

**Osgoode Hall Law School  
Disability and the Law - Code 4905  
Course Outline (Fall 2017)**

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**Instructor:** Dr. C. Tess Sheldon, Visiting Professor  
Interim Academic Director, Disability Law Intensive  
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**Class Times:** Tuesdays from 11:30- 2:30

**Location:** Room 2028, Osgoode Hall Law School

**I. COURSE DESCRIPTION AND OBJECTIVES**

This course examines disability as a legal category with implications for the rights of persons with disabilities. Students will be introduced to alternative conceptions and theories of disability and impairment and examine how law both constructs and regulates the lives of individuals with disabilities. Throughout the course, we will analyze statutory provisions and jurisprudence in different areas to understand how disability is defined and regulated by law. This course examines and evaluates how law can be used to achieve the goals of social justice and equality for persons with disabilities.

The topic areas of this course include:

- Historical approaches to the law of disability in Canada
- The development of conceptions and theories of disability and impairment including: the medical model; the social construction model; the human rights model; feminist and postmodern approaches to disability
- Human rights approaches to disability law – domestic and international
- Legal construction and regulation of disability in a number of contexts including: health, mental health, economic and social welfare, reproduction, death and dying
- Comparison and evaluation of various legal models (ie. Anti-discrimination, social and economic entitlements) for addressing issues of social justice for people with disabilities

The objectives of this course are:

- To explore the role of law and the limits to the role of law in achieving the goals of social justice and equality for individuals with disabilities
- To provide an overview of existing law relating to the regulation of disability in

Canada

- To develop critical responses to existing law regarding the regulation of disability in Canada.
- To provide an overview of alternative conceptions and theories of disability and impairment and to evaluate these in the context of the legal regulation of disability.
- To listen and constructively engage in class discussions in a way that respects multiple points of view.
- To discuss, analyze and write about disability rights issues.

## **II. METHOD OF TEACHING**

This course will be organized and taught using a combination of lecture and seminar methods. Learning is expected to arise from reading, discussion, research and class participation. Students are expected to read the assigned materials before class and to participate in analytical and reflective class discussions, assignments and presentations.

The materials in this course are extensive. Please don't be intimidated! **You will not be responsible for a close reading of all of the materials every week.** Rather, we will use a combination of in-class presentations and assignments, chief facilitators, class discussion and short written comments as a way of reducing the volume of material for which individual students are responsible, while at the same time exposing students to the depth and range of materials relating to each topic. Initially, classes will be led by the instructor. Thereafter, classes will be led by a small group of students (the number in each will depend on the size of the class) who will be required to do a presentation and facilitate class discussion and learning based on the course readings assigned for that week. Following the student presentation/class activity a general seminar discussion will take place. Discussion questions may be distributed to students in advance and additional questions or related in-class activities will be raised by student presenters.

## **II. LEARNING RESOURCES**

### **a. Required Course Material**

Materials are drawn from Roxanne Mykitiuk and Joan Gilmour, *Disability and the Law's* coursebook (Fall 2017).

For the most part, the materials will be made available electronically by permalinks to the library's e-resources, below.

Discussion questions and problems will be handed out in class or made available on the course Moodle.

**b. Optional Sources**

Students are encouraged to monitor the media and other sources of popular culture for recent developments in the area of disability and the law and to bring these to the attention of the class.

**c. Classes**

Classes will meet on Tuesdays from 11:30 - 2:20 in Room 2028. We will take one 20-minute break in each class. The first class will be August 29, 2017 and the last class will be held on November 28, 2017. There will be no class on November 7 2017 for Osgoode's Reading Week.

**d. Office Hours**

Generally, I will be available to meet with students at the following times. If these hours are not good for you please let me know and we can schedule an appointment for a time and place that is mutually convenient.

Tuesdays: 2:30 pm - 4:00 pm.

Thursdays: 1:00 pm - 2:30 pm.

**IV. METHOD OF EVALUATION**

**a. Student Presentation/Facilitation (20% of final grade)**

Each student is required to do a class presentation relating to a selected area in the course outline and to assist in facilitating class discussion on that topic. Topics will be assigned during the first two weeks of class. Students will work in small groups in leading and facilitating the class on that topic.

**Tips for student presentations:**

The presentation should not attempt to summarise all the issues raised by a particular case, article or articles but rather should be a thoughtful presentation of **some** of the key issues as well as a critical analysis of the way in which those issues are presented or argued. A good presentation will make connections and draw out differences between the cases and articles under discussion and across the topic. Students may use this

forum as an opportunity to canvass ideas they want to develop further in a research essay.

I will meet with each group of presenters about a week before their presentation to plan the presentation and offer suggestions and advice. Please be sure to make an appointment with me as a group.

**Try to refrain from reading a prepared text.**

You may wish to consider distributing a hand-out which summarizes the article or case you are presenting and raises discussion questions and critiques of the article. These are often very useful for class members.

Feel free to experiment with creative forms of presentation. In the past students have produced videos, used role play, invited guests to assist them, created games, held mock trials, used film and written narratives etc.

**b. Class Participation (10% of final grade)**

This component of your final grade will be based upon your attendance and contribution to class discussions and activities. I hope that your contributions will demonstrate attentiveness to the main ideas of each session. Probing questions and comments are encouraged. I am more concerned about the quality of your contribution than the quantity.

In addition, students are required to submit written comments on the weekly readings for two separate weeks to the instructor. The brief comments (2-3 pages) must be submitted to me electronically at least 24 hours before class. You can choose the weeks you like, provided you do not cover the same material in your class presentation/facilitation. Choices will be finalized during the first two weeks of class. The comments are meant to be reflective, critical, provocative etc. provided they are, in some way, related to the materials for the week. There are no style guidelines for these comments.

**c. Term Paper (70% of final grade)**

All students are expected to write a term paper on a topic of your choice, provided that it is related to the areas studied in this course. The aim of the research/analytical essay is to allow you to develop your own critical position by researching and writing about a topic in-depth. Students are strongly encouraged to meet with the instructor after you have selected a specific paper topic. Students are required to submit a paper outline and

bibliography to me for approval no later than October 17 2017. The proposal should be no more than two pages (exclusive of bibliography).

Law students' final term papers must be submitted electronically through the Osgoode Hall online dropbox on or before 3:30 p.m on Monday December 4, 2017. Students in the Critical Disability Studies Program must submit their papers at the same time, in electronic copy by the course Moodle. NOTE: Late papers of students in the CDS program will be penalized two marks per day (out of 70) including weekends. Late papers of students at Osgoode Hall will receive a grade of "F" (unless the student has been granted an approved extension). Requests for extension beyond the December 4 at 3:30 p.m. due date are to be directed to Assistant Dean, Students, Mya Rimon.

The main body of the research/analytical term paper is to be 7,000 words. These limitations do not include footnotes, appendices, charts, lists of figures or table of contents. The main body of the research paper must be in a medium sized clear typeface of 12 pitch (average size). Restrictions will be rigorously enforced. Therefore, if students have any questions regarding length or format they should consult with the instructor.

Students are expected to state and develop a thesis in their papers and those which are purely descriptive will be penalized. Papers which are poorly written and organized and loosely argued will receive an inferior grade. The specific criteria I will use in grading your papers will include the following:

- i. **Comprehensiveness of research** - This dimension involves the discovery, selection, and effective use of relevant and up to date primary and secondary materials on the topic. Where appropriate, materials ought to include non-legal sources.
- ii. **Writing and organization** - Superior grades will be awarded only for papers in which the subject matter has been logically and coherently presented and in which the writing is excellent. "Writing" includes style, diction, citation, punctuation, spelling and grammar.
- iii. **Insight** - Students are required to achieve an understanding of the complexities of the subject matter that goes beyond the mere recitation of the arguments or conclusions presented by leading authorities; to regurgitate the ratio of a case or to present uninterpreted statistics.
- iv. **Originality** - To achieve a high grade on this criterion, students must demonstrate an ability not only to identify the leading authorities and

arguments, but also to deploy critical arguments in relation to the standard positions. This must then lead to the presentation and defence of an original position in relation to the topic. "Original" here does not mean one that is totally unprecedented in any of the literature. In this context, it can mean looking at a traditional or emerging issue in a fresh way, often by applying a novel source or argument (ie. one that is not ordinarily associated with the legal literature in this area).

## **V. COURSE TIMELINE AND IMPORTANT DATES**

August 29 2017	Week 1	Introduction
September 5 2017	Week 2	Disability: Current and Historical Trends
September 12 2017	Week 3	Ableism, Sanism and Theorizing Disability
September 19 2017	Week 4	Disability, Citizenship and Equality Law
September 26 2017	Week 5	Equality and Accessibility and Disability <b>Guest Lecture: Representative from the Dream Team (to be confirmed)</b>
October 3, 2017	Week 6	The Duty to Accommodate
October 10 2017	Week 7	Perspectives on Reproduction
October 17 2017	Week 8	Reproductive Genetics, Wrongful Life, and Wrongful Birth
October 17 2017		<b>Paper Outline &amp; Bibliography due</b>
October 24, 2017	Week 9	Consent and Capacity
October 31 2017	Week 10	Economic Exclusion And Socio-Economic Rights <b>Guest Lecture: AJ Withers</b>
November 7	No class	Reading Week (Osgoode)
November 14 2017	Week 11	Death, Dying and Constructions of Disability
November 21 2017	Week 12	Education <b>Guest Lecture: David Lepofsky, AODA Alliance</b>
November 28 2017	Week 13	The Future of Disability Rights Law including Canada's CRPD Obligations
December 4 2017		<b>Final Papers Due at 3:30 pm</b>

## **VI. COURSE READINGS**

**August 29 2017: Introduction to Critical Legal Theory and Osgoode Hall Law Library Research Tutorial**

The class will first meet in the classroom during which course descriptions and expectations will be discussed, presentation topics will be assigned by the course director and two weekly readings for comments submission will be chosen by students.

- Natalie Spagnuolo & Kory Earle, “Freeing our People: Updates from the Long Road to Deinstitutionalization” (2017) 24:2 *The Monitor* 51 online; < <https://www.policyalternatives.ca/publications/monitor/freeing-our-people-updates-long-road-deinstitutionalization> >.
- Natalie Spagnuolo & Kory Earle, “Freeing our People: Updates from the Long Road to Deinstitutionalization – Clear Language Version” (2017) 24:2 *The Monitor* 51 online; < <https://www.policyalternatives.ca/publications/monitor/freeing-our-people>>

### **September 5 2017: Disability: Current and Historical Trends**

- Canada, *Advancing the Inclusion of Persons with Disabilities 2008* (Hull, PQ: HRDC, 2008), online: Statistics Canada <[http://publications.gc.ca/collections/collection\\_2009/rhdcc-hrsdc/HS61-1-2008E.pdf](http://publications.gc.ca/collections/collection_2009/rhdcc-hrsdc/HS61-1-2008E.pdf)> [**EXCERPT: pages 1 – 3**]
- Ruth Enns, "Coming Out of the Attic: A Brief History of Disabled People's Activism" in *A Voice Unheard: The Latimer Case and People with Disabilities* (Halifax: Fernwood Publishing, 1999) 71-99 [PERMALINK: [http://books1.scholarsportal.info.ezproxy.library.yorku.ca/viewdoc.html?id=/ebooks/ebooks0/gibson\\_crkn/2010-12-16/1/10192112](http://books1.scholarsportal.info.ezproxy.library.yorku.ca/viewdoc.html?id=/ebooks/ebooks0/gibson_crkn/2010-12-16/1/10192112) ]
- Michael J. Prince, "Canadian Disability Policy: Still a Hit-and-Miss Affair" (2004) 29 *Canadian Journal of Sociology* 59-82, online: <<https://muse.jhu.edu/article/54136/pdf> >
- Steve Estey (2011), “The Road to the UN Convention”, online: Council of Canadians with Disabilities < <http://www.ccdonline.ca/en/international/un/canada/road-to-the-un-convention-march2011> >
- Geoffrey Reaume, “Disability History in Canada: Present Work in the Field and Future Prospects” (2012) 1:1 *Canadian Journal of Disability Studies* 35–81, [PERMALINK: <http://cjds.uwaterloo.ca.ezproxy.library.yorku.ca/index.php/cjds/article/view/20/19>]
- Robert McRuer, “Disability Inc.” in by L Ben-Moshe, *et al.*, eds, *Disability Incarcerated: Imprisonment and Disability in the United States and Canada* (New York: Palgrave Macmillan US, 2014) 271 -279 [PERMALINK: <http://ebookcentral.proquest.com.ezproxy.library.yorku.ca/lib/york/reader.action?docID=1765699&ppg=272> ]

### **September 12 2017: Ableism, Sanism and Theorizing Disability**

- Please watch: “Sanism: Dr. Jennifer Poole at TEDxRyersonU” (video): online: <<https://m.youtube.com/watch?v=hZvEUbtTBes>>
- Robert Bodgan & Douglas Bilken, “Handicapsim” in M Wappett & K Arndt eds *Foundations of Disability Studies* (New York: Palgrave Macmillan US, 2013) [PERMALINK: <http://ebookcentral.proquest.com.ezproxy.library.yorku.ca/lib/york/reader.action?docID=1588850&ppg=16> ]
- Dianne Pothier & Richard Devlin, "Introduction: Toward a Critical Theory of Dis-Citizenship" in Dianne Pothier & Richard Devlin, *Critical Disability Theory: Essays in Philosophy, Politics, Policy and Law* (Vancouver: University of British Columbia Press, 2006) 1–22 [PERMALINK: [http://books2.scholarsportal.info.ezproxy.library.yorku.ca/viewdoc.html?id=/ebooks/ebooks0/gibson\\_crkn/2009-12-01/2/404153&page=16](http://books2.scholarsportal.info.ezproxy.library.yorku.ca/viewdoc.html?id=/ebooks/ebooks0/gibson_crkn/2009-12-01/2/404153&page=16) ]
- Peter Beresford & Jasna Russo, “Supporting the Sustainability of Mad Studies and Preventing its Cooption” (2016) 31:2 *Disability & Society* 270 - 274, online: <<http://www.tandfonline.com/doi/full/10.1080/09687599.2016.1145380> >
- Tom Shakespeare, "Critiquing the Social Model" in *Disability Rights and Wrongs* (New York: Routledge, 2006) 29-53 [PERMALINK: <http://ebookcentral.proquest.com.ezproxy.library.yorku.ca/lib/york/reader.action?docID=356014&ppg=38> ]
  - **RECOMMENDED:** Tom Shakespeare, "Critiquing the Social Model" in *Disability Rights and Wrongs Revisited* (New York: Routledge, 2014) **ON RESERVE**
- Christopher Riddle, “Ontology of Impairment” in M Wappett & K Arndt eds, *Emerging Perspectives on Disability Studies* (New York: Macmillan US, 2013), 23–39 [PERMALINK: <http://ebookcentral.proquest.com.ezproxy.library.yorku.ca/lib/york/reader.action?docID=1588832&ppg=40>]
- Lennard J Davis, “An Excess of Sex: Sex Addiction as Disability” in Robert McRuer & Anna Mollow, eds, *Sex and Disability* (Duke University Press, 2012) 313-330 [PERMALINK: <http://ebookcentral.proquest.com.ezproxy.library.yorku.ca/lib/york/reader.action?docID=1173041&ppg=326> ]

### September 19 2017: Disability, Citizenship and Equality Law

- *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624, online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1552/index.do>
- *Quebec (Attorney General) v A*, [2013] 1 SCR 61, online: SCC < <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10536/index.do> >
- *Tanudjaja v Canada*, 2014 ONCA 852, online: <<http://canlii.ca/t/gffz5>>, leave to appeal refused [2015] SCCA No 36283

- Ravi Malhotra, "Has the *Charter* Made a Difference for People with Disabilities?: Reflections and Strategies for the 21st Century" (2012) 58 *The Supreme Court Law Review* 273, online: < <http://digitalcommons.osgoode.yorku.ca/sclr/vol58/iss1/10> >
- Isabel Grant & Peter J Carver. "PS v *Ontario*: Rethinking the Role of the *Charter* in Civil Commitment." (2016) 53:3 *Osgoode Hall Law Journal* 999-1032, online: <<http://digitalcommons.osgoode.yorku.ca/ohlj/vol53/iss3/7> >
- H. Archibald Kaiser, "Canadian Mental Health Law: The Slow Process of Redirecting the Ship of State" (2009) 17 *Health Law Journal* 139 - [http://www.hli.ualberta.ca/HealthLawJournals/~media/hli/Publications/HLJ/HLJ17-05\\_Kaiser.pdf](http://www.hli.ualberta.ca/HealthLawJournals/~media/hli/Publications/HLJ/HLJ17-05_Kaiser.pdf) [**EXCERPT: pages 148 -153**]

### September 26 2017: Equality, Accessibility and Disability

#### Guest Lecture: Representatives from the Dream Team

- *Canadian Human Rights Act*, RSC 1985, c H-6, online: <http://laws-lois.justice.gc.ca/eng/acts/h-6/> >
- *Human Rights Code*, R.S.O. 1990, c. H-19, online: <<https://www.ontario.ca/laws/statute/90h19>>
- *Accessibility for Ontarians with Disabilities*, 2005, S.O. 2005, c. 11, online: < <https://www.ontario.ca/laws/statute/05a11> >
- *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Montreal (City)*; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Boisbriand (City)*, [2000] 1 SCR 665, online: < <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1789/index.do> >
- *Granovsky v Canada (Minister of Employment and Immigration)*, [2000] 1 SCR 703, online: < <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1791/index.do> >
- *Stewart v Elk Valley Coal Corp.*, 2017 SCC 30, online: < <https://scc-csc.lexum.com/scc-csc/scc-csc/en/16679/1/document.do> > [**EXCERPTS: headnote and paras 58-145 (Gascon J, dissenting)**]
- *Braithwaite v Ontario (Attorney General)*, (2007) 88 OR (3d) 45, online: <http://canlii.ca/t/1v9bd>
- Ani B Satz, "Disability, Vulnerability, and the Limits of Antidiscrimination" (2008) 83 *Wash L Rev* 513- 568, online: < <https://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/246/Satz%201709.pdf?sequence=1&isAllowed=y>>
- Daniella A Schmidt, "Bathroom Bias: Making the Case for Trans Rights under Disability Law" (2013) 20 *Mich. J Gender & L.* 155, online: <<http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1033&context=mjgl> >
- Phillip Dufresne, "The Dream Team's Fight Against Discriminatory Bylaws" (2014), online: DreamTeam < <http://thedreamteam.ca/the-dream-teams-fight-against-discriminatory-bylaws/> >

### October 3 2017: The Duty to Accommodate

- *Council of Canadians with Disabilities v Via Rail Canada Inc.*, [2007] 1 SCR 650, online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2352/index.do>
- *Alberta v Hutterian Brethren of Wilson Colony*, [2009] 2 SCR 567, online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7808/index.do>
- *Hydro-Quebec v Syndicat des employe-e-s de techniques professionnelles et de bureau d'Hydro-Quebec, section locale 2000 (SCFP-FTQ)*, [2008] 1 SCR 561, online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2507/index.do>
- *ADGA Group Consultants Inc. v Lane*, 2008 CanLII 39605 (ON SCDC), online: <http://canlii.ca/t/205dq> > **[EXCERPTS: headnote and paras 104 -126]**
- Gwen Brodsky, Shelagh Day & Yvonne Peters, "Accommodation in the 21st Century" (Ottawa: Canadian Human Rights Commission, 2012) online: CHRC [https://www.chrc-ccdp.gc.ca/sites/default/files/accommodation\\_eng.pdf](https://www.chrc-ccdp.gc.ca/sites/default/files/accommodation_eng.pdf) > **[EXCERPT: page 42-45 ("Conclusion")]**
- Lennard Davis, "Bending Over Backwards: Disability, Narcissism, and the Law" (2000) 21 Berkeley J Emp & Lab L 193, online: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1278&context=bjell> >
- Ontario Human Rights Commission, "Duty to Accommodate" in *Policy on Ableism and Discrimination Based on Disability* (Toronto: OHRC, 2016) online: OHRC [http://www.ohrc.on.ca/sites/default/files/Policy%20on%20ableism%20and%20discrimination%20based%20on%20disability\\_accessible\\_2016.pdf](http://www.ohrc.on.ca/sites/default/files/Policy%20on%20ableism%20and%20discrimination%20based%20on%20disability_accessible_2016.pdf) > **[EXCERPTS: pages 28–48 ]**
- Ontario Human Rights Commission, "Duty to Accommodate" in *Policy on Preventing Discrimination Based on Mental Health Disabilities and Addictions* (Toronto: OHRC, 2014), online: OHRC [http://www.ohrc.on.ca/sites/default/files/Policy%20on%20Preventing%20discrimination%20based%20on%20mental%20health%20disabilities%20and%20addictions\\_ENGLISH\\_accessible.pdf](http://www.ohrc.on.ca/sites/default/files/Policy%20on%20Preventing%20discrimination%20based%20on%20mental%20health%20disabilities%20and%20addictions_ENGLISH_accessible.pdf) > **[EXCERPT: pages 28–58]**

### October 10 2017: Perspectives on Reproduction

- *E (Mrs.) v Eve*, [1986] 2 SCR 388, online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/170/index.do> >
- *Muir v Alberta* (1996), 132 DLR (4th) 695 (Alta QB), online: <http://canlii.ca/t/1p6lq> >
- *Cameron v Nova Scotia* (1999), 177 DLR (4th) 611 (NSCA), online: <http://canlii.ca/t/1f0zf> >
- Marcia H Rioux & Lora Patton, "Beyond Legal Smokescreens: Applying a Human Rights Analysis to Sterilization Jurisprudence" in M Rioux, L Basser & M Jones, eds, *Critical Perspectives on Human Rights and Disability Law* (Leiden: Martinus Nijhoff Publishers, 2011) 243–271 [PERMALINK:

<http://ebookcentral.proquest.com.ezproxy.library.yorku.ca/lib/york/reader.action?docID=737765&ppg=259> ]

- Judith Mosoff, "Reproductive Technology and Disability: Searching for the "Rights" and Wrongs in Explanation", (1993) 16 Dalhousie LJ 98-124  
[PERMALINK:  
[http://www.heinonline.org/HOL/Permalink?a=eW9ya3UuY2E&u=http%3A%2F%2Fwww.heinonline.org.ezproxy.library.yorku.ca%2FHOL%2FPage%3Fhandle%3Dhein.journals%2Fdalholwj16%26start\\_page%3D98%26collection%3Djournals%26id%3D100](http://www.heinonline.org/HOL/Permalink?a=eW9ya3UuY2E&u=http%3A%2F%2Fwww.heinonline.org.ezproxy.library.yorku.ca%2FHOL%2FPage%3Fhandle%3Dhein.journals%2Fdalholwj16%26start_page%3D98%26collection%3Djournals%26id%3D100) ]
- Daphne Gilbert & Diana Majury, "Infertility and the Parameters of Discrimination Discourse" in D Pothier & R Devlin, eds, *Critical Disability Theory: Essays in Philosophy Politics, Policy and Law*, (Vancouver: UBC Press, 2006) 285-304  
[PERMALINK:  
[http://books2.scholarsportal.info.ezproxy.library.yorku.ca/viewdoc.html?id=/ebooks/ebooks0/gibson\\_crkn/2009-12-01/2/404153&page=300](http://books2.scholarsportal.info.ezproxy.library.yorku.ca/viewdoc.html?id=/ebooks/ebooks0/gibson_crkn/2009-12-01/2/404153&page=300) ]

### October 17 2017: Reproductive Genetics, Wrongful Life, and Wrongful Birth

- Legal and Social Affairs, *Legislative Summary - Bill S201: An Act to Prohibit and Prevent Genetic Discrimination* (6 December 2016), online  
<https://lop.parl.ca/content/lop/LegislativeSummaries/42/1/s201-e.pdf>
- *Krangle v Briscoe*, [2002] 1 SCR 205, online: < <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1946/index.do> >
- *Paxton v Ramji*, 2008 ONCA 697, online: <http://canlii.ca/t/215b2>
- Erik Parens & Adrienne Asch, "The Disability Rights Critique of Prenatal Genetic Testing" (1999) 29 The Hastings Center Report S1–S22 [PERMALINK:  
<http://www.jstor.org.ezproxy.library.yorku.ca/stable/3527746>]
- Jen Rinaldi, "Wrongful Life and Wrongful Birth: The Devaluation of Life with Disability" (2009) 1 Journal of Public Policy, Administration and Law 1-7, online:  
<http://jppal.journals.yorku.ca/index.php/jppal/article/viewFile/19130/21597>
- Janet Malek, "Deciding against Disability: Does the Use of Reproductive Genetic Technologies Express Disvalue for People with Disabilities?" (2010) 36:4 Journal of Medical Ethics 217-221 [PERMALINK:  
<http://jme.bmj.com.ezproxy.library.yorku.ca/content/36/4/217> ]
- Tom Shakespeare, "Questioning Prenatal Diagnosis" in *Disability Rights and Wrongs* (New York: Routledge, 2006) 85-102 [PERMALINK:  
<http://ebookcentral.proquest.com.ezproxy.library.yorku.ca/lib/york/reader.action?docID=356014&ppg=94> ]
  - **RECOMMENDED:** Tom Shakespeare, "Questioning Prenatal Diagnosis" in *Disability Rights and Wrongs Revisited* (New York: Routledge, 2014) – **ON RESERVE**

### October 24 2017: Consent and Capacity

- Law Commission of Ontario, “**Executive Summary**” in *Legal Capacity, Decision Making and Guardianship -Final Report* (March 2017) online: <http://www.lco-cdo.org/wp-content/uploads/2017/03/CG-Final-Report-EN-online.pdf>
- *Health Care Consent Act*, SO 1996, c 2, Sch A,, online: <<https://www.ontario.ca/laws/statute/96h02> > [**EXCERPTS: ss. 1 – 37.1, s. 70.1**]
- *Substitute Decisions Act*, SO 1992, c 30, online: <https://www.ontario.ca/laws/statute/92s30> [**EXCERPT: ss. 1 – 68**]
- *Thompson v Ontario*, 2016 ONCA 676, online < <http://www.ontariocourts.ca/decisions/2016/2016ONCA0676.pdf>>
- Sophie Nunnelley, “Involuntary Hospitalization and Treatment: Themes and Controversies” in J Chandler & Colleen M Flood, eds, *Law and Mind: Mental Health Law & Policy in Canada* (Toronto: LexisNexis, 2016) 113-138 [**ON MOODLE AND ON RESERVE**]
- *Starson v Swayze*, [2003] 1 SCR 722, online: < <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2064/index.do> >
- *Starson v Pearce*, 2009 CanLII 46 (ON S.C.) <<http://canlii.ca/t/221lt>> ,
- Robert Solomon, J Gray, R O’Reilly & M Nikolic, “Treatment Delayed- Liberty Denied” (2009), 87:3 Canadian Bar Review 679–718 [PERMALINK: <http://www.cba.org.ezproxy.library.yorku.ca/Publications-Resources/CBA-Journals/Canadian-Bar-Review>]
- Sheila Wildeman, “Insight Revisited: Relationality and Psychiatric Treatment Decision-Making Capacity” in J Downie & J Llewellyn, eds, *Being Relational: Reflections on Relational Theory and Health Law* (Vancouver: UBC Press, 2012) 255-286 [PERMALINK: <http://ebookcentral.proquest.com.ezproxy.library.yorku.ca/lib/osgoode/reader.action?docID=3412773&ppg=268>]

**October 31 2017: Economic Exclusion And Socio-Economic Rights  
GUEST LECTURE: AJ Withers, Ontario Coalition Against Poverty**

- *B.C. v Hutchinson*, [2005] 2005 BCSC 1421 (BCSC), aff'g. *Hutchinson v B.C. Ministry of Health* [2004], BCHRTD No. 55 (BCHRT), online; <<http://www.courts.gov.bc.ca/jdb-txt/sc/05/14/2005bcsc1421err1.htm>>
- *Nova Scotia (Workers' Compensation Board) v Martin; Nova Scotia (Workers' Compensation Board) v Laseur*, [2003] 2 SCR 504, online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2088/index.do>
- *Director, Ontario Disability Support Program v Tranchemontagne*, (2009) 95 O.R. (3d) 327, online: <<https://www.canlii.org/en/on/onscdc/doc/2009/2009canlii18295/2009canlii18295.pdf> >
- *Harris v Canada (Minister of Human Resources and Skills Development)*, [2009] 4 FCR 330, online: < <http://canlii.ca/t/22f6v> >

- Sunny Taylor, "The Right Not to Work: Power and Disability" (2004) 55:10 Monthly Review 30, online: <https://monthlyreview.org/2004/03/01/the-right-not-to-work-power-and-disability/>
- Income Security Advocacy Centre, "Report Card: Coroner's Report on the Implementation of Rogers Inquest Recommendations" (2004), online: ISAC < [http://incomesecurity.org/publications/litigation/Rogers\\_Inquest\\_Report\\_Card\\_on\\_Implementation\\_of\\_Coroners\\_Jury\\_Recommendations\\_-\\_2004.pdf](http://incomesecurity.org/publications/litigation/Rogers_Inquest_Report_Card_on_Implementation_of_Coroners_Jury_Recommendations_-_2004.pdf) >
- John Stapleton, "The "Welfareization" of Disability Incomes in Ontario (Toronto: Metcalf Foundation, 2013) <http://metcalffoundation.com/wp-content/uploads/2013/12/Welfareization-of-Disability-Incomes-in-Ontario.pdf>
- Ontario Coalition Against Poverty, "Left in the Lurch: The Destabilizing Reality of Toronto's Housing Stabilization Fund" (October 2016), online: OCAP <<https://ocap.toronto.files.wordpress.com/2016/10/left-in-the-lurch.pdf> >
- AJ Withers & John Clarke, "What Basic Income Means for Disabled People" (April 21 2017) The Bullet E-Bulletin No. 1399, online: <<https://socialistproject.ca/bullet/1399.php> >

## November 7 2017: READING WEEK

### November 14 2017: Death, Dying and Constructions of Disability

#### (i) Medical Assistance in Dying for People Determined to be Decisionally Capable

- *Carter v Canada (Attorney General)*, [2015] 1 SCR 331, online: <<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do>>
- *AB v Canada (Attorney General)*, 2016 ONSC 1912, online: <<http://canlii.ca/t/gnr79> >
- *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519, online: <<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1054/index.do> >
- Vulnerable Persons Standard, online < <http://www.vps-npv.ca/readthestandard> >
- The College of Physicians and Surgeons of Ontario, "Medical Assistance in Dying" (2016), online < <http://www.cpso.on.ca/CPSO/media/documents/Policies/Policy-Items/medical-assistance-in-dying.pdf?ext=.pdf> >
- Maneesha Deckha, "A Missed Opportunity: Affirming the Section 15 Equality Argument against Physician-Assisted Death" (2016) 10:1 McGill J Law & Health S69 -S121 online: < [https://mjlhmccgill.files.wordpress.com/2017/07/mjlh\\_10\\_1\\_deckha2.pdf](https://mjlhmccgill.files.wordpress.com/2017/07/mjlh_10_1_deckha2.pdf)>
- Jocelyn Downie, "And Miles to Go before I Sleep: The Future of End-of-Life Law and Policy in Canada" (2016) 39 Dalhousie LJ 413- 430 [PERMALINK: <http://www.heinonline.org/HOL/Permalink?a=eW9ya3UuY2E&u=http%3A%2F%2F>

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- Graeme Bayliss “It Doesn’t Get Better: The Mentally Ill Deserve the Right to Die with Dignity”, *The Walrus* (April 14 2016), online: <https://thewalrus.ca/suicide-is-not-painless/> >
- Scott Kim & Trudo Lemmens, “Should Assisted Dying for Psychiatric Disorders Be Legalized in Canada?” (2016) 188:14 CMAJ E337-E339 [PERMALINK: <http://www.cmaj.ca.ezproxy.library.yorku.ca/content/188/14/E337.full.pdf+html> ]
- Harriet Johnson “Unspeakable Conversations” *The New York Times* (16 February 2003), online: NYT < <http://www.nytimes.com/2003/02/16/magazine/unspeakable-conversations.html> >
- Sherri Yazdani, Daniel Buchman, Linda Wright & Jennifer A Chandler, “Organ Donation and Medical Assistance in Dying (MAID): Ethical and Legal Issues Facing Canada” (2017) McGill J Law & Health, forthcoming, online: <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2974397](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2974397) >

## (ii) Medical Assistance in Dying for People Determined to be Decisionally Incapable

- *Sawatzky v Riverview Health Centre* (1998), 167 D.L.R. (4th) 359, online: < <http://canlii.ca/t/gbsfj> >
- *An NHS Trust v B. and Others*, [2006] E.W.H.C. 507 (Fam.), online: <http://www.familylawweek.co.uk/site.aspx?i=ed1721>
- *Sweiss v Alberta Health Services*, 2009 ABQB 691, online: <<http://canlii.ca/t/26tn9>>
- *Rasouli (Litigation Guardian of) v Sunnybrook Medical Centre*, [2013] 3 SCR 341, online: < <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13290/index.do> >

## November 21 2017: Education and the AODA Guest Lecture: David Lepofsky, AODA Alliance

- Accessibility for Ontarians with Disabilities Act Alliance, “What an Ontario Education Accessibility Standard Could Include? – A Discussion Paper” (November 21, 2016), online: AODA Alliance <<http://www.aodaalliance.org/education/Education-Accessibility.docx> >
- Accessibility for Ontarians with Disabilities Act Alliance, “The AODA Alliance's Analysis of the August 12, 2015 KPMG Report for the Ontario Government on Accessibility Barriers in Ontario's Education System” (November 9, 2016), online: AODA Alliance <<http://www.aodaalliance.org/strong-effective-aoda/november-9-2016-aoda-alliance-analysis-of-kpmg-education-barriers-report.docx> >
- Accessibility for Ontarians with Disabilities Act Alliance, “AODA Alliance's Response to Ontario Government Survey of the Public on Accessibility” (10 July

2017), online: AODA Alliance < <http://www.aodaalliance.org/strong-effective-aoda/07102017-aoda-submission-on-education-accessibility-barriers.docx> >

- Nadir Khan & Adam Giancola, “TDSB SEAC Report” (1 May 2017), online: Toronto District School Board <<http://www.tdsb.on.ca/Portals/0/Community/Community%20Advisory%20committees/SEAC/SEACReportRevised.docx> >
- UN Committee on the Rights of Persons with Disabilities, *General Comment 4: The Right to Inclusive Education*, UN Doc CRPD/C/GC/4 (2 September 2016) Online: OHCHR < <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx> >

### **November 28 2017: The Future of Disability Rights Law including Canada’s CRPD Obligations**

- Ministry of Community and Social Services, Response to Guy Mitchell Inquest Recommendations (2016), online: < <http://www.vanmeerfreepress.com/wp-content/uploads/2016/07/MCSS-responses-to-the-recommendations-July-22-2016.pdf> >
- Arlene S Kanter, "The Globalization of Disability Rights Law" (2003) 30 Syracuse J Int'l L & Com 241-269 [PERMALINK: [http://www.heinonline.org/HOL/Permalink?a=eW9ya3UuY2E&u=http%3A%2F%2Fwww.heinonline.org.ezproxy.library.yorku.ca%2FHOL%2FPage%3Fhandle%3Dhein.journals%2Fsjilc30%26start\\_page%3D241%26collection%3Djournals%26id%3D247](http://www.heinonline.org/HOL/Permalink?a=eW9ya3UuY2E&u=http%3A%2F%2Fwww.heinonline.org.ezproxy.library.yorku.ca%2FHOL%2FPage%3Fhandle%3Dhein.journals%2Fsjilc30%26start_page%3D241%26collection%3Djournals%26id%3D247) ]
- Peter Barlett, “Implementing a Paradigm Shift: Implementing the CRPD in the Context of Mental Disability Law” in *Torture in Healthcare Settings: Reflections on the Special Rapporteur on Torture’s 2013 Thematic Report* (Washington: Centre for Human Rights and Humanitarian Law, American University Washington College of Law, 2014) 169-180, online: <[http://ure.org/wp-content/uploads/2014/03/PDF\\_Torture\\_in\\_Healthcare\\_Publication.pdf](http://ure.org/wp-content/uploads/2014/03/PDF_Torture_in_Healthcare_Publication.pdf) >
- Right to Housing Coalition, “Submission on the Right to Adequate Housing Committee on Economic, Social and Cultural Rights Canada’s Sixth Periodic Review” (1 February 2016), online: Right to Housing: <[https://righttohousing.files.wordpress.com/2016/02/cescr-submission\\_r2h-coalition.pdf](https://righttohousing.files.wordpress.com/2016/02/cescr-submission_r2h-coalition.pdf)>
- Disability Rights Promotion International, “Summary” in *Expanding the Circle: Monitoring the Human Rights of Indigenous, First Nations, Aboriginal, Inuit and Métis People with Disabilities in Canada: Site Report* (March 2016) online: DRPI <<http://drpi.research.yorku.ca/north-america/north-america-publications-resources/expanding-the-circle-monitoring-the-human-rights-of-indigenous-first-nations-aboriginal-inuit-and-metis-people-with-disabilities-in-canada-site-report/> >
- UN Committee on the Rights of Persons with Disabilities, “Concluding Observations on the Initial Report of Canada” UN Doc. CRPD/C/CAN/CO/1 (8

May 2017), online:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCAN%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCAN%2fCO%2f1&Lang=en)

## **VII. OSGOODE AND YORK ACADEMIC POLICIES**

### ***a. Academic Honesty and Integrity***

Osgoode students are required to maintain high standards of academic integrity and are subject to the York Senate Policy on Academic Honesty and the relevant Osgoode Academic Rules. The Senate Policy can be found at <http://www.yorku.ca/secretariat/policies/document.php?document=69> The York University academic integrity website can be found at <http://www.yorku.ca/academicintegrity>

The Senate Policy and Osgoode Academic Rules are also found in the Student Handbook, which is available on the MyOsgoode website, under the Documents and Publications tab.

### ***b. Religious Observance***

York University is committed to respecting the religious beliefs and practices of all members of the community, and making accommodations for observances of special significance to adherents. Should any of the dates relating to examinations or assignments for this course pose such a conflict for you, please let Assistant Dean, Students, Mya Rimon, know within the first three weeks of class.

### ***c. Students with Disabilities and Accommodation Needs***

York University has a range of resources to assist students with physical, mental, and learning disabilities/challenges in achieving their educational objectives. Students with disabilities requiring accommodation in the classroom or in the examination or evaluation process are encouraged to identify themselves to York's Counselling & Disability Services office (N110, Bennett Centre for Student Services or 416-736-5297) or Osgoode's Office of Admissions & Student Services as soon as possible. Students seeking accommodation in experiential education settings are encouraged to read the *Accommodation Information for Clinical & Intensive Program* handout provided to them with their enrolment offer. All requests for accommodation will be kept confidential.

Requests for accommodation for in-term work must be made, in writing, to either the instructor or to the Assistant Dean, Students, Mya Rimon. Such requests must be made as soon as the need for accommodation arises and, barring exceptional circumstances, in advance of the deadline for the work.

Requests for accommodation for final examinations and final papers may only be made to and approved by the Assistant Dean, Students, Mya Rimon and must be made in advance of the examination date or final paper due date.

***d. Other York University Policies, including Ethics Review Process***

Further information concerning relevant York University academic policies, such as the Ethics Review Process for research involving human participants is available on the Senate Committee on Academic Standards, Curriculum and Pedagogy webpage (see Reports, Initiatives, Documents) –

<http://www.yorku.ca/secretariat/senate/committees/ascp/index-ascp.html>