

**COURSE SCHEDULE**

**LAWS 4904C**

**Winter 2013**

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

**Professor: Maeve W. McMahon**

*Readings should be completed prior to the class.*

**1 January 7 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 14 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. Available through e-journals 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 January 21 Topic to be announced (but at least part of the class will discuss women’s imprisonment and notably the case of Ashley Smith)**

*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. Available through e-journals at the library.

Students should also consult the website for the Canadian Association of Elizabeth Fry Societies - [www.elizabethfry.ca](http://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 5<sup>th</sup> Report Regarding the International Covenant on Civil and Political Rights.

**4 January 28 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.

- 5 **February 4** 1) TO EXAMINE ISSUES IN THE CURRENT GOVERNMENT’S APPROACH TO PRISON REFORM
- 2) A DEEPER LOOK AT THE DISCIPLINARY PROCESS, SEGREGATION, AND THE NEED FOR REFORM

- Objectives:*
- to explore the content of the current government’s Roadmap to Strengthening Public Safety
  - to explore the critique of that approach as expressed in the report by critics Michael Jackson and Graham Stewart in ‘A Flawed Compass’
  - 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 'A Roadmap to Strengthening Public Safety.' Report of the Correctional Service of Canada Review Panel, 2007 [aka the Sampson Report].

This report is available online through the library. The library also has a hard copy in government documents on the second floor, at call # CA1 PSP805 2007.R57 (note: for in library use only).

10 'A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety,' by Michael Jackson and Graham Stewart.

This report is available online at [www.justicebehindthewalls.net](http://www.justicebehindthewalls.net)

11 "The Disciplinary Process 1972-1992: Warden's Court to Independent Chairpersons," pp. 187-200, in Jackson.

12 "The Disciplinary Process at Matsqui," pp. 201-244, in Jackson.

**6 February 11 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 18 – WINTER BREAK – NO CLASS**

**7 February 25 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 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**     **March 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 March 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 March 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

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),<sup>1</sup> Atlanta, GA: Clarity Press, 2003.

29 “The Rise of the Prison Industrial Complex in the United States,” by Phillip

---

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



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 April 2

*LAST DAY OF CLASS – PAPERS ARE DUE*

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].
- 32 Andrew John Goldsmith “Policing’s New Visibility,” **British Journal of Criminology**, (2010) 50:5:914-934. Available through e-journals at the library.
-