85.

Feb 6

Seminar 5: the Reach of the Charter

- Chapters 6 and 7
- Peter W Hogg and Allison A Bushell, “The Charter Dialogue Between Courts and Legislatures (Or Perhaps The Charter of Rights Isn’t Such a Bad Thing After All),” *Osgoode Hall Law Journal*, 35 (1997), pp. 75-124.
- F L Morton, “Dialogue or Monologue?” Policy Options, April 1999 Found at: <http://www.irpp.org/po/archive/apr99/morton.pdf>
- James B Kelly, “Legislative Activism and Parliamentary Bills of Rights: Institutional lessons for Canada, in James B Kelly and Christopher P Manfredi, (eds.) *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, (Vancouver: University of British Columbia Press, 2009), pp. 86-106.

Supplemental Readings:

- Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada, “Respecting Democratic Roles,” speech given Nov 2004. Found at: <http://www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm04-11-12-eng.asp>
- Andrew Petter, “Look Who’s Talking Now: Dialogue Theory and the Return to Democracy,” in Petter, *The Politics of the Charter: The Illusive Promise of Constitutional Rights*, (Toronto: University of Toronto Press, 2010), pp. 149-166.
- Andrew Petter, “Taking Dialogue Theory Much too Seriously (or Perhaps Charter Dialogue Isn’t Such a Good Thing After All,” in Petter, *The Politics of the Charter: The Illusive Promise of Constitutional Rights*, (Toronto: University of Toronto Press, 2010), pp.190-210.
- Peter W Hogg, Allison A Bushell Thornton and Wade K Wright, “Charter Dialogue Revisited – or ‘Much Ado About Metaphors,” *Osgoode Hall Law Journal*, 45 (2007), pp. 1-65.

Feb 13 MIDTERM

Seminar 6: The Charter and Interests

- Chapter 8
- “Judges, the Court Party and the Charter Revolution,” book excerpt in *Policy Options*, April, 2000. <http://www.irpp.org/po/archive/apr00/morton.pdf>

Feb 20

Seminar 7: Fundamental Freedoms

- Chapter 10
- *R. V. Sharpe* [2001] 1 S. C. R. 45
- *R. v. N.S.*, 2012 SCC 72
- *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016

Feb 27 BREAK

March 6

Seminar 8: Democratic Rights

- Chapter 11
- *Thomson Newspapers Co. v. Canada (A.G.)* [1998] 1 S.C.R. 877
- *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519
- *Figueroa v. Canada (Attorney General)* [2003] 1 S.C.R. 912
- *Harper v. Canada (Attorney General)* [2004] 1 S.C.R.

March 13

Seminar 9: Legal Rights

- Chapter 12
- *Canada (Justice) v. Khadr* [2008] SCC 28
- *R. v. D.B.*, [2008] 2 S.C.R. 3
- *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 S.C.R. 134
- *R. v. Tse*, [2012] SCC 16
- *R. v. Aucoin*, [2012] SCC 66

March 20

Seminar 10: Equality Rights

- Chapter 13
- *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203
- *Reference re Same-Sex Marriage*, 2004 SCC 79 [2004] 3 S.C.R. 698
- *Newfoundland (Treasury Board) v. N.A.P.E.*, [2004] 3 S.C.R. 381, 2004 SCC 66
- Matthew Hennigar, “Reference Re: Same Sex Marriage: Making Sense of the Government’s Litigation Strategy,” in James B Kelly and Christopher P Manfredi, (eds.) *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, (Vancouver: University of British Columbia Press, 2009), pp.209-230.

March 27

Seminar 11:

- Chapter 14
- John Whyte, “On Not Standing for Notwithstanding” in Christian Leuprecht and Peter H Russell (eds), *Essential Readings in Canadian Constitutional Politics*, (Toronto: University of Toronto Press, 2011), pp. 373-380.

- Peter H Russell, “Standing Up for Notwithstanding,” in Christian Leuprecht and Peter H Russell (eds), *Essential Readings in Canadian Constitutional Politics*, (Toronto: University of Toronto Press, 2011), pp. 381-392.
- Keira Ladner and Michael McCrossan, “The Road Not Taken: Aboriginal Rights After the Re-Imagining of the Canadian Constitutional Order,” in James B Kelly and Christopher P Manfredi, (eds.) *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, (Vancouver: University of British Columbia Press, 2009), pp. 263-283.

Supplemental Readings:

- Janet L Hiebert, “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*, (Vancouver: University of British Columbia Press, 2009), pp.107-125.

April 3 IN-CLASS FINAL EXAM