Osgoode Hall Law School
Disability and the Law - LAW4905A
Course Outline (Fall 2019)

Instructor: Marian MacGregor, Adjunct Faculty
            Executive Director, Centre for Human Rights Equity and Inclusion
            Email: mymac@yorku.ca

Class Times: Wednesdays from 2:30 pm - 5:20 pm
Location: Room 2010, 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 Myktitiuk and Joan Gilmour (revised by Tess Sheldon), Disability and the Law’s coursebook (Fall 2018).

For the most part, the materials have been made available electronically by permalinks to the library’s e-resources.

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. We will begin each class with a short discussion about these observations.

c. Classes

Classes will meet on Wednesdays from 2:30 - 5:20 in Room 2010. We will take one 20-minute break in each class. The first class will be August 28, 2019 and the last class will be held on November 27, 2019. There will be no class on November 6, 2019 for Osgoode’s Reading Week.

d. Office Hours (Victor Dahdaleh Bldg Rm 2070)

Generally, I am at the Centre for Human Rights Equity and Inclusion everyday and very flexible with my availability to meet with students. Please email me or speak with me after class to schedule an appointment.

III. 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 self-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 be about 60-75 minutes in length. It 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 & Two Written Reflections (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, double spaced, about 750 words) must be submitted to me by email (mymac@yorku.ca) at least 24 hours before class. There are no style guidelines for these comments You do not need to include a bibliography. You can choose the weeks you like, provided you do not cover the same material in your class presentation/facilitation. Your 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. You might consider reflecting on how the readings resonated with you, identifying examples of how the readings apply to “real-life” (recent news, local issues), offering examples of unanswered questions for further discussion, or identifying issues that require clarification.

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 16 2019. Your outline must contain the thesis you wish to investigate and should be no more than two pages (exclusive of bibliography). Please deliver these by email to mymac@yorku.ca.

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 2, 2019. 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” pursuant to Academic Rule A.6 (unless the student has been granted an approved extension pursuant to Academic Rule F). Requests for extension beyond the December 2 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. First person writing is permitted. Papers will be penalized 5% for every 500 words less than 6500 words and 5% for every 500 words more than 7500 words.

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 (i.e. one that is not ordinarily associated with the legal literature in this area).

### IV. COURSE TIMELINE AND IMPORTANT DATES

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<th>Date</th>
<th>Week</th>
<th>Topic</th>
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<td>August 28 2019 DP</td>
<td>Week 1</td>
<td>Introduction</td>
<td><strong>Guest Lecture</strong>: Daniel Perlin Reference Librarian</td>
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<td>September 4 2019</td>
<td>Week 2</td>
<td>Disability: Current and Historical Trends</td>
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<td>September 11 2019</td>
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<td>September 25 2019</td>
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<td><strong>Paper Outline &amp; Bibliography due</strong></td>
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<td>October 23, 2019</td>
<td>Week 9</td>
<td>Perspectives on Sex, Reproduction &amp; Parenting</td>
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<td>October 30, 2019</td>
<td>Week 10</td>
<td>Death, Dying and Constructions of Disability</td>
<td><strong>Guest Lecture</strong>: Cheryl Milne</td>
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<td>November 6, 2019</td>
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<td>November 13, 2019</td>
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<td>November 20, 2019</td>
<td>Week 12</td>
<td>Economic Exclusion and Socio-Economic Rights</td>
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November 27 2019 | Week 13 | The Future of Disability Law including Canada’s CRPD Obligations
December 2 2019 | | Final Papers Due at 3:30 pm

V. COURSE READINGS

August 28 2019: Introduction to Critical Legal Theory and Osgoode Hall Law Library Research Tutorial

During this class, 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.


September 4 2019: Disability: Current and Historical Trends


September 11 2019: Ableism, Sanism and Theorizing Disability


• 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: Routlege, 2006) 29-53 [PERMALINK: http://web.a.ebscohost.com.ezproxy.library.yorku.ca/ehost/detail/detail?vid=0&sid=1e18a3a8-a536-4d9e-924b-8f8a97851237%40sessionmgr4006&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d#AN=178981&db=nlebk]


September 18 2019: Disability Rights, Citizenship and Equality Law


• 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 Supreme Court Law
Review 273, online: <http://digitalcommons.osgoode.yorku.ca/sclr/vol58/iss1/10>


September 25 2019: Equality, Accessibility and Disability

- Canadian Human Rights Act, RSC 1985, c H-6, online: http://laws-lois.justice.gc.ca/eng/acts/h-6/ >
- Accessibility for Ontarians with Disabilities, 2005, S.O. 2005, c. 11, online: <https://www.ontario.ca/laws/statute/05a11>
- Braithwaite v Ontario (Attorney General), (2007) 88 OR (3d) 45, online: http://canlii.ca/t/1v9bd
- 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>

October 2 2019: Education and the AODA

Guest Lecture: David Lepofsky, AODA Alliance

- Bill C-81 Accessible Canada Act


• 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>


October 9 2019: 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

• Paxton v Ramji, 2008 ONCA 697, online: http://canlii.ca/t/215b2


• Tom Shakespeare, "Questioning Prenatal Diagnosis" in Disability Rights and Wrongs (New York: Rutledge, 2006) 85-102 [PERMALINK:
October 16 2019: The Duty to Accommodate
Guest Lecture: Rob Lattanzio

  [EXCERPTS: headnote and paras 109-144, 216-229]
  [EXCERPTS: headnote and paras 53-109]
- ADGA Group Consultants Inc. v Lane, 2008 CanLII 39605 (ON SCDC), online: <http://canlii.ca/t/205dq> [EXCERPTS: headnote and paras 104 -126]

October 23 2019: Perspectives on Sex, Reproduction and Parenting

- 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.  [EXCERPTS: paras 146-245, 250-288]


**October 30 2019: Death, Dying and Constructions of Disability – Guest Lecture Cheryl Milne**

• Council of Canadian Academies, 2018. *The State of Knowledge on Medical Assistance in Dying Where a Mental Disorder Is the Sole Underlying Medical Condition*. Ottawa (ON): The Expert Panel Working Group on MAID Where a Mental Disorder Is the Sole Underlying Medical Condition. Online: https://cca-reports.ca/wp-content/uploads/2018/12/The-State-of-Knowledge-on-Medical-Assistance-in-Dying-Where-a-Mental-Disorder-is-the-Sole-Underlying-Medical-Condition.pdf Chapters 1-3 provide a general overview of the historical context and the subsequent chapters are specific to the issue of Mental Disorder as the sole underlying medical condition. Our guest lecture, Cheryl Milne sat on the panel relating to Mature Minor and you may wish to read those chapters as well


• **AB v Canada (Attorney General)**, 2016 ONSC 1912, online: <http://canlii.ca/t/qnr79 >
Disability and the Law – Course Outline (2019)

- Vulnerable Persons Standard, online <http://www.vps-npv.ca/readthestandard>

November 6 2019: READING WEEK

November 13 2019: Consent and Capacity
Guest Lecture: Ryan Fritsch – Law Commission of Ontario

- **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](https://www.ontario.ca/laws/statute/92s30) [EXCERPT: ss 1 – 68]
Disability and the Law – Course Outline (2019)


- *Starson v Pearce*, 2009 CanLII 46 (ON SC) <http://canlii.ca/t/221lt>


November 20 2019: Economic Exclusion and Socio-Economic Rights


- *Harris v Canada (Minister of Human Resources and Skills Development)*, [2009] 4 FCR 330, online: <http://canlii.ca/t/22f6v>


November 27 2019: The Future of Disability Law including Canada’s CRPD Obligations


• 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>


VI. 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 Office (N108, Bennett Centre for Student Services or 416-736-5755) 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