

**COURSE SCHEDULE**

**LAWS 4311A**

**Winter 2017**

**Advanced Legal Topic  
CORRECTIONAL LAW, HUMAN RIGHTS IN CANADIAN PRISONS**

**Professor: Maeve W. McMahon**

*Readings should be completed prior to the class.*

*Students are assigned individual topics for presentation (see course outline for details of the presentation structure, format, and evaluation). **IF A STUDENT FAILS TO MAKE THE PRESENTATION ON THE ASSIGNED DATE YOU WILL LOSE THE OPPORTUNITY OF MAKING AN IN-CLASS PRESENTATION, AS WELL AS THE MARKS FOR THE ASSIGNMENT.***

**1      January 9      INTRODUCTION AND LESSONS FROM SCHOLARSHIP:** Introduction of instructor and students and their interests; Course summary and overview; Discussion of expectations concerning class attendance and participation, presentations, and final assignments; Student selection of presentation topics.

**2      January 16      OVERVIEWS OF THE ORGANIZATION OF THE CANADIAN PRISON SYSTEM; BAIL ISSUES AND HUMAN RIGHTS; THE EVOLUTION OF THE MISSION STATEMENT OF THE CORRECTIONAL SERVICE OF CANADA; CORRECTIONS, THE CONSTITUTION, AND THE RULE OF LAW; AND OF THE SITUATION OF HUMAN RIGHTS IN THE PRISONS HISTORICALLY AND RECENTLY**

*Objectives      - to introduce the work of revisionist historians, and especially the theme of a dissonance between rhetoric and practice concerning human rights and prisons*

*- to identify current issues concerning corrections and human rights, especially with respect to problems in the bail system*

*- to introduce students to key components of the Canadian prison system*

*- to identify and discuss the aspirations articulated in the Mission Statement (1992) of the Correctional Service of Canada*

Readings:

1 Curt T. Griffiths and Simon Verdun-Jones “The Structure and Operation of Canadian Corrections,” pp. 459-494 in their book **Canadian Criminal Justice**, second edition. Toronto: Harcourt Brace and Company. 1994. (On reserve at the library).

2 Canadian Civil Liberties and Education Trust “*Set Up to Fail: Bail and the Revolving Door of Pre-trial Detention*” [authored by Abby Deshman and Nicole Myers]. July 2014. Toronto: Canadian Civil Liberties Association. Available online [www.ccla.org](http://www.ccla.org) (click ‘our work’ and then click ‘reports’).

3 “Introduction,” pp. 1-12, and “Change and Continuity in the Canadian Prison: Lessons from Scholarship,” pp. 15-31 in Michael Jackson **Justice Behind the Walls: Human Rights in Canadian Prisons**. Vancouver: Douglas and McIntyre, 1992 [hereafter referred to as ‘Jackson’].

4 “‘Good Corrections’: Organizational Renewal and the Mission Document,” pp. 33-46, and “Corrections, the Courts, and the Constitution,” pp. 47-73, in Jackson.

**3 January 23 1) CHANGES IN FEDERAL CORRECTIONS OVER THE PAST 3 DECADES**

**2) THE RE-EMERGENCE OF ISSUES OF PRIVATIZATION IN CRIMINAL JUSTICE IN ONTARIO DURING THE 1990S**

**3) ABORIGINAL PRISONERS AND SPIRITUALITY; AND A PRELIMINARY EXAMINATION OF CONDITIONS CONCERNING THE USE OF SEGREGATION AND THE DISCIPLINARY PROCESS**

*Objectives:* - to examine changes (positive and negative) for both federal corrections staff and prisoners over the past 30 years

- to introduce issues concerning privatization in criminal justice

- to elaborate on aboriginal spirituality as facilitated and expressed in Canadian prisons

- to examine how the system of segregation of prisoners works in theory and in practice

- to examine issues of violence, including murder, with the case example of Gary Allen at Kent Institution

Readings:

- 5 “Life Inside a Kaleidoscope,” pp. 77-102, in Jackson.
- 6 “Control as Enterprise: Some Recent Developments in Privatization and Criminal Justice.” by Maeve W. McMahon (pp 109-128) in Steve Easton (Editor) **Privatizing Correctional Institutions**. Vancouver: The Fraser Institute, 1998. [Available on reserve at the Library].
- 7 “Along the Red Road,” pp. 103-110, and “Operation Big Scoop,” pp. 111-139, in Jackson.
- 8 “The Life and Death of the Electric Man,” pp. 141-184, in Jackson.

- 4 **January 30 Guest speaker: Senator Kim Pate (formerly Executive Director of CAEFS – the Canadian Association of Elizabeth Fry Societies, and appointed a Senator in the fall of 2016)**

Readings:

Please consult the website for CAEFS – Canadian Association of Elizabeth Fry Societies.

Lee Steven Chapelle **Hard Time in Canada. One Man’s Journey: Inside and Out [An Insider View of Canadian Justice Policies and Corrections]**. 2014. LSC Publications. [Available on reserve at the library]

Having spent over 20 years in prisons Lee Chapelle now works in prison consulting. You can view his website at [www.canadianprisonconsulting.com](http://www.canadianprisonconsulting.com)

- 5 **February 6**
- 1) TO EXAMINE THE OMBUDSMAN OF ONTARIO’S PERSPECTIVE ON THE ‘CODE OF SILENCE’ CONCERNING EXCESSIVE USE OF FORCE AGAINST INMATES
  - 2) TO EXAMINE THE OFFICE OF THE CORRECTIONAL INVESTIGATORS 2015-2016 REPORT CONCERNING FEDERAL INSTITUTIONS
  - 2) A DEEPER LOOK AT THE DISCIPLINARY PROCESS, SEGREGATION, AND THE NEED FOR REFORM

*Objectives:* - to explore the content of the Ontario Ombudsman’s Report on the ‘Code

*of Silence' concerning excessive use of force in provincial prisons*

- *to explore the content of the Office of the Correctional Investigator's Annual Report for 2015-2016*

- *to examine issues at the Ottawa Carleton Detention Centre*

- *to examine the evolution, and increasing legalization of the disciplinary process in federal prisons in Canada*

- *to examine routine features of the disciplinary hearing process at the Matsqui institution*

Readings:

**9** Andre Marin '*The Code': Investigation Into the Ministry of Community Safety and Correctional Services' response to allegations of excessive use of force against inmates.* June 2013. Toronto: Ombudsman of Ontario. Available online at [www.ombudsman.on.ca](http://www.ombudsman.on.ca)

**10** Ivan Zinger *Report of the Office of the Correctional Investigator, 2015-2016.* Ottawa: Office of the Correctional Investigator. Available online.

**11** Ottawa Carleton Detention Centre Task Force Action Plan. 2016. Available online.

**12** "The Disciplinary Process 1972-1992: Warden's Court to Independent Chairpersons," pp. 187-200, and "The Disciplinary Process at Matsqui," pp. 201-244, in Jackson.

**6 February 13 RESEARCH PAPER PROPOSALS DUE (3-4 PAGES, WITH A 2 PAGE ANNOTATED BIBLIOGRAPHY). Submit at the beginning of class.**

**CONTINUING A DEEPER LOOK AT THE DISCIPLINARY PROCESS, SEGREGATION, AND THE NEED FOR REFORM**

**FAILURES IN FEDERAL PRISONS IN CANADA TO ADHERE TO THE RULE OF LAW**

*Objectives:* - *to examine routine features of the disciplinary hearing process at the Kent institution*

- to explore how matters of prison discipline might be better dealt with
- to explore the tension between rhetoric and reality with respect to the issue of administrative segregation
- to identify the need for outside supervision in order to ensure that the practices of administrative segregation adhere to fundamental principles of justice
- to examine the breadth of the formal legal criteria for administrative segregation, and how they permit the persistence of customary law and practice

- 13 “The Disciplinary Process at Kent,” pp. 245-268, in Jackson.
- 14 “Bringing Justice to the Disciplinary Process,” pp. 269-283, in Jackson.
- 15 “Administrative Segregation: The Litmus Test of Legitimacy,” pp. 287-302, in Jackson.
- 16 “Administrative Segregation at Matsqui and Kent, 1993-99: The Persistence of Customary Law,” pp. 319-351, in Jackson.

**FEBRUARY 20 – WINTER BREAK – NO CLASS**

**7 February 27 TO EXAMINE ‘CERTAIN EVENTS’ AT THE PRISON FOR WOMEN IN KINGSTON IN 1994, AND THE ENSUING INQUIRY BY COMMISSIONER LOUISE ARBOUR**

**TO IDENTIFY SOME HUMAN RIGHTS ISSUES FACED BY WOMEN WORKING IN CORRECTIONS AND IN PRISONS FOR MEN**

**TO REVIEW THE WORK OF THE TASK FORCE ON ADMINISTRATIVE SEGREGATION ESTABLISHED PURSUANT TO THE ARBOUR REPORT, AND THE RESISTANCE OF THE CORRECTIONAL SERVICE OF CANADA TO INTRODUCING AN INDEPENDENT ELEMENT**

*Objectives:* - to examine the findings of Commissioner Louise Arbour concerning strip-searches and the use of segregation at the Prison for Women in 1994, and her finding of the Correctional Service of Canada’s failure to comply with the Rule of Law

- to discuss issues of sexual discrimination and harassment at the 'Wakefield' Jail
- to review the work of the Task Force on Administrative Segregation established pursuant to the Arbour Report, and the resistance of the Correctional Service of Canada to introducing an 'independent' element
- to document how, despite the various reports and their recommendations, practices of administrative segregation, as exemplified at Kent from the summer of 1997, continued to not be in conformity with the Rule of Law

Readings:

- 17 "The Arbour Report: The Indictment of a System," pp. 353-374, in Jackson.
- 18 "Women Working in Corrections and in Prisons for Men," and "A History of Women working in Corrections and in Prisons for Men," pp.3-27 and "Discrimination and Harassment at the Wakefield Jail: A Research Perspective," pp. 55-88, and "Impediments to Reporting Discrimination and Harassment," pp. 89-109 in Maeve W. McMahon **Women on Guard: Discrimination and Harassment in Corrections**. Toronto: University of Toronto Press. 1999. [Available on reserve at the library].
- 19 "The Task Force on Administrative Segregation, 1996-97," pp. 375-394, in Jackson.
- 20 "A Deadly July: Prison Politics, Staff Realities, and the Law," pp. 395-432, in Jackson.

- 8      **March 6**      **1) ISSUES OF INVOLUNTARY TRANSFER OR 'GREYHOUND THERAPY'**
- 2) ISSUES OF HUMAN RIGHTS AND PRIVACY IN FEDERAL PRISONS;**
- 3) A CASE STUDY OF B.C. PRISONER GARY WEAVER AND HIS EXPERIENCES OF SEGREGATION IN 1999**

*Objectives:*

- to explore the phenomenon of involuntary transfers of federal prisoners, colloquially known as 'Greyhound Therapy', and how policy developments at the Correctional Service of Canada in 2001 subverted the provisions of the Corrections and Conditional Release Act, as well as the recommendations of various reports

*- to elucidate issues concerning privacy and the lack thereof in Canadian federal prisons, especially with respect to matters of strip-searching*

*- to explore the experience of segregation and Special Handling Units from a prisoner's – Gary Weaver's – perspective, and to illustrate how federal case management tends to focus on a prisoner's weaknesses rather than their strengths*

*- to elucidate how the segregation of Gary Weaver in 1999 failed to comply with the requirement of the Corrections and Conditional Release Act, nor with the recommendations of many reports urging that the Rule of Law be complied with in Canadian federal prisons*

Readings:

**21** “Involuntary Transfers: Greyhound Therapy Then and Now,” [part 1], pp. 435-456, in Jackson.

**22** “Involuntary Transfers: Greyhound Therapy Then and Now,” [part 2], pp. 456-482, in Jackson.

**23** “The Power to Search and the Protection of Privacy,” pp. 483-513, in Jackson.

**24** “Super Max to Club Fed: The Journey from Outlawry,” [part 1], pp. 515-544, in Jackson.

**9 March 13 1) A CASE STUDY OF B.C. PRISONER GARY WEAVER AND HIS EXPERIENCES OF SEGREGATION IN 1999 (continued)**

**2) THE ONGOING NEED FOR REFORM IN CANADIAN PRISONS**

*Objectives: - to continue exploring the experience of segregation and Special Handling Units from a prisoner's - Gary Weaver's - perspective, and to illustrate how federal case management tends to focus on a prisoner's weaknesses rather than their strengths*

*- to continue elucidating how the segregation of Gary Weaver in 1999 failed to comply with the requirement of the Corrections and Conditional Release Act, nor with the recommendations of many reports urging that the Rule of Law be complied with in Canadian federal prisons*

*- to consider outside, independent and judicial remedies that might facilitate the meaningful application of the Rule of Law, and the promotion of a culture of human rights in Canadian prisons*

*- to revisit the United Nations Standard Minimum Rules for the Treatment of Prisoners and Canada's level of compliance with the principles articulated therein*

*- to reaffirm the dissonance that continues to exist between the rhetoric and reality of human rights in Canadian prisons, and to provide some concluding reflections on why this phenomenon persists*

*- to examine issues in extradition law in Canada (as reflected in the case of Hassan Diab*

Readings:

**25** "Super Max to Club Fed: The Journey from Outlawry," [part 2], pp. 544-571, in Jackson.

**26** "Correcting Corrections: The Remedial Tool Box," pp. 575-603, in Jackson.

**27** "CONCLUSION: Human Rights and the Prison at the Beginning of the Twenty-First Century," pp. 607-617, in Jackson.

**28 & 29** Extradition law in Canada: The case of Hassan Diab. Reading/s to be identified with the instructor.

**10 March 20 HUMAN RIGHTS IN CANADIAN PRISONS IN COMPARATIVE PERSPECTIVE**

We will examine how conditions in Canadian prisons, including human rights matters, compare with the situation of other countries. Our discussion will draw upon the work of relevant organizations, including Penal Reform International, and the Sentencing Project (information about these can be found by 'google' searching the organizations' names on the Internet).

We will watch the movie '*In the Name of the Father*' concerning the wrongful conviction and imprisonment of the Guilford Four in Britain. This will be used as a springboard for discussing matters such as how prison officials and staff can support human rights and improve the confinement conditions of those who have been wrongfully convicted.

*Objective:* - to explore the complexities of human rights issues in prisons in a



*comparative context, and to consider matters other than human rights that promote prison conditions conducive to the well-being of prisoners, staff, and management*

**11 March 27 PRIVATIZATION OF PRISONS AND POTENTIAL IMPLICATIONS FOR HUMAN RIGHTS**

*Objectives: - to address the issue of prison privatization in Canada and elsewhere, including with respect to female offenders*

*Readings*

**30.** “‘Get Tough’ Efficiency, Human Rights, Correctional Restructuring and Prison Privatization in Ontario, Canada,” by Dawn Moore, Kellie Leclerc Burton and Kelly Hannah-Moffat, pp. 152-161 in **Capitalist Punishment: Prison Privatization and Human Rights** by Andrew Coyle, Allison Campbell and Rodney Neufeld (hereinafter referred to as ‘Coyle et al),<sup>1</sup> Atlanta, GA: Clarity Press, 2003.

**31** “The Rise of the Prison Industrial Complex in the United States,” by Phillip J. Wood, pp.16-29 in Coyle et al.

**32** “Prison Privatization and Women,” by Katherine van Wormier, pp. 102-113 in Coyle et al.

**33 & 34** Recent developments in private prisons. Readings to be agreed with the instructor.

**12 April 3 LAST DAY OF CLASS – PAPERS ARE DUE**

The final paper will include 15 pages of narrative text plus a bibliography. In addition to the title page the paper should include a ‘Table of Contents.’

**VISITING GUEST SPEAKER: JAMIE NELSON.**

Jamie Nelson was wrongfully convicted and will speak about his experiences with this.

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<sup>1</sup> On reserve at the library under Coyle et al.

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