

# MEMORANDUM

**TO:** Students Enrolled in Mental Disability Law: Civil; Fall Term 2018; Tuesday, 9:00 a.m. – 10:50 p.m., Room 309

**FROM:** Professor H.A. Kaiser (Room 412; 494-1003 (office); [archie.kaiser@dal.ca](mailto:archie.kaiser@dal.ca))

**DATE:** September 11, 2018

**RE:** SCHEDULE, EVALUATION AND OTHER INTRODUCTORY ISSUES

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**Mental Disability Law: Civil LAWS 2127 (2 credit hours) / 2128 (3 credit hours);  
Course Description**

This seminar concentrates on issues involving those who are described as having a mental health problem or an intellectual disability. The class surveys many central topics, including the history and conceptualization of mental disorder; substantive and constitutional aspects of involuntary civil commitment; the legal response to alleged incompetence; the right to make treatment decisions; misuses of power and remedies; and advocacy services. Special attention is directed towards the *Convention on the Rights of Persons with Disabilities* and other sources which may have substantial influences on law reform and social justice issues. Students are encouraged to develop their understanding of the rules and policies of the legal system and to heighten their awareness of this form of inequality and discrimination.

ASSESSMENT METHOD: Term assignments (**LAWS 2127**, 2 credit hours) or major paper (**LAWS 2128**, 3 credit hours); a class presentation and class participation are also required for each student. Please note: registration processes and waitlists are set up separately for each of the 2-credit and 3-credit options.

**General University Policies and Notices:**

**STUDENTS REQUESTS FOR ACCOMMODATION:**

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean, Academic Michael Deturbide or the Director of Student Services and Engagement Dana-Lyn Mackenzie as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require documentation.

Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit [www.dal.ca/access](http://www.dal.ca/access) for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at (902) 494-2836.

- General Academic Support – Advising Halifax:  
[http://www.dal.ca/campus\\_life/academic-support/advising.html](http://www.dal.ca/campus_life/academic-support/advising.html)

Page 2

September 11, 2018

**SUBMISSION OF MAJOR PAPERS AND ASSIGNMENTS:**

Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties: <https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

Please note students may also be required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

- a) submit copies of multiple drafts demonstrating development of their work
- b) submit copies of sources
- c) submit an annotated bibliography

**PLAGIARISM:**

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

- Fair Dealing Guidelines: <http://libraries.dal.ca/services/copyright-office/guidelines/fair-dealing-guidelines.html>

**CLASS TOPICS and MATERIALS**

With only 11 regular classes after our first session (no session during Study Break, November 13), some topics cannot be addressed as thoroughly as I would like and others will simply be left out. Nonetheless, I have tried to select issues which will likely be novel to you and which are both significant and contemporary.

Major readings for the course are set out in the syllabus, comprising the cover sheet of the required readings for each class. Usually readings will be available in class in hard copy form the week before we cover the materials. There will often be slides

or other materials given out during classes. It is the student's responsibility to ensure he or she obtains all the required readings, including the class hand-outs. Please inform me if you have any difficulties in gaining access to the materials.

Page 3  
September 11, 2018

### List of Topics

I have tried to allocate the time required to provide coverage of the topics based upon their complexity and importance. Depending upon the extent of class discussion, we should be able to keep up with this schedule.

- Week 1 (September 11). **Introduction** to the course and to Mental Disability Law in general.
- Week 2 (September 18) **Mental Disorder and Disability, Society and the Law in Historical Perspective.**
- Week 3 (September 25) **Understanding Disability: Medical and Social Models.**
- Week 4 (October 2) **Introducing Treatment Issues in Hospitals and the Community.**
- Week 5 (October 9) **Completion of Discussion: Inpatient Treatment Issues.**
- Weeks 6 (October 16) **Completion of Discussion: Community Treatment Issues.**
- Week 7 (October 23) **Restraint and Seclusion.**
- Week 8 (October 30) **International Human Rights Law: Introducing the *CRPD*.**
- Week 9 (November 6) **Issues for Persons Labelled with an Intellectual Disability.**
- (November 13) *Study Break Week*
- Week 10 (November 20) **Incapacity in Nova Scotia: The *Adult Capacity and Decision-making Act*.**
- Week 11 (November 27) **Advocacy.**
- Week 12 (December 4) **To be announced.**

### EVALUATION: 2 or 3 CREDITS

The course can be taken either as a two credit course evaluated by a series of assignments or a three credit course, evaluated by major paper. These options are, of course, open to you, with the variations explained below.

As far as I am concerned, there is no obstacle to your changing the basis of your enrolment from two to three credits or *vice versa*. However, you must check with the Associate Dean's Office, which can require confirmation from me. All Faculty rules must be complied with.

### TOPICS TO BE CHOSEN FROM THE "CIVIL" REALM

For both class presentations and paper topics (for three credit students), subjects must be chosen

Page 4

September 11, 2018

from the civil domain. I offer another class, Mental Disability Law: Criminal, which provides intensive coverage of criminal justice issues such as Criminalization, Policing, Imprisonment, and so on.

**If you wish to pursue a topic in the realm of criminal justice, you should enrol in that course for 2019/20.**

**CLASS PARTICIPATION: *Mandatory for 2 and 3 Credit Students***

**General Class Participation**

**Regardless of the form of evaluation which you have selected, 10% of your final grade will be allocated to class participation.**

***10% of your final grade will be attributed to General Class Participation.***

Although it is somewhat difficult to be precise, I do try to look at each person with respect to certain categories. To de-mystify things, the criteria I use are: attendance (taken in each regular and special session), preparation, frequency of contributions, quality of contributions, collegiality, and contribution to the learning environment.

**CLASS PRESENTATION: *Mandatory for 2 and 3 Credit Students***

**Individual Class Presentation: Mandatory Component for All Students**

***20% of your final grade will be calculated on the basis of your presentation of a particular issue or theme to the whole class.***

***CHOOSE ONE OR THE OTHER APPROACH (OR COMBINE THEM)***

Depending on the number of students in the course and when the presentations actually commence, it may be necessary to hold sessions outside normal class hours to give each student a fair opportunity to present his or her topic and also to cover the rest of the syllabus. My previous experience suggests that this is a very valuable part of the course. The dates will be announced later in the term.

**For three-credit students, please note that it is *unacceptable* to merely discuss your research paper unless the presentation takes one of the approaches below.**

**OPTION A: COMMUNITY OUTREACH**

The emphasis will be on trying to reach beyond the classroom and the library to the local community where one can observe and comment upon problems in Mental Disability Law: Civil. The topic will be of your own choosing, but I will suggest some examples which might inspire you to think about alternatives.

The class discussion which students will lead will be based upon their research and must be completed within 30 minutes including questions. Students will usually do these projects on an individual basis, but I am certainly open to students working together.

Page 5  
September 11, 2018

Students should complete and distribute in advance, or during your presentation, a basic set of materials. Usually this takes the form of a short commentary, outline, copies of slides or overheads. This would normally be in the range of 5-10 pages. You can send electronic copies to me and I will distribute them to the class electronically and in paper form in class.

### **OPTION B: CONTEMPORARY DEVELOPMENTS**

As an alternative to the “Community Outreach” variant, students may elect to provide the class with a presentation offering the most contemporary information on an extremely current topic in mental disability law and policy. This would not require the methods and commentary suggested for the other option, such as site visits or interviews, although students should distribute materials as noted above.

The key to selecting a topic for this approach would be ensuring that there are *very recent developments* (say within the last year) of ongoing significance in the chosen area. The emphasis would be on timely issues, often which are still unfolding. In addition to bringing the class up to date in an authoritative manner, the presenter might predict the future and preferred directions for the debate, law or policy and may draw upon international or foreign sources.

*Presentations which do not incorporate elements of either Option A or B will receive a lesser grade.*

### **Possible Topics for Class Presentations**

*You should discuss the topic(s) in which you are interested with me before you invest too much time in pursuing it. The following list, with some adaptation, should assist you in choosing one of the above options. Many of these topics could also be adapted for a research paper.*

In order to stimulate your planning, examples of *possible* presentation topics follow:

1. The Mental Health Commission of Canada: An Assessment of Achievements Based on Its Strategy (or any other major topic emerging from their work).
2. The Halifax Mobile Mental Health Crisis Service.
3. The “Excited Delerium” Controversy.
4. Finding an Advocate: The Current Range of Resources for People with Mental Health Problems in Nova Scotia.
5. “Rights advisors” under the I.P.T.A.
6. Recruitment, training and appointments: Nova Scotia Review Boards.
7. Social workers and mental disability law.
8. The Mental Health Strategy for Nova Scotia: Its Current State.
9. Next Steps following the *Assisted Capacity and Decision-making Act*.

Page 6  
September 11, 2018

10. Mental disability related exceptions to confidentiality in Nova Scotia.
11. Observations on a hearing(s) before the (i) I.P.T.A. Review Board.
12. Commentary on selected topics based on interviews with: professors or practitioners of psychiatry or other related professions on a legally related topic; persons with mental disabilities (requires consultation with professor); media representatives with an interest in the area; judges; lawyers; government officials; members of a tribunal.
13. An examination of ongoing policy dilemmas surrounding the Involuntary Psychiatric Treatment Act.
14. The Metro Community Housing Association, or similar organizations which provide supportive residential environments.
15. Concurrent diagnosis: policy, treatment and supportive services.
16. Capacity determinations by health professionals (or lawyers).
17. Employment development and integration programs.
18. Psychiatric emergency services.
19. Media awareness of Mental Disability Issues.
20. Connections Clubhouse or similar services.
21. Judicial training and expertise in the mental health area.
22. Mental health issues in the practice of the N.S. Human Rights Commission.
23. Anti-stigma campaigns in Nova Scotia.
24. Peer advocates in Nova Scotia.
25. “Voluntary” admissions to psychiatric facilities.
26. Services for youth with mental health problems in HRM: Laing House and other providers.
27. College of Physicians and Surgeons of Nova Scotia; specific policies raising mental health issues for members (and others).
28. The development of mental disability advocacy organizations in Nova Scotia.
29. The “duty to accommodate” and Nova Scotia Human Rights cases dealing with mental health issues.
30. CTO’s: The Nova Scotia vision in action.
31. Discharge planning for in-patients.

Page 7  
September 11, 2018

32. Disciplinary cases in the Nova Scotia Bar involving mental health issues.
33. “Fitness to practice” developments in the Nova Scotia Bar.
34. Mental health promotion initiatives in Canadian law schools.
35. Close treatment orders for youth in Nova Scotia courts.
36. Suicide prevention in Nova Scotia.
37. Local mental health historical milestones.
38. ECT: policy and use in Nova Scotia.
39. The DSM 5: local state of knowledge and training.
40. PTSD: emerging issues for health care and legal professionals.
41. The Nova Scotia (or other jurisdiction) response to the *C.R.P.D.* in Canada’s Initial Report and beyond.
42. The Statutory Review of *IPTA*: A Focus on Specialized Topics in the LaForest Report and Beyond.
43. Finding a career in mental disability law.
44. Early reaction by persons with mental health problems to DSM 5.
45. The (August 29, 2013) Nova Scotia plan for “Continuing Care and Services for Persons with Disabilities”.
46. New disorder or disabilities: novel topics emerging from the DSM-5 revision process.
47. The C.M.H.A., N.S. History and its current programs.
48. The Schizophrenia Society of Nova Scotia or People First Nova Scotia or N.S. Association for Community Living: Programs and Policies.
49. Funding mental disability advocacy organizations.
50. The Shadow Report: Civil Society Responses to the *C.R.P.D.*
51. Rural mental health services: ensuring equity.
52. Mental health services for Residential School survivors.
53. Issues emerging from cannabis legalization.
54. “Conversion Therapy”: history and present law and policies.

Page 8

September 11, 2018

55. Mental health policies and programs in Nova Scotia Mi'kmaq communities and the law.
56. Mental health first aid: legal issues.
57. Current efforts to conform with the *CRPD* in the professions.
58. Virtual counselling: legal issues.
59. Trauma and mental health: current legal issues.
60. The *CRPD*: the *Optional Protocol* in Canada.

The above list is obviously not exhaustive and I look forward to hearing other proposals. Basically, the exercise should involve a few hours of preparatory research, followed by whatever time is required to select your topic, plan your methodology, and to complete the actual community contacts (if appropriate), and then explaining and critically commenting upon your topic in your class presentation.

## **ASSIGNMENTS AND MAJOR PAPERS**

### **2 Credit Assignments**

Students who have chosen the two credit stream will be evaluated by way of a series of assignments. The First Assignment will be distributed on September 25, 2018 and will be due October 23 at the start of class. The Second Assignment will be distributed on October 23, 2018 and will be due November 20 at the start of class.

### **3 Credit Major Paper**

As far as major papers are concerned, you should review the Faculty of Law guidelines with respect to major papers in the Calendar. *Particularly if this is your first major paper in Law School, pay close attention to these standards.*

*You should discuss your proposed topic in advance with me.* I am prepared to comment upon research/plans and outlines.

You should have settled upon the general area of your research by early October. I appreciate that there may be some fluctuation between the initial discussion of your topic and the final version of your paper. *The paper must be submitted by Friday, December 7, 2018 at 4:00 p.m.* Penalties may be assessed for lateness within Faculty guidelines by the Studies Committee.

If this deadline is unsuitable for your schedule, then you must petition the Studies Committee for accommodation in advance, although they will normally provide extensions only in exceptional circumstances.



Page 9  
September 11, 2018

### **EXAMPLES OF POSSIBLE TOPICS FOR RESEARCH FOR MAJOR PAPERS**

By no means am I intending here to offer an exhaustive list for you. If anything, given the relative paucity of scholarship in Canada, the field is wide open to your creative efforts. There is some prospect of getting your work published.

The list should begin to stimulate your thinking on the kinds of issues which you could consider in your research.

In addition, many of the topics suggested for class presentations could be adapted to become paper topics (and vice versa).

1. Advice for Fiscally Limited Governments: Law Reform choices in the Mental Disability Law Area.
2. The Significance of Inequality for Mental Health and Responsive Legal Strategies.
3. New Confidentiality or Personal Directive (or Other) Legislation in Nova Scotia.
4. *The U.N. Convention on the Rights of Persons with Disabilities: Potential and Limits.*
5. The recovery model and mental health law.
6. The human rights potential of the Mental Health Commission of Canada as shown in their Strategy (or other document).
7. Legal approaches to anti-stigma campaigns.
8. Mental health legislation: can it deal with anything other than care and treatment?
9. Using a "Rights Analysis Instrument" (previously employed in Australia) in Canada: the Mental Health Commission project or other templates.
10. Assessing the current state of Mental Health and Disability Law, Policy and Practice in Nova Scotia.

You could address a whole range of topics: the current legislation on mental health or disability from a Constitutional perspective; proposing amendments to the Involuntary Psychiatric Treatment Act; the *Personal Directives Act*; examining the extent and quality of advocacy services for mentally disordered people; preparing an opinion on the constitutionality of conditions under which people are detained in psychiatric facilities; looking at the local law reform process. You could have the opportunity to make a substantial contribution to law reform by trying to both critique the situation in Nova Scotia and to provide alternatives.

11. What place do people with mental health problems have in law reform?
12. Should there be a jury trial before a person is civilly committed?
13. Should there be an absolute right to refuse treatment for all people?

Page 10  
September 11, 2018

14. Is there any statutory, common law or constitutional *right to treatment* in Canada, especially in light of recent court decisions?
15. If substitute decision makers are available, how should their fitness to make decisions be determined?
16. To what extent can the usual criteria of bona fide occupational requirements enable an employer to get around an apparent case of discrimination on the grounds of mental disability?
17. When could involuntary somatic treatments such as E.C.T. or medication be seen as a misuse of psychiatric power? What remedies are available to the recipient?
18. Are limitation periods an insuperable barrier for citizens with grievances in their distant past in light of mental health factors?
19. What has been the history of the deinstitutionalization in the United States? To what extent has Canada fallen victim to the same tendencies?
20. What kind of alternatives to institutional care for persons with severe and chronic problems are available in Canada?
21. Does psychiatry operate with a racial, gender, class or other bias? How can the law combat any such tendencies?
22. How has psychiatry been used for political purposes? To what extent has this happened or could this happen in Canada?
23. What is the relationship between pharmaceutical companies and psychiatry?
24. To what extent are diagnostic or practice manuals or psychiatric texts responsive to legal or constitutional themes?
25. Is it possible to learn or practice Mental Health Law in an apolitical and non-judgmental fashion?
26. Are the existing professional standards and legal and constitutional rules adequate to ensure confidentiality of medical information in the 21<sup>st</sup> century?
27. Are advance health care directives a cure for problems of varying states of capacity?
28. What is the current best example of adult protection statutes?
29. Could the Montreal Depatterning case occur now?
30. What rights do consumers have to rectify and seek redress for errors in their health records?
31. Is there a prospect for civil liability for historic cases of tardive dyskinesia in Canada'?

Page 11  
September 11, 2018

32. Lawyer's ethical and competence standards in assessing client capacity to instruct.
33. Fighting stigma using the media and the law.
34. Treatment availability, cost containment and the least onerous and restrictive alternative.
35. The influence of the least onerous and least restrictive alternative principle in mental disability law decisions.
36. The *Ontarians with Disabilities Act* or the *Advocacy Act* (Ontario) or other advocacy statutes.
37. Support programs for lawyers (and other professionals) with mental health problems.
38. Law in community-based treatment programs.
39. Public housing for people with serious mental health problems.
40. Environmental Illness: Mental Health and Legal Dimensions
41. Substance abusing pregnant women with mental health problems
42. Hospital responsibility to prevent patient self-harm and suicide or sexual exploitation.
43. Expert reports in psychiatry: scope and problems.
44. Selection, training and operation of Review Boards.
45. Mental illness prejudice in the news media and its legal effects.
46. "Voluntary" admissions and "consensual" treatment: the reality.
47. Patient restraint and seclusion standards in Canada.
48. Comparative assessments of any major issue in mental disability law.
49. Sexual autonomy in institutional settings.
50. Awareness of legal issues in DSM 5.
51. Marriage and capacity.
52. Traumatic brain injury; rehabilitative options; the usefulness of incompetency statutes; compensation levels.
53. Standards for procedural rules and decision making in Review Boards.
54. Canadian perspectives on cultural safety and competence in involuntary assessments.
55. Autism and the right to health care (and/or educational) services.

Page 12

September 11, 2018

56. Cultural abuse in residential schools for Aboriginal peoples and the recovery of damages or other remedies: mental health law dimensions.
57. Removal from office in mental health crises.
58. Rights to in-home mental health services.
59. Regulation of ECT in mental health statutes.
60. PTSD and Armed Forces (or other) employment law and standards.
61. Mental health issues in custody and child protection cases and practice.
62. Mental health issues in Bar Society disciplinary proceedings.
63. The effect of fatality inquiries on the development of mental health law.
64. Anti-depressants, anti-psychotics and young people: lessons to be learned.
65. Mental health law in less developed countries.
66. Contrasts between statutory rights of prisoners and psychiatric detainees.
67. Remedies for unlawful or inappropriate civil commitment.
68. Legal issues surrounding Assertive Community Treatment or Mobile Crisis Teams.
69. The relevance of home care to commitment decisions.
70. Bar Society mental health disclosure requirements for applicants.
71. Protecting persons in mental disability institutions against unreasonable intrusions on liberty and invasions of privacy.
72. Depression in the legal profession.
73. The DSM 5 revision process.
74. Self-represented litigants with mental health problems.
75. Accessibility standards for courts and tribunals involving mental health issues.
76. Dual diagnosis and the legal domain.
77. The dilemmas of concurrent diagnoses.
78. Editorials and mental health law issues: content and influence.
79. Mental health promotion initiatives: measuring effectiveness from a legal perspective.
80. Law reform trends in Europe.

Page 13

September 11, 2018

81. Legal responses to “spectacular” cases in mental health.
82. Supported decision making: recent law reform proposals.
83. The Ontario Law Reform Commission study on mental health issues.
84. Housing and treatment: the Chez Soi experiment of the MHCC.
85. Post-partum depression and involuntary hospitalization.
86. Legal dilemmas in eating disorder crises.
87. Particular diagnoses and their legal implications in DSM 5.
88. Health and Safety issues in mental health facilities.
89. The extent of legal training in psychiatric residency training programs.
90. The most recent policy initiatives of the MHCC.
91. The Scottish national mental health index.
92. Gender and mental health and illness: DSM 5 developments.
93. Racism and mental health legislation policy and/or treatment.
94. Self-stigma and its legal implications.
95. Contemporary outlooks on psychosurgery and its variants.
96. Mental health issues among persons holding public office.
97. Finding the balance: the deterioration standard and intervention.
98. Evolution of legal and human rights: crisis prevention, minimization and stabilization.
99. The substance and aftermath of the mental health and human rights resolution (A/HRC/32/L26) in the Human Rights Council (June 29, 2016).
100. Brexit and its mental health law implications.
101. Emergency mental health services: right to counsel issues.
102. Product regulation and mental health: the legalization of cannabis.
103. Accommodations for students with mental health problems.
104. Legal dilemmas of personality disorders.
105. The Trump Presidency: mental health and the law issues.

Page 14

September 11, 2018

106. Legalization or decriminalization of other drugs beyond cannabis: mental health legislation issues.
107. The opioid crisis: legal issues in concurrent diagnoses.
108. Mental health aspects of recent child protection cases.
109. The potential of the *CRPD Optional Protocol* in Canada.