

Course Outline

COURSE:	LAWS 4903 C – Special Topic: Correctional Law: Human Rights in Canadian Prisons
TERM:	Fall 2009
PREREQUISITES:	Fourth-year Honours standing
CLASS:	Day & Time: Wednesday 11:35am – 2:25 pm Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Professor Maeve W. McMahon, B.Soc.Sc., M.A. (Criminology) PhD (Sociology)
CONTACT:	Office: D586 LA (Loeb) (assignments and mail should be addressed to C473 Loeb) Office Hrs: Monday & Wednesday – 3:00-4:125 pm (and usually available immediately <i>after</i> class) Telephone: 613-520-2600 x 8095 Email: Maeve McMahon@carleton.ca

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 16, 2009 for December examinations** and **March 12, 2010 for April examinations**.

For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

This course will examine the history, structure, and place of correctional law within the Canadian criminal justice system. We will examine primary correctional statutes and legislation. The legal underpinning of major correctional programmes will be established. We will discuss the competing objectives of punishment, incapacitation and rehabilitation in the context of respect for the rule of law and human rights. The protection of the human rights of prisoners will be a primary theme, and we shall consider the role of judicial inquiries (notably the work of Louise Arbour as Commissioner 'Concerning Certain Events at the Prison for Women in Kingston') in protecting these rights. We shall also address the human rights situations concerning correctional staff, and especially with respect to women working in prisons for men. While our primary focus is on Canada, we shall also be considering matters concerning imprisonment and human rights in international and comparative contexts. This is a seminar course that expects students to participate in informed discussion of the weekly topics. Students should do required readings prior to class.

REQUIRED PURCHASE

Justice Behind the Walls: Human Rights in Canadian Prisons by Michael Jackson. Vancouver: Douglas and McIntyre. 2002. Michael Jackson is a Law Professor at the University of British Columbia. The book is available at the Carleton University Bookstore.

ADDITIONAL REQUIRED READINGS

Students are obliged to consult the *Corrections and Conditional Release Act* as relevant. The Act can be accessed through the website of the Department of Justice at www.laws.justice.gc.ca

- 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.
- Ivan Zinger "Human Rights Compliance and the Role of External Prison Oversight," **Canadian Journal of Criminology and Criminal Justice**, (2006) 48:2:127-140.
- Debra Parkes and Kim Pate "Time for Accountability: Effective Oversight of Women's Prisons," **Canadian Journal of Criminology and Criminal Justice**, (2006) 48:2:251-285.
- Jeremy Patrick "Creating a Federal Inmate Grievance Tribunal," **Canadian Journal of Criminology and Criminal Justice**, (2006) 48:2:287-303.
- Maeve W. McMahon "Control as Enterprise: Some Recent Developments in Privatization and Criminal Justice," in Steve Easton (Editor) **Privatizing Correctional Institutions**. Vancouver: The Fraser Institute. 1998
- Women on Guard: Discrimination and Harassment in Corrections** by Maeve W. McMahon. Toronto: University of Toronto Press. 1999

Students also should consult the websites of organizations and institutions dealing with prison-related matters. These include CAEFS – Canadian Association of Elizabeth Fry Societies; the John Howard Society; the Correctional Service of Canada; the Ontario Ministry of Correctional Services; the Church Council on Justice. Concerning issues in the USA students can consult the Sentencing Project (Marc Mauer). Additional suggestions will be provided in class both by the instructor and the students.

Further readings may be assigned in class. Students are also expected to consult additional academic sources in the course of preparing their research proposals and final assignments. The instructor can provide students with assistance in identifying sources relevant to their topic.

EVALUATION PROCEDURE

- 6% ATTENDANCE
- 20% IN-CLASS PRESENTATION: Student presentations - 15 minutes - will be based on individual chapters of Professor Jackson's book, and on articles in the **Canadian Journal of Criminology and Criminal Justice**, as well as additional sources. The presenting student will then lead a 10 minute class discussion of the topic. The presenter should provide a 1-2 page handout to the Instructor and to classmates.
- The presentations will commence with the student providing a brief introduction to themselves and their research interests concerning law, prisons and human rights. The presentation should provide an informative and analytical discussion of the reading/s. The main point/s of the reading/s should be identified. The major strengths and insights of the reading should also be identified. The presenter can also identify any limitations of the reading/s.
- The presenter should identify potential research topics arising from the reading/s.
- The presenter should identify questions for group discussion (and these should be provided to students on the handout).
- The presenter should have a written or typed set of notes to guide their presentation. However simply reading word by word from the notes is *strongly* discouraged, and may adversely affect the grade given by the Instructor to the presentation.
- 24% RESEARCH PAPER PROPOSAL (3-4 pages with a 2 page annotated bibliography). Due on October 14, at the beginning of class.
- 50% FINAL PAPER (15 pages of text, plus a bibliography and an appendix if relevant. In addition to the title page, the paper should include a 'Table of Contents').
- The final assignment will be due on Friday, December 4 (two days after the last day of class). Assignments should be deposited in the 'drop-box' at the Department of Law, C473 Loeb by 3pm at the latest.

Late assignments will be marked down by one half grade for each day that they are late. A medical certificate or other appropriate documentation will be required to support any request for an extension. Students must complete and hand in all assignments in order to meet the course requirements and to be eligible to pass the course.

It is your responsibility to be present in class and to submit assignments on time.

A hard copy of assignments must be submitted. Assignments are not to be submitted by e-mail.

Always keep a copy of your assignments.

A detailed schedule of individual class topics, and readings, will be available for students.

SCHEDULE

Readings should be completed prior to the class.

1 Sep 16 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 Sep 23 OVERVIEWS OF THE ORGANIZATION OF THE CANADIAN PRISON SYSTEM; WOMEN'S PRISONS 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 women in prison*
 - *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. "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. 2002 [hereinafter referred to as 'Jackson'].
2. Debra Parkes and Kim Pate "Time for Accountability: Effective Oversight of Women's Prisons," in the **Canadian Journal of Criminology and Criminal Justice**, 2006, 48:2:251-285. (On reserve at the library).
3. 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).
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 Sep 30 PART 1: GUEST PRESENTER MICHELLE DEVIDI, MACODRUM LIBRARY REFERENCE LIBRARIAN SPECIALIZING IN LAW, HUMAN RIGHTS, CRIMINOLOGY AND CRIMINAL JUSTICE

Objectives: - *to gain guidance and instruction in utilizing library resources in conducting research on human rights and Canadian prisons (and internationally)*

Note: This session will take place in the Library – in Room 102 – from 11.35-1pm. Students will gain maximum advantage from this session if you have already thought about your research topic for your essay, and conducted some preliminary research. Please come prepared with relevant questions for Ms DeVidi.

PART 2: 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

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*

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].

4 Oct 7 PART 1: VISITING GUEST SPEAKER - KIM PATE, EXECUTIVE DIRECTOR OF THE CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES

Objective: - *to familiarize ourselves with current issues concerning women, imprisonment and human rights from the perspective of a leading reformer in the field*

Readings:

Students should review reading #2 Debra Parkes and Kim Pate “Time for Accountability: Effective Oversight of Women’s Prisons,” in the **Canadian Journal of Criminology and Criminal Justice**, 2006, 48:2:251-285. (On reserve at the library).

Students should also consult the website for the Canadian Association of Elizabeth Fry Societies - www.elizabethfry.ca In particular, students should consult the Submission of the Canadian Association of Elizabeth Fry Societies to the United Nations Human Rights Committee. Examining Canada’s 5th Report Regarding the International Covenant on Civil and Political Rights.

PART 2: ABORIGINAL PRISONERS AND SPIRITUALITY; AND A PRELIMINARY EXAMINATION OF CONDITIONS CONCERNING THE USE OF SEGREGATION AND THE DISCIPLINARY PROCESS

Objectives: - *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:

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.

**5 Oct 14 RESEARCH PAPER PROPOSALS DUE
(3-4 PAGES, WITH A 2 PAGE ANNOTATED BIBLIOGRAPHY). Submit at the beginning of class.**

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

- Objectives:*
- *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 and Kent institutions*
 - *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*

Readings:

9 “The Disciplinary Process 1972-1992: Warden’s Court to Independent Chairpersons,” pp. 187-200, in Jackson.

10 “The Disciplinary Process at Matsqui,” pp. 201-244, in Jackson.

11 “The Disciplinary Process at Kent,” pp. 245-268, in Jackson.

12 “Bringing Justice to the Disciplinary Process,” pp. 269-283, in Jackson.

6 Oct 21 FAILURES IN FEDERAL PRISONS IN CANADA TO ADHERE TO THE RULE OF LAW

- Objectives:*
- *to continue exploring issues of a need for outside supervision concerning the use of administrative segregation*
 - *to examine the breadth of the formal legal criteria for administrative segregation, and how they permit the persistence of customary law and practice*
 - *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 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*

Readings:

13 “Administrative Segregation: The Litmus Test of Legitimacy,” pp. 287-302, in Jackson.

14 “Administrative Segregation at Matsqui and Kent, 1993-99: The Persistence of Customary Law,” pp. 319-351, in Jackson.

15 “The Arbour Report: The Indictment of a System,” pp. 353-374, in Jackson.

16 “The Task Force on Administrative Segregation, 1996-97,” pp. 375-394, in Jackson.

- 7 **Oct 28** 1) **FAILURES TO APPLY THE RULE OF LAW IN FEDERAL PRISONS;**
 2) **SOME HUMAN RIGHTS ISSUES FACED BY WOMEN WORKING IN CORRECTIONS AND IN PRISONS FOR MEN**

- Objectives:*
- *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*
 - *to discuss cross-gender supervision in corrections, and issues of sexual harassment and discrimination at the Bell Cairn Training Centre for correctional workers*
 - *to discuss issues of sexual discrimination and harassment at The 'Wakefield' Jail*
 - *to highlight the significance and consequences of matters in corrections being identified as 'operational' or 'policy'*
 - *to discuss the content of the Arbitration Report concerning the provincial 'Wakefield' Jail in Ontario, and the broader implications of the closure of that Jail for correctional workers facing discrimination and harassment*

Readings:

- 17 "A Deadly July: Prison Politics, Staff Realities, and the Law," pp. 395-432, 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 "Gender-Based Discrimination and Harassment: From Policy Initiatives to Problems at Bell Cairn," pp. 28-54 in Maeve W. McMahon **Women on Guard: Discrimination and Harassment in Corrections**. Toronto: University of Toronto Press. 1999. [hereafter 'McMahon. Available on reserve at the library].
- 19 "Discrimination and Harassment at the Wakefield Jail: A Research Perspective," pp. 55-88, and "Impediments to Reporting Discrimination and Harassment," pp. 89-109 in McMahon.
- 20 "Responding to, and Ending, Discrimination and Harassment," pp. 89-129, and "Conclusion," and "Epilogue: The Arbitration Agreement about the Wakefield Grievances," pp. 130-154 in McMahon.

- 8 **Nov 4** 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 Nov 11 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*

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.

10 Nov 18 **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 Prison Privatization International (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 Nov 25 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:

28. “‘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), 1 Atlanta, GA: Clarity Press, 2003.

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

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

12 Dec 2 LAST DAY OF CLASS – PAPERS ARE DUE TWO DAYS LATER, ON FRIDAY, DECEMBER 4. THEY SHOULD BE DEPOSITED AT THE ‘DROP BOX’ AT THE DEPARTMENT OF LAW BY 3PM AT THE LATEST.

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

HUMAN RIGHTS AND CANADIAN PRISONS - RECENT DEVELOPMENTS IN HISTORICAL CONTEXT

Reading:

31 “Human Rights Compliance and the Role of External Prison Oversight” by Ivan Zinger (pp 127-140) and “The Litmus Test of Legitimacy: Independent Adjudication and Administrative Segregation” by Michael Jackson (pp 157-196) in the **Canadian Journal of Criminology and Criminal Justice** (April 2006) 48:2. [The individual articles are available on reserve at the library].

At the last class there will also be a ‘Q&A’ session to assist students in finalizing their papers.

¹ On reserve at the library under Coyle et al.