

PSCI 490/633: Rights and Public Policy

Winter, 2014

HH 344 - Thursdays, 1:30-4:20pm

Instructor: Dr. Emmett Macfarlane

Email Address: emacfarl@uwaterloo.ca

Office Location: Hagey Hall 350

Office Hours: Thurs. 10am-12pm, HH 350

Contact Policy: Email is likely the best way to get in touch with the professor outside of scheduled office hours. A few things to remember when emailing:

- **Please use your official UW email account.** To ensure your privacy, your professor will not reply to emails sent from a non-UW account (such as Gmail, Hotmail, Yahoo, Sympatico, etc.).
- Please address your email to the professor appropriately (i.e. 'Dr. Macfarlane', 'Professor', etc.).
- Please remember to sign your email with a first and last name.
- Please allow 24-48 hours for a response to your email.
- **Email should be used for brief questions that can be answered quickly.** If you want to discuss course material, assignments, or another matter in greater detail, please see the professor during office hours or make an appointment to meet at some other time convenient for both.

Course Description: This course will examine the role that rights and rights discourse play in public policy development and policy change. Students will explore key debates about the role of courts in policy-making, institutional relationships surrounding the application of rights to particular policies, and the limits of rights and rights discourse. The course will also explore the place of rights instruments in the comparative context, including the United Kingdom, Australia and the United States. Seminar topics involve policies implicating the Charter of Rights and Freedoms, including health care, social policy and the welfare state, multiculturalism, the environment, the Criminal Code, and policies affecting Indigenous communities. Statutory rights instruments and the role of human rights commissions and tribunals will also be examined.

Pre-Requisites: PSCI 260 or LS 101.

University Regulations:

Academic Integrity:

Academic Integrity: In order to maintain a culture of academic integrity, members of the University of Waterloo are expected to promote honesty, trust, fairness, respect and responsibility.

Discipline: A student is expected to know what constitutes academic integrity, to avoid committing academic offences, and to take responsibility for his/her actions. A student who is unsure whether an action constitutes an offence, or who needs help in learning how to avoid offences (e.g., plagiarism, cheating) or about “rules” for group work/collaboration should seek guidance from the course professor, academic advisor, or the Undergraduate Associate Dean. When misconduct has been found to have occurred, disciplinary penalties will be imposed under Policy 71 – Student Discipline. For information on categories of offenses and types of penalties, students should refer to Policy 71 - Student Discipline, <http://www.adm.uwaterloo.ca/infosec/Policies/policy71.htm>. These two websites are particularly helpful:

[Academic Integrity website \(Arts\): http://arts.uwaterloo.ca/arts/ugrad/academic_responsibility.html](http://arts.uwaterloo.ca/arts/ugrad/academic_responsibility.html)

[Academic Integrity Office \(uWaterloo\): http://uwaterloo.ca/academicintegrity/](http://uwaterloo.ca/academicintegrity/)

Grievance: A student who believes that a decision affecting some aspect of his/her university life has been unfair or unreasonable may have grounds for initiating a grievance. Read Policy 70 - Student Petitions and Grievances, Section 4, <http://www.adm.uwaterloo.ca/infosec/Policies/policy70.htm>.

Appeals: A student may appeal the finding and/or penalty in a decision made under Policy 70 - Student Petitions and Grievances (other than regarding a petition) or Policy 71 - Student Discipline if a ground for an appeal can be established. Read Policy 72 - Student Appeals, <http://www.adm.uwaterloo.ca/infosec/Policies/policy72.htm>.

Accommodation for Students with Disabilities:

Note for students with disabilities: The AccessAbility Office, located in Needles Hall, Room 1132, collaborates with all academic departments to arrange appropriate accommodations for students with disabilities without compromising the academic integrity of the curriculum. If you require academic accommodations to lessen the impact of your disability, please register with AccessAbility at the beginning of each academic term.

Academic/Personal Counselling:

Life at university can sometimes have unexpected challenges. If you find yourself feeling overwhelmed, anxious, stressed, or have other personal or academic issues that are affecting how you are managing your workload, please see counselling services offered at U Waterloo. You do not need to divulge personal information to me, you can simply talk to a counselor and he or she can advise your professors whether or not you require accommodation vis-à-vis extensions, etc.. Visit the following website for more information: <https://uwaterloo.ca/student-success/academic-and-life-wellness-services>.

Format:

This is a seminar class. Student participation and discussion of key issues, course readings and cases will be the primary component.

Texts:

There is no textbook purchase required for this course. Students are expected to obtain all of the readings and cases through the course LEARN site (readings are also available through the library system and cases are available online).

Course Requirements, Expectations, and Standards:

Assignments:

Participation (20%):

You will be evaluated on regular, quality contributions to class discussions in the seminar. This is a major component of the course, and doing all of the readings is integral to your success.

Reading Summary and Discussion Questions (20%):

Students will submit a 200 word summary (a short, single-spaced paragraph) of one of the readings for each week, with three sophisticated discussion questions that reflect the student has carefully read the article/case. A total of 8 such assignments must be submitted during the term (if they wish, students can submit one for each week in which readings are assigned and have their 8 highest marks counted). **Each assignment is due IN CLASS the day the reading is assigned. NOTE: no late assignments will be accepted.**

Critical Analysis (20%):

Students will write a critical analysis of 3 pages (double spaced, standard font size and margins) on one (or more) of the readings from one of Weeks 2-5. The critical analysis should examine and assess the major findings or arguments of the reading(s) and evaluate whether the author(s) provide a convincing line of reasoning. **The critical analysis is due IN CLASS during the week for which the reading was assigned.**

Research Paper (40%):

Students will be expected to write a research paper examining a public policy issue that has implications for rights or that has come up against rights claims. A separate assignment sheet will be handed out in class. **Due IN CLASS March 27 (Week 11).**

Extra Credit/Make-up Work:

Unlike high school, it is rare that a university-level course would allow for make-up work to help improve a grade. There is no extra credit or make-up work offered in PSCI 490. The requirements of the course are set out at the beginning and students are expected to work hard and well in order to earn marks. It should also be stated that students don't start off with an "A" and lose marks on assignments. Everyone hands in their assignments and the assumption is that marks are earned – that is, you go from a zero up to the assessed value of the work as evaluated by the professors or tutorial assistants.

It should also be clear that at the post-secondary level, it is expected that everyone will work hard. "Working hard" on your assignments does not mean you have earned or deserve a high grade if key elements of the assignment are missing. I will not entertain appeals of grades on the basis that you "worked hard" on it and therefore deserve more marks.

Other Course Policies:

Course Website

The course outline, detailed assignments, class announcements, etc. will be available on the course website on LEARN . If you have questions about when assignments are due, late policies, sickness accommodation, etc., your first source of information is the course outline. Users can login to LEARN via: <http://learn.uwaterloo.ca/>. Use your WatIAM/Quest username and password.

Late Penalties

All late assignments will be penalized 5% a day (including weekends). A waiver of this penalty will only be considered in the event of an officially documented extenuating circumstance (this does NOT include a note from your mother). See "Extension Policy" below. Late assignments can be placed in the professor's drop box in the Department of Political Science. This is cleared out daily.

Final Submission Date for Assignments

The final submission date for assignments is one week (7 days) after their due date (with the imposition of late penalties). The instructor WILL NOT accept the assignment for grading after one week has passed without a documented extenuating circumstance. If an extenuating circumstance may prevent you from submitting an assignment by its submission date, please contact the professor at the earliest possible convenience and be prepared to provide him or her with official documentation concerning your situation.

Extension Policy for Assignments

The professor will only consider granting an extension in the event of an officially documented extenuating circumstance (that is, serious personal illness, critical personal or family crisis, etc.). If

a situation arises that may prevent you from completing an assignment, contact the professor as early as possible, ideally before the assignment is due.

The UW Verification of Illness Form can be found at: www.healthservices.uwaterloo.ca/Health_Services/verification.html. Please note that midterms will not be deferred. Instead, the final exam will be re-weighted appropriately.

***Computer Problems**

Students are expected to back up their written work and lecture notes (on a USB stick, by emailing them to yourself, by printing them out, by saving them on an app like DropBox, etc.). Extensions will NOT be granted for computer-related issues. Furthermore, students will be responsible for finding replacement lecture notes where they fail to back-up their files.

Grade Appeals

To request a review of your assignment, you must provide a 1 page explanation as to 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 should be submitted 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, stay the same, or lowered on appeal.* Students who wish to appeal an examination grade should follow the same procedure noted above for assignments.

Schedule:

WEEK 1 – Jan. 9: Introduction

WEEK 2 – Jan. 16: Judicial Review

Readings:

- Jeremy Waldron, “The Core of the Case Against Judicial Review,” *Yale Law Journal* 115 2006, pg. 1346-1406.
- F.L. Morton and Rainer Knopff, “Judges and the Charter Revolution.” *The Charter Revolution & The Court Party*. (Toronto: Broadview Press, 2000). Chapter 2, pp. 33-58.

WEEK 3 – Jan. 23: Positive Rights?

Readings:

- Emmett Macfarlane, “Supreme Confusion,” *Policy Options*. (March 2013): 45-48.
- Margot Young, “Section 7 and the Politics of Social Justice,” *UBC Law Review* (2005) 38(2): 539-560.
- Jamie Cameron, “Positive Obligations under Sections 15 and 7 of the Charter: A Comment on *Gosselin v. Quebec*.” *Supreme Court Law Review*. (2003) 20: 65-88.

WEEK 4 – Jan. 30: The Parliamentary or “Commonwealth Model”

Readings:

- Stephen Gardbaum, “Reassessing the New Commonwealth Model of Constitutionalism.” *International Journal of Constitutional Law*. (2010) 8(2): 167-206.
- John Chesterman and Brian Galligan, “The Politics of Rights Protection in Western Democracies,” *Australian Journal of Political Science*. (2009) 44(1): 29-40.

WEEK 5 – Feb. 6: Inter-institutional “Dialogue”

Reading:

- James B. Kelly and Matthew A. Hennigar, “The Canadian Charter of Rights and the minister of justice: Weak-form review within a constitutional Charter of Rights.” *International Journal of Constitutional Law*. (2012) 10(1): 35-68.
- Emmett Macfarlane, “Dialogue or Compliance? Measuring Legislatures’ Policy Responses to Court Rulings on Rights.” *International Political Science Review*. (2013) 34: 39-56.

WEEK 6 – Feb. 13: Aboriginal and Treaty Rights

Readings:

- Lynda M. Collins and Meghan Murtha, “Indigenous Environmental Rights in Canada: The Right to Conservation Implicit in Treaty and Aboriginal Rights to Hunt, Fish, and Trap.” *Alberta Law Review*. (2010) 47(4): 959-91.
- Dimitrios Panagos and J. Andrew Grant. “Constitutional change, Aboriginal rights, and mining policy in Canada.” *Commonwealth & Comparative Politics*. (2013) 51(4): 405-23.

*****READING WEEK*****

WEEK 7 – Feb 27: Health Policy

Readings:

- Colleen M. Flood, “Chaoulli: Political Undertows and Judicial Riptides,” *Health Law Journal* 2008, pg. 211-235.
- Case: *Canada v. PHS Community Services Society* [2011]

WEEK 8 – Mar 6: Equality Rights, the Criminal Code and Moral Controversies

Readings:

- Linda A. White, “Federalism and Equality Rights Implementation in Canada,” *Publius: The Journal of Federalism*. (2013): 1-26.
- Case: *Canada (Attorney General) v. Bedford* [2013]

WEEK 9 – Mar. 13: Multiculturalism Policy and Rights

Readings:

- Lorraine E. Weinrib, “Ontario’s Sharia Law Debate: Law and Politics under the Charter,” in *Law and Religious Pluralism in Canada*. Richard J. Moon, ed. Chapter 10, pp. 239-263.
- Laura Barnett et al, *An Examination of the Duty to Accommodate in the Canadian Human Rights Context*. Background Paper. (Canada: Library of Parliament, 2012).

WEEK 10 – Mar. 20: Human Rights Tribunals/Commissions

Readings:

- Rosanna Langer, “An Overview of Public Administration of Human Rights Enforcement in Canada,” *Defining Rights and Wrongs: Bureaucracy, Human Rights and Public Accountability*. (Vancouver: UBC Press, 2007). Chapter 1, pp. 1-24.
- Richard Moon, “The Regulation of Hate Speech Under the *Canadian Human Rights Act*,” *Canadian Diversity* (2010) 83: 28-32.
- Case: *Moore v. British Columbia (Education)* [2012]

WEEK 11 – Mar. 27: Rights Discourse

Readings:

- Mary Ann Glendon, “The Land of Rights,” *Rights Talk: The Impoverishment of Political Discourse*. (Free Press, 1991), chapter 1, pp. 1-17.
- Janet Hiebert, “Debating Policy: The Effects of Rights Talk,” in *Equity & Community: The Charter, Interest Advocacy and Representation*. F. Leslie Seidle, ed. (Montreal: Institute for Research on Public Policy, 1993), pp. 31-60.

WEEK 12 – Apr 3: Reform / Conclusions

Reading:

- Vanessa A. MacDonnell, “The Constitution as Framework for Governance.” *University of Toronto Law Journal*. 63(4): 624-54.