

Course Outline

COURSE:	LAWS 3503A – Equality & Discrimination
TERM:	Summer 2021
PREREQUISITES:	0.5 credit from LAWS 2105, LAWS 2302, LAWS 2502; and 0.5 credit in LAWS at the 2000 level.
CLASS:	Day & Time: Please check Carleton Central for current class schedule.
	Room: This course will be delivered through a combination of synchronous and asynchronous lectures. The doctrinal portions of the course will be made available as pre-recorded videos. We will hold two weekly synchronous Q&A / discussion sessions during regular class hours, lasting for up to half of our allotted time.
INSTRUCTOR: (CONTRACT)	Phil Lord, J.D. B.C.L. LL.M. MCI Arb
CONTACT:	Office Hrs: The first point of contact is the TA for this course, Sami Islam. You can contact him by email at samiislam@cmail.carleton.ca or by telephone at (647) 770-0798. Sami will hold office hours on Mondays from 3:00-4:00PM on Zoom (link will be provided on cuLearn). Where appropriate, Sami will refer questions to me.
	Telephone: 514-447-4704
	Email: phil.lord@carleton.ca

CALENDAR COURSE DESCRIPTION

Human rights issues and law in Canada; history and present day experiences of discrimination; critical exploration of law's effectiveness in responding to discrimination; meaning(s) of equality and discrimination; focus on Human Rights Codes - interpretation, administration, enforcement with some reference to s.15 of the Charter.

COURSE DESCRIPTION

This course will discuss the law's treatment of discrimination and equality. We will chiefly adopt a public law, federal focus. We will consider the constitutional context for the protection of equality, as well as broader social issues which are encapsulated in and affected by the relevant constitutional and legislative provisions. We will discuss how equality and discrimination, and their protection, affect our

broader identities – and their multiple and overlapping constitutive factors. We will also consider how the law has legitimised and perpetuated historical inequities, as well as how the law may help remedy these inequities.

REQUIRED TEXTS

There is no required text for this course. Course readings will be provided through our course website.

EVALUATION

The university requests that we inform you of the following:

Standing in a course is determined by the course instructor subject to the approval of the Department and 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 Department and the Dean.

I will assess your knowledge of the principles we will learn in this course, as well as your ability to critically think about important issues regarding equality and discrimination. You will see that the assessments for this course are varied, so that we can accommodate a diverse student population with different learning styles. I have tried to minimise the weight, and associated stress, of formal examinations.

Your final grade in this course will be determined as follows:

1. Participation (15%)
2. Midterm examination (30%)
3. Outline of your final paper (10%)
4. Final paper (45%)

Participation (15%): The purpose of this portion of your grade is not to compel you to participate in class if and when you do not feel comfortable do so. It is to ensure that you get the most out of this class, which requires (1) regular attendance and (2) completion of the reading assignments *in full* and *prior to* coming to class. Therefore, my expectation is that you will come to class and come prepared. I also expect you to participate in class discussions when you feel like you have something to contribute. The quality (not number) of your interventions, and the extent to which they demonstrate your preparation for class, will determine your grade. While you are free to use your computer to record the class and take notes, it is my expectation that you will not use electronic devices to do things that are more appropriately done elsewhere. Regular class attendance, proper preparation, and a number of quality interventions proportional with the size of the group will be sufficient to achieving a high grade for participation.

Midterm examination (30%): You will be examined on your knowledge of the principles taught thus far. The examination will be made up of multiple-choice questions and/or short-answer questions. I strongly urge you to approach the midterm examination in the way you would a final examination or assignment with a higher weight. The time you will dedicate to studying for the midterm examination will help you develop a deeper understanding of the law, which will ground our reflections and the work you will be expected to undertake in your final paper.

The examination will take place during regular class hours on July 28th.

Please note that the midterm test 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/>.

Outline of your final paper (10%): I will need to approve your topic for the final paper. Please submit for approval an outline of your paper, which should include the proposed topic, a plan of your argument, and some of the sources you plan to engage with. The proposal should be 300-600 words, excluding references. You should use a 12-point font and double line spacing, and format references according to APA (7th edition) style or the *Canadian Guide to Uniform Legal Citation* (8th or 9th edition). Please submit as a Word document, with your last name as the title of the document.

Your outline is due on July 26th at 5 P.M. EST. You may submit early, and I will do my best to promptly return your outline.

Final paper (45%): The most significant component of your grade for this course will be the final paper. In the paper, you will be expected to demonstrate your understanding of an area of equality and discrimination law and of the policy issues which underpin it. You will also be expected to critically assess these rules, by setting out and defending a thesis. For instance, you may argue that the rules should evolve in a certain way to accommodate social change or that the rules do or do not meet their stated purpose. A good paper will demonstrate a firm grasp of the law and an ability to defend a thesis and conduct limited independent research. You should cite 1-5 external sources. The paper should be about 2,200 words (+/- 10%), excluding references. You should use a 12-point font and double line spacing, and format references according to APA (7th edition) style or the *Canadian Guide to Uniform Legal Citation* (8th or 9th edition). Please submit as a Word document, with your last name as the title of the document.

Your paper is due on August 14th at 5 P.M. EST.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

Submitting an assignment after the relevant deadline will result in a penalty of five percent per calendar day (not business day).

A failure to adhere to style guidelines or word limits for an assignment may result in a penalty of up to twenty percent.

If you anticipate that you will be unable to submit an assignment on time, it is crucial that you inform me as soon as possible. I subscribe to the following statement, provided by the Department of Law and Legal Studies:

The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>

Extensions for longer than 7 days will normally not be granted. In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

SCHEDULE

The schedule is subject to minor changes.

All of the material for the course should be in an accessible format. Please contact me if you cannot access one of the assigned readings. You are free to record course sessions for personal use, and you may use devices or software that helps you access course lectures.

July 5: Introduction to section 15 of the *Canadian Charter*

1. “Section 15 – Equality Rights”, online: *Department of Justice*
<<https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art15.html>>

Note: The reading load for next week is higher than usual, so it might make sense to read ahead.

July 7 and July 12: General framework of analysis under section 15 of the *Canadian Charter*

1. *R v Kapp*, 2008 SCC 41
2. *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497

Note: The reading load is higher than usual, but these are very important readings. We will focus on the analytical framework set out in the cases, so you do not need to focus on the facts of each case.

July 14: “Positive obligations” under section 15 of the *Canadian Charter*

1. *Auton (Guardian ad litem of) v British Columbia (Attorney General)*, 2004 SCC 78

July 19: Government programs, positive obligations, nature of the evidence necessary to support a section 15 claim

1. *Gosselin v Québec (Attorney General)*, 2002 SCC 84 (read the headnote only – pages 429 to 448)

Note: The reading load for this session is lower than usual. The reading load for the next session is correspondingly higher.

July 21: “Ameliorative” programs and section 15(2) of the *Canadian Charter*

1. *Alberta (Aboriginal Affairs and Northern Development) v Cunningham*, 2011 SCC 37
2. Also review the paragraphs of *R v Kapp*, 2008 SCC 41 on section 15(2) of the *Canadian Charter*
3. *Gratz v Bollinger*, 539 US 244 (2003) (read the syllabus (pages 244 to 247), skim the rest)

July 26: Enumerated and analogous grounds, sexual orientation

1. *Vriend v Alberta*, [1998] 1 SCR 493 (do *not* read section III (pages 516 to 525), the section 1 analysis (pages 554 to 562), and the dissent (pages 583 and following); you may also choose to skim pages 562 to 583)

July 28: Same-sex marriage, balancing of *Charter* rights

1. *Reference re Same-Sex Marriage*, 2004 SCC 79 (focus on reference questions 2, 3, and 4)
2. *Obergefell v Hodges*, 576 US 644 (2005) (read the syllabus, skim the rest)

August 2: Holiday (No class)

August 4: Quebec's Bill 21

1. Phil Lord, "What Is the True Purpose of Quebec's Bill 21?" (2020) 9:3 Directions 1 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3516964)
2. Phil Lord, "It Doesn't Work!": The Symbolic Aspect of Law, From the Criminal Law to Bill 21" (2020) 9:6 Directions 1 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3631336)

August 9: Trans equity

1. Kyle Kirkup, "The Origins of Gender Identity and Gender Expression in Anglo-American Legal Discourse" (2018) 68:1 University of Toronto Law Journal 80
2. Florence Ashley, "Don't Be so Hateful: The Insufficiency of Anti-Discrimination and Hate Crime Laws in Improving Trans Well-Being" (2018) 68:1 University of Toronto Law Journal 1 (you can skim this article if you do not have time to read it)

August 11: Substantive equality, intersectionality, charting the path forward

1. *Fraser v Canada (Attorney General)*, 2020 SCC 28 (read the headnote only – pages 1 to 19)
2. Juan Battle & Colin Ashley, "Intersectionality, Heteronormativity, and Black Lesbian, Gay, Bisexual, and Transgender (LGBT) Families" (2008) 2:1 Black Women, Gender + Families 1
3. Julia R Johnson, "Cisgender Privilege, Intersectionality, and the Criminalization of CeCe McDonald: Why Intercultural Communication Needs Transgender Studies" (2012) 6:2 Journal of International and Intercultural Communication 135 (this reading is optional)

August 16: Review, discussion

1. Jonathan Todres & Sarah Higinbotham, "A Person's a Person: Children's Rights in Children's Literature" (2013) 45:1 Columbia Human Rights Law Review 1 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2234163) (you can read as little or as much of this article as you have time to)

I wish to acknowledge Talia Karam, who greatly contributed to the design of this course through the Students as Partners Program.

The following statements are provided by the university for inclusion in all course outlines:

Academic Accommodations

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

Pregnancy Obligation

Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

Religious Obligation

Write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

Academic Accommodations for Students with Disabilities

If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) <https://carleton.ca/pmc>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism 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, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence. More information on the University's Academic Integrity Policy can be found at: <https://carleton.ca/registrar/academic-integrity/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/studentsupport/svpolicy/>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: <https://students.carleton.ca/services/accommodation/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations: <https://carleton.ca/law/current-students/>

Proctoring of Examinations

Please note that tests and 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/>.