

**CIVIL LIBERTIES AND THE CHARTER
LAW 359**

SPRING 2012 COURSE DESCRIPTION

**Professor Jeremy Webber
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1. CONTACT DETAILS:

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This class will be administered using a Moodle site. Please try to log on as soon as possible and let me know if you experience any trouble.

2. COURSE DESCRIPTION:

This course explores a number of central aspects of the interpretation of the Canadian Charter of Rights and Freedoms, especially by focusing upon a set of linked issues concerning substantive equality, the potential for advancing social and economic rights under section 7, and the imposition of positive obligations on the state. The discussion of those issues will provide an optic upon the nature and legitimacy of judicial review, the limitations, scope, and consequences of Charter adjudication, the comparative strengths and weaknesses of other forms of rights protection (especially statutory bills of rights), and the consequences of these factors for the way in which rights are interpreted. Specific aspects of the Charter to be covered will include section 15, section 7, freedom of association, and a brief excursion into freedom of religion. The course will draw, from time to time, upon insights obtained through comparison to other countries' constitutions, especially the protection of social and economic rights in India and South Africa.

3. OBJECTIVES:

By the end of the course, you should:

- Have a deeper knowledge of the interpretation, both actual and potential, of several sections of the Charter, especially sections 2a, 2d, 7 and 15.
- Have a sense of the issues involved in and the challenges encountered when litigating social and economic rights or seeking to secure positive obligations from government through a Charter challenge. This will probe what is often seen to be a crucial boundary of the Charter's purview: its focus on protecting the "individual" against state action, seeing the state as threatening rights as opposed to enabling them.

- Have explored the extent to which the Charter might be used to address issues of poverty and extreme economic disadvantage in Canadian society.
- Have reflected upon the respective roles of the courts and legislatures in interpreting and securing the rights under the Charter, including the question of judicial deference to legislative decision-making.

4. CLASS FORMAT:

Class sessions will occur in varied modes.

- (1) We begin with a mooted exercise that is designed to introduce, in experiential form, the central issues of the course.
- (2) Many sessions will run as a seminar, some focusing on cases, some on analytical or theoretical works. For each and every one of these sessions, you will be expected to have read, thought about, and be ready to discuss the readings for that session. The discussion of that day's readings will often be led by prepared commentary by one or two members of the class (see below), followed by general discussion. You are encouraged to bring problems encountered in your paper to the class discussion (when relevant).
- (3) From time to time we will vary this format, for example by having a class commenced by a group presentation, or by having different parts of the class read different works and compare notes.

Participation is strongly encouraged (indeed required), but please be mindful of the number of students and the consequent need to allow others space to participate.

The course deals with issues on which opinions can be strongly held, and in which participants can believe that their most fundamental interests are on the line. All participants must treat others with respect.

5. COURSE MATERIALS:

The materials will be distributed primarily through the Moodle site, either by having the readings posted directly on the site or by linking to outside sources. A few materials will be placed on reserve. Check the Moodle site for the reading schedule and information on how to obtain the readings.

6. EVALUATION:

The method of evaluation has two components weighted as follows:

1. Class participation (20%):

This in turn will consist of three elements:

- a) Your participation in the Moot exercise, including your memorandum of arguments or reasons (as the case may be). The memorandum is to be no more than two pages long. This mooting component will be worth 5% of your total mark.
- b) My assessment of your prepared “quote and comment” on the readings on the day on which you serve as one of the discussion leaders. This will be worth 5%.

In the first class sessions, you will choose or be assigned the day on which you will serve as a discussion leader. Your comment should be five minutes in length. It must take a quotation from the reading (no more than one short paragraph) and use that as the foundation for an insightful and thoughtful comment on an important idea raised by the reading, primarily as a means of prompting discussion. **It should not be a summary of the reading.** You will be expected to prepare a one-page handout, to be e-mailed to me the day before the class for distribution to all members, which sets out the quotation you have chosen and then at most two or three bullet points, which serve as an outline for your comments.

- c) My assessment of your participation in class discussions generally, including class attendance and participation in the seminar discussions. This component will be worth 10%.

Attendance at all class sessions is required. Note that this includes the make-ups. If for any reason you cannot attend a seminar, please inform me in advance.

2. Term paper (80%):

The term paper is the principal mode of evaluation in the course. It must be approximately 5000 to 6250 words exclusive of footnotes and bibliography (20 to 25 pages at 250 words per page). It must be your own individual work. Please read carefully the guidelines for the paper below.

The paper must grapple with one of the issues central to the class. I must approve the topic in advance. **The topic must be chosen and notified to me by January 27.** The due date is **Monday April 16.**

It is possible for law students to do their Major Research Paper in this course. If so, you must meet the word requirements of that Paper (minimum 7500 words, exclusive of footnotes and bibliography). Please see me early in the semester to discuss.

Penalties for late submission:

Please see the Moot instructions for due dates for the memoranda. Unless an extension is requested and approved, your memorandum will not be accepted after that date and will receive a grade of 0.

The handout for your “quote and comment” must be submitted the day before the class at which you are commenting. It will not be accepted after that time and will receive a grade of 0.

Unless an extension is requested and approved, the term paper must be submitted by noon on April 16. Papers submitted after that date will incur a penalty of 1 grade step for each weekday (including holidays).

7. GENERAL GUIDELINES FOR PAPERS

New work:

The work that you do for the paper must be "new work". “Multiple submissions” of your own work (i.e. the submission of the same paper in more than one academic course) is a serious academic offence unless you have obtained the prior permission of the instructors concerned. (See the section on academic integrity at the end of this memo.) Similarly, it would be academically dishonest to submit as your paper all or part of a memo, report, or other work product that you undertook or completed outside the academic context such as for employment purposes. Accordingly, if you wish to make use in your paper of research or writing that you have already completed, whether within an academic context or not, you **must** discuss this with me before doing so. We can then jointly determine the extent to which it would be appropriate for you to rely on, and build upon, such work.

Knowledge and Thought:

The paper should demonstrate that you have thought about your topic in depth and that you have acquired a thorough grasp of the subject area that you have chosen to write about. It should also demonstrate your ability to think critically about your topic.

Style, Format and Presentation: The paper should be well organized, well written and well presented.

Organization: The paper should be logically organized around a central thesis or theme. It should have an introduction and a conclusion and the sections in between should unfold in a logical fashion. In the introduction you should tell the reader what the paper is about, what your thesis is, and how the paper will unfold. (Try to capture the reader’s interest and make him/her want to keep reading.) The “middle” sections of the paper should “tell the story you want to tell” and provide the reader with the background he/she will need to understand

that story. Headings, sub-headings, and “bridging text” between sections should be used to improve the clarity of your message and the “readability” of the paper. The conclusion should draw the themes of your paper together and make your “final statement” about your topic.

Writing: The paper should be well written in terms of word usage, sentence structure, grammar, and spelling. Please read your work with a critical eye, **before** submitting it to me. Try to detach yourself from what you have written and put yourself in the shoes of a reader. Ask yourself if each sentence is a complete sentence. Does it make sense? Is it too wordy? Is it clear? Do the sentences, paragraphs and sections flow logically from one idea or topic to the next? Is there sufficient “bridging” text between sections to improve “readability”?

Format and Presentation: You must use proper style for case citations and other footnotes. Follow the *Canadian Guide to Uniform Legal Citation*. Your final product should also be well presented in terms of its overall appearance. Lines should be 1.5 spaced or double-spaced and I suggest you use 1.25 inch margins and a 12 point font. **Run the spell and grammar check functions on the entire paper before submitting it.**

UNIVERSITY STATEMENT REGARDING ACADEMIC INTEGRITY

Academic integrity is expected of all participants in the University Community. It is a serious academic offence to engage in plagiarism or other forms of academic dishonesty or to assist others in doing so. Students should familiarize themselves with the Academic Regulations of the University of Victoria Regarding Academic Integrity that are set out in the University Calendar.

The rules regarding proper use and citation of primary and secondary sources and what constitutes improper use of sources, are not always well-known by students. **If you have any doubts in this regard, please discuss them with the instructor.**

Note that **“multiple submissions” of your own work is an academic offence** unless you have obtained the prior permission of the instructor. This means that you are not allowed to submit the same work for academic credit in more than one course, regardless of whether or not the other course is one at this university or at another academic institution. Note that similar issues may arise regarding the use of research and writing that has been undertaken or completed in an employment or other non-academic context. Students should consult their instructor for permission in such cases.

Plagiarism and other forms of academic dishonesty may lead to disciplinary proceedings and, depending on the circumstances, may result in the imposition of academic penalties ranging from a reprimand, loss of credit for a course, an “F” grade, or temporary or permanent suspension from the Faculty or the University.