Carleton University

Department of Law and Legal Studies

Course Outline

Course: LAWS 4311B – Human Rights in Canadian Prisons

TERM: WINTER 2020

PREREQUISITES: LAWS 2908, CRCJ 3001, or CRCJ 3002 and fourth-year Honours standing

CLASS: Day & Time: Mondays, 11:35 a.m. – 2:25 p.m.

Room: Please check with Carleton Central for current room location

INSTRUCTOR: Savannah Gentile

(CONTRACT)

CONTACT: Office: B442 Loeb Building

Office Hrs: By appointment after class

Telephone: 343-204-4329

Email: savannahgentile@cunet.carleton.ca

CALENDAR COURSE DESCRIPTION

Correctional law in the Canadian criminal justice system; competing objectives of punishment and rehabilitation in the context of respect for the rule of law and human rights; protection of human rights of prisoners in Canada and in international and comparative contexts. Seminars three hours a week.

COURSE DESCRIPTION

This seminar is designed to orient students to key human rights issues related to incarceration and the correctional and criminal justice systems. As such, you will read and analyze legislation, some case law, reports, supplementary research materials as well as media articles that allow us to think critically about the ethical and other constraints upon counsel and others trying to assist prisoners, the specific barriers confronted by women prisoners (particularly Indigenous women and women with mental health issues), as well as legal and other reforms that are possible in this area.

REQUIRED TEXTS

All the course readings can be accessed electronically through hyperlinks on the course outline or on CU Learn.

EVALUATION

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.

Evaluation Overview

1) Participation

2 reading self-reflections/summaries
 10% each DUE: 8pm night before presentation

• 2 group presentations based on reflections 10% each

In class attendance and participation
 20%

2) Research Paper

Research Paper Proposal
 Final Research Paper
 30% DUE: Feb 3 at beginning of class
 April 6 at beginning of class

1) Participation and Presentations: 60% Total

2 Group Presentations and 2 *Individual* summary / reflections for a total:

2 *individual* reading summary and reflection assignments worth 10% each, and leadership of the class discussion pertaining to your summary and reflection, for an additional 10% each; for a total of 40% of your mark.

For each of the 2 dates for which you sign up, you will be responsible for emailing to the class a document by **8pm the evening before class** containing reflective insights, critical remarks, and/or challenging questions that struck you while contemplating the assigned readings for that date. Your summary and reflection might highlight significant insights gleaned from the readings; they might take the form of a critique; they might propose new arguments or strategies for advocates or lawyers; or they might point to additional sources and questions that should be interrogated.

You should set your sights on preparing **collaborative and cooperative presentations**/facilitations (max 4 people per group), while also provoking deeper thinking among your classmates, as well as linking prior readings and contemplating the broader goal of this course.

Each of your presentations/reflections will be **assessed for**:

(i) originality of insight; (ii) quality of written prose (including spelling and editing); (iii) ability to integrate and link readings and ideas; (iv) overall persuasiveness, style and precision; and (v) demonstration of collaboration and cooperative efforts by each group of presenters; (vi) ability to demonstrate knowledge of relevant federal or provincial law and policy; (vii) originality of presentation and identification of potential advocacy strategies; (viii) overall effectiveness of class presentations (ability to convey ideas and provoke deeper thinking and discussion).

Class Participation - 20% - based upon your attendance, preparation for, and participation in class.

2) Final Research Paper: 40% Total

10% - Draft Research Proposal – DUE: February 3, 2020

The research proposal should summarize succinctly your anticipated topic for the research paper, why you have chosen this topic and what you hope to argue, critique, or demonstrate with your research paper. The annotated bibliography is a brief summary (about one or two paragraphs each) indicating the relevance of each of 4 articles that you intend to use in your research paper. The purpose here is to encourage you to read, summarize, and think about journal articles related to your research topic early in the term. I will use your bibliographies to provide feedback on topics and to suggest additional sources, if necessary. You are not required to retain those 4 articles in your final paper.

30% - Final Research Paper – DUE: April 6, 2020

10 page (double spaced) on a topic of each student's choosing. Feel free to consult with me prior to your proposal. Feel free to get creative, to reach out to local organizations and groups, such as the Canadian Association of Elizabeth Fry Societies or the JAIL line, about writing a research paper to answer a particular question or provide background on a particular issue they may have. In some cases, I may be able to facilitate contact with an organization or group.

A late penalty of 5% per calendar day after April 6, up to 5 days. The paper will **only** be accepted for marking in **hard copy format**. An electronic copy will be accepted as the receipt date of the paper; however, this version will not be printed off or marked.

SCHEDULE

| Date | Topic and Readings | Pages |
|----------------|--|------------------|
| Jan 6 | History and Purpose of Imprisonment | |
| Readings :* | No Readings Films: Twice Condemned and the Stanford Prison Experiment Overview of the course, syllabus, and evaluation | |
| Jan 13 | Role and Rule of Law in Prisons | |
| Readings : | Commission of Inquiry into Certain Events at the Prison for Women in Kingston [Arbour Report] http://www.caefs.ca/wp-content/uploads/2013/05/Arbour Report.pdf | ss. 3 – 3.2.2 |
| | Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women: https://www.chrc-ccdp.gc.ca/eng/content/protecting-their-rights-systemic-review-human-rights-correctional-services-federally | |
| | Interim Report of Senate Committee on Human Rights – Human Rights and the Legal Framework for Federal Corrections | pp. 11- 19 |

| | https://sencanada.ca/content/sen/committee/421/RIDR/reports/RIDR_Report Prisioners_e.pdf | |
|---------------|---|--------------------------------|
| | The Canadian Charter of Rights and Freedoms https://laws-lois.justice.gc.ca/eng/const/page-15.html | ss. 2, 7-12, |
| | Corrections and Conditional Release Act | 15 ss. 3 – |
| | https://laws-lois.justice.gc.ca/eng/acts/C-44.6/page-2.html#h-105740 Commissioner's Directive (CD) 01: | 6(3) |
| | https://www.csc-scc.gc.ca/politiques-et-lois/001-cd-en.shtml | |
| Jan 20 | Classification and Use of Force / Segregation and Transfers | |
| Readings : | Human Rights in Action Manuals (Federal) http://www.caefs.ca/wp-content/uploads/2013/05/CAEFS ENG HRIA-Purple-HB-WEB-Version OK-1.pdf | |
| | Office of the Correctional Investigator, Annual Report 2016-17, Special Focus - Maxed Out: A Review of the Secure Units at the Regional Women's Facilities. available online: https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20162017-eng.aspx?texthighlight=annual+report#s7 | |
| | Protecting Their Rights: https://www.chrc-ccdp.gc.ca/eng/content/protecting-their-rights-systemic-review-human-rights-correctional-services-federally | pp. 23 - 32 |
| | Prisoners of Isolation: Solitary Confinement in Canada – Chapter 3 Solitary Confinement in the Age of Corrections: Cruel and Unusual Punishment in the Twentieth Century: http://justicebehindthewalls.net/book.asp?cid=775 | |
| | Ontario Human Rights Commission's stance on segregation: http://www.ohrc.on.ca/en/submission-ohrc-ministry-community-safety-and-correctional-services-provincial-segregation-review | |
| Jan 27 | Search and Seizure / Discipline and Visiting | |
| Readings : | Human Rights in Action Manuals (Federal) http://www.caefs.ca/wp-content/uploads/2013/05/CAEFS ENG HRIA-Purple-HB-WEB-Version OK-1.pdf Part IV: Restrictive Measures - pp. 63-74 | |
| | The Arbour Report http://www.caefs.ca/wp-content/uploads/2013/05/Arbour Report.pdf | ss. 2.4.2.8 (a) – (f) |
| | Why We Must End Strip Searches in Canada's Prisons for Women: https://www.vice.com/en_ca/article/wjvnx5/why-we-must-end-strip-searches- in-canadas-prisons-for-women | |

| | Jessica Hutchison, "It's Sexual Assault. It's Barbaric": Strip Searching in Women's Prisons as State- Inflicted Sexual Assault (2019) Available on CULearn | |
|--------------------|--|-----------------------------|
| | CCRA – https://laws-lois.justice.gc.ca/eng/acts/C-44.6/page-10.html#h-106210 | ss. 46- 67 |
| | Commissioner's Directives (CDs): CD 559 (Visits): https://www.csc-scc.gc.ca/acts-and-regulations/559-cd-en.shtml | |
| Feb 3 | Sex and Race *Research Paper Proposals Due in Hardcopy | |
| Readings | Criminalizing Women – Gender and (In)justice in Neoliberal Times Available on CU Learn | Ch 13 |
| | Bangkok Rules, a Short Guide: * https://www.penalreform.org/wp-content/uploads/2013/07/PRI-Short-Guide-Bangkok-Rules-2013-Web-Final.pdf | |
| | Interim report of standing senate committee on Human Rights: https://sencanada.ca/content/sen/committee/421/RIDR/reports/RIDR Report Prisioners e.pdf | pp. 21 - 60 |
| | Truth and Reconciliation Commission – http://trc.ca/assets/pdf/Calls to Action English2.pdf | Calls to Action 25-42 |
| | http://www.caefs.ca/wp-content/uploads/2013/04/The-Lived-Experience-of- Discrimination-Aboriginal-Women-Who-are-Federally-Sentenced-The-Law- Duties-and-Rights.pdf | |
| Feb 10 Readings | Issue in Focus: Segregation and Bill C-83 Segregation and mental health in Ontario's prisons: Jahn v. Ministry of Community Safety and Correctional Services: http://www.ohrc.on.ca/en/segregation-and-mental-health-ontario%E2%80%99s-prisons-jahn-v-ministry-community-safety-and-correctional | |
| | CCRA: https://laws-lois.justice.gc.ca/eng/acts/C-44.6/page-6.html#h-106090 | |
| | Letter to Minister Goodale on Bill C-83 from CAEFS President, Diana Majury. Available on CULearn. | |
| | British Columbia Civil Liberties Association v. Canada (Attorney General), 2018 BCSC 62: | |
| | https://www.canlii.org/en/bc/bcsc/doc/2018/2018bcsc62/2018bcsc62.html | |
| | CAEFS' Intervener Factum, BCCLA v. Canada 2018 BCSC 62 Available on CULearn | |

| Feb 17 | OFF – READING WEEK | |
|----------|--|-----------------|
| Feb 24 | Mental Health, Self-harm and Deaths in Custody | |
| Raedings | https://ihrp.law.utoronto.ca/utfl file/count/documents/WorkingGroup Clinic/C ruel%20and%20Inhuman FINAL Print.pdf Office of the Correctional Investigator, Risky Business: An Investigation of the Treatment and Management of Chronic Self-Injury Among Federally Sentenced Women - https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20130930-eng.pdf Verdict and Recommendations of the Jury – Inquest into the Death of Ashley Smith http://www.csc-scc.gc.ca/publications/005007-9009-eng.shtml | |
| | Fifth Estate videos: "Fifth Estate Episode: Behind the Wall." November 12, 2010 "Fifth Estate Episode: Out of Control" January 8, 2010 Inside the legal battle for Ashley Smith's Court case exhibits: https://www.youtube.com/watch?v=1h-ZqhY33CQ | |
| March 2 | Conditional Release and Community Integration | |
| Readings | Auditor General of Canada. Report 5—Preparing Women Offenders for Release—Correctional Service Canada: https://www.oag-bvg.gc.ca/internet/English/parl oag 201711 05 e 42670.html | |
| | Locked In; Locked Out: Imprisoning Women in the Shrinking and Punitive Welfare State: http://www.efryottawa.com/documents/LockedinLockedout-Spoilockresearchreport.pdf | |
| | Fact Sheet – Community Options Required: http://www.caefs.ca/wp-content/uploads/2013/04/Community-Options-Required.pdf | |
| Mar 9 | Rights and Remedies: ATIP, Grievance, OCI, Habeas Corpus | |
| Readings | CD 081: https://www.csc-scc.gc.ca/acts-and-regulations/081-cd-en.shtml (Grievances) | |
| | CCRA: https://laws-lois.justice.gc.ca/eng/acts/C-44.6/page-14.html#h-106532 | ss.90 – 91.2 |
| | Dean Beeby, A quick guide for journalists, activists, students and others using the federal Access to Information Act (February 2019). Available on CULearn | |

| Kelly Hannah-Moffat, Gendering Risk at What Cost: Negotiations of Gender and Risk in Canadian Women's Prisons. Available on CULearn | |
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| Issue in Focus: Classification | |
| judicial-discourses-in-the-sentencing-of-indigenous-women/ | |
| http://www.slaw.ca/2019/06/06/thursday-thinkpiece-implicating-the-system- | |
| https://uofmpress.ca/blog/entry/listening-to-what-the-criminal-justice-system- hears | |
| Indigenous Women (Winnipeg: University of Manitoba Press, 2019). | |
| | |
| Arbour Report, Part IV, recommendation 8, pg 134: http://www.caefs.ca/wp- | |
| R. v. Casey, 2015 NSSC 187: http://www.canlii.org/en/ns/nssc/doc/2015/2015nssc187/2015nssc187.html | |
| Sentencing and sentence management | |
| | |
| https://sencanada.ca/content/sen/committee/421/RIDR/reports/RIDR_Report | Pp 63- 64 |
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| pleteStr=2016%20fc%20537&autocompletePos=1 | |
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| Justice Behind the Walls - Judicial Review The Residual Role of the Courts | |
| http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=parkesd | |
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| Accountability and Oversight | |
| resultIndex=1 | |
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| https://www.oci-bec.gc.ca/cnt/complaint-plainte-eng.aspx | |
| Making a Complaint with the Office of the Correctional Investigator: | |
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| | https://www.oci-bec.gc.ca/cnt/complaint-plainte-eng.aspx Hamm v Attorney General of Canada (Edmonton Institution), 2016 ABQB 440: http://www.canlii.org/en/ab/abqb/doc/2016/2016abqb440/2016abqb440.html? resultIndex=1 Accountability and Oversight "Time for Accountability: Effective Oversight of Women's Prisons". Debra Parkes; Kim Pate. Canadian Journal of Criminology and Criminal Justice; Apr 2006; 48, 2. http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=parkesd Justice Behind the Walls - Judicial Review The Residual Role of the Courts Twins v. Canada (Attorney General), 2016 FC 537: http://www.canlii.org/en/ca/fct/doc/2016/2016fc537/2016fc537.html?autocom pleteStr=2016%20fc%20537&autocompletePos=1 Interim report of the Standing Senate Committee on Human Rights: https://sencanada.ca/content/sen/committee/421/RIDR/reports/RIDR Report Prisioners e.pdf Sentencing and sentence management R. v. Casey, 2015 NSSC 187: http://www.canlii.org/en/ns/nssc/doc/2015/2015nssc187/2015nssc187.html Arbour Report, Part IV, recommendation 8, pg 134: http://www.caefs.ca/wp-content/uploads/2013/05/Arbour Report.pdf Excerpts from Implicating the System: Judicial Discourses in the Sentencing of Indigenous Women (Winnipeg: University of Manitoba Press, 2019). https://uofmpress.ca/blog/entry/listening-to-what-the-criminal-justice-system-hears http://www.slaw.ca/2019/06/06/thursday-thinkpiece-implicating-the-system-judicial-discourses-in-the-sentencing-of-indigenous-women/ |

Canada v Ewert, 2016 FC 203:

http://www.canlii.org/en/ca/fca/doc/2016/2016fca203/2016fca203.html?autocompleteStr=2016%20FCA%20203&autocompletePos=1

Ewert v Canada, 2018 SCC 30:

https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17133/index.do and

submission

http://www.scc-csc.ca/WebDocuments-

<u>DocumentsWeb/37233/FM050 Interveners Native-Women's-Association-of-Canada.pdf</u>

April 6 Decarceration and Abolition

*Final Research Paper Due in Hardcopy

Readings

https://www.churchilltrust.com.au/media/fellows/Kilroy Deborah 2013 To contribute to decarceration.pdf

Challenging Convictions: Indigenous and Black Race-Radical Feminists Theorizing the Carceral State and Abolitionist Praxis in the United States and Canada, Lena Palacios. Available on CULearn.

Spirit matters: https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf

https://www.cbc.ca/radio/ideas/prison-abolitionists-argue-there-s-a-better-way-forward-1.5399845

https://www.nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html

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) website: 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) www.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: http://carleton.ca/studentaffairs/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: carleton.ca/sexual-violence-support

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. http://carleton.ca/law/current-students/