

COURSE SYLLABUS: Current Issues in Advanced Constitutional Law

Course Code: 5805C 001

Western Law

January Intensive Course 2016

Room 202

1:00 PM-4:00 pm

Professor Kyle Kirkup

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COURSE DESCRIPTION

Safe injection sites. Sex work. Assisted death. Mandatory minimum sentences. Medical marijuana. Solitary confinement. Some of Canada's most difficult social issues are being framed as constitutional rights claims. This advanced seminar will explore contemporary constitutional law issues under two sections of the *Canadian Charter of Rights and Freedoms*: section 7 (the right to life, liberty and security of the person) and section 12 (the right not to be subjected to any cruel and unusual punishment). After canvassing the jurisprudential development of these two sections over the past three decades, the course explores six contemporary case studies: *Insite* (2011), *Bedford* (2013), *Carter* (2015), *Nur* (2015), *Smith* (2015), and a recent challenge to solitary confinement in federal prisons. The course ends by examining the future possibilities and limitations of constitutional challenges under sections 7 and 12 of the *Charter*.

LEARNING OBJECTIVES

By the end of this course, students will have:

- An understanding of the jurisprudential development of sections 7 and 12 *Charter* over the past thirty years.
- An understanding of the relationship between social issues (safe injection sites, sex work, assisted death, mandatory minimum sentences, medical marijuana, solitary confinement) and the framing of constitutional rights claims.
- An understanding of how to use jurisprudence, legislation, public policy, and social science evidence to construct constitutional rights claims.
- An understanding of how to write about contemporary constitutional rights issues for non-expert audiences.
- An understanding of how to prepare and present oral arguments in constitutional rights cases.
- An understanding of the future possibilities and limitations of constitutional rights claims under sections 7 and 12 of the *Charter*.

REQUIRED TEXTS

Cases and articles will be available on OWL.

EVALUATION

1. Class Participation (15%)

Student grades will incorporate recognition of attendance and participation in the class. Students who come to class prepared and contribute to the class discussion will be given higher grades. Students who come to class unprepared and who do not contribute to the class discussion will be given lower grades.

2. Op-ed (10%)

Students will write a 650 word op-ed on one of the course's six case studies: safe injection sites, sex work, assisted death, mandatory minimum sentences, medical marijuana, or solitary confinement. The intended audience is a major Canadian news outlet, such as *The Globe and Mail* or the *National Post*. Op-eds are due on the second day that the case study is covered in class (eg. sex work op-eds are due January 11, 2016). Please submit hardcopies at the start of the class. Students must select different case studies for the op-ed and the advocacy exercise.

3. Advocacy Exercise (15%)

Students will be placed in teams. The teams will prepare thirty-minutes of oral arguments as either the appellant or the respondent for one of the course's six case studies: safe injection sites, sex work, assisted death, mandatory minimum sentences, medical marijuana, or solitary confinement. The advocacy exercises will take place during the second day that the case study is covered in class (eg. sex work advocacy exercise will take place on January 11, 2016). Students should be prepared to respond to questions from the judge(s). Students will receive a grade for their team's overall performance. No written materials will be submitted for this assignment. Students must select different case studies for the op-ed and the advocacy exercise.

4. Research Essay Outline and Presentation (10%) (Due: January 20, 2016)

Students will select a topic of their choice related to section 7 and/or section 12 of the *Charter*. On **January 20, 2016**, they will submit a two-page, double-spaced outline of their Research Essay. The outline will summarize the proposed argument and include a working bibliography that includes at least five academic sources.

On **January 20, 2016** will briefly present their outline to the class. The presentations should last 2-3 minutes, and will be followed by class discussion. The instructor will return the outlines to students on January 22, 2016. Students will receive a grade for their outline (7.5%) and their presentation (2.5%).

5. Research Essay (50%) (Due: February 12, 2016)

Students will submit their Research Essay (5000-6250 words) on **February 12, 2016 by NOON (EST)** to kyle.kirkup@mail.utoronto.ca. Students are not permitted to change the topic of their

Research Essay without the instructor's permission. Please note that the assignment meets the Faculty of Law's Essay Requirement.

ADDITIONAL INFORMATION

Statement on Use of Electronic Devices

Given the interactive nature of this course, electronic devices should only be used to access course materials and to take notes. Use of mobile devices is not permitted in class.

Statement on Academic Offences

Scholastic offences are taken seriously and students are directed to read the appropriate policy, specifically, the definition of what constitutes a Scholastic Offence, at the following Web site: http://www.uwo.ca/univsec/handbook/appeals/scholastic_discipline_undergrad.pdf.

All required papers may be subject to submission for textual similarity review to the commercial plagiarism detection software under license to the University for the detection of plagiarism. All papers submitted for such checking will be included as source documents in the reference database for the purpose of detecting plagiarism of papers subsequently submitted to the system. Use of the service is subject to the licensing agreement, currently between The University of Western Ontario and Turnitin.com (<http://www.turnitin.com>).

Support Services

Students who are in emotional/mental distress should refer to Mental Health@Western (<http://www.uwo.ca/uwocom/mentalhealth/>) for a complete list of options about how to obtain help. Misty Clapton, Assistant Dean (Student Services) is available to help students identify resources that may be of assistance to them.

SCHEDULE

INTRODUCTION

JANUARY 5, 2016: INTRODUCING SECTIONS 7 & 12

Peter W. Hogg, “The Brilliant Career of Section 7 of the Charter” (2012) 58 SCLR (2d) 195.

Debra L Parkes, “The Punishment Agenda in the Courts” (2014) 67 SCLR (2d) 589.

CASE STUDY 1: SAFE INJECTION SITES

JANUARY 6, 2016: SAFE INJECTION SITES (PART I)

Canada. Health Canada. *Vancouver’s INSITE service and other Supervised injection sites: What has been learned from research? — Final report of the Expert Advisory Committee*, March 31, 2008, online: <http://www.hc-sc.gc.ca/ahc-asc/pubs/sites-lieux/insite/index-eng.php>.

Hester Lessard, “Jurisdictional Justice, Democracy, and the Story of Insite” (2011) 19:3 Const Forum Const. 93.

Alana Klein, “Section 7 of the Charter and the Principled Assignment of Legislative Jurisdiction” (2012) 57 SCLR 59.

JANUARY 7, 2016: SAFE INJECTION SITES (PART II)

Factum: Canada (Attorney General).

Factum: PHS Community Services Society.

Canada (Attorney General) v PHS Community Services Society, 2011 SCC 44, [2011] 3 SCR 134.

CASE STUDY 2: SEX WORK

JANUARY 8, 2016: SEX WORK (PART I)

Reference re *ss. 193 and 195.1(1)(c) of the Criminal Code* (Man.), [1990] 1 SCR 1123 [Prostitution Reference].

Emily van der Meulen, “When Sex is Work: Organizing for Labour Rights and Protections” (2012) 69 *Labour/Le Travail* 147.

Melissa Farley, “Prostitution, Liberalism, and Slavery” (2013) 12:3 *Logos*.

JANUARY 11, 2016: SEX WORK (PART II)

Factum: Canada (Attorney General).

Factum: Terri-Jean Bedford et al.

Canada (Attorney General) v Bedford, 2013 SCC 72, [2013] 3 SCR 1101.

CASE STUDY 3: ASSISTED DEATH

JANUARY 12, 2016: ASSISTED DEATH (PART I)

Lorraine Weinrib, “The Body and the Body Politic: Assisted Suicide under the Canadian Charter of Rights and Freedoms” (1994) 39:3 *McGill LJ* 618.

Jocelyn Downie & Simone Bern, “Rodriguez Redux” (2008) 16 *Health LJ* 27.

JANUARY 13, 2016: ASSISTED DEATH (PART II)

Factum: Canada (Attorney General).

Factum: Lee Carter et al.

Carter v Canada (Attorney General), 2015 SCC 5.

CASE STUDY 4: MANDATORY MINIMUM SENTENCES

JANUARY 14, 2016: MANDATORY MINIMUM SENTENCES (PART I)

R v Ferguson, 2008 SCC 6, [2008] 1 SCR 96.

Benjamin L Berger, “A More Lasting Comfort? The Politics of Minimum Sentences, the Rule of Law, and *R. v. Ferguson*” (2009) 47 SCLR (2d) 1.

Debra L Parkes, “From *Smith to Smickle*: the *Charter's* Minimal Impact on Mandatory Minimum Sentences” (2012) 57 SCLR (2d) 149.

JANUARY 15, 2016: MANDATORY MINIMUM SENTENCES (PART II)

Factum: Her Majesty the Queen.

Factum: Hussein Jama Nur.

R v Nur, 2015 SCC 15.

CASE STUDY 5: MEDICAL MARIJUANA

JANUARY 18, 2016: MEDICAL MARIJUANA (PART I)

R v Parker (2000), 146 CCC (3d) 193 (Ont CA).

Canada. Health Canada. *Medical Use of Marijuana*. April 29, 2015, online: <http://www.hc-sc.gc.ca/dhp-mps/marihuana/index-eng.php> (See, in particular: Procedures for Accessing Marijuana for Medical Purposes; Information for Healthcare Practitioners; Information for Law Enforcement; Information for Municipalities; Frequently Asked Questions)

JANUARY 19, 2016: MEDICAL MARIJUANA (PART II)

Factum: Her Majesty the Queen.

Factum: Owen Edward Smith.

R v Smith, 2015 SCC 34.

RESEARCH ESSAY ROUNDABLE

JANUARY 20, 2016: RESEARCH ESSAY ROUNDTABLE (Research Essay Outlines Due)

Students should come to class prepared to present their essay outline and to obtain feedback from the class. Presentations should be 2-3 minutes in length.

CASE STUDY 6: SOLITARY CONFINEMENT

JANUARY 21, 2016: SOLITARY CONFINEMENT (PART I)

Michael Jackson, “The Litmus Test of Legitimacy: Independent Adjudication and Administrative Segregation” (2006) 48:2 Canadian Journal of Criminology and Criminal Justice 157.

Lisa Coleen Kerr, “The Chronic Failure to Control Prisoner Isolation in US and Canadian Law” (2015) 40:2 Queen’s LJ 483.

JANUARY 22, 2016: SOLITARY CONFINEMENT (PART II); FUTURE DIRECTIONS OF SECTIONS 7 & 12

Notice of Civil Claim: British Columbia Civil Liberties Association and The John Howard Society of Canada.

Response to Notice of Civil Claim: British Columbia Civil Liberties Association and The John Howard Society of Canada.

Margot E Young, “The Other Section 7” (2013) 62 SCLR (2d) 3.