Critical Disability Law
GS/CDIS 5120 3.0
Course Outline (Winter 2019)

Course Director: Brendon Pooran, Barrister & Solicitor
Email: bpooran@pooranlaw.com

Class Time: Mondays from 2:30 pm - 5:30 pm
January 14 – April 1, 2019
(Exceptions: No class Jan.7, 2019; Feb. 18, 2019 - Reading Week)

Location: Vari Hall 1156, York University
Office Hours: Mondays from 1:30pm - 2:15pm (Or scheduled via email)
Room TBA, HNES Building

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
- An examination of disability and impairment in relation to concepts of power, normalcy, health, illness, disease, ageing, dependence, embodiment, competence, human dignity and personhood
• 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.

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 voluminous. 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, 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. Each class will begin with introductory remarks by the course director pertaining to the weekly topic. Following this, one, or possibly two, students will be required to do a presentation and/or to facilitate the class based on the course readings assigned for that week. Following the student presentation(s) a general seminar discussion will take place. Discussion questions may be distributed to students in advance and additional questions will be raised by student presenters.
III. LEARNING RESOURCES

a. Required Course Material

- A course kit can be purchased from the York University Bookstore which is located in York Lanes (#24 on the Keele campus map)

- A complete reading list is at the end of this course outline. These materials contain the readings for each class and form the basis of class presentations and discussions. Discussion questions and problems will be handed out in class.

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. Email Policy

- You may contact me by email, using your YorkU email account, for any substantive or administrative matters related to the course. Please include your full name and student number in email correspondence.

IV. METHOD OF EVALUATION

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

As of the 2nd class on January 21st, 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. Please submit your top 3 choices by email to the Course Director by the 1st class on January 14th. Depending on the enrollment in the class, it may be necessary to have more than one student presentation per class.

Tips for student presentations:

- Individual presentations should be no longer than 30 minutes (not including questions and discussion). The presentation should not attempt to summarize all the issues raised by a particular 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 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.**

- Presentations that reference only one of the week’s readings will receive a poor grade.

- Try to refrain from simply reading a prepared text.

- You may wish to consider distributing a handout which summarizes the articles or cases 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.

**Students will receive presentation grades once all presentations have been completed for the term.**

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.

c. **Comments on Two Readings Assigned in Separate Weeks (5% of final grade)**

In addition, students are required to submit **written comments on the weekly readings for two separate weeks** to the course director. The brief comments **(500-750 words)** must be **paginated and submitted 48 hours before class by email. A cover sheet indicating the course code and title, course director’s name, student’s name and number** must be included as well. You can select the two weeks of your choice, provided that you do not cover the same material in your class presentation/facilitation. **Please email your choices to the course director by the 1st class on January 14th.** The comments are meant to be reflective, critical, provocative etc. provided they are, in some way, related to the materials. Students are graded on a pass/fail basis.
Late comments will not be accepted and will be given a grade of ZERO. The graded comments will be returned to students within 2 weeks of submission.

d. **Term Paper (65% 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 essay is to allow you to develop your own critical position by researching an area in-depth. Students are strongly encouraged to meet with the instructor after you have selected a specific paper topic. Students must **submit a paper outline and bibliography in the 4th class on February 4th** for approval and **submit an electronic version of them by email on or before the same date**. Your outline must contain the thesis you wish to investigate and should be **no longer than 500 words (exclusive of bibliography)**.

Although a grade will not be given to the paper outline and bibliography, feedback will be provided to students **in the 5th class on February 11th**.

A **final draft of the essay** must be submitted to the course director **in the final class on April 1st**. Students are also required to submit **an electronic version of their essays to the course director by email on or before the same date**.

Late term papers will be deducted **5% per calendar day**. The latest an assignment will be accepted with a mark deduction is within 7 calendar days of the original deadline.

The main body of the research paper is to be **double-spaced**. It is to be a **minimum of 6250 words** and a **maximum of 8750 words**. These limitations **do not include footnotes, appendices, charts, lists of figures or table of contents**. Papers must be in **Times New Roman of 12 font size**. A cover sheet indicating the course code and title, course director’s name, student’s name and number must be included as well. Restrictions will be rigorously enforced. Therefore, if students have any questions regarding length or format they should consult with the course director.

**Students must save all drafts/revisions of their work and photocopies of all source documents until the final grade for the course is posted** and be prepared to present them upon the request of the course director. This is done not only in case of suspected loss of academic integrity. It is also because it allows you to revisit your thinking on the content you are engaged with, an important scholarly practice.
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 used in grading your papers will include the following:

i. **Comprehensiveness of research (15 marks)** - 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 (20 marks)** - 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 (20 marks)** - 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 (10 marks)** - 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 (i.e. one that is not ordinarily associated with the legal literature in this area).

**Students who have breached academic integrity will receive a grade of ZERO on the assignment.**

V. **GRADING SCALE**

Student work is evaluated with great care. Grades are not negotiable. Our program follows the grading and grade reappraisal policies as outlined in the program’s Student Handbook and Survival Guide.

The grades for a course are considered official following approval by the home graduate program of the course. The Faculty of Graduate Studies may change a grade if the program
director concerned reports a clerical error or if an appeal to the program results in a change of grade.

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<tr>
<th>Grade</th>
<th>Description pertaining to the program</th>
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<tr>
<td>A+</td>
<td>Exceptional 90–100% Excellence in writing, research, reading and originality.</td>
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<tr>
<td>A</td>
<td>Excellent 85–89% Work that shows a superior command of the subject, clearly written, creatively researched.</td>
</tr>
<tr>
<td>A-</td>
<td>High 80–84% Work that shows a superior command of the material but limited in breath or depth of research and/or presentation.</td>
</tr>
<tr>
<td>B+</td>
<td>Highly Satisfactory 75–79% Research and writing skills may be flawed in some visible and correctable way. Critical perspective is present and is consistently applied.</td>
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<tr>
<td>B</td>
<td>Satisfactory 70–74% Work that meets minimum expectations of a graduate student in research, writing, and reading skills. Critical perspective is present but is not consistently applied.</td>
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<tr>
<td>C</td>
<td>Conditional 60–69% Unsatisfactory work: flawed in methodology or critical assumption, incoherently organized, poorly written, or superficially researched. Critical perspective is beginning to develop.</td>
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<tr>
<td>F</td>
<td>Failure 0–59% Work that is far below what is required. Does not address the assignment adequately. Absence of critical perspective. <strong>Work that breaches academic honesty is given a grade of ZERO.</strong></td>
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<td>Incomplete N/A</td>
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VI. ACADEMIC INTEGRITY

Any acts of academic dishonesty including but not limited to plagiarism, cheating by submitting the same course work twice, or failure to cite sources are taken seriously and handled according to York University Policy. For details, please refer to the [Faculty of Graduate Studies calendar](#) and the [Senate Policy on Academic Policy](#).

York University’s online Academic Integrity Tutorial is designed to help students learn about academic integrity. You are strongly recommended to [complete this tutorial](#).

VII. ASSIGNMENT DEFERRED STANDING OR EXTENSION POLICY

**Exceptions to** the lateness penalty for valid and unforeseen reasons such as illness, compassionate grounds, etc. will be considered by the course director only when supported by an Assignment Deferred Standing Agreement and appropriate written supporting documentation (e.g. Attending Physician’s Statement, etc.).

Download the [Assignment Deferred Standing Agreement](#) from the program website.

Download the [Attending Physician’s Statement](#) from the Faculty of Graduate Studies website.
VIII. ACADEMIC ACCOMODATIONS FOR STUDENTS WITH DISABILITIES

Consult the instructor at the earliest possible date to ensure that you can be accommodated so as to be able to partake fully in the course. See The York University Senate Policy on Academic Accommodation for further information.

If the accommodation involves extended time to complete course work after the conclusion of the course, students will complete an Assignment Deferred Standing Agreement with the course director and then submit it to the Critical Disability Studies Graduate Program Office (Room 409, HNES Building) for record.

IX. COURSE TIMELINE AND IMPORTANT DATES

*An extra class will be held to make up for the lost week.

<table>
<thead>
<tr>
<th>Date</th>
<th>Chapter</th>
<th>Topic</th>
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<tbody>
<tr>
<td>January 7, 2019</td>
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<td>CLASS CANCELLED</td>
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<tr>
<td>January 14, 2019</td>
<td>Chapter 1</td>
<td>Introduction</td>
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<tr>
<td>January 21, 2019</td>
<td>Chapter 2</td>
<td>Disability: Current and Historical Trends</td>
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<td>January 28, 2019</td>
<td>Chapter 3</td>
<td>Theorizing Disability</td>
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<tr>
<td>February 4, 2019</td>
<td>Chapter 4</td>
<td>Disability Rights, Citizenship and Equality Law - Paper outline and bibliography due</td>
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<tr>
<td>February 11, 2019</td>
<td>Chapter 5</td>
<td>Disability Rights, Equality and Accessibility</td>
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<td>February 18, 2019</td>
<td></td>
<td>READING WEEK – NO CLASS</td>
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<tr>
<td>February 25, 2019</td>
<td>Chapter 6</td>
<td>The Duty to Accommodate</td>
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<tr>
<td>March 4, 2019</td>
<td>Chapter 7</td>
<td>Perspectives on Reproduction</td>
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<td>Reproductive Genetics, Wrongful Life and Wrongful Birth</td>
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<tr>
<td>March 11, 2019</td>
<td>Chapter 8</td>
<td>Education</td>
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<td>March 18, 2019</td>
<td>Chapter 9</td>
<td>Consent and Capacity</td>
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<td>March 25, 2019</td>
<td>Chapter 10</td>
<td>Death, Dying and Constructions of Disability</td>
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<td>*Date TBD</td>
<td>Chapter 11</td>
<td>Economic and Social Assistance</td>
</tr>
<tr>
<td>April 1, 2019</td>
<td>Chapter 12</td>
<td>The Future of Disability Rights Law - Final paper due</td>
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X. READING LIST

CHAPTER 1 - January 14, 2019
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.

At 3:15 pm, the class will move to the Osgoode Hall Law Library for a legal research tutorial until 5:30 pm.


CHAPTER 2 - January 21, 2019
Disability: Current and Historical Trends


Geoffrey Reaume, "Introduction: The Physical and Medical Setting" in Remembrance of Patients Past: Patient Life at the Toronto Hospital for the Insane, 1870-1940. (Toronto, Oxford University Press, 2000) 1


CHAPTER 3 – January 28, 2019
Theorizing Disability


Tom Shakespeare, "Critiquing the Social Model" in *Disability Rights and Wrongs* (New York: Routledge, 2006) 29


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**CHAPTER 4 – February 4, 2019**  
**Disability Rights, Citizenship and Equality Law**

http://books2.scholarsportal.info.ezproxy.library.yorku.ca/viewdoc.html?id=/ebooks/ebooks0/gibson_crkn/2009-12-01/2/404153&page=16


The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 (extracts)


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**CHAPTER 5 – February 11, 2019**  
**Disability Rights, Equality and Accessibility**
Critical Disability Law – Course Outline (Winter 2019)

Quebec (Commission des droits de la personne et des droits de la jeunesse) v Montreal (City); Quebec (Commission les droits de la personne et des droits de la jeunesse) v Boisbriand (City), [2000] 1 SCR 2000, online: https://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/1789/index.do


Braithwaite v Ontario (Attorney General), (2007) 88 OR (3d) 45, online: http://canlii.ca/t/1v9bd


*READING WEEK - FEBRUARY 18, 2019*

CHAPTER 6 – February 25, 2019
The Duty to Accommodate


Adga Group Consultants Inc. v Lane, 2008 CanLII 39605 (ON SCDC), online: http://canlii.ca/t/205dq [headnote and paras XXX]

CHAPTER 7 – March 4, 2019

Perspectives on Reproduction


Muir v. Alberta (1996), 132 DLR (4th) 695 (Alta. Q.B.) http://canlii.ca/t/1p6lq

Cameron v Nova Scotia (1999), 177 DLR (4th) 611 (NSCA) http://canlii.ca/t/1f0zf


http://books2.scholarisportal.info.ezproxy.library.yorku.ca/viewdoc.html?id=/ebooks/ebooks0/gibson_crkn/2009-12-01/2/404153&page=300

Reproductive Genetics, Wrongful Life, and Wrongful Birth


http://www.jstor.org.ezproxy.library.yorku.ca/stable/3527746
### CHAPTER 8 – March 11, 2019

**Education**

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### CHAPTER 9 – March 18, 2019

**Consent and Capacity**

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CHAPTER 10 – March 25, 2019
Death, Dying and Constructions of Disability

(i) Medical Assistance in Dying for People determined to be Decisionally-Capable

Rodriguez v British Columbia (Attorney General), [1993] 3 S.C.R. 519


A.B. v Canada (Attorney General), 2016 ONSC 1912, online: <http://canlii.ca/t/gnr79>

Ministry of Justice and Attorney General of Canada, “Legislative Background: Medical Assistance in Dying (Bill C-14, as Assented to on June 17, 2016)” 2016, online: https://www.justice.gc.ca/eng/rp-pr/other-autre/adra-amrs/adra-amrs.pdf


CHAPTER 11 – Date TBD
Economic and Social Assistance


Ontario Disability Support Program Act, SO 1997, c.25, Schedule B


http://www.cmaj.ca.ezproxy.library.yorku.ca/content/188/14/E337


Graeme Bayliss “It Doesn’t Get Better: The Mentally Ill Deserve the Right to Die with Dignity” (April 14 2016) The Walrus, online: https://thewalrus.ca/suicide-is-not-painless/

Tom Shakespeare, "Autonomy at the End of Life" in Disability Rights and Wrongs (New York: Routledge, 2006) 118


(ii) People Determined to be Decisinally 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


**CHAPTER 12 – April 1, 2019**

The Future of Disability Rights Law


**Tanudjaja v Canada**, 2014 ONCA 852, online: <http://canlii.ca/t/gffz5>


XI. 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 Student Accessibility Services and/or York Student Counseling & Development (N110, Bennett Centre for Student Services or 416-736-5297) or Osgoode’s Office of Admissions & Student Services as soon as possible.

OSGOODE STUDENTS
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. Students from Critical Disability Studies program, please include your Graduate Program Office and Graduate Program Director in any requests.

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