ALLARD SCHOOL OF LAW
UNIVERSITY OF BRITISH COLUMBIA (UBC)

Canadian Constitutional Law: Charter
(The Canadian Charter of Rights and Freedoms)

LAW 201.003 T2

Fridays 1:30 – 3:30 P.M. (Location: Room 105, Allard Hall)

Instructor

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Office: Room 458, Allard Hall

Office Hours: Thursdays 2:10 – 4:00

Note: I reply to e-mails promptly wherever possible. If you do not hear from me in 48 hours, feel free to resend your message. Absent the unexpected, I likely just missed it. I may post any questions posed and the responses thereto in a message to the class; identifying information will be removed from the original text prior to posting and the question may be reformulated for clarity. Ensure that you are enrolled in the course Connect page and that your e-mail is correctly on file with UBC SSC.

Course Description

The full year Canadian Constitutional Law class provides an introduction to Canadian constitutional law. It examines federalism and the division of powers between federal and provincial governments, the Canadian Charter of Rights and Freedoms, and Aboriginal and treaty rights. This component of the course covers the Canadian Charter of Rights and Freedoms. It will introduce the structure of the Charter and Charter analysis and the basic doctrinal tests for compliance with and justified infringements of some major rights, including rights to free association, free expression, and equality.

Evaluation

This section of the course will be evaluated in an examination at 1:30 P.M. on 12 April 2018. You will have a set amount of time to complete the Charter examination and the Aboriginal and Treaty Rights examination in the same examination session. The Charter component of the examination will be graded out of 100. Your final grade for Canadian Constitutional Law will be a function of your grade in all three sections of the course. If your Federalism examination grade is lower than your Charter and Aboriginal and Treaty Rights examination scores, then your Federalism grade will not impact your final grade; your final grade will be calculated as 2/3 of your Charter score plus 1/3 of your Aboriginal and Treaty Rights score. If your Federalism examination grade is higher, then it will count as 1/4 of your grade. The remaining portions will be split into the aforementioned thirds. If you are unable to write on the assigned date due to religious or medical reasons, please contact Kaila Mikkelsen, Assistant Dean, Students, at mikkelsen@allard.ubc.ca.
Details on grading in first year courses more generally and on examination policies can be found at http://www.allard.ubc.ca/student-resources/jd-student-resources/academic-services. See especially the ‘Examination and Grading Rules’ document therein. Policies on academic concessions and accommodation are available at the same link. For information on computerized examinations, see http://www.allard.ubc.ca/computerized-exams.

Attendance

I will not take weekly attendance in this course, but attendance is expected and strongly encouraged. Attendance in classes is expected of all students in this faculty. I further expect you to read the assigned material, to annotate or brief the assigned cases, and to review your notes regularly. Attendance and active participation tends to (indirectly) impact actual performance in this course. Please promptly arrive on time. In the event of unforeseen delay, it is better to arrive late than to miss a whole class, but please be quiet on your arrival and arrive late only in exceptional circumstances.

Course Materials

Required:


Necessary constitutional documents are available in a variety of settings, including, at last check: http://laws-lois.justice.gc.ca/eng/Const/Const_index.html.

Recommended:


Be sure to get the most recent edition of the required text as there are substantive changes between the 4th and 5th editions. I also suggest the latest edition of Hogg as it accounts for recent developments and will give page number references using that edition, but the Hogg text as a whole is only recommended. Be sure to note changes in the law we discuss in class if you choose to purchase an older Hogg. You will be responsible for the up-to-date law discussed in class.

Further materials will be posted on Connect. Again: please ensure that you are enrolled in the course page. Such texts will be labelled ‘[Connect]’ below.

Academic Integrity

All UBC law students are subject to the University’s rules on Academic Misconduct: http://vpacademic.ubc.ca/integrity/ubc-regulation-on-plagiarism/ and are expected to act with academic integrity at all times. Students should be especially aware of the University’s rules in relation to plagiarism. Plagiarism includes: copying the work of another student; copying or paraphrasing from a textbook or reference book, journal article, case or electronic source without proper footnoting; copying your own work that has already been submitted for another course in this degree or another degree, passing off the ideas of another person as your own.
If you plagiarize, you will be subject to penalties set out in the UBC calendar: http://www.calendar.ubc.ca/vancouver/index.cfm?tree=3,54,111,0. If you would like to learn more about academic misconduct, visit the UBC Library’s website on academic integrity: http://learningcommons.ubc.ca/guide-to-academic-integrity/. Examples of academic misconduct can also be found in the UBC Annual Report on Student Discipline: http://universitycounsel.ubc.ca/discipline/.

Reading List

You are responsible for knowing the content of ‘Required’ readings. ‘For Clarification’ readings are provided to help you if you have any difficulties understanding the required texts. ‘Further Reading’ suggestions are provided in case you are interested in exploring issues further. You should only do ‘Further Reading’ if you are confident that you are up-to-date in all your classes.

Any required changes in the schedule, including replacement classes, will be announced in advance.

5 January 2018: Introduction to the Charter of Rights and Freedoms

Required:

CCL: 767 [Introduction], 775-778 [Prescribed by Law], 783-789 [Oakes (Justifiable Limitations)], 792-795 [Irwin Toy (Judicial Deference)], 802-806 [Ford (The Override)]

Canadian Charter of Rights and Freedoms [Skim all. Read sections 1 and 24-33 in detail.]

For Clarification:

Hogg: Sections 38.1-38.12 of Chapter 38 [Limitations on Rights], Chapter 39 [The Override]

Further Reading:

CCL: 733-762 [Historical Background Material], 768-770 [Hunter v Southam (Purposive Interpretation)], 779-782 [GTVA (Prescribed by Law)], 789-792 [Edmonton Journal (Post-Oakes Limitations)]

Universal Declaration of Human Rights, GA Res 217 (111), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810, (1948), ss 29-30 [Connect]

The Basic Law for the Federal Republic of Germany (1949), ss 1-19 [Connect]

The Constitution of the Republic of South Africa (1996), s 36 [Connect]

12 January 2018: Freedom of Association (with a Brief Mention of Freedom of Peaceful Assembly)

Required:

CCL: 1131 [Introduction], 1142-1147 [Dunmore (Labour Rights)], 1162-1170 [Saskatchewan Labour Federation (Labour Rights), 1171-1173 [Overview of the Right Not to Associate]
Canadian Charter of Rights and Freedoms: Sections 1 and 2

For Clarification:

CCL: 1131-1139 [Historical Material on Labour Rights]

Further Reading:

CCL: 1149-1162 [Health Services and Support and Fraser (Intermediate Labour Rights Cases)], 1174-1180 [Advance Cutting & Coring Ltd (Right Not to Associate)]


Required:

CCL: 865-882 [Big M Drug Mart and Edwards Books (Sunday Closing Laws)]

Canadian Charter of Rights and Freedoms: Sections 1 and 2

For Clarification:

Hogg: Sections 42.4 [Freedom of Religion] and 42.5 [Sunday Observance] of Chapter 42

Further Reading:

CCL: 884-900 [Note on Zylberberg and Saguenay (Prayers in Public)], 904-906 [Catholic Schools]

23 January 2018 (12:30 – 2:00 P.M. in Room 106): Freedom of Conscience and Religion 2: Accommodation

Required:

CCL: 906-918 [Anselem (Succahs on Balconies), 923-934 [Hutterian Brethren (Licence Plate Photographs (Majority Judgment))]

Canadian Charter of Rights and Freedoms: Sections 1 and 2

For Clarification:

CCL: 934-941 [Hutterian Brethren (Dissent)]

Further Reading:

CCL: 962-968 [Trinity Western (Religious School Community Standards Barring Homosexual Behaviour)], 971-985 [Loyola High School (Compulsory World Religions Classes)]
26 January 2018

Re-Orientation Day: Class Rescheduled to 23 January 2018 at 12:30 – 2 P.M. in Room 106

2 February 2018: Freedom of Thought, Belief, Opinion and Expression 1: Hate Speech

Required:

CCL: 1033-1046 [Keegstra (Hate Speech (Majority Judgment))], 1057-1062 [Whatcott (Hate Speech and Provincial Human Rights Law)]

Canadian Charter of Rights and Freedoms: Sections 1 and 2

For Clarification:

CCL: 994-999 [The Scope and Limits of the Right, Including More from Dolphin Delivery], 1046-1051 [Keegstra (Dissent)]

Hogg: Sections 43.9 [Hate Propaganda] of Chapter 43

9 February 2018: Freedom of Thought, Belief, Opinion and Expression 2: Pornography

Required:

CCL: 1065-1074 [Butler (Pornography)], 1077-1082 [Note on Little Sisters (Pornography and Discrimination)]

Canadian Charter of Rights and Freedoms: Sections 1 and 2

For Clarification:

Hogg: Sections 43.1 [Pornography] of Chapter 43

Further Reading:

CCL: 1082-1084 [Note on Sharpe (Child Pornography)]

16 February 2018: Freedom of Thought, Belief, Opinion and Expression 3: Advertising

Required:

CCL: 1000-1008 [Irwin Toy (Advertising to Children)], 1013-1026 [RJR-MacDonald (Cigarette Advertising)]

Canadian Charter of Rights and Freedoms: Sections 1 and 2

For Clarification:

CCL: 1028-1030 [JTI-MacDonald (Cigarette Advertising)]
Further Reading:

CCL: 1086-1104 [Harper (Election Spending)]

23 February 2018

No Class (Reading Week)


Required:

CCL: 1181-1189 [Introduction, Motor Vehicle Reference (Absolute Liability for Driving with a Suspended License)], 1192-1195 [Parts of the Right]

Excerpts from Singh v Minister of Employment and Immigration, [1985] 1 SCR 177 [Procedural Rights (Charter-based Judgment)] [Connect] [Skim parts from paras 67-74 on section 1 if needed.]

Canadian Charter of Rights and Freedoms: Sections 1 and 7

For Clarification:

Hogg: Subsection 38.14(b) of Chapter 38 [Limitations on Rights and Section 7]

Further Reading:

Singh v Minister of Employment and Immigration, [1985] 1 SCR 177 at paras 34-56 [Application of the Charter] [Full Case Available on Connect]

9 March 2018: The Right to Life, Liberty and Security of the Person and the Principles of Fundamental Justice 2: Criminal Prohibition and Bodily Integrity 1: Abortion and Safe Injection

Required:

CCL: 1196-1207 [Morgentaler (Abortion (Dickson, Beetz, and Wilson Judgments))], 1216-1221 [Insite (Safe Injection Sites)]

Canadian Charter of Rights and Freedoms: Sections 1 and 7

**Required:**

*CCL*: 1222, 1225-1232 [Excerpts from *Bedford* (Prostitution)], 1234-1236, 1238-1246 [Excerpts from *Carter* (Assisted Death)]

*Canadian Charter of Rights and Freedoms*: Sections 1 and 7

**For Clarification:**

*CCL*: 1223-1225 [More *Bedford*], 1237 [More *Carter*]

**Further Reading:**

*CCL*: 1210-1215 [*Rodriguez* (Historical Assisted Death Decision)]

23 March 2018: Equality Rights 1: Changing Tests for Compliance

**Required:**

*CCL*: 1290-1292 [Historical Background Material], 1295-1298 [Section on “The Comparative Approach” in *Law* (Historical Test)], 1309-1323 [*A and Taypotat* (Governing Tests)]

*Canadian Charter of Rights and Freedoms*: Sections 1 and 15

**For Clarification:**

*CCL*: 1280-1286 [*Andrews* (Early Test)], 1303-1308 [*Kapp* (Historical Antecedent of Current Tests)]

**For Further Reading:**


30 March 2018

No Class (Holiday)

6 April 2018: Equality Rights 2: Stages of Analysis

**Required:**

*CCL*: 1324-1335 [Stages of Analysis and *Eldridge* (Sign Language Interpreters in Hospitals)], 1345-1346 [Comparator Groups], 1379-1383 [*M v H* (Disadvantage/Same Sex Spousal Support)]

*Canadian Charter of Rights and Freedoms*: Sections 1 and 15
For Clarification:

CCL: 1346-1360 [Withler (Comparator Groups)]

TBD: Optional Review Sessions

Required:

No new material. Review all distributed materials and your own notes thereon.

For Clarification:

In addition to the preceding, review relevant sections of Hogg as you find helpful. You may consult other outside texts (e.g., Bernard W Funston & Eugene Meegan, Canada’s Constitutional Law in a Nutshell, 4th Ed (Toronto: Carswell, 2013)), but I recommend focusing on the assigned materials and not adding new material to your reading list at this late date.

Early Alert

During the term, I will do my best to reach out and offer support if I am concerned about your academic performance or well-being. I also encourage you to come and speak with me if you need assistance.

In addition, I may identify my concerns using Early Alert. The program allows academic, financial, or mental health concerns to be identified sooner and responded to in a more coordinated way. This provides you with the earliest possible connection to resources like academic advising, financial advising, counselling, or other resources and support to help you get back on track.

The information is treated confidentially and is sent because I care about your academic success and well-being. For more information, please visit earlyalert.ubc.ca.