



POLI 3P18
Law and Politics: Rights Protection in Canada

Faculty of Social Sciences
Winter 2021/22

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Lecture Times: Tue Fri 9-10am [Jan 11, Jan 31-;

async Jan 12-30]

Lecture Room: TH 246 [starting Jan 31?]

Office Hours: by appointment; Fri 10-11am
after in-person classes resume

COVID Reminders

- Please remember to wear a mask on campus and in class, except briefly to take a drink. If you have a medical exemption from masking, please be prepared to show it to your instructors
- Complete the self-assessment using the Brock Safety app every day before coming to campus
- If you have any COVID symptoms, please do not come to class; accommodations will be made

Course Description

This course considers both the historical and contemporary interplay between law and politics in Canada. In particular, it considers the various political and constitutional arrangements designed to protect rights and freedoms in Canada and the success of such mechanisms in advancing this objective, particularly the Charter of Rights and Freedoms that Canada adopted in 1982. Themes that will be explored in this course include the legitimacy of judicial review, the relationship between judicial and democratic actors in a constitutional democracy, and the potential for rights to clash with one another. To this end, the students will read important works that consider these questions, as well as significant civil liberties cases in Canadian constitutional law.

Course Learning Objectives

At the end of this course, students should be able to:

- identify the concepts of law, rights, and judicial review
- explain the sources of law and rights protection in Canada, and the political origins of the Charter of Rights and Freedoms
- understand and critically assess the political and legal roles of the Canadian judiciary, in particular judicial review of laws to ensure that they comply with the constitution, and in the criminal process
- know how to find and read a court case
- understand several key rights in Canada and how the courts have interpreted them over time in leading cases
- demonstrate familiarity with core political concepts like equality, liberty, and the rule of law, and an appreciation of their contested nature

In the process, students will be given opportunities to develop their analytical and argumentation skills through written assignments, exams, and class discussions. The term paper will require students to develop a research project based on their interests and to carry it out with academic integrity.

<i>Required Texts (available in Brock bookstore)</i>

Tom Bateman, Janet Hiebert, Rainer Knopff and Peter Russell. *The Court and the Charter: Leading Cases*, 2nd edition. Toronto: Emond Montgomery Publishing, 2017. [ebook option available]

The course also requires access to Sakai (<https://lms.brocku.ca>) for some readings and resources.

<i>Course Requirements</i>

Seminar Participation	20%	
Case Brief Assignment	20%	(Tuesday, February 15, 2021, in class/9am)
Research Paper	30%	(Tuesday, March 22, 2021, in class/9am)
Final Examination	30%	(TBA, scheduled by Registrar)

Requests for extra work will not be granted (ex., seminars missed without an acceptable explanation). The penalty for late submission of the case brief or term paper is **-3% per day**, except in cases of documented accommodation; time management problems are not grounds for extensions.

Seminar Participation: [online until at least Jan 31; in-person after]

Although seminars provide an opportunity to review reading and lecture material, that is not their main purpose. Instead, they give us a chance to explore the ideas and issues of the material more fully, interactively, as a group, using specific readings to focus our discussions. As such, you should complete assigned readings and view lecture material for that unit before your seminar, and be prepared to contribute consistently, meaningfully, and respectfully to class discussion. Be sure to incorporate course readings in your comments. Attendance at weekly seminars is mandatory. Failure to attend a seminar results in a grade of 0 for that day. Please see seminar schedule on page 7.

NOTE: Smart phone use is not permitted in seminar; they are a distraction and texting during a discussion shows disrespect for other students. As several seminar readings are in electronic format laptops and tablets can be used, but please don't let them become a distraction.

Case Brief Assignment: [See Sakai 'Assignments' for instructions and sample brief]

A case brief lays out the important points of a judicial ruling. You will write and submit a brief for one case that you select from a list of options. It will be about 3 single-spaced pages (1" margins, 12 pt font), and is due in class **Tuesday, Feb. 15, 2021**. Details are posted to Sakai "Assignments".

Research Paper Requirements: [See Sakai for more instructions]

You must submit a research paper of 3000-3500 words (10-12 double-spaced pages, 1" margins, 12 pt font) by **Mar. 22, 2021** (hardcopy and to Sakai "Assignments"). Make sure that the paper is not simply a description of court cases or laws—this is a political science course and, as such, we are interested in explaining (and perhaps critiquing) decisions and law, their evolution, impact, or some other analysis. See "Term Paper" in "Assignments" on Sakai for more information.

Turnitin.com is used in this course and is integrated into Sakai; if you have objections, please notify the instructor to discuss alternatives

Course Communications

- All official announcements and communications for this course will be through your Brock email.
- To contact the instructor, email or a visit during office hours is preferred. Emails will normally be answered within 24 hours.
- Questions pertaining to seminar scheduling (e.g., switching seminars) should be directed to the seminar coordinator, Diane Leon (dleon@brocku.ca).
- Questions pertaining to course content or assignment extensions should be directed to Prof. Hennigar.
- Questions pertaining to seminars should be directed to seminar leaders. Record your teaching assistant's name and contact information at your first seminar.

Brock University Academic Policies

Important Dates: The last day to withdraw without academic penalty is **Friday, March 4, 2022**. We will try to ensure you receive at least 15% of your final grade by February 25, 2022, but as this falls during reading week it may not be possible.

Intellectual Property Notice: All slides, presentations, handouts, tests, exams, and other course materials created by the instructor in this course are the intellectual property of the instructor. A student who publicly posts or sells an instructor's work, without the instructor's express consent, may be charged with misconduct under Brock's Academic Integrity Policy and/or Code of Conduct, and may also face adverse legal consequences for infringement of intellectual property rights.

Special Accommodations and Support: The University is committed to fostering an inclusive and supportive environment for all students and will adhere to the Human Rights principles that ensure respect for dignity, individualized accommodation, inclusion and full participation. The University provides a wide range of resources to assist students, as follows:

a) If you require academic accommodation because of a disability or an ongoing health or mental health condition, please contact Student Accessibility Services at askSAS@brocku.ca or 905 688 5550 ext. 3240.

b) If you require academic accommodation because of an incapacitating medical condition, you must, as soon as practicable, inform your instructor(s) of your inability to complete your academic work. You must also submit a Brock University Student Medical Certificate (found at <https://brocku.ca/registrar/toolkit/forms>). The University may, at its discretion, request more detailed documentation in certain cases. If you are unable to write a scheduled examination due to an incapacitating medical condition, you must follow the process set out in the [Faculty Handbook III:9.4.1](#).

c) If you are experiencing mental health concerns, contact the Student Wellness and Accessibility Centre. *Good2Talk* is a service specifically for post-secondary students, available 24/7, 365 days a year, and provides anonymous assistance: <http://www.good2talk.ca/> or call **1-866-925-5454**. For information on wellness, coping and resiliency, visit: <http://brockmentalhealth.ca/mental-well-being/>.

d) If you require academic accommodation on religious grounds, you should make a formal, written request to your instructor(s) for alternative dates and/or means of satisfying requirements. Such requests should be made during the first two weeks of any given academic term, or as soon as possible after a need for accommodation is known to exist.

e) If you have been affected by sexual violence, the Human Rights & Equity Office offers support, information, reasonable accommodations, and resources through the Sexual Violence Support & Education Coordinator. For information on sexual violence, visit [Brock's Sexual Assault and Harassment Policy](#) or

contact the Sexual Violence Support & Response Coordinator at humanrights@brocku.ca or 905 688 5550 ext. 4387.

f) If you feel you have experienced discrimination or harassment on any of the above grounds, including racial, gender or other forms of discrimination, contact the Human Rights and Equity Office at humanrights@brocku.ca.

Tentative Schedule and Readings

– Please Note: ALL readings are required unless marked otherwise; see ‘Units’ on Sakai page –

Jan 11: *Introduction* [“live” 9-9:50am via Zoom, see link on Sakai page]

Familiarize yourself with Sakai page; view syllabus, **Welcome Video**, **Netiquette** documents

Unit 1 (Jan 14-18): *Judicial Review in Canada* [asynchronous] SEMINARS START JAN 17, SEE SCHEDULE PG. 7

Bateman et al., Introduction (1-21)

Heather MacIvor, *Canadian Politics and Government in the Charter Era*, 2d ed. (Don Mills: OUP, 2013), preface and chpt. 3 [**Sakai**]

FOR SEMINAR [both on Sakai]: Beverley McLachlin, “The Judiciary’s Distinctive Role in our Constitutional Democracy,” *Policy Options*, vol. 24, no. 8 (September 2003), 5-8

Rory Leishman, “Judicial Leaps of Logic,” *Policy Options*, vol. 24, no. 9 (October 2003), 73

Unit 2 (Jan 21-25): *Constitutional Interpretation* [asynchronous]

Heather MacIvor, *Canadian Politics and Government in the Charter Era*, 9-20 [**Sakai**]

Joseph Heath, “Why Have a Constitution at All?” *Policy Options* 24, no. 9 (Oct 2003), 42 [**Sakai**]

Charles-Maxime Panaccio, “The Justification of Rights Violations: Section 1 of the Charter,” *The Oxford Handbook of the Canadian Constitution*, ed. P. Oliver, et al. (Don Mills: OUP, 2017). [**Sakai**]

B.C. Motor Vehicle Act Reference, [1985] 2 S.C.R. 486 (Bateman #20)

R. v. Oakes, [1986] 1 S.C.R. 103 (Bateman #14)

Unit 3 (Jan 28-Feb 1): *Fundamental Freedoms I: Freedom of Religion*

Bateman et al., 47-55; 102-121

(seminar 3) *B. (R.) v. Children’s Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 [**Sakai**]

Unit 4 (Feb 4-8): *Fundamental Freedoms II: Freedom of Expression, Association*

Bateman et al., 90-101; 122-142

R v. Keegstra [1990] (in Bateman et al., 1st edition) [**Sakai**]

Ward v. Quebec, 2021 SCC 43 [**Sakai**] (just read the headnotes, up to “Cases Cited”)

(seminar 4) -focus on *Keegstra*, *Ward*, and *Whatcott* (Bateman #10)

CASE BRIEF ASSIGNMENT DUE FRIDAY, FEB 15, 2021

Unit 5 (Feb 11-15): *Equality Rights*

Ian Greene, *The Charter of Rights and Freedoms: 30+ Years of Decisions that Shape Canadian Law* (Toronto: Lorimer, 2014), 263-271; 288-319 **[Sakai]**

Bateman et al., 319-368

Newfoundland (Treasury Board) v. N.A.P.E., [2004] (in Bateman et al., 1st edition) **[Sakai]**

Fraser v. Canada (Attorney General), 2020 SCC 28 **[Sakai]** (just headnotes, up to “Cases Cited”)

READING WEEK: Feb 21-25

Unit 6 (Feb 18-Mar 1): *Indigenous Rights*

Peter Russell et al., “R. v. Sparrow,” “Delgamuukw,” “R. v. Marshall 1,” “R. v. Marshall 2,” “Haida Nation,” *The Court and the Constitution: Leading Cases* (Toronto: Emond Montgomery, 2008), 411-470 **[all of these are on Sakai, under the case names]**

Kiera Ladner and Michael McCrossan, “The Road Not Taken: Aboriginal Rights after the Re-imagining of the Canadian Constitutional Order,” *Contested Constitutionalism*, ed. J. Kelly and C. Manfredi (Vancouver: UBC Press, 2009), 263-283. **[Sakai]**

See Sakai for maps of treaties and land claims

Unit 7 (Mar 4-8): *The Right to Life, Liberty and Security of the Person I*

MacIvor, 267-278 **[Sakai]**

Bateman et al., 187-201; 241-289

Unit 8 (Mar 11-15): *The Right to Life, Liberty and Security of the Person II*

Bateman et al., 290-318

Government of Canada, “Medical Assistance in Dying.” <https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html> **[Sakai]**

Sandra Martin, “Fight to the Death,” *Globe and Mail* (27 Jan. 2018), 1. **[Sakai]**

Carter v. Canada (Attorney General), [2015] SCC 5 (Bateman #26)

Unit 9 (Mar 18-22): *Legal Rights: Fair Trial and Sexual Assault*

MacIvor, 278-301 **[Sakai]**

Bateman et al., 173-186

R. v. Seaboyer, [1991] and *R. v. Daviault*, [1994] (in Bateman et al., 1st edition) **[both on Sakai]**

Sean Fine, “Chief Justice Defends Need for Balance in Sex-Assault Trials,” *Globe and Mail* (30 October 2017), A.1. **[Sakai]**

Laura Wright, “Sexual Assault Trials: Experts call for alternatives to Canada's current court system,” *CBC News* (20 February 2016) **[link on Sakai]**

TERM PAPER DUE TUESDAY, MAR 22, 2021

Unit 10 (Mar 25-Apr 1): Judicial Remedies: Sections 23, 24(1) and 24(2)

Bateman et al., 369-428

(seminar 10) *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353 (Bateman #35); *Doucet-Boudreau v. Nova Scotia*, [2003] 3 S.C.R. 3 (Bateman #32)

Want more background? See Kent Roach, “Charter Remedies,” *The Oxford Handbook of the Canadian Constitution* [Sakai]

Unit 11 (Apr 5-8): Courts and Democracy: Dialogue and Rights Discourse

Bateman et al., 18-21; 143-155

Grant Huscroft, “Rationalizing Judicial Power: the Mischief of Dialogue Theory,” *Contested Constitutionalism*, ed. J. Kelly and C. Manfredi (Van.: UBC Press, 2009), 50-65 [Sakai]

Eleni Nicolaides and M. Hennigar, “Carter Conflicts,” *Policy Change, Courts, and the Canadian Constitution*, ed. E. Macfarlane (Toronto: UTP, 2018), 314-16 [excerpt, Sakai]

“Canada’s notwithstanding clause — what’s that again?” CBC.ca, Sept. 10, 2018 [Sakai]

<Professor H’s shameless self-promotion>: “Notwithstanding Clause,” CHCH.com [Sakai]

SEMINAR SCHEDULE, POLI 3P18

These are some questions to think about when doing the readings, and to help frame our discussions.

Seminar 1 (Week of Jan. 17): ***Organizational Seminar / Judicial Review in Canada***

- Who do you find more persuasive: McLachlin or Leishman?

Seminar 2 (Week of Jan. 24): ***Constitutional Interpretation***

- What's the difference between "procedural" and "substantive" judicial review?
- What are the pros and cons of the "framers' intent" and "living tree" approaches?

Seminar 3 (Week of Jan. 31): ***Fundamental Freedoms I (Freedom of Religion)***

- Should parents be permitted to deny their children medical care on religious grounds?

Seminar 4 (Week of Feb. 7): ***Fundamental Freedoms II (Freedom of Expression)***

- Should free speech be limited in cases of "hate speech" or offensive speech?

Seminar 5 (Week of Feb. 14): ***Equality Rights***

- Does equality require treating everyone identically, or "treating likes alike"?
- How should courts assess claims of adverse effect/systemic discrimination? (see *Fraser* 2020 case)

(Week of Feb. 21): ***READING WEEK, NO SEMINARS***

Seminar 6 (Week of Feb. 28): ***Indigenous Rights***

- How do Indigenous rights in s.35 differ from Charter rights, and what is the significance?
- Should Canadian courts be involved in the interpretation of s. 35?

Seminar 7 (Week of Mar. 7): ***The Right to Life, Liberty and Security of the Person I***

- Should s.7 provide positive rights, like to health care or housing?

Seminar 8 (Week of Mar. 14): ***The Right to Life, Liberty and Security of the Person II***

- What should a medically-assisted dying policy look like? Who should decide?

Seminar 9 (Week of Mar. 21) ***Legal Rights: Fair Trial and Sexual Assault***

- Is it possible to respect the right to fair trial and encourage complainants to come forward? Is there a better way to handle sexual assault cases than the current system?

Seminar 10 (Week of Mar. 28): ***Judicial Remedies I***

- Should we have an "automatic" exclusionary rule? What approach should courts take to s.24(2)?

Seminar 11 (Week of Apr. 4): ***Judicial Remedies II / Courts and Democracy***

- Are the courts too activist, or too involved in policy-making?
- When should s.33's 'notwithstanding clause' be used?

DEPARTMENT OF POLITICAL SCIENCE

STATEMENT ON ACADEMIC MISCONDUCT

Academic misconduct is a serious offence. The principle of academic integrity, particularly of doing one's own work, documenting properly (including use of quotation marks, appropriate paraphrasing and referencing/citation), collaborating appropriately, and avoiding misrepresentation, is a core principle in university study. Students should consult Section VII, "Academic Misconduct", in the "Academic Regulations and University Policies" entry in the Undergraduate Calendar, available at <http://brocku.ca/webcal> to view a fuller description of prohibited actions, and the procedures and penalties. Information on what constitutes academic integrity is available at <https://brocku.ca/academic-integrity/>.

This course may use Turnitin.com, phrase-matching software. If you object to uploading your assignments to Turnitin.com for any reason, please notify the instructor to discuss alternative submissions.

POLICY ON LATE ESSAYS

The policy of the Department is that essays received by the instructor or deposited in the Political Science Department essay box after 4:00 p.m. or at a time designated by the instructor, of the date on which they were due will be penalized two per cent for each day late from Monday through Friday and five per cent for the period from Friday 4:00 p.m. to Monday 8:30 a.m., and that no paper will be accepted two weeks after the due date. Papers are last collected from the essay box each weekday at 4:00. **Instructors may establish more restrictive deadlines or more severe penalties in particular courses – check the course outline.** Extensions of due dates are granted only in circumstances that are beyond the student's control, such as health problems that are supported by a medical certificate, or other, clearly equivalent situations.

An essay is considered received when the original hard copy (printed-not disk) of the paper is in the hands of the instructor or in the box outside the Political Science Department's office. (ALL ESSAYS MUST INCLUDE A TITLE PAGE WITH THE FOLLOWING INFORMATION CLEARLY MARKED: STUDENT NUMBER, TA and INSTRUCTOR'S NAME, COURSE NAME and NUMBER).

Having an essay date-stamped by security, or the library, or anyone else does not constitute receipt of the essay by the Political Science Department. Instructors may require that essays be submitted electronically through turnitin.com. In this case, students must consult with the Instructor on what constitutes a late essay.

Time management problems are not grounds for extensions. You are strongly urged to avoid these penalties by beginning to work on essays early in the term; by setting your own target dates for completion that are several days before the due date; and by carefully budgeting your time.

POLICY ON RETURNING MARKED ESSAYS

Marked essays will normally be returned during class meetings or at the final examination. Students who are not in class to receive their essays or do not receive them at the final examination can obtain them in two ways:

- directly from the instructor during his/her office hours (unless the instructor specifies in the course outline or by notice on his/her office door that this option is not available), and/or
- directly from the instructor on specific days and at specific times announced in class or posted on his/her office door.

Note: Essays that are not picked up within six months after the end of term will be shredded.