

Politics 3P18: Law and Politics ~ Rights Protection in Canada
Brock University
Fall 2011

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Course Description and Objectives

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. Through written assignments, exams, and class discussions, students will be given opportunities to develop their analytical and argumentation skills.

Required Texts (available in Brock bookstore)

Tom Bateman, Janet Hiebert, Rainer Knopff and Peter Russell. *The Court and the Charter: Leading Cases*. Toronto: Emond Montgomery, 2008.

Heather MacIvor, *Canadian Politics and Government in the Charter Era*. Toronto: Thomson, 2006

POLI 3P18 Coursepack

Full-text Supreme Court of Canada Decisions: <http://scc.lexum.org/en/index.html>

The course uses several articles from the journal *Policy Options*. They can be found for free on-line at <http://www.irpp.org/po/index.htm> (click 'back issues' to browse by year and issue).

Course Requirements

Seminar Participation	15%	
Mid-term Examination	20%	(October 13, 2011)
Research Paper	30%	(November 15, 2011)
Final Examination	35%	

- The last day to withdraw without academic penalty is **Friday, Nov. 4, 2011**. You will receive at least 15% of your final grade by October 28, 2011.
- Requests for extra work will not be granted.
- If you have any special needs regarding lectures or testing, please contact me and the Services for Students with disABILITIES (Schmon Tower 400) as soon as possible.

Seminar Participation:

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 cases to focus our discussions. As such, you should complete assigned readings before your seminar, and be prepared to take part in class discussion. Attendance at weekly seminars is mandatory. Failure to attend or to contribute constructively to discussions will result in a lower participation grade. Please see seminar schedule on page 5.

Research Paper Requirements: [See Sakai for more instructions later this term]

The length of the research paper is 3000-3500 words (10-12 pages). The term paper must be double-spaced with standard margins using a 12 point font. The paper is due **November 15, 2011, in class**. A **FIVE (5) PER CENT PER DAY** penalty will be assigned for late papers. If you cannot submit in class, a hard copy of your paper must be submitted to the box outside the Political Science Department office (Plaza 3rd Floor). Papers more than one week overdue will not be accepted. Extensions 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—time management problems are not grounds for extensions. As the paper topic is open, this course uses the electronic plagiarism detection service turnitin.com. More instructions will be provided later in the term, including alternate arrangements (additional requirements) for students who wish to opt out.

Tentative Schedule and Readings

– Please Note: ALL readings are required –

Sept 8: *Introduction***Sept 13-15: *Judicial Review in Canada***

SEMINARS START THIS WEEK
SEE TOPIC SCHEDULE ON PG. 5

MacIvor, preface and chpt. 2

Bateman et al., 12-15 ('The Charter Goes to Court')

Beverly 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

Sept 20-22: *Constitutional Interpretation*

MacIvor, chpts. 1 & 3

Joseph Heath, "Why Have a Constitution at All?" *Policy Options* 24, no. 9 (October 2003), 42

Cases:

B.C. Motor Vehicle Act Reference, [1985] 2 S.C.R. 486 (Bateman case #13)

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

Sept 27-Oct 6: *Fundamental Freedoms*

MacIvor, chpt. 8

Bateman et al., 60-131

Matthew Hennigar, “British Columbia Puts Religious Freedom and Polygamy to the Test”,
<http://www.law.ualberta.ca/centres/ccs/issues/polygamy.php> [Sakai]

Tracy Clark, “Greater Vancouver Transportation Authority v. Canadian Federation of Students
 (2009) – Political Expression on Public Transit” (2010):
http://www.law.ualberta.ca/centres/ccs/rulings/Public_Transit.php [Sakai]

Cases:

(Sept 27-30) *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295 (Bateman #3)
B. (R.) v. Children’s Aid Society of Metropolitan Toronto, [1995] 1 S.C.R. 315

(Oct 4-6) *R. v. Butler*, [1992] 1 S.C.R. 452 (Bateman, #6)
RJR-MacDonald Inc. v. Canada, [1995] 3 S.C.R. 199 (Bateman #7)

**Thursday, Oct 13: **MIDTERM EXAM (on material up to and including Oct 6);
 seminars this week will be for review****

Oct 11-18: *Equality Rights I*

MacIvor, chpt. 11 (except “Dossier 11.4”)

Bateman, et al., 375-402; 428-438

Cases:

Newfoundland (Treasury Board) v. N.A.P.E., [2004] 3 S.C.R. 381 (Bateman #29)

R. v. Kapp, 2008 SCC 41, (see <http://www.canlii.org/en/ca/scc/doc/2008/2008scc41/2008scc41.html>)

Oct 20-25: *Equality Rights II*

MacIvor, 359-362 (“Dossier 11.4”)

Bateman, et al., 403-417; 439-450.

Janet Hiebert, “From Equality Rights to Same-Sex Marriage—Parliament and the Courts in the Age
 of the Charter,” *Policy Options*, vol. 24, no. 9 (October 2003), 10-16

Graham Fraser, “What the Framers of the Charter Intended,” *Policy Options*, vol. 24, no. 9 (October
 2003), 17-20

Christopher P. Manfredi, “Same-Sex Marriage and the Notwithstanding Clause,” *Policy Options*, vol.
 24, no. 9 (October 2003), 21-24

Cases:

Vriend v. Alberta, [1998] 1 S.C.R. 493

Halpern v. Canada (Attorney General), [2003] O.J. No. 2268 (O.C.A.) [Sakai]

Oct 27-Nov 1: *The Right to Life, Liberty and Security of the Person*

MacIvor, 164-166 (Case Study #3, “Abortion”)

Bateman, et al., 213-236; 280-345

Antonia Maioni and Christopher Manfredi, “When the Charter Trumps Health Care—A Collision of Canadian Icons,” *Policy Options* (September 2005), 56-60

Coursepack, reading #1 (Petter, “Wealthcare: The Politics of the *Charter* Revisited,” *Access to Care, Access to Justice*, ed. C. Flood et al., (Toronto: U of T Press, 2005), 116-138)

Cases:

Charkaoui v. Canada (Citizenship and Immigration), [2007] 1 S.C.R. 350 (Bateman #20)

Chaoulli v. Quebec (Attorney General), [2005] 1 S.C.R. 791 (Bateman #22)

Nov 3-8: *Legal Rights: Fair Trial and Sexual Assault*

MacIvor, chpt. 10

Bateman et al., 237-279

Coursepack, reading #2 (Hiebert, *Charter Conflicts* (Montreal: McGill-Queen’s UP, 2002), 91-117)

Cases:

R. v. Ewanchuk, [1999] 1 S.C.R. 330

R. v. Mills, [1999] 3 S.C.R. 668 (Bateman #18; it’s mislabelled in the table of contents!)

Nov 10-17: *Judicial Remedies: Sections 23, 24(1) and 24(2)*

Bateman, et al., 349-358; 453-466

MacIvor, p. 14-16, p.32-34.

Coursepack, reading #3 (Manfredi, *Judicial Power and the Charter*, 97-102; 151-168)

Coursepack, reading #4 (Hiebert, *Charter Conflicts*, 146-161)

“*R v Grant*: Psychological detention and the exclusion of evidence,”

http://www.law.ualberta.ca/centres/ccs/rulings/R_v_Grant.php [Sakai]

Cases:

R. v. Grant, 2009 SCC 32, [2009] 2 S.C.R. 353

Doucet-Boudreau v. Nova Scotia (Minister of Education), [2003] 3 S.C.R. 3

Nov 22-29: *Dialogue and Rights Discourse*

MacIvor, chpt. 4; chpt. 12 (379-384 only, on section 33); chpt. 13

Bateman, et al., 21-26; 169-182

Coursepack, readings #5 & 6 (Manfredi, *Judicial Power and the Charter*, 169-195; Huscroft *Contested Constitutionalism*, 50-65)

F.L. Morton, “Can Judicial Supremacy be Stopped?” *Policy Options* 24, no. 9 (Oct 2003), 25-29.

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 Sept. 11): ***Organizational Seminar / Judicial Review in Canada***

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

Seminar 2 (Week of Sept. 18): ***Constitutional Interpretation***

- What's the difference between "procedural" and "substantive" judicial review?
- Should the Court have ignored "framers' intent" in the BC Motor Vehicle Reference? What are the pros and cons of the "framers' intent" and "living tree" approaches?

Seminar 3 (Week of Sept. 25): ***Fundamental Freedoms (Freedom of Religion)***

- Do you agree with the Court's ruling in *B. (R.) v. C.A.S.M.T.*, [1995]?
- Is Canada's ban on polygamy constitutionally valid?

Seminar 4 (Week of Oct. 2): ***Fundamental Freedoms (Freedom of Expression)***

- What do the events of the G20 summit in 2010 suggest about the state of free speech in Canada?
- Do you agree with the SCC's general approach to freedom of expression?

Seminar 5 (Week of Oct. 9): ***Midterm Exam Review***

Seminar 5 (Week of Oct. 16): ***Equality Rights I***

- Does equality require treating everyone identically, or "treating likes alike"?
- Do we still need affirmative action?

Seminar 6 (Week of Oct. 23): ***Equality Rights II***

- Should civil marriage commissioners be allowed to refuse to marry gay couples on religious grounds?
- Should the Charter extend to private organizations or religious institutions?

Seminar 7 (Week of Oct. 30): ***The Right to Life, Liberty and Security of the Person***

- Should there be a right, under s.7, to health care?

Seminar 8 (Week of Nov. 6): ***Legal Rights: Fair Trial and Sexual Assault***

- Should there be "rape shields" and "privacy shields" in sexual assault cases? Why or why not?

Seminar 9 (Week of Nov. 13): ***Judicial Remedies***

- Should we have an "automatic" exclusionary rule?

Seminar 10 (Week of Nov. 20): ***Dialogue and Rights Discourse***

- Does a "dialogue" between courts and parliament exist? Should it?

DEPARTMENT OF POLITICAL SCIENCE

STATEMENT ON ACADEMIC MISCONDUCT

Because academic integrity is vital to the well-being of the university community, Brock University takes academic misconduct very seriously. Academic misconduct includes plagiarism, which involves presenting the words and ideas of another person as if they were your own, and other forms of cheating, such as using crib notes during a test or fabricating data for a lab assignment. The penalties for academic misconduct can be very severe. A grade of zero may be given for the assignment or even for the course, and a second offense may result in suspension from the University. Students are urged to read the section of the Brock University Undergraduate Calendar that pertains to academic misconduct. Students are also reminded that the Student Development Centre (Schmon Tower, Room 400) offers free workshops on writing and study skills and on avoiding plagiarism.

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.

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.

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.

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.