

Law, Politics, and the *Charter of Rights and Freedoms*
POL3332F
The University of Western Ontario
Fall 2019

Professor: Caroline Dick
Time: Monday 1:30-3:20 p.m.
Classroom: SSC 3024

Office: SSC 4088
Email: cdick4@uwo.ca
Office Hours: Monday 12:15-1:15 p.m.
Tuesday 1:30-2:30 p.m.

Prerequisite(s): Political Science 2230E or Sociology 2260A/B

Antirequisite(s): The former Political Science 403F/G

IMPORTANT NOTICE RE PREREQUISITES/ANTIREQUISITES

You are responsible for ensuring that you have successfully completed all course prerequisites, and that you have **not** taken an antirequisite course. Lack of prerequisites may not be used as a basis for appeal. If you are found to be **ineligible** for a course, you may be removed from it at any time and you will receive no adjustment to your fees. **This decision cannot be appealed.** If you find that you do not have the course requisites, it is in your best interest to drop the course well before the end of the add/drop period. Your prompt attention to this matter will not only help protect your academic record, but will ensure that spaces become available for students who require the course in question for graduation.

Course Description

The *Canadian Charter of Rights and Freedoms* has been described as the single most important innovation of the constitutional changes of 1982 and the most radical break ever made with the Canadian constitutional and legal order, which previously had been characterized by continuity and incremental development. The *Charter* assigns the judiciary the authority and responsibility to review legislative and executive decisions to determine whether they are consistent with the protected rights and freedoms enshrined in the *Charter*. However, judicial interpretations of the *Charter*, the respective roles of Parliament and the judiciary in the political process, and Charter litigation commenced by competing social interests are subjects that evoke considerable controversy. This course will examine these controversies.

Learning Objectives

By the end of the course, students should acquire an in-depth understanding of the operation of the *Charter* and its impact on and relationship to the political realm. Students should also be able to apply that knowledge to public policy issues by producing their own Charter analyses to resolve rights-based, public policy controversies and by critically evaluating Charter jurisprudence.

Required Readings

The vast majority of the readings are available electronically through the library catalogue. Abbreviated versions of the Supreme Court of Canada cases that have been designated as required readings are available in the course web site. The rest of the readings are available in a course package that is available at the UWO bookstore. Readings included in the course package are marked with an asterisk (*). Students are not required to do the recommended readings. However, the instructor may refer to materials from those readings in the lecture.

Other Sources

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11. <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>

Full text legal decisions of the Supreme Court of Canada are available electronically at: <http://scc.lexum.org/decisia-scc-csc/scc-csc/en/nav.do>

Format

This is a lecture-based course. Students are expected to attend all lectures, to do the required readings each week, and to participate in class discussions.

Evaluation

In-Class Test 20% (October 21, 2019)

Case Analysis/Position Paper 40% (DUE: November 25, 2019)

Final Examination 40%

In-Class Test

The exam will examine materials covered in weeks 2-4. All information presented in lectures and all required readings are examinable. **Students who miss the in-class exam and who receive academic accommodation or self-report will complete a written assignment in lieu of the exam.**

Case Analysis/Position Paper

See instructions below.

Final Exam

The final examination will take place during the scheduled exam period in December. The exam will consist of short answer and longer, essay questions. Students should use the lecture outlines to guide their exam preparation. All information presented in the lecture and all required readings are examinable.

Email

The Professor will respond to email and will do her best to reply within 48 hours (excluding weekends). Please do not send email messages via OWL. Do note that university policy precludes Professors from responding to email messages that were not sent from a UWO email account. Note, also, that grades may not be discussed via email.

Web Site

There is a web site set up for this course, available at: <https://owl.uwo.ca>. The course syllabus and abbreviated case law materials will be posted on the web site as will important class announcements and links to turnitin.com. Accordingly, students should check the web site regularly.

IMPORTANT POLICIES

Academic Offences

Scholastic offences are taken seriously and students are directed to read the appropriate policy, specifically, the definition of what constitutes a Scholastic Offence, at the following web site: http://www.uwo.ca/univsec/appeals_discipline/index.html

Turnitin

All assignments are subject to submission for textual similarity review to the commercial plagiarism detection software under license to the University for the detection of plagiarism. All papers submitted for such checking will be included as source documents in the reference database for the purpose of detecting plagiarism of papers subsequently submitted to the system. Use of the service is subject to the licensing agreement, currently between The University of Western Ontario and Turnitin.com (<http://www.turnitin.com>).

Submission of Assignments

Assignments are due at the start of class (the lecture) at 1:30 p.m. Assignments may not be submitted by fax or email, outside of class time (the lecture) or while the lecture is in progress.

Assignments also must be submitted electronically to turnitin.com prior to being submitted in hard copy form at the lecture. A link to turnitin.com can be found in the course web site. Note that assignments have not been submitted “on time” unless they have been submitted in hard copy form at the lecture **with a copy of the receipt generated by turnitin.com attached.**

Students may submit their assignments to turnitin one time only. Multiple submissions are not allowed. Students may not submit their papers to turnitin using other course web sites prior to submitting their assignments in 3332. **Students who do submit 3332 assignments to turnitin using other course web sites will receive a grade of zero on the assignment.**

Late penalty

Late case analyses/position papers may be handed in 1 week following the original due date with a 10% deduction. Late assignments must be submitted at the lecture by **1:30 p.m.** (both hard copy and turnitin.com) to be considered on time. **Assignments that are more than 1 week late will not be accepted for grading.**

Extensions

Extensions are not given. However, when there are genuine and unavoidable family or medical circumstances, students may seek academic accommodation, as detailed below, where self-reporting is not an option. If you fail to hand in an assignment but are pursuing academic

accommodation, please advise your Professor of this fact.

Computer Problems

Students are expected to back up their written work and lecture/tutorial notes. Furthermore, students will be responsible for finding replacement lecture/tutorial notes where they fail to back-up their files. Extensions are not granted for computer-related problems.

Academic Accommodation

If a situation should arise where a student requires accommodation because of a medical or personal issue, the student should visit his or her faculty's Academic Counselling office so that an academic counsellor can make a recommendation for academic accommodation to the student's Professor(s).

This procedure means that you do not provide your instructor with any details of your situation. It is your responsibility to speak with a counsellor as soon as possible after an issue arises. Academic accommodation ONLY will be provided if you speak with an Academic Counsellor and provide them with documentation of your issue, and if the issue is brought to their attention in a timely fashion.

Academic Counselling **for the Faculty of Social Sciences** is located at SSC 2105

Telephone: 519 661-2011

Recorded information: 519 661-2052

Fax: 519 661-3384

Email: ssaco@uwo.ca

Medical Illness

Please be aware that the policies regarding medical documentation have changed. The following is an excerpt from the Policy on Accommodation for Medical Illness.

Undergraduate Students (S.08-113).

Documentation from Family Physicians and Walk-In Clinics

A UWO Student Medical Certificate (SMC) is required where a student is seeking academic accommodation. This documentation should be obtained at the time of the initial consultation with the physician or walk-in clinic. An SMC can be downloaded under the Medical Documentation heading of the following website:
<https://studentservices.uwo.ca/secure/index.cfm>.

Hard copies are available from Academic Counselling in the Faculties.

Documentation from Student Health Services

Students obtaining documentation from Student Health Services should sign a "release of information." This form authorizes Student Health Services to provide information to the student's home Faculty. Release of information forms are available from, and can be arranged through, the student's home Faculty Academic Counselling service.

Documentation from Hospital Urgent Care Centres or Emergency Departments

Students should request that an SMC be filled out. Students may bring this form with them, or request alternative Emergency Department documentation. Documentation should be secured at the time of the initial visit to the Emergency Department. Where it is not possible for a student to have an SMC completed by the attending physician, the student must request documentation sufficient to demonstrate that his/her ability to meet his/her academic responsibilities was seriously affected.

Support Services

Students who are in emotional/mental distress should refer to Mental Health@Western <http://www.uwo.ca/uwocom/mentalhealth/> for a complete list of options about how to obtain help.

Grade Appeals

If you are concerned that your assignment was not graded fairly, you may ask to have your assignment reviewed. To request a review of your assignment, you must provide a 1 page statement explaining why you think your assignment was improperly graded (i.e. what do you think you did that should have been given more weight?). The explanation, the original assignment and a clean copy of the assignment, all in hard copy form, must be submitted to the Professor no later than 3 weeks after the assignment was **made available for return**.

NOTE: Students must take responsibility for picking up their marked work in a timely manner. **No appeals will be considered more than 3 weeks after the assignment/exam was made available for return.** Grades may be either **raised or lowered** on appeal. Students who wish to appeal an examination grade should follow the same procedure noted above for assignments.

Use of Electronic Devices:

Students are not permitted to use any electronic devices during exams. Students are asked to turn off their cell phones during lectures and tutorials. Laptops are permitted during lectures and tutorials only for the purpose of note taking.

Assignment Instructions

Case Analysis/Position Paper

All students will complete *either* the case analysis assignment *or* the position paper assignment. Written assignments must include footnotes, endnotes or parenthetical citation and a bibliography organized according to the Chicago style. Note that all citations must include references to **specific page numbers**. Help with using the Chicago Style can be found at the following UWO library web source:
<https://www.lib.uwo.ca/files/styleguides/ChicagoStyleAuthorDate.pdf>

NOTE: Students *will* be penalized for incorrect citation style.

Option 1: Case Analysis

Each student will write a 2500 word case analysis, typed and double-spaced, using a standard 12 point font and standard (1"/2.54 cm) margins, of the Supreme Court of Canada decision listed below. Students should evaluate **both the majority and minority (dissenting) opinions** in completing the assignment.

The case analysis should provide the following: a brief discussion of the litigation's political background (ie. how the issue has been dealt with in public policy); an overview of the parties to the case (state and societal actors); a synopsis of the facts of the case; a discussion of the position and arguments of the parties; an evaluation of the major political and constitutional issues raised by the case (including issues raised by members of the court concerning **the relationship between courts and legislatures** when it comes to interpreting Charter rights and placing reasonable limits on those rights); and an assessment of how the case was decided.

Students need not undertake additional research to complete their case analysis. However, they must cite class readings when discussing the relationship between courts and legislatures to provide scholarly explanations of, and support for, the concepts and ideas that they raise.

Assignments must be submitted in hard copy form. Email submissions will not be accepted. To be accepted and considered 'on time' your turnitin receipt must be attached to the hardy copy of your assignment at the time of submission.

The Case

R. v. Lloyd, [2016] 1 S.C.R. 130.

This case involves a Charter challenge to a provision of the *Controlled Drugs and Substances Act* that set a mandatory minimum sentence for those found guilty of drug trafficking or possession for the purpose of trafficking where the offender had been convicted of a previous drug offence in the last 10 years, excepting possession.

Please note that you are only dealing with the Charter aspects of the case. You need not address the issue and discussion of the powers of provincial court justices.

Note on Citing Court Cases

Proper legal citation is required. Please note that it is **not acceptable** to cite from the case summary/headnote. Only paragraphs with assigned paragraph numbers may be cited.

Your bibliographical entry should appear as follows:

R. v. Lloyd, [2016] 1 S.C.R. 130.

Students should use **paragraph numbers** when referring to the decision (**ie. students may not cite or quote the unnumbered head note that summarizes the decision at the start of the judgement**).

For students using footnotes or endnotes, the first citation should appear as follows:

R. v. Lloyd, [2016] 1 S.C.R. 130 at para. 55.

Subsequent citations may appear as follows:

R. v. Lloyd at para. 14.

R. v. Lloyd at paras. 12-13. (when referencing more than one paragraph)

OR

Option 2: Position Paper

Students will write a 2500 word position paper, typed and double-spaced, using a standard 12 point font and standard (1"/2.54 cm) margins, that offers a principled resolution to the fact situation set out below. Students should identify the Charter right(s) at risk of violation for all parties in the fact scenario and answer the question posed below.

No fewer than four (4) academic sources must be incorporated into the paper. Relevant government reports, government statutes and judicial/administrative decisions are considered academic sources that will count as sources for the purposes of the assignment. Please note that the point of the exercise is not to research and report the current state of Canadian law; it is how *you* would resolve the case that is the subject of the assignment.

The Facts:

Jenny Wilson is a male-to-female, pre-operative transsexual who has been found guilty of second-degree murder for killing her roommate. Jenny has been taking female hormones and living as a woman for many years under the guidance of a certified gender specialist. The only step that Jenny has yet to take in order to complete her transition is gender confirmation surgery (GCS). Jenny argues that the principles of equality demand that she serve her sentence in a women's prison. Correctional Service Canada disagrees. They argue that Jenny's pre-operative status renders her a threat to the physical and psychological well-being of female inmates.

Question: *What are the competing Charter rights at stake in the dispute and how would you resolve the conflict? Where should Jenny serve her sentence?*

Class Schedule

Week 1: September 9

Introduction

Week 2: September 16

The Application of the *Charter*

Required:

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11. <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>

Patricia Hughes. "The Intersection of Public and Private Under the *Charter*." *University of New Brunswick Law Journal*. 52 (2003): 201-14.

Hutchinson, Allan C., and Andrew Petter. "Private Rights/Public Wrongs: The Liberal Lie of the Charter." *University of Toronto Law Journal* 38 (1988): 278-97.

Recommended:

Petter, Andrew. "Look Who's Talking Now: Dialogue Theory and the Return to Democracy." In *The Politics of the Charter: The Illusive Promise of Constitutional Rights*, 149-66, Toronto: University of Toronto Press, 2010.

Bakan, Joel. "Power to the Powerful." In *Just Words: Constitutional Rights and Social Wrongs*, 87-100. Toronto: University of Toronto Press, 1997.

Brodsky, Gwen, and Shelagh Day. "Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty." *Canadian Journal of Women and the Law* 14 (2002): 185-220.

Week 3: September 23

The *Charter's* Democratic Implications: The Supreme Court of Canada as Policy Maker

Required:

*Morton, F. L., and Rainer Knopff. "The Supreme Court as the Vanguard of the Intelligentsia: The Charter Movement as Postmaterialist Politics." In *Canadian Constitutionalism 1791-1991*, ed. Janet Ajzenstat, 57-80. Ottawa: Canadian Study of Parliament Group, 1992. **(pages 57-64 only)**

*Knopff, Rainer, and F. L. Morton. "The Politics of Interpretation." In *Charter Politics*, 98-

119, Scarborough: Nelson, 1992.

Kelly, James B., and Michael Murphy. "Confronting Judicial Supremacy: A Defence of Judicial Activism and the Supreme Court of Canada's Legal Rights Jurisprudence." *Canadian Journal of Law and Society* 16, no. 1 (2001): 3-27.

Recommended:

Roach, Kent. "Dialogue or Defiance: Legislative Reversals of Supreme Court Decisions in Canada and the United States." *International Journal of Constitutional Law* 4, no. 2 (2006): 347-70.

Manfredi, Christopher. *Judicial Power and the Charter: Canada and the Paradox of Liberal Constitutionalism*, 2d ed., Oxford University Press, 2001.

Knopff, Rainer. "How Democratic is the Charter? And Does it Matter?" *Supreme Court Law Review*, 2d ser., 19 (2003): 199-217.

Mandel, Michael. "The Charter and Democracy." In *The Charter of Rights and the Legalization of Politics in Canada*, rev. ed., 39-61. Toronto: Thompson Publishing, 1994.

Week 4: September 30

Parliament and the Courts: Who Determines the Meaning of the Charter?

Required:

Hogg, Peter H., and Allison Bushell. "The Charter Dialogue Between Courts and Legislatures (Or Perhaps the *Charter Of Rights* Isn't Such a Bad Thing)." *Osgoode Hall Law Journal* 35 (1997): 75-124. (pages 75-105 only) ****You do not need to print/read the appendix.**

Manfredi, Christopher, and James B. Kelly. "Six Degrees of Dialogue: A Response to Hogg and Bushell." *Osgoode Hall Law Journal* 37 (1999): 513-27.

Recommended:

Huscroft, Grant. "Rationalizing Judicial Power: The Mischief of Dialogue Theory," In James B. Kelly and Christopher P. Manfredi eds., *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, 50-65. Vancouver: UBC Press, 2009.

Hogg, Peter W., Allison A. Bushell Thornton, and Wade K. Wright. "Charter Dialogue Revisited – or 'Much Ado About Metaphors'." *Osgoode Hall Law Journal* 45 (2007): 1-65.

Manfredi, Christopher P., and James B. Kelly. "Misrepresenting the Supreme Court's Record? A Comment on Sujit Choudhry and Claire E. Hunter, 'Measuring Judicial Activism on the Supreme Court of Canada'." *McGill Law Journal* 49 (2004): 741-64.

Roach, Kent. *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue*. Toronto: Irwin Law, 2001.

Week 5: October 7**The Charter, Executive Power and Federalism****Required:**

*Kelly, James, B. "Governing with the Charter of Rights and Freedoms." *Supreme Court Law Review*, 2d ser., 21 (2003): 299-337.

Kelly, James, B. "Reconciling Rights and Federalism during Review of the Charter of Rights and Freedoms: The Supreme Court of Canada and the Centralization thesis, 1982 to 1999." *Canadian Journal of Political Science* 34, no. 2 (2001): 325-55.

Recommended:

Radmilovic, Vuk. "Governmental Interventions and Judicial Decision Making: The Supreme Court of Canada in the Age of the Charter." *Canadian Journal of Political Science* 46, no. 2 (2013): 323-44.

Wright, Wade K. "Facilitating Intergovernmental Dialogue: Judicial Review of the Division of Powers in the Supreme Court of Canada." *Supreme Court Law Review* 51 (2010): 629-93.

Russell, Peter H. "The Charter and Canadian Democracy." In James B. Kelly and Christopher P. Manfredi eds., *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, 287-306. Vancouver: UBC Press, 2009.

Hogg, Peter W. "Federalism Fights the Charter of Rights." In David P. Shugarman and Reg Whitaker eds., *Federalism and Political Community: Essays in Honour of Donald Smiley*, 249-66. Peterborough: Broadview Press, 1989.

Cairns, Alan C. *Charter versus Federalism: The Dilemmas of Constitutional Reform*. Montreal & Kingston: McGill-Queen's Press, 1992.

Week 6: October 14**No Lecture (Thanksgiving)****Week 7: October 21****In-Class Test on Weeks 2- 4 (Out of the country/no office hours this week)****Week 8: October 28****Interest Groups and the Court Party Thesis****Required:**

Morton, F. L. "The Charter Revolution and the Court Party." *Osgoode Hall Law Journal* 30 no. 3 (1992): 627-52.

Hein, Gregory. "Interest Group Litigation and Canadian Democracy." *IRPP Choices* 6 (2000): 1-30.

Recommended:

Ryder, Bruce, Cidalia Faria, and Emily Lawrence, "What's *Law* Good For? An Empirical Overview of Charter Equality Rights Decisions." *Supreme Court Law Review* 24 (2004):103-36.

Martin, Robert I. *The Most Dangerous Branch: How the Supreme Court Has Undermined Our Law and Our Democracy*. Kingston: McGill-Queen's University Press, 2003.

Smith, Miriam. "Ghosts of the Judicial Committee of the Privy Council: Group Politics and Charter Litigation in Canadian Political Science." *Canadian Journal of Political Science* 35, no. 1 (2002): 3-29.

Elliot, Robin. "The Charter Revolution and the Court Party: Sound Critical Analysis or Blinkered Political Polemic?" *University of British Columbia Law Review* 35 (2002): 271-327.

Morton, F. L., and Rainer Knopff. "The Court Party." In *The Charter Revolution and the Court Party*, 59-86. Peterborough: Broadview Press, 2000.

Morton, F. L., and Avril Allen. "Feminists and the Courts: Measuring Success in Interest Group Litigation in Canada." *Canadian Journal of Political Science* 34 (2001): 55-84.

Week 9: November 4**No Lecture (Reading Week)****Week 10: November 11****Rights and Limits: Sections 1 and 33****Required:**

*Hiebert, Janet L. "The Supreme Court on Section 1." *Limiting Rights: The Dilemma of Judicial Review*, 52-88. Montreal & Kingston: McGill-Queen's University Press, 1996.

Cameron, Jamie. "The Charter's Legislative Override: Feat or Figment of the Constitutional Imagination?" *Supreme Court Law Review*, 2d ser., 23 (2004): 136-67.

Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1623789

Recommended:

Antaki, Mark. "The Turn to 'Values' in Canadian Constitutional Law: Critical Essays on R. v. Oakes," In Luc. B. Tremblay and Grégoire C. N. Webber eds., *The Limitation of Charter Rights: Critical Essays on R. v. Oakes*, 155-80. Montreal: Thémis, 2009.

Bredt, Christopher D., and Adam M. Dodek. "The Increasing Irrelevance of Section 1 of the Charter." *Supreme Court Law Review*, 2d ser., 14 (2001): 175-88.

Lajoie, Andrée, and Henry Quillinan. "Emerging Constitutional Norms : Continuous Judicial Amendment of the Constitution - the Proportionality Test as a Moving Target." *Law and Contemporary Problems* 55 (1992): 285-302.

Hiebert, Janet L. "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*, 107-25. Vancouver: UBC Press, 2009.

Russell, Peter H. "Standing Up for Notwithstanding." *Alberta Law Review* 29 (1991): 293-309.

Kahana, Tsvi. "Understanding the Notwithstanding Mechanism." *University of Toronto Law Journal* 52 (2002): 221-74.

Hiebert, Janet L. "Is it Too Late to Rehabilitate Canada's Notwithstanding Clause?" *Supreme Court Law Review*, 2d ser., 23 (2004): 169-89.

Week 11: November 18 **Fundamental Freedoms (Expression)**

Required:

Elliot, Robin. "Back to Basics: A Critical Look at the *Irwin Toy* Framework for Freedom of Expression." *Review of Constitutional Studies* 15, no.2 (2011): 205-48. **(pages 205-12; 217-21 and 235-37 only)**

Harper v. Canada (Attorney General), [2004] 1 S.C.R. 827.
(abbreviated version available in course web site)

Recommended:

Ross, June. "The Protection of Freedom of Expression by the Supreme Court of Canada." *Supreme Court Law Review*, 2d ser., 19 (2003): 81-109.

Cameron, Jamie. "Anticipation: Expressive Freedom and the Supreme Court of Canada in the New Millennium." *Supreme Court Law Review*, 2d ser., 14 (2001): 67-86.

Hiebert, Janet L. "Money and Elections: Can Citizens Participate on Fair Terms amidst Unrestricted Spending?" *Canadian Journal of Political Science* 31, no. 1 (1998): 91-111.

Week 12: November 25 *Case Analysis/Position Paper Due***** **Equality Rights (Women)**

Required:

Dobrowolsky, Alexandra. "Beyond Winners and Losers? What has happened to women's equality after 25 years of Charter struggles?" Paper delivered at the Annual Meeting of the Canadian Political Science Association, Vancouver, British Columbia, 4-6 June 2008.
www.cpsa-acsp.ca/papers-2008/Dobrowolsky.pdf

Newfoundland Treasury Board v. N.A.P.E., [2004] 3 S.C.R. 381.

(abbreviated version available in course web site)

Recommended:

Majury, Diana. "The *Charter*, Equality Rights, and Women: Equivocation and Celebration." *Osgoode Hall Law Journal* 40 (2002): 297-336.

Sheppard, Colleen. "Grounds of Discrimination: Towards an Inclusive and Contextual Approach." *Canadian Bar Review* 80 (2001): 893-916.

Sampson, Fiona. "The Law Test for Discrimination and Gendered Disability Inequality." In *Making Equality Rights Real: Securing Substantive Equality under the Charter*, ed. Fay Faraday, Margaret Denike and M. Kate Stephenson, 245-73. Toronto: Irwin Law, 2006.

McIntyre, Sheila. "The Supreme Court and Section 15: A Thin and Impoverished Notion of Judicial Review." *Queen's Law Journal* 31, no. 2 (2005-2006): 731-69.

Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497.

Week 13: December 2
Socioeconomic Rights

Required:

*Jackman, Martha. "Reality Checks: Presuming Innocence and Proving Guilt in Charter Welfare Cases." In Margot Young, Susan B. Boyd, Gwen Brodsky, and Shelagh Day ed. *Poverty: Rights, Social Citizenship and Legal Activism*, 23-39. Vancouver: UBC Press, 2007.

Gosselin v. Quebec (Attorney General), [2002] 4 S.C.R. 429.
(abbreviated version available in course web site)

Recommended:

Petter, Andrew. "Wealthcare: The Politics of the *Charter* Revisited," In *The Politics of the Charter: The Illusive Promise of Constitutional Rights*, 167-89, Toronto: University of Toronto Press, 2010.

Brodsky, Gwen, and Shelagh Day. "Women's Poverty is an Equality Violation." In *Making Equality Rights Real: Securing Substantive Equality under the Charter*, ed. Fay Faraday, Margaret Denike and M. Kate Stephenson, 319-44. Toronto: Irwin Law, 2006.

Langford, Malcolm. *Social Rights Jurisprudence*. Cambridge: Cambridge University Press, 2009.

Wiseman, David. "The Charter and Poverty: Beyond Injusticiability." *University of Toronto Law Journal* 51 (2001): 425-58.

APPENDIX A: APPENDIX TO UNDERGRADUATE COURSE OUTLINES DEPARTMENT OF POLITICAL SCIENCE

Prerequisite checking - the student's responsibility

"Unless you have either the requisites for this course or written special permission from your Dean to enroll in it, you may be removed from this course and it will be deleted from your record. This decision may not be appealed. You will receive no adjustment to your fees in the event that you are dropped from a course for failing to have the necessary prerequisites."

Essay course requirements

With the exception of 1000-level courses, most courses in the Department of Political Science are essay courses. Total written assignments (excluding examinations) will be at least 3,000 words in Politics 1020E, at least 5,000 words in a full course numbered 2000 or above, and at least 2,500 words in a half course numbered 2000 or above.

Use of Personal Response Systems ("Clickers")

"Personal Response Systems ("clickers") may be used in some classes. If clickers are to be used in a class, it is the responsibility of the student to ensure that the device is activated and functional. Students must see their instructor if they have any concerns about whether the clicker is malfunctioning.

Students must use only their own clicker. If clicker records are used to compute a portion of the course grade:

- the use of somebody else's clicker in class constitutes a scholastic offence,
- the possession of a clicker belonging to another student will be interpreted as an attempt to commit a scholastic offence."

Security and Confidentiality of Student Work (refer to current *Western Academic Calendar*
(<http://www.westerncalendar.uwo.ca/>)

"**Submitting or Returning Student Assignments, Tests and Exams** - All student assignments, tests and exams will be handled in a secure and confidential manner. Particularly in this respect, leaving student work unattended in public areas for pickup is not permitted."

Duplication of work

Undergraduate students who submit similar assignments on closely related topics in two different courses must obtain the consent of both instructors prior to the submission of the assignment. If prior approval is not obtained, each instructor reserves the right not to accept the assignment.

Grade adjustments

In order to ensure that comparable standards are applied in political science courses, the Department may require instructors to adjust final marks to conform to Departmental guidelines.

Academic Offences

"Scholastic offences are taken seriously and students are directed to read the appropriate policy, specifically, the definition of what constitutes a Scholastic Offence, at the following Web site:

<http://www.uwo.ca/univsec/handbook/appeals/scholoff.pdf>."

Submission of Course Requirements

ESSAYS, ASSIGNMENTS, TAKE-HOME EXAMS MUST BE SUBMITTED ACCORDING TO PROCEDURES SPECIFIED BY YOUR INSTRUCTOR (I.E., IN CLASS, DURING OFFICE HOURS, TA'S OFFICE HOURS) OR UNDER THE INSTRUCTOR'S OFFICE DOOR.

THE MAIN OFFICE DOES NOT DATE-STAMP OR ACCEPT ANY OF THE ABOVE.

Note: Information excerpted and quoted above are Senate regulations from the Handbook of Scholarship and Academic Policy. <http://www.uwo.ca/univsec/handbook/>

Students registered in Social Science should refer to <http://counselling.ssc.uwo.ca/> <http://counselling.ssc.uwo.ca/procedures/havingproblems.asp> for information on Medical Policy, Term Tests, Final Examinations, Late Assignments, Short Absences, Extended Absences, Documentation and other Academic Concerns. Non-Social Science students should refer to their home faculty's academic counselling office.

Plagiarism

"Plagiarism: Students must write their essays and assignments in their own words. Whenever students take an idea, or a passage from another author, they must acknowledge their debt both by using quotation marks where appropriate and by proper referencing such as footnotes or citations. Plagiarism is a major academic offence." (see Scholastic Offence Policy in the Western Academic Calendar).

Plagiarism Checking: "All required papers may be subject to submission for textual similarity review to the commercial plagiarism detection software under license to the University for the detection of plagiarism. All papers submitted for such checking will be included as source documents in the reference database for the purpose of detecting plagiarism of papers subsequently submitted to the system. Use of the service is subject to the licensing agreement, currently between The University of Western Ontario and Turnitin.com (<http://www.turnitin.com>)."

Multiple-choice tests/exams: "Computer-marked multiple-choice tests and/or exams may be subject to submission for similarity review by software that will check for unusual coincidences in answer patterns that may indicate cheating."

Note: Information excerpted and quoted above are Senate regulations from the Handbook of Scholarship and Academic Policy. <http://www.uwo.ca/univsec/handbook/>

PLAGIARISM*

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Method (2) given above is usually preferable for academic essays because it provides the reader with more information about your sources and leaves your text uncluttered with parenthetical and tangential references. In either case words taken from another author must be enclosed in quotation marks or set off from your text by single spacing and indentation in such a way that they cannot be mistaken for your own words. Note that you cannot avoid indicating quotation simply by changing a word or phrase in a sentence or paragraph which is not your own.

B. In adopting other writers' ideas, you must acknowledge that they are theirs.

You are plagiarizing if you adopt, summarize, or paraphrase other writers' trains of argument, ideas or sequences of ideas without acknowledging their authorship according to the method of acknowledgement given in 'A' above. Since the words are your own, they need not be enclosed in quotation marks. Be certain, however, that the words you use are entirely your own; where you must use words or phrases from your source, these should be enclosed in quotation marks, as in 'A' above.

Clearly, it is possible for you to formulate arguments or ideas independently of another writer who has expounded the same ideas, and whom you have not read. Where you got your ideas is the important consideration here. Do not be afraid to present an argument or idea without acknowledgement to another writer, if you have arrived at it entirely independently. Acknowledge it if you have derived it from a source outside your own thinking on the subject.

In short, use of acknowledgements and, when necessary, quotation marks is necessary to distinguish clearly between what is yours and what is not. Since the rules have been explained to you, if you fail to make this distinction your instructor very likely will do so for you, and they will be forced to regard your omission as intentional literary theft. Plagiarism is a serious offence which may result in a student's receiving an 'F' in a course or, in extreme cases in their suspension from the University.

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SUPPORT SERVICES

Students who are in emotional/mental distress should refer to Mental Health@Western <http://www.uwo.ca/uwocom/mentalhealth/> for a complete list of options about how to obtain help.

Appendix B - Procedures for Requesting Academic Consideration

Students who experience an extenuating circumstance (illness, injury, or other extenuating circumstance) sufficiently significant to temporarily render them unable to meet academic requirements may submit a request for academic consideration through the following routes:

- Submitting a Self-Reported Absence form provided that the conditions for submission are met;
- For medical absences, submitting a Student Medical Certificate (SMC) signed by a licensed medical or mental health practitioner in order to be eligible for Academic Consideration; or
- For non-medical absences, submitting appropriate documentation (e.g., obituary, police report, accident report, court order, etc.) to Academic Counselling in their Faculty of registration in order to be eligible for academic consideration. Students are encouraged to contact their Academic Counselling unit to clarify what documentation is appropriate.

Students seeking academic consideration:

- are advised to consider carefully the implications of postponing tests or midterm exams or delaying handing in work;
- are encouraged to make appropriate decisions based on their specific circumstances, recognizing that minor ailments (upset stomach) or upsets (argument with a friend) are **not** an appropriate basis for a self-reported absence;
- must communicate with their instructors **no later than 24 hours** after the end of the period covered by either the self-reported absence or SMC, or immediately upon their return following a documented absence.

Academic consideration **is not** normally intended for the following circumstances:

- Students who require academic accommodation based on an ongoing physical or mental illness (recurring or chronic) or an existing disability. These students are expected to seek and arrange

reasonable accommodations with Student Accessibility Services (SAS) as soon as possible in accordance with the Policy on Academic Accommodation for Students with Disability.

- Students who experience high levels of stress related to academic performance (including completing assignments, taking part in presentations, or writing tests or examinations). These students should access support through Student Health and Wellness and Learning Skills Services in order to deal with this stress in a proactive and constructive manner.

Requests for Academic Consideration Using the Self-Reported Absence Form

Students who experience an unexpected illness or injury or an extenuating circumstance (48 hours or less) that is sufficiently severe to temporarily render them unable to meet academic requirements (e.g., attending lectures or labs, writing tests or midterm exams, completing and submitting assignments, participating in presentations) should self-declare using the **online Self-Reported Absence portal**. This option should be used in situations where the student expects to resume academic responsibilities **within 48 hours or less**.

The following conditions are in place for self-reporting of medical or extenuating circumstances: Students will be allowed:

- a maximum of two self-reported absences between September and April;
- a maximum of one self-reported absence between May and August.

Any absences in excess of the number designated above, regardless of duration, will require students to present a Student Medical Certificate (SMC) no later than two business days after the date specified for resuming responsibilities.

- The duration of the excused absence will be for a maximum of 48 hours from the time the Self-Reported Absence form is completed through the online portal, or from 8:30 am the following morning if the form is submitted after 4:30 pm;
- The duration of the excused absence will terminate prior to the end of the 48 hour period should the student undertake significant academic responsibilities (write a test, submit a paper) during that time;
- The duration of an excused absence will terminate at 8:30 am on the day following the last day of classes each semester regardless of how many days of absence have elapsed;
- Self-reported absences **will not be** allowed for scheduled final examinations; for midterm examinations scheduled during the December examination period;
- Self-reporting **may not be** used for assessments (e.g. midterm exams, tests, reports, presentations, or essays) worth more than 30% of any given course.
- students must be in touch with their instructors **no later than 24 hours** after the end of the period covered by the Self-Reported Absence form, to clarify how they will be expected to fulfil the academic expectations they may have missed during the absence.

Request for Academic Consideration for a Medical Absence

Students seeking academic consideration for a medical absence not covered by existing Student Accessibility Services (SAS) accommodation, will be required to provide documentation in person to Academic Counselling in their Faculty of registration in the form of a completed, signed Student Medical Certificate (SMC) where the conditions for a Self-Reported Absence have not been met, including where the student has exceeded the maximum number of permissible Self-Reported Absences.

Request for Academic Consideration for a Non-Medical Absence

Students seeking academic consideration for a non-medical absence will be required to provide appropriate documentation to Academic Counselling in their Faculty of registration where the conditions for a Self-Reported Absence have not been met, including where the student has exceeded the maximum number of permissible Self-Reported Absences.

APPENDIX TO UNDERGRADUATE COURSE OUTLINES

DEPARTMENT OF POLITICAL SCIENCE

Prerequisite checking - the student's responsibility

"Unless you have either the requisites for this course or written special permission from your Dean to enroll in it, you may be removed from this course and it will be deleted from your record. This decision may not be appealed. You will receive no adjustment to your fees in the event that you are dropped from a course for failing to have the necessary prerequisites."

Essay course requirements

With the exception of 1000-level courses, most courses in the Department of Political Science are essay courses. Total written assignments (excluding examinations) will be at least 3,000 words in Politics 1020E, at least 5,000 words in a full course numbered 2000 or above, and at least 2,500 words in a half course numbered 2000 or above.

Use of Personal Response Systems ("Clickers")

"Personal Response Systems ("clickers") may be used in some classes. If clickers are to be used in a class, it is the responsibility of the student to ensure that the device is activated and functional. Students must see their instructor if they have any concerns about whether the clicker is malfunctioning.

Students must use only their own clicker. If clicker records are used to compute a portion of the course grade:

- the use of somebody else's clicker in class constitutes a scholastic offence,
- the possession of a clicker belonging to another student will be interpreted as an attempt to commit a scholastic offence."

Security and Confidentiality of Student Work (refer to current *Western Academic Calendar*

<http://www.westerncalendar.uwo.ca/>

"Submitting or Returning Student Assignments, Tests and Exams - All student assignments, tests and exams will be handled in a secure and confidential manner. Particularly in this respect, leaving student work unattended in public areas for pickup is not permitted."

Duplication of work

Undergraduate students who submit similar assignments on closely related topics in two different courses must obtain the consent of both instructors prior to the submission of the assignment. If prior approval is not obtained, each instructor reserves the right not to accept the assignment.

Grade adjustments

In order to ensure that comparable standards are applied in political science courses, the Department may require instructors to adjust final marks to conform to Departmental guidelines.

Academic Offences

"Scholastic offences are taken seriously and students are directed to read the appropriate policy, specifically, the definition of what constitutes a Scholastic Offence, at the following Web site:

http://www.uwo.ca/univsec/pdf/academic_policies/appeals/scholastic_discipline_undergrad.pdf

Submission of Course Requirements

ESSAYS, ASSIGNMENTS, TAKE-HOME EXAMS MUST BE SUBMITTED ACCORDING TO PROCEDURES SPECIFIED BY YOUR INSTRUCTOR (I.E., IN CLASS, DURING OFFICE HOURS, TA'S OFFICE HOURS) OR UNDER THE INSTRUCTOR'S OFFICE DOOR.

THE MAIN OFFICE DOES NOT DATE-STAMP OR ACCEPT ANY OF THE ABOVE.

Attendance Regulations for Examinations

EXAMINATIONS/ATTENDANCE (Sen. Min. Feb.4/49, May 23/58, S.94, S.3538, S.3632, S.04-097) A student is entitled to be examined in courses in which registration is maintained, subject to the following limitations: 1) A student may be debarred from writing the final examination for failure to maintain satisfactory academic standing throughout the year. 2) Any student who, in the opinion of the instructor, is absent too frequently from class or laboratory periods in any course will be reported to the Dean of the Faculty offering the course (after due warning has been given). On the recommendation of the Department concerned, and with the permission of the Dean of that Faculty, the student will be debarred from taking the regular examination in the course. The Dean of the Faculty offering the course will communicate that decision to the Dean of the Faculty of registration.

Medical Policy, Late Assignments, etc.

Students registered in Social Science should refer to

https://counselling.ssc.uwo.ca/procedures/medical_accommodation.html for information on Medical Policy, Term Tests, Final Examinations, Late Assignments, Short Absences, Extended Absences, Documentation and other Academic Concerns. Non-Social Science students should refer to their home faculty's academic counselling office.

University Policy on Cheating and Academic Misconduct

Plagiarism: Students must write their essays and assignments in their own words. Whenever students take an idea, or a passage from another author, they must acknowledge their debt both by using quotation marks where appropriate and by proper referencing such as footnotes or citations. Plagiarism is a major academic offence." (see Scholastic Offence Policy in the Western Academic Calendar).

Plagiarism Checking: "All required papers may be subject to submission for textual similarity review to the commercial plagiarism detection software under license to the University for the detection of plagiarism. All papers submitted for such checking will be included as source documents in the reference database for the purpose of detecting plagiarism of papers subsequently submitted to the system. Use of the service is subject to the licensing agreement, currently between The University of Western Ontario and Turnitin.com (<http://www.turnitin.com>)."

Multiple-choice tests/exams: "Computer-marked multiple-choice tests and/or exams may be subject to submission for similarity review by software that will check for unusual coincidences in answer patterns that may indicate cheating."

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- Student Support Services (including the services provided by the USC listed here) can be reached at: <https://westernusc.ca/your-services/>
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