

# Issues in Criminalization and Imprisonment

September 14, 15, 21 & 22, 2018

Friday evenings & Saturdays

Kim Pate

O: 613-995-9220 M: 613-298-2422; [kpate@sen.parl.gc.ca](mailto:kpate@sen.parl.gc.ca)

This seminar is designed to orient future lawyers to key issues related to incarceration and the correctional and criminal justice systems. As such, you will read and analyze legislation, some case law, reports as well as supplementary research materials that allow us to think critically about the ethical and other constraints upon counsel and others trying to assist prisoners, the specific barriers confronted by women prisoners (particularly Indigenous women and women with mental health issues), as well as legal and other reforms that are possible in this area.

On September 14<sup>th</sup>, we will travel by bus to Nova Institution (federal prison for women in Truro, N.S.), for a meeting and dialogue with women prisoners, staff and community-based advocates to identify key legal issues requiring advocacy. The bus will depart from and return to the law school. We will meet with the women from 18h00-21h00.

We will then have an intensive full day of immersion in and discussion of the materials on September 15<sup>th</sup>.

The final component of the course will involve attending the Prison Law conference being hosted at the law school the following weekend and participating in the discussion regarding the teaching of prison law and attending the plenary sessions.

Successful completion of this intensive course will be based upon your preparation for, participation in and reflections regarding the materials and experiences included in the course.

For the reading(s) assigned, you will be expected to contribute to group discussion, encouraging engagement of your colleagues by leading with reflective insights, critical remarks, and/or challenging questions that struck you while contemplating the assigned reading(s). Set your sights on provoking deeper thinking among the group as well as linking other readings. You might highlight significant insights gleaned from the readings; or provide a critique; or propose new arguments or strategies for lawyers; or point to additional sources and questions that should be interrogated.

Following the conference, you will submit a 2-3 page reflection outlining what your key take-aways are from the course and conference.

## ***1. September 14, 2018 – 16h00-22h00 - Nova Prison for Women***

## READINGS: Guidelines for Advocacy

- [Introduction](#)
- [Section I – Language](#)
- [Section II – Justice for Women – Legal & Equality Issues](#)
- [Section III – What Do We Mean By Normative Legislation](#)
- [Section IV - Areas of Advocacy](#)

PDF version - <http://www.caefs.ca/wp-content/uploads/2013/04/guidelines-for-advocacy-intro.pdf>

## Truth and Reconciliation Commission of Canada

- <http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Principles%20of%20Truth%20and%20Reconciliation.pdf>
- [http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls\\_to\\_Action\\_English2.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf)

## Canadian Charter of Rights and Freedoms: Legal Rights, s. 7-14

- <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>

*Human Rights in Action: Handbook for Women Serving Federal Sentences – Parts I & II*

## 2. September 15, 2018 - 9h00am-12h00 & 13h00-16h00

### History & Purpose of Imprisonment

- Stanford Prison Experiment
- History of Imprisonment
- Film: *Twice Condemned*

### Rights and Restrictions

#### READINGS:

- **Human Rights in Action Manuals (Federal and Provincial)**
  - Part II: Arriving in Prison
  - Part III: Protecting Your Rights
  - Part IV: Restrictive Measures
- ***Corrections and Conditional Release Act: Search and Seizure, ss. 46-67:***  
<http://laws-lois.justice.gc.ca/eng/acts/C-44.6/page-15.html#docCont>
- **Commissioner's Directives 559 & 710-8: Visits**
  - <http://www.csc-scc.gc.ca/politiques-et-lois/559-cd-eng.shtml>
  - <http://www.csc-scc.gc.ca/lois-et-reglements/710-8-cd-eng.shtml>
- ***R v Oakes, 2016 ABCA 90:***  
<http://www.canlii.org/en/ab/abca/doc/2016/2016abca90/2016abca90.html>
- ***Twins v. Canada (Attorney General), 2016 FC 537:***  
<http://www.canlii.org/en/ca/fct/doc/2016/2016fc537/2016fc537.html?autocompleteStr=2016%20fc%20537&autocompletePos=1>

- **Prisoners of Isolation: Solitary Confinement in Canada – Chapter 3 Solitary Confinement in the Age of Corrections: Cruel and Unusual Punishment in the Twentieth Century:** [The Effects of Solitary Confinement](#)
- Ontario Human Rights Commission’s stance on segregation: <http://www.ohrc.on.ca/en/submission-ohrc-ministry-community-safety-and-correctional-services-provincial-segregation-review>
- **Solitary** – by Renee Acoby: <http://joanr73.wordpress.com/2012/11/22/solitary-by-renee-acoby/>
- Reports of the Correctional Investigator – A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries: <http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20131126-eng.pdf>
- Reports of the Correctional Investigator - *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022-eng.aspx>; PDF version: <http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>
- **Women and the Canadian legal system: examining situations of hyper-responsibility.** Article from *Canadian Woman Studies*, January 1, 2008. - <http://cws.journals.yorku.ca/index.php/cws/article/viewFile/22118/20772>

## Remedies & Advocacy

- **Debra Parkes and Emma Cunliffe, Women and wrongful convictions: concepts and challenges**, 2015, available online through the University library website: <http://libraries.dal.ca>
- *Hamm v Attorney General of Canada (Edmonton Institution)*, 2016 ABQB 440: <http://www.canlii.org/en/ab/abqb/doc/2016/2016abqb440/2016abqb440.html?resultIndex=1>
- *Ewert v Canada*, 2015 FC 1093: <http://www.canlii.org/en/ca/fct/doc/2015/2015fc1093/2015fc1093.html>
- *Canada v Ewert*, 2016 FC 203: <http://www.canlii.org/en/ca/fca/doc/2016/2016fca203/2016fca203.html?autocompleteStr=2016%20FCA%20203&autocompletePos=1>
- *Ewert v Canada*, 2017 – SCC submissions (awaiting decision) [http://www.scc-csc.ca/WebDocuments-DocumentsWeb/37233/FM050\\_Intervenors\\_Native-Women's-Association-of-Canada.pdf](http://www.scc-csc.ca/WebDocuments-DocumentsWeb/37233/FM050_Intervenors_Native-Women's-Association-of-Canada.pdf)

- *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13562/index.do>
- **Canadian Human Rights Commission Report: *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women***: <http://www.chrc-ccdp.gc.ca/sites/default/files/fswen.pdf>
- “Time for Accountability: Effective Oversight of Women's Prisons”. Debra Parkes; Kim Pate. *Canadian Journal of Criminology and Criminal Justice*; Apr 2006; 48, 2.  
<http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=parkesd>
- Remedying Breaches of Fiduciary Obligations
  - <http://www.caefs.ca/wp-content/uploads/2013/04/The-Lived-Experience-of-Discrimination-Aboriginal-Women-Who-are-Federally-Sentenced-The-Law-Duties-and-Rights.pdf>
- **Reports of the Auditor General**
  - **Women prisoners** [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201711\\_05\\_e\\_42670.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_05_e_42670.html)
  - **Indigenous prisoners** [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201611\\_03\\_e\\_41832.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_03_e_41832.html)

**Senate Committee on Human Rights** – Study on the issues relating to the human rights of prisoners in the correctional system

- <https://sencanada.ca/en/Committees/ridr/MeetingSchedule/42-1?mode=PAST> ; <https://sencanada.ca/en/newsroom/senate-investigates-human-rights-in-canadian-prisons/> ; <https://sencanada.ca/en/sencaplus/news/life-on-the-inside-human-rights-in-canadas-prisons/>
- **Bangkok Rules**, a Short Guide: <http://16889-presscdn-0-48.pagely.netdna-cdn.com/wp-content/uploads/2013/07/PRI-Short-Guide-Bangkok-Rules-2013-Web-Final.pdf>

### 3. September 21 & 22, 2018: *Prison Law Conference*

#### **ADDITIONAL RESOURCES:**

- *A Sourcebook on Solitary Confinement*, Mannheim Centre for Criminology, London (2008)
- **Federally Sentenced Women**: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20142015-eng.aspx#s10>; OR, PDF version, pp 49-53:

<http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20142015-eng.pdf>

- U.S. Prison Overcrowding Litigation – Plata case
  - <http://www.supremecourt.gov/opinions/10pdf/09-1233.pdf>
- U.S. Solitary and Conditions of Confinement – Ashker Settlement Agreement –
  - [https://ccrjustice.org/sites/default/files/attach/2015/09/2015-09-01-ashker-Settlement\\_Agreement.pdf](https://ccrjustice.org/sites/default/files/attach/2015/09/2015-09-01-ashker-Settlement_Agreement.pdf)

## **Justice Behind the Walls**

- [Chapter 1 Change and Continuity in the Canadian Prison: Lessons from Scholarship](#)
- [Chapter 3 Prison Visiting: Lifelines to the Community](#)
- [Chapter 4 The Power to Search and the Protection of Privacy](#)
  - Sector 4:
- [Chapter 1 Administrative Segregation: The Litmus Test of Legitimacy](#)  
[Chapter 2 Administrative Segregation at Matsqui and Kent, 1993-6: The Persistence of Customary Law](#)
  - [Chapter 3 The Arbour Report: The Indictment of a System](#)
  - [Chapter 4 The Task Force on Administrative Segregation 1996-7](#)
  - [Chapter 5 A Deadly July: Prison Politics, Staff Realities and the Law](#)
- Sector 5:
- [Chapter 1 Involuntary Transfers: Greyhound Therapy Then and Now](#)
- [Judicial Review -- The Residual Role of the Courts](#)
- [Correcting Corrections: The Remedial Toolbox](#)
- [The Grievance System -- Through the Eyes of a Prison Ombudsman](#)
- [The Grievance System: Through the Eyes of the Arbour Commission](#)
- [The Prisoner Grievance Process and the Office of the Correctional Investigator](#)
- [Conclusion: Human Rights and the Prison at the Beginning of the Twenty-First Century](#)