

PSCI 463/666/LS 463: Rights and Public Policy

Fall, 2020

Remote meetings: Thursdays, 12:30-2:20pm

Instructor: Dr. Emmett Macfarlane

Email Address: emacfarl@uwaterloo.ca

Office Location: Hagey Hall 308

Office Hours: Mondays 9:30am-10:30am, or by appointment

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

- **Please use your official UW email account.**
- **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 virtual office hours or make an appointment to connect 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. Seminar topics involve policies implicating the Charter of Rights and Freedoms, including health care, social policy and the welfare state, multiculturalism, the environment, animal rights, 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.

Format:

This is a seminar class. Student participation and discussion of key issues, particularly on the Learn discussion boards, is crucial. Course readings and cases will be the primary component.

Texts:

There is no textbook purchase required for this course. All of the readings and cases are available through the course LEARN site or online.

Recommended text: *Policy Change, Courts, and the Canadian Constitution*, Emmett Macfarlane ed. (University of Toronto Press, 2018). [This year, if you are interested in the additional recommended readings, I recommend ordering this book from Amazon.ca or another online seller]

Course Requirements, Expectations, and Standards:

Assignments:

Participation (30%):

You will be evaluated on regular, quality contributions to class discussions on the Learn site. We will also be meeting each week for ungraded discussions at the assigned class time [via Web Ex]. This is a major component of the course, and doing all of the readings is integral to your success.

Each week has its own discussion topic, which is open for six days immediately following our Thursday meeting. You cannot participate in anyone else's thread until you start your own (this requires you to start a new thread with a comment, question, etc.). Students are expected to participate actively in each week's discussions, although you are NOT required to participate in *every thread* in a given week's discussion. Feel free to be argumentative! But remember to be respectful! This isn't Twitter, after all.

Critical Commentaries and Discussion Questions (30%):

Students will submit a one-page critical commentary 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 **six** such assignments must be submitted during the term. **Each assignment is due to the Learn dropbox by 12:00pm on the day the reading is assigned (i.e. Thursdays before our virtual meetings). NOTE: no late assignments will be accepted.**

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 distributed. **Final due date: Wednesday November 28 by 7:00pm to the dropbox on Learn.**

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 463. 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 professor.

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

The research paper 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.

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.

***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.

University Regulations

Cross-listed course

Please note that a cross-listed course will count in all respective averages no matter under which rubric it has been taken. For example, a PHIL/PSCI cross-list will count in a Philosophy major average, even if the course was taken under the Political Science rubric.

Academic Integrity and Discipline

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. See the [Office of Academic Integrity webpage](#) for more information.

Discipline: A student is expected to know what constitutes academic integrity, to avoid committing academic offences, and to take responsibility for his/her actions. Check [the Office of Academic Integrity](#) for more information. 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](#). For typical penalties check [Guidelines for the Assessment of Penalties](#).

Grievances and 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?).

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.

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. When in doubt, please be certain to contact the department’s administrative assistant who will provide further assistance.

Appeals: A decision made or penalty imposed under Policy 70 - Student Petitions and Grievances (other than a petition) or Policy 71 - Student Discipline may be appealed if there is a ground. A student who believes he/she has a ground for an appeal should refer to [Policy 72 - Student Appeals](#).

Accommodation for Students with Disabilities

Note for students with disabilities: The [AccessAbility Services](#) office, located on the first floor of the Needles Hall extension (1401), 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 the AS office at the beginning of each academic term.

Mental Health Support

All of us need a support system. The faculty and staff in Arts encourage students to seek out mental health supports if they are needed.

On Campus

- Counselling Services: counselling.services@uwaterloo.ca / 519-888-4567 ext 32655
- [MATES](#): one-to-one peer support program offered by Federation of Students (FEDS) and Counselling Services
- Health Services Emergency service: located across the creek from Student Life Centre

Off campus, 24/7

- [Good2Talk](#): Free confidential help line for post-secondary students. Phone: 1-866-925-5454
- Grand River Hospital: Emergency care for mental health crisis. Phone: 519-749-433 ext. 6880
- [Here 24/7](#): Mental Health and Crisis Service Team. Phone: 1-844-437-3247
- [OK2BME](#): set of support services for lesbian, gay, bisexual, transgender or questioning teens in Waterloo. Phone: 519-884-0000 extension 213

Full details can be found online at the Faculty of ARTS [website](#)

Download [UWaterloo and regional mental health resources \(PDF\)](#)

Download the [WatSafe app](#) to your phone to quickly access mental health support information

Turnitin.com: Text matching software (Turnitin®) will be used to screen assignments in this course. This is being done to verify that use of all material and sources in assignments is documented. Students will be given an option if they do not want to have their assignment screened by Turnitin®. In the first week of the term, details will be provided about arrangements and alternatives for the use of Turnitin® in this course.

Schedule:

WEEK 1 – Sep. 10: Introduction

WEEK 2 – Sep. 17: Judicial Review

Readings:

- Jeremy Waldron, “The Core of the Case Against Judicial Review,” *Yale Law Journal* 115 (2006): 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.

Recommended:

- Janet Hiebert, “The Charter, Policy, and Political Judgment,” *Policy Change, Courts, and the Canadian Constitution*, ch. 4.

WEEK 3 – Sep. 24: Positive Rights?

Readings:

- 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.
- Emmett Macfarlane, “The Dilemma of Positive Rights: Access to Health Care and the Canadian Charter of Rights and Freedoms,” *Journal of Canadian Studies*. (2014) 48(3): 49-78.

WEEK 4 – Oct. 1: Rights that Aren't – or Weren't – Part of the Charter

Reading:

- Dwight Newman and Lorelle Binnion, "The Exclusion of Property Rights from the Charter: Correcting the Historical Record." *Alberta Law Review* (2015) 52(3): 543-65.
- 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.
- *Saskatchewan Federation of Labour v. Saskatchewan*, [2015]

Recommended:

- Michael McCrossan, "Contrasting Visions of Indigenous Rights, Recognition, and Territory: Assessing Crown Policy in the Context of Reconciliation and Historic Obligations," *Policy Change, Courts, and the Canadian Constitution*, ch. 17.

WEEK 5 – Oct. 8: Overturning Courts?

Reading:

- Dennis Baker and Rainer Knopff, "Daviault Dialogue: The Strange Journey of Canada's Intoxication Defence," *Review of Constitutional Studies*. (2014) 19(1): 35-58.
- Janet Epp Buckingham, "Ruling Restricts Government Funding for Religious Schools," *Oxford Journal of Law and Religion*. (2017) 6: 600-3.
- Emmett Macfarlane, "Doug Ford's law to slash Toronto council is unfair – but the court shouldn't have spiked it," *Maclean's* (September 10, 2018)
<https://www.macleans.ca/opinion/doug-fords-law-to-slash-toronto-council-is-unfair-but-it-should-not-be-struck-down/>
- Mark Gollom, "Doug Ford's use of notwithstanding clause sparks fears it will embolden others to invoke it," CBC News (September 12, 2018)
<https://www.cbc.ca/news/canada/toronto/doug-ford-notwithstanding-clause-charter-city-council-1.4818668>
- Grégoire Webber, Eric Mendelsohn, and Robert Leckey, "The faulty received wisdom around the notwithstanding clause," *Policy Options* (May 10, 2019)
<https://policyoptions.irpp.org/magazines/may-2019/faulty-wisdom-notwithstanding-clause/>

- Recommended:

- Richard Albert, "The Desuetude of the Notwithstanding Clause – and How to Revive It," *Policy Change, Courts, and the Canadian Constitution*, ch. 7.

[NO CLASS Oct. 15 DUE TO FALL READING WEEK]

WEEK 6 – Oct. 22: Animal Rights?

Readings:

- Tom Regan, “The Case for Animal Rights,” *The Humane Society Institute for Science and Policy* (1986): 179-89.
- Jan Narveson, “A Case Against Animal Rights,” *The Human Society Institute for Science and Policy* (1986): 191-204.
- William A. Edmundson, “Do Animals Need Rights?” *The Journal of Political Philosophy*. (2015) 23(3): 345-360.

WEEK 7 – Oct. 29: 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]

Recommended:

- Eleni Nicolaidis and Matthew Hennigar, “Carter Conflicts: The Supreme Court of Canada’s Impact on Medical Assistance in Dying Policy,” *Policy Change, Courts, and the Canadian Constitution*, ch. 15.

WEEK 8 – Nov. 5: 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]

Recommended:

- Rachael Johnstone, “Canadian Abortion Policy and the Limitations of Litigation,” *Policy Change, Courts, and the Canadian Constitution*, ch. 16.

WEEK 9 – Nov. 12: Multiculturalism Policy and Rights

Readings:

- Laura Barnett et al, *An Examination of the Duty to Accommodate in the Canadian Human Rights Context*. Background Paper. (Canada: Library of Parliament, 2012).
- Carissima Mathen, “Reflecting Culture: Polygamy and the Charter,” *Supreme Court Law Review* (2012) 57(2d): 357-74.

Recommended:

- Stéphanie Chouinard, “Section 23 of the Charter and Official-Language Minority Instruction in Canada,” *Policy Change, Courts, and the Canadian Constitution*, ch. 11.
- Christopher G. Anderson and Dagmar Soennecken, “Taking the Harper Government’s Refugee Policy to Court,” *Policy Change, Courts, and the Canadian Constitution*, ch. 14.

WEEK 10 – Nov. 19: Human Rights Tribunals/Commissions

Readings:

- *Stewart v. Elk Valley Coal Corp*, [2017]
- Richard Moon, “The Regulation of Hate Speech Under the *Canadian Human Rights Act*,” *Canadian Diversity* (2010) 83: 28-32.

Recommended:

- Kyle Kirkup, “After Marriage Equality: Courting Queer and Trans Rights,” *Policy Change, Courts, and the Canadian Constitution*, ch. 18.

WEEK 11 – Nov. 26: Religious Freedom

Readings:

- *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)* [2017]
- *Trinity Western University v. Law Society of Upper Canada* [2018]

WEEK 12 – Dec. 3: Rights Talk/Reform/Conclusions

Reading:

- Mary Ann Glendon, “The Land of Rights,” *Rights Talk: The Impoverishment of Political Discourse*. (Free Press, 1991), chapter 1, pp. 1-17.
- Vanessa A. MacDonnell, “The Constitution as Framework for Governance.” *University of Toronto Law Journal*. 63(4): 624-54.

Recommended:

- Troy Riddell and Dennis Baker, “The Charter Beat: The Impact of Rights Decisions on Canadian Policing,” *Policy Change, Courts, and the Canadian Constitution*, ch. 8.