

McGill University

Department of Political Science  
POLI478B

**The Canadian Constitution: Rights and Liberties**

Winter 2018

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**Required Texts** (Available at Bookstore)

Tom Bateman et al, eds., The Court and the Charter: Leading Cases, 2d edition.  
Toronto: Emond-Montgomery, 2017.

James B. Kelly and Christopher P. Manfredi, eds., Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms. Vancouver: UBC Press, 2009.

**Description and Requirements**

The purpose of this course is to provide an overview of the constitutional protection of rights and liberties in Canada in the post-Charter era. In addition to examining the legal development of the rights and liberties protected under the Charter, the course will consider the broader impact of Charter adjudication on public policy and the nature of Canadian democracy. In particular, the course will examine the tension between constitutional supremacy and judicial supremacy.

The course requirements consist of a mid-term examinations (30%), a term paper (30%), class participation (10%), and a comprehensive final examination (30%). The mid-term examination will be held on February 12, 2018, and the term paper is due on April 9, 2018. A supplemental final examination will be available, but the privilege of additional work will not be granted. *According to Senate regulations, instructors are not permitted to make special arrangements for final exams. Please consult the Calendar, section 4.7.2.1, General University Information and Regulations at [www.mcgill.ca](http://www.mcgill.ca).*

**Policy Statements on Academic Integrity and Language**

McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other

academic offences under the Code of Student Conduct and Disciplinary Procedures (see [www.mcgill.ca/integrity](http://www.mcgill.ca/integrity) for more information).

In accord with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded.

L'université McGill attache une haute importance à l'honnêteté académique. Il incombe par conséquent à tous les étudiants de comprendre ce que l'on entend par tricherie, plagiat et autres infractions académiques, ainsi que les conséquences que peuvent avoir de telles actions, selon le Code de conduite de l'étudiant et des procédures disciplinaires (pour de plus amples renseignements, veuillez consulter le site <http://www.mcgill.ca/integrity>).

Conformément à la Charte des droits de l'étudiant de l'Université McGill, chaque étudiant a le droit de soumettre en français ou en anglais tout travail écrit devant être noté (sauf dans le cas des cours dont l'un des objets est la maîtrise d'une langue).

### **Schedule and Reading Assignments**

January 8: **Syllabus Distribution and Introduction** (Jan. 8)

January 15: **Contested Constitutionalism, the Charter, and Judicial Decisionmaking**

Kelly and Manfredi, "Should We Cheer? Contested Constitutionalism and the Canadian Charter of Rights and Freedoms," in Kelly and Manfredi, eds., Contested Constitutionalism, 3-29.

Lori Hausegger, M. Hennigar, T. Riddell, Canadian Courts: Law, Politics, and Process (Oxford University Press, 2009), 102-40.

Mark S. Harding and Rainer Knopff, "'Charter Values' vs. Charter Dialogue," National Journal of Constitutional Law 31(2): 161-81.

Dennis R. Baker, Not Quite Supreme: The Courts and Coordinate Constitutional Interpretation (McGill-Queen's University Press, 2010), 17-38.

January 22: **Legal Mobilization and Judicial Policymaking**

Hausegger et al, Canadian Courts: Law, Politics, and Process, 212-68.

Christopher Manfredi and Antonia Maioni, Health Care and the Charter (UBC Press, 2017), 3-18.

January 29: **Fundamental Freedoms**

Bateman et al., The Court and the Charter, Part B.

Howard Kislowicz, “Freedom of Religion and Canada’s Commitments to Multiculturalism,” National Journal of Constitutional Law 31: 1-23.

February 5: **Democratic Rights**

Bateman et al., The Court and the Charter, Part C.

February 12: **Mid-Term Examination  
Open Discussion**

February 19: **Fundamental Justice and Legal Rights (1)**

Bateman et al., The Court and the Charter, Part D.

February 26: **Fundamental Justice and Legal Rights (2)  
Social and Economic Rights**

Bateman et al., The Court and the Charter, Part E.

Christopher P. Manfredi and Antonia Maioni, “Judicializing Health Policy: Unexpected Lessons and an Inconvenient Truth,” in Kelly and, eds., Contested Constitutionalism, 129-143.

March 5: **No Class: Reading Week**

March 12: **Equality Rights (1)**

Bateman et al., The Court and the Charter, Part F (Excluding Case 28)

March 19: **Equality Rights (2)  
Language Rights**

*Egan v. Canada*, [1995] 2 S.C.R 513.

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1265/index.do>

*Vriend v. Alberta*, [1998] 1 S.C.R. 493.  
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1607/index.do>

*M. v. H.*, [1999] 2 S.C.R. 3.  
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1702/index.do>

*Reference re Same-Sex Marriage*, [2004] 3 S.C.R. 698.  
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2196/index.do>

Bateman et al., The Court and the Charter, Part G.

*Solski (Tutor of) v. Quebec (Attorney General)*, [2005] 1 S.C.R. 201, <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/2214/index.do>

*Nguyen v. Quebec (Education, Recreation and Sports)*, [2009] 3 S.C.R. <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/7822/index.do>

March 26: **Aboriginal Rights**

*Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010.  
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1569/index.do>

*Tsilhqot'in Nation v. British Columbia*, [2014] 2 S.C.R. 256.  
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do>

*Daniels v. Canada (Indian Affairs and Northern Development)*, [2016] 1 S.C.R. 99.  
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15858/index.do>

April 2: **No Class: Easter Break**

April 9: **Politics and Constitutional Litigation**  
**Term Paper Due**

Christopher Manfredi, "Conservatives, the Supreme Court, and the Constitution: Judicial-Government Relations, 2006-15," Osgoode Hall Law Journal 52:3 (2016): 951-83.

Emmet Macfarlane, "'You Can't Always Get What You Want': Regime Politics, the Supreme Court of Canada, and the Harper Government," Canadian Journal of Political Science (2017): 1-21.

*Reference re Supreme Court Act, ss. 5 and 6*, [2014] 1 S.C.R. 433.

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13544/index.do>

Reference re Senate Reform, [2014] 1 S.C.R. 704.

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13614/index.do>

April 16: **Conclusion**