

**EQUALITY, HUMAN RIGHTS AND SOCIAL JUSTICE**

LAW 378

SPRING TERM 2009

Instructors:

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**Units/Hours:** 1.5 units, requiring three hours per week class time  
Classes meet Fridays from 9 am to 12 noon

**Prerequisite:** Students must have completed the first year course in Canadian constitutional law or an equivalent or obtain the permission of the instructor.

**Class Format:**

The course is a seminar. Classroom time will consist of discussion, mini lectures, classroom exercises, and presentations by students and guests.

**Office Hours:** By appointment after class, or by phone/email (or in person in Vancouver by appointment.)

**Course Description:**

This course will examine the role of law and of legal conceptions of equality in struggles by equity seeking groups and individuals for social justice in Canada. Topics covered include the relation of social movements to law and social change, Charter equality rights and strategic litigation, the institutional and jurisprudential frameworks of domestic human rights law, and critical theoretical debates pertaining to anti-discrimination law.

The class will begin with an introductory session on the relation of social movements to law and theories of social advocacy and social change. We will return to these themes throughout the course, both from a theoretical perspective and practitioners' perspective. We will repeatedly encourage you to ask yourself, "How can we most effectively use the law to support social change?"

Although all of you have some grounding in Charter equality law from your first year constitutional law course, we will spend a few sessions reviewing s. 15 jurisprudence and teasing out some of the main conundrums facing the courts today. Next there are several sections on the institutional and jurisprudential frameworks of human rights law. In this part of the course, we will also look at some of the current challenges and tensions within discrimination jurisprudence. Classes toward the end of the term will focus on the domestic application of international human rights laws, practical considerations when bringing equality and human rights cases (such as standing and costs) and the role government plays in advancing human rights and social equity.

### **Course Materials:**

We will be using a course pack. There may also be handouts throughout the term.

### **Course Objectives:**

- Critically analyse the relationship between social movements, law and social change in Canada.
- Acquire basic knowledge of the legal and jurisprudential frameworks for pursuing anti-discrimination and equality claims in Canada.
- Extend and deepen knowledge of current strategic and jurisprudential challenges in the human rights arena.
- Analyze a social justice problem of concern and critically assess the ways in which human rights and equality law address those concerns.
- Develop oral presentation and writing skills.

### **Evaluation:**

Your term papers will count for 75% of the grade in the seminar and class participation will count for 25%.

- a. **Term Papers:** You are required to write a research paper on an aspect of equality or human rights law of your choosing. Your paper may focus on an issue related to the interpretation and application of s.15 of the Charter or Canadian anti-discrimination legislation, or both, or on developments in equality law and human rights law in other jurisdictions or international contexts. You are expected to conduct research in the relevant primary (cases, statutes etc.) and secondary sources (scholarly articles, books and reports). Your paper may be primarily theoretical or primarily practical in orientation; it may be historical or contemporary; it may have a domestic, comparative or international focus. Papers should engage with the subject matter and materials covered in the course as much as possible.

Papers will be graded on the quality of the research, writing and analysis. The term papers are due on **Friday, April 16**. Please submit your paper to us by email. Students who miss the deadline for the final paper risk losing up to 5 points on their overall grade for the course for each day the paper is late. Short of extenuating personal or compassionate circumstances, we are not willing to be flexible about the deadline and penalties.

Length: Your term papers should be roughly 6,500 - 7,500 words (excluding notes, bibliography and appendices). There is no maximum length, but writing more than 40 pages double-spaced is unwise.

Approval of Topic and Submission of Outline: To assist you in framing your topic, paper outlines should be sent to us by email by **10 a.m. on Tuesday, February 2** (failure to submit on time will result in a 5% deduction from the grade assigned to the final paper). We will copy the outlines and distribute them to the class at our meeting on **Friday, February 5**. We will gladly make ourselves available to discuss your paper topic with you before you submit your paper outline.

b. **Class Participation (25%)**

Attendance and engagement (15%): This portion of the class participation grade will be based on attendance and our assessment of the depth and quality of your engagement with the material. Students who attend the seminar regularly, explain any absences, and show some evidence of consistent engagement, will receive at least a (B) on this portion of the participation grade.

Paper outline feedback (5%): Each student will be assigned the task of commenting on another student's paper outline. Your feedback should be delivered by email to your colleague and us by **Friday, February 12**, a week after copies of the outlines are distributed. Your feedback should be concise (suggested length: 1-2 pages double spaced) and should give a candid appraisal and constructive suggestions to your colleague. Is the paper topic well defined? Is it too narrow or too broad? Are the main issues clearly identified? Is the importance of the topic apparent? Has the author made clear what s/he aims to contribute to the literature? Can the author's goals be accomplished in the space allocated for the term paper? Is the author's research methodology appropriate for the topic? Are there important sources (cases, legislation, articles, books) not mentioned in the bibliography?

Class Facilitation (5%): This portion of the participation grade will be based on your facilitation of class discussion for roughly 30 minutes on one occasion during the course. You may facilitate on your own or in groups of one to two. Student facilitators should contact each other to coordinate their coverage of the materials. Please inform us of the readings or topic you would like to facilitate by **January 18**, and we will do our best to accommodate your wishes. Facilitators should prepare a summary of roughly 250 words (per student) of the issues or questions they would like to pursue in class. **You must distribute your summary to the course instructor and other students by the end of the day on Monday before the Friday's class.** The issues or questions you raise should flow out of the required readings, but may also be drawn from the recommended readings or any other relevant literature, case law or emerging controversies.

## Course Plan

Note: Dates and Topics are Subject to Change

#	Date	Topic	Required Readings
1	Jan 8	Introduction  Lecturers: Grace Pastine, Carmen Cheung	No readings.
2	Jan 15	Social Movement Activism: Theories of Advocacy and Social Change  Lecturer: Grace Pastine, Carmen Cheung	<p>Thomas B. Stoddard, Bleeding Heart: Reflections on Using the Law to Make Social Change, 72 N.Y.U. L. Rev. 967 (1997)</p> <p>Nan D. Hunter, Lawyering for Social Justice, 72 N.Y.U. L. Rev. 1009, 1011-13, 1017-22 (1997).</p> <p>Gerald Torres, Legal Change, 55 Cleveland State. L. Rev. 135 (2007)</p> <p>William Quigley, Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations, 21 Ohio N.U.L. Rev. 455, 466-71 (1994).</p> <p><u>Supplementary Reading</u></p> <p><a href="#">William P. Quigley, Letter to a Law Student Interested in Social Justice, 1 DePaul J. for Soc. Justice 7 (Fall 2007).</a></p> <p>William P. Quigley, Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth, 20 Wash. UJL &amp; Pol'y 101 (2006).</p> <p>Allan C. Hutchinson, "Charter Litigation and Social Change: Legal Battles and Social Wars" in Robert J. Sharpe, ed., Charter Litigation (Toronto: Butterworths, 1987) 357.</p> <p>Steve Wexler, "Practicing Law for Poor People", 79 Yale L.J. 1049, 1053 (1971).</p>

3	Jan 22	<p>Defining Equality Rights: Law and Meiorin</p> <p>Lecturer: Grace Pastine, Carmen Cheung</p>	<p><a href="#">Law v. Canada</a>, [1999] 1 S.C.R. 497</p> <p><a href="#">B.C. (Public Service Employee Relations Commission) v. BCGSEU ("Meiorin")</a>, [1999] 3 S.C.R. 3</p> <p><u>Supplementary Reading</u></p> <p>Peter W. Hogg, "What is Equality? The Winding Course of Judicial Interpretation" (2005) 29 Supreme Court L.R. (2d) 39.</p>
4	Jan 29	<p>The Purposes of Section 15 and the Meanings of Equality</p> <p>Lecturer: Grace Pastine, Carmen Cheung</p>	<p>Donna Greschner, "The Purpose of Canadian Equality Rights", (2002) 6 Review of Constitutional Studies 290</p> <p>Sophia R. Moreau, "The Wrongs of Unequal Treatment", (2004) 54 U.T.L.J. 291 (reprinted in Faraday et al eds., Making Equality Rights Real (2006))</p> <p><u>Supplementary Reading</u></p> <p>Peter Westen, "The Empty Idea of Equality" (1982) 95 Harv. L. Rev. 537.</p> <p>David M. Beatty, "The Canadian Conception of Equality", (1996) 46 U.T.L.J. 349</p>

5	Feb 5	Prohibited Grounds of Discrimination  Lecturer: Grace Pastine, Carmen Cheung	<p><a href="#">Corbière v. Canada (Minister of Indian and Northern Affairs)</a>, [1999] 2 S.C.R. 203</p> <p>Dianne Pothier, "Connecting Grounds of Discrimination to Real People's Real Experiences", (2001) 13 C.J.W.L. 37, 37-58</p> <p><u>Supplementary Reading</u></p> <p>Canadian Human Rights Commission, Prohibited Grounds of Discrimination in Canada (2006)</p> <p><a href="#">Denise G. Réaume, "Of Pigeonholes and Principles: A Reconsideration of Discrimination Law"</a>, (2002) 40 Osgoode Hall L.J. 113</p> <p>Colleen Sheppard, "Grounds of Discrimination: Towards an Inclusive and Contextual Approach", (2001) 80 Can. Bar Rev. 893</p>
6	Feb 12	Racial Discrimination and Equality Rights  Lecturer: Carmen Cheung	<p><a href="#">Nitya Iyer, "Charter Litigating for Racial Equality"</a> (1996)</p> <p>Sujit Choudhry, "Protecting Equality in the Face of Terror: Ethnic and Racial Profiling and s.15 of the Charter" in R.J. Daniels, P. Macklem and K. Roach eds., <i>The Security of Freedom: Essays on Canada's Anti-Terrorism Bill</i> 367-381 (Toronto: University of Toronto Press, 2001)</p> <p><u>Background Reading</u></p> <p><a href="#">OHRC, Policy and Guidelines on Racism and Racial Discrimination</a> (2005)</p>
	Feb 19	Reading Break	No Class

7	Feb 26	<p>Intersectionalities: Strategies for Claims Involving Multiple Discrimination</p> <p>Lecturer: Carmen Cheung</p>	<p>C. A. Aylward, "Intersectionality: Crossing the Theoretical and Praxis Divide" (1999)</p> <p><a href="#">Ontario Human Rights Commission, An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims (Discussion Paper, 2001)</a></p> <p><u>Supplementary Reading</u></p> <p><a href="#">Canada (A.G.) v. Mossop, [1993] 1 SCR 554</a></p> <p>Nitya Duclos, "Disappearing Women: Racial Minority Women in Human Rights Cases" (1993) 6 C.J.W.L. 25.</p> <p><a href="#">Baylis-Flannery v. DeWilde</a>, 2003 HRTO 28, 48 C.H.R.R. D/197</p>
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8	<p>Mar 5 Access to Justice: Charter Damages, Public Interest Standing and Costs</p> <p>Lecturer: Grace Pastine</p>	<p>Faisal Bhabha, "Institutionalizing Access to Justice: Judicial, Legislative and Grassroots Dimensions", (2007) 33 Queen's L.J. 139</p> <p><u>Background Readings:</u></p> <p><a href="#">Ward v. British Columbia</a>, 2009 BCCA 23</p> <p><a href="#">Downtown Eastside Sex Workers United Against Violence Society et al v. Attorney General of Canada</a>, 2008 BCSC 1726</p> <p><u>Supplementary Readings:</u></p> <p>Avvy Go, "Whose Charter Is It Anyways? An Examination of Charter Litigation as it Relates to the Chinese Canadian community", (2007) 22 N.J.C.L. 93</p> <p><a href="#">Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)</a>, 2007 SCC 2, [2007] 1 S.C.R. 38</p> <p><a href="#">Canadian Bar Association v. B.C.</a>, 2008 BCCA 92</p> <p><a href="#">British Columbia (Attorney General) v. Christie</a>, 2007 SCC 21, 1 S.C.R. 873</p>
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9	Mar 12	<p>Comparative Equality Rights: United States</p> <p>Lecturer: Carmen Cheung</p>	<p><a href="#">Parents Involved in Community Schools v. Seattle School District No. 1 et al</a>, (2007) 127 S. Ct. 2738 (Roberts opinion for the plurality; Breyer dissent)</p> <p><u>Background Reading:</u></p> <p>Ronald Rotunda and John Nowak, Treatise on Constitutional Law: Substance and Procedure 4<sup>th</sup> ed. (Thomson/West, 2008), Chapter 18, "Equal Protection", pp.294-320</p> <p><u>Supplementary Reading</u></p> <p>Jack M. Balkin and Reva B. Siegel, "The American Civil Rights Tradition: Anticlassification or Antisubordination?", (2003-04) 58 U. Miami L. Rev. 9</p> <p><a href="#">R. v. Kapp</a>, 2008 SCC 41</p>
10	Mar 19	<p>Assessing Equality Rights: What Difference Does Section 15 Make?</p> <p>Lecturer: Grace Pastine</p>	<p>Janet Hiebert, "Assessing the Charter's Influence", chapter 9 in Charter Conflicts: What Is Parliament's Role? (Montreal &amp; Kingston: McGill-Queen's U. Press, 2002)</p> <p>Judy Fudge, "The Canadian Charter of Rights: Recognition, Redistribution, and the Imperialism of the Courts", in Tom Campbell, K.D. Ewing and Adam Tomkins eds., Sceptical Essays on Human Rights (Oxford: Oxford University Press, 2001)</p> <p>David Schneiderman, "Universality v. Particularity: Litigating Middle Class Values under Section 15", in McIntyre and Rodgers eds, Diminishing Returns (2006) at 367</p>

11	Mar 26	<p>The Domestic Application of International Human Rights Laws</p> <p>Lecturer: Carmen Cheung</p>	<p>Dale Gibson, <i>The Law of the Charter: Equality Rights 12-17</i> (Scarborough, ON: Carswell, 1990)</p> <p>Ruth Sullivan, <i>Sullivan on the Construction of Statutes</i>, 5th ed., Ch. 20 (Markham: Butterworths, 2008)</p> <p>Harold Hongju Koh, "How Is International Human Rights Enforced?", 74 <i>IND. L.J.</i> 1397 (1999)</p> <p><a href="#">Canada (Justice) v. Khadr</a>, 2008 SCC 28.</p> <p><u>Supplementary Readings</u></p> <p>International human rights instruments: <a href="http://www2.ohchr.org/english/law/">http://www2.ohchr.org/english/law/</a></p> <p>Donald J. Fleming &amp; John P. McEvoy, "Domestic Implementation of Canada's International Human Rights Obligations" in Oonagh E. Fitzgerald, ed., <i>The Globalized Rule of Law: Relationships Between International and Domestic Law</i> (Toronto: Irwin Law, 2006).</p> <p>Anne Bayefsky, "International Human Rights in Canadian Courts" in Benedetto Conforti &amp; Francesco Francioni, eds., <i>Enforcing International Human Rights in Domestic Courts</i> (The Hague: Martinus Nijhoff, 1997) at 295.</p> <p><a href="#">Victoria v. Adams</a>, 2008 BCSC 1363, paras. 75 - 100.</p>
	Apr 2	Spring Break	No Class

12	Apr 9	<p>The Role of the Government in Advancing Human Rights: Public Inquiries and the Attorney General</p> <p>Lecturer: Grace Pastine</p>	<p>Kent Roach, "Not Just the Government's Lawyer: The Attorney General as Defender of the Rule of Law" 31 Queens Law Journal 598-643 (2006)</p> <p>Craig Jones, "The Attorney General's Standing to Seek Relief in the Public Interest: The Evolving Doctrine of Parens Patriae" (2007) 86 Can. Bar Rev. 121</p> <p><u>Supplementary Readings</u></p> <p>Frank Iacobucci, "Commissions of Inquiry in Canada", 12 Dalhousie L.J. 21 1989-1990</p> <p>Bryan Schwartz, "Public inquiries", Canadian Public Administration, Volume 40 Issue 1, 1997</p> <p><a href="#">Alone and Cold: The Davies Commission Inquiry Into the Death of Frank Paul</a></p>
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