

**COURSE OUTLINE**

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**COURSE NUMBER - TITLE** LAWS 4801 – RISK AND THE LEGAL PROCESS**SECTION:** A**TERM:** Fall 2023**PREREQUISITES:** 4<sup>th</sup>-year Honours standing**DAY & TIME:** Mondays 14:30 – 17:30**DELIVERY METHOD/ROOM:** ONLINE SYNCHRONOUS**INSTRUCTOR (CONTRACT):** Tara Ashtakala**CONTACT INFORMATION:** **OFFICE:** Loeb B-442  
**OFFICE HOURS:** After lectures or by appointment  
**EMAIL:** [Tara.Ashtakala@carleton.ca](mailto:Tara.Ashtakala@carleton.ca)

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**UNDERGRADUATE CALENDAR COURSE DESCRIPTION (GENERAL)**

Application of risk assessment and tools in various legal arenas including insurance, liability and tort, litigation management, environmental protection, and sentencing and parole.

**INSTRUCTOR COURSE DESCRIPTION (SPECIFIC)**

Risk management is **not just for business majors** anymore; it is an increasingly important aspect of both public and private activities. Nowadays, the ability to anticipate the consequences in law of a proposed or uncontrollable event is essential for legal counsel, whether your client is an individual involved in an everyday consumer transaction or a construction company carrying out a megaproject or a government institution concerned with protecting the safety of the public. Policies, contracts and even lifestyle choices can benefit from the scrutiny of the legal professional in order to avoid lawsuits or other adverse legal consequences. This course is intended to introduce students of law and legal studies to the situations, actors, methodology and societal impact of risk management. You will be surprised and intrigued by the diversity of issues that you will be exposed to in this course and you will use the skills you learn herein in your future law-related career.

**COURSE OBJECTIVES**

- to identify situations of risk with legal implications
- to determine which actors (eg individuals, governments, courts) are affected by the risk issue
- to evaluate the strategies employed for preventing or mitigating (ie managing) risk
- to explore the impact of the risk and its management on law and society as a whole

## **REQUIRED TEXTS**

There is no textbook for this course. **Required Readings will be posted in PDF form on Brightspace; Please note that you are required to read only those paragraphs or pages indicated in the pre-lecture notes, not the entire document.**

## **COURSE DELIVERY:**

- This course will be delivered online and synchronously via Zoom, on the day and at the time above
- Pre-lecture notes will be posted on Brightspace prior to each class, indicating readings to be done ahead of lecture and containing questions that help the student understand the readings.
- It is during lecture that the answers to the questions in the pre-lecture notes will be discussed.
- Case study exercises, involving group discussions, will also be conducted during lecture
- The presentation and research paper components of evaluation in the course will be submitted by students as per the deadlines indicated in the “Evaluation” section below.

## **EVALUATION**

““Standing in a course is determined by the course instructor subject to the approval of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Dean.””

## **All components must be completed in order to obtain a passing grade in course**

### **1. Audio-visual Presentation - 25% of final grade**

- Each student will be required to complete a 10 minute presentation on a risk issue of your choosing.
- Your task in the presentation assignment is to **take a position** on the risk topic you have chosen **and** to impart – to your colleagues and to me – your **understanding** of:
  - why the current social and legal impacts of the risk are a problem;
  - how the law has dealt with the risk so far;
  - the defects in the law (this is why the risk is causing social and legal problems); and
  - how the defects in the law should be rectified, using law.By the end of the presentation, you should have persuaded your audience that your position on the issue is in fact the best way to minimize the risk of the adverse legal consequences recurring in the future.
- Since, as we will learn in the course, legal risk cannot be entirely prevented, the assignment is generally about finding the best **legal** course of action – whose benefits outweigh the risks - to deal with the ongoing legal problem you have identified.
- Format: the presentation must be submitted in video format and consists of **two** (2) sections:
  1. Creative segment: the first 5 minutes of your video should consist of a **FICTIONAL STORYLINE** illustrating:
    - why the current social and legal impacts of the risk are a problemYou must therefore create **ORIGINAL** content and film it. Do not submit a video of you simply reading off notes. You can ask fellow students, friends or family members to play characters in your storyline. Note that you do not need special equipment to create videos: filming can be done with mobile phones

and video editing apps are usually included with computer operating systems like Windows, or are otherwise available to download for free online. Law and risk tends to address serious topics, so have fun with this part and try to make your audience laugh about your chosen risk!

2. Analysis segment: the remaining 5 minutes of your video must consist of a formal presentation about:
  - how the law has dealt with the risk so far;
  - the defects in the law; and
  - how the defects in the law should be rectified

Use presentation software (Powerpoint, Prezi) for this portion..

In this section, you must show yourself presenting your slides – this can be accomplished by using a picture-in-picture tool.

### **PRESENTATION SUBMISSION DEADLINES (upload to Brightspace by these dates):**

- **The dates for submitting presentations will be determined as of the 1<sup>st</sup> lecture, when final enrolment in the course can be confirmed.**

### **2. Term Essay - 30% of final grade**

The essay builds upon the basic arguments made in the presentation on the chosen risk topic: it is meant to be a scholarly research piece. By the end of the paper, your research and arguments should persuade the reader that your proposed legal solutions are the best way to minimize the risk of the adverse legal consequences recurring in the future.

- **Due on 8 Dec** : upload to Brightspace
- **Length:** 13-15 pages, plus bibliography.
- **Use Canadian Guide to Uniform Legal Citation (McGill Guide) at <https://libguides.ucalgary.ca/guides/mcgillguide>**
- **Use Canadian spelling only. This is a requirement and not to be ignored.** If you are going to use spell-checking applications to review your text, you should first ensure that the language settings on your computer are set to Canadian English.

### **3. Formally-scheduled, open book final examination - 45% of final grade**

- The goal of the timed final exam is to apply the course content to 1) solve a fictitious client's legal problem and to 2) thoroughly discuss a thematic issue.
- To be scheduled during final exam period: 10-22 Dec 2023
- **The final exam will be written online, Any student who does not write the final exam on the day it is scheduled, for whatever reason, must apply for a deferral.** Note that there is no guarantee that your application will be granted. See the conditions for deferring an exam: <https://carleton.ca/registrar/deferral/>

- **The final exam will be E-proctored.** *e-Proctoring: please note that examinations in this course will use a remote proctoring service provided by Scheduling and Examination Services. You can find more information at <https://carleton.ca/ses/e-proctoring/#sect1>*

### **LATE PENALTIES AND REQUESTS FOR EXTENSIONS:**

- Penalties for late submission of assignments will be 1 point per day deducted from the total number of points of the assignment. This is based on fairness to the class members who turned in the assignment on time.
  - The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension.
  - **Extensions for longer than 7 days will normally not be granted.** If the student decides to make a request for such an extension, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days). Again, the instructor has the final say on whether the extension will be granted.
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**LECTURE TOPIC SCHEDULE** \* specific titles of readings may change, depending upon their relevance to current events happening at the time of each lecture. Therefore, the most accurate and updated list of readings to be done in this course will always be found on the 1<sup>st</sup> page of the pre-lecture slides, that will be posted ahead of every class, on Brightspace.

### **THE NATURE OF RISK AND UNCERTAINTY**

**11 Sep INTRODUCTION AND OVERVIEW**

**18 Sep SITUATIONS OF RISK**

- Vern Krishna, “Crime Pays More If You’ve Got Class,” Globe & Mail, April 29 (2002)
- Anna Sharratt, “Risk Renewal” (January 2002) Canadian Insurance 10.
- Nicole Baer, “Thinking Outside The Courtroom,” 2:4 Justice Can. 1 (2003)
- Jennifer Couzia-Frankel, “As gene-testing surges, lawsuits aren’t far behind” (7 May 2019): Science.org.
- WFP Press Release, “World’s first humanitarian insurance policy issued” (2006) World Food Programme.
- Dostmohammed and Long, ‘Regulating the Sharing Economy’ (2015): Canadian Association of Programmes in Public Administration
- BBC News online, ‘Laser scam’ gamblers to keep £1m , 5 December 2004
- Dan M. Kahan, ‘A Risky Science Communication Environment for Vaccines’ (2013)

**25 Sep RISK ISSUES FACED BY GOVERNMENTAL RISK MANAGERS**

- “M. Megalli & A. Friedman, “Fronting for Business” (1992) Multinational Monitor.
- A. Wildavsky, “No Risk Is the Highest Risk of All” (Jan-Feb 1979): American Scientist 67:1, 32-37.

- Alexandria S. Palazzo, "No-fault insurance..." (2015): Windsor Rev Legal & Soc Issues.
- C. Hubbard, "Culpability and Compensation in Canadian Health Care: Much Ado About No-Fault?" (2000): McGill J Med 5: 111-116
- F. van Waarden, "Institutions and Innovation - the legal environment of innovating firms" (Sep-Oct 2001): Organization Studies,.
- D. Macdonald, "Coerciveness and the selection of environmental Policy instruments," (Summer 66:2 161-187;
- Allan J. Kam, "NHTSA Safety Defect Investigations" (17 July 2001): Highway Traffic Safety Associates LLC, ATLA 2001 Annual Convention, Product Liability Section, Montreal, Canada;
- Dunsmuir v. New Brunswick, 2008 SCC 9 (CanLII), [2008] 1 SCR 190:
- Ernst v Alberta (Energy Resources Conservation Board), 2014 ABCA 285

## 2 Oct TOOLS FOR THE PREVENTION AND/OR MITIGATION OF RISK

- A. Concept of Insurance
- Flyvbjerg et al, "Dealing with Risk" (2003) in Megaprojects and Risk, Ch. 7, Cambridge Univ Press;
- B Precautionary Principle
- J. Morris, "Defining the Precautionary Principle" (2000) in Rethinking Risk and the Precautionary Principle, "Problems with the Precautionary Principle", Elsevier;
- C. Motion to strike
- Mathur v Ontario, 2020 ONSC 6918,.
- D. Tort Action
- Comite d'environnement de la Baie Inc. v. Societe d'electrolyse et de chimie Alcan, 1992 CanLII 2925 (QC CA),.
- E. Planning for Risk in Contracts
- Triantis, "Contractual Allocations of Unknown Risks: A Critique of the Doctrine of Commercial Impracticability" (1992) 42 Univ. Tor. L.J. 450
- Selina-Lee Anderson, "Impacts of climate change – foreseeable or unforeseeable? Drafting force majeure clauses in the era of climate uncertainty" (8 August 2018), McCarthy Tetrault, online

## 9 Oct RISK IN THE LEGAL PROCESS (RISK MANAGEMENT STRATEGIES IN THE COURTOOM)

- Kelliher (Village of) v. Smith, [1931] S.C.R. 672 .
- R. v. Mohan, [1994] 2 S.C.R. 9 .
- R. v. Bingley, 2017 SCC 12
- Moravian Church v Newfoundland and Labrador 2005 NLTD 123,
- R v Chapple 2005 BCSC 383
- R. v. N.S. 2012 SCC 72
- Frederic L. Lederer, "The Road to the Virtual Courtroom?" (Spring 1999) 50 South Carolina Law Review 800-844,
- Tamara A. Small & Kate Puddister, "Tweeting Criminal Trials in the Digital Age" (18 May 2020), Cambridge Univ Press online:
- "Canadian courts turning an eye to how artificial intelligence is used in the legal system" (11 July 2023) Canadian Lawyer online;

**DEALING WITH RISK IN VARIOUS TYPES OF LAW****16 Oct DISASTERS AND RISK MANAGEMENT**

- Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (18 June 1998) International Telecommunications Union, UNTS 2296 p.5.
- Convention on Assistance in case of a Nuclear Accident or Radiological Emergency (18 Nov 1986), International Atomic Energy Agency, UNTS 24643
- Sendai Framework for Disaster Risk Reduction 2015-2030, (18 March 2015) UN Office for Disaster Risk Reduction.
- “Victoria Bannon & David Fisher: Legal Lessons in Disaster Relief from the Tsunami, the Pakistan Earthquake and Hurricane Katrina” (March 15 2006) American Society for International Law Insights
- Gerry R. Thornton, “Hurricane Katrina - The Legal Saga Begins” (2005-09-19) Insurance J
- Emergency Management Act, RSC 2007 c. 15
- Emergencies Act. RSC 1985 c. 22 (4th Supp.)

**23 Oct Reading week, no class****30 Oct RISK AND PUBLIC HEALTH**

- Reference re Genetic Non-Discrimination Act 2020 SCC 17
- Reference re Anti-Inflation Act 1976 2 SCR
- Schneider v. The Queen 1982 2 SCR
- The Attorney-General of Ontario and others (Appeal No. 2) v The Canada Temperance Federation (Ontario) , JCPC, 1940.
- Emergencies Act RSC 1985 c. 22 (4th Supp.)
- Canada (Health) v The Winning Combination, Inc. 2017 FCA 101
- “Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System” (31 July 2019) Ministry of the Attorney General, Ontario.

**6 Nov RISK ISSUES IN CRIMINAL LAW**

- Criminal Code of Canada RSC 1985 cC-46 s. 718
- R v Lloyd [2016] 1 SCR
- Criminal Code of Canada RSC 1985 cC-46 s. 735
- R. v. Boutilier [2017] 2 SCR
- “Offender Risk Assessment”, (2000) John Howard Society of Alberta
- Ewert v Canada [2018] 2 RCS
- R v Ndhlovu 2022 SCC 38
- Ilvy Goossens et al, “Examining the High-Risk Accused Designation for Individuals Found Not Criminally Responsible on Account of Mental Disorder” (2019) Canadian Psychology Vol. 60, No. 2, 102–114.

**13 Nov VOLUNTARY ASSUMPTION OF RISK : THE CASE OF SPORT**

- Criminal Code of Canada RSC 1985 cC-46 , s. 265
- A. Husa & S. Thiele, “In the Name of the Game: Hockey Violence and the Criminal Justice

System.” (2002) Criminal Law Q, Vol 45(4) 509.

- R v Jobidon [1991] 2 SCR
- R. v. Cey [1989] SJ no. 264
- R. v. Leclerc 4 OR (3d) 788
- R v Ciccarelli 54 CCC 3d Ont Dist Ct 1989
- Citron, Jeffrey A. & Ableman, Mark, “Civil liability in the arena of professional sports” (2003) UBC L R 36(2) 193-230. .
- Dunn v University of Ottawa [1995] O.J. No. 2856 (Ont. Gen. Div.),
- Bruce v Cohon 2016 BCSC 419
- Dent et al v NFL (2018) US Court of Appeals for the 9<sup>th</sup> Circuit, District of Columbia

#### **20 Nov VOLUNTARY ASSUMPTION OF RISK: THE CASE OF TORT**

- Occupational Health and Safety Act of Ontario, R.S.O. 1990, CHAPTER O.1, s. 43(2)
- R v Port Colborne (**City**) [1992] O.J. No. 2555
- Douglas v Canadian Corps of Commissionaires [1995] OLRB Rep. May 601
- Dube v. Labar [1986] 1 SCR
- Crocker v. Sundance Northwestern Resorts Ltd., [1988] 1 SCR
- Childs v. Desormeaux 2006 SCC 18.
- Horsley v. MacLaren [1972] SCR 441
- Coopersmith v. Air Canada 2009 QCCQ 5521
- Taylor v BC (Privacy Commissioner) 2017 BCSC 1420

#### **27 Nov RISK AND THE MEDIA**

- Irwin Toy Ltd. v. Quebec (Attorney General) [1989] 1 RCS
- Rocket v Royal College of Dentists and Surgeons of Ontario [1990] 2 SCR
- CCLA v Attorney General of Ontario 2020 ONSC 4838
- Harper v Canada (Attorney General) [2004] 1 RCS
- R. v. Butler [1992] 1 SCR
- Ward c Quebec 2021 SCC 43
- Guistra v Twitter, Inc. 2021 BCSC 54
- R v Skelly 2021 ONSC 555
- A.B. v Bragg Communications Inc. [2012] 2 RCS
- Dagenais v. Canadian Broadcasting Corp., 1994 3 RCS
- R. v. Mentuck, 2001 3 SCR
- Sierra Club of Canada v Canada (Minister of Finance) 2002 2 SCR
- R v Vice Media 2018 3 SCR

#### **4 Dec CORPORATE LEGAL RISKS**

- R v SNC-Lavalin 2019 QCCQ 18961
- Criminal Code of Canada RSC 1985 cC-46
- TD Waterhouse Private Investment Counsel et al 014 ONSEC 34
- Buckerfield’s Limited et al. v. M.N.R. 1964] C.T.C. 504, [1965] 1 Ex. C.R. 299, 64 D.T.C. 5301
- Orphan Well Association v Grant Thornton [2019] 1 S.C.R.  
Trinity Church v Wal-Mart Stores, Inc. 2015 US Court of Appeals for the 3<sup>rd</sup> Circuit,

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## **PLAGIARISM**

### PLAGIARISM

The University Academic Integrity Policy defines plagiarism as “*presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one’s own.*” This includes reproducing or paraphrasing portions of someone else’s published or unpublished material, regardless of the source, and presenting these as one’s own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, artworks, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, material on the internet and/or conversations.

Examples of plagiarism include, but are not limited to:

- any submission prepared in whole or in part, by someone else, including the unauthorized use of generative AI tools (e.g., ChatGPT);
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another’s data or research findings without appropriate acknowledgement;
- submitting a computer program developed in whole or in part by someone else, with or without modifications, as one’s own; and
- failing to acknowledge sources through the use of proper citations when using another’s work and/or failing to use quotations marks.

Plagiarism is a serious offence that cannot be resolved directly by the course’s instructor. **The Associate Dean of the Faculty will conduct a rigorous investigation of any suspected cases**, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of “F” for the course.

## **ACADEMIC ACCOMMODATION**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request, you can follow: (<https://students.carleton.ca/course-outline/>)

## **STUDENT MENTAL HEALTH:**

You can access Wellness resources at: <https://wellness.carleton.ca/>

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End of Course Outline.