

## JSGS 841 – HEALTH LAW & POLICY

Syllabus subject to change up until course date

UNIVERSITY OF REGINA CAMPUS	
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<b>OFFICE HOURS:</b>	By appointment (note: appointments available by phone or by facetime or Zoom)
<b>OFFICE LOCATION:</b>	N/A
<b>TERM:</b>	Winter 2020
<b>ROOM:</b>	Online
<b>DATE AND TIME:</b>	The first day of classes is September 2, 2020 and the final module will close on December 8, 2020. The dates for each module are identified below in the Course Outline section of the syllabus. Modules will open Monday mornings at 8:00 a.m. Saskatchewan time and close Sundays at midnight.  Nov 9 – 14 fall break

### CALENDAR DESCRIPTION

This course will provide an overview of issues at the intersection of health law and policy. It will include a basic introduction to the foundations of health law including how Indigenous people’s health is affected followed by examination of topical issues in this domain.

### LEARNING OBJECTIVES

- To become familiar with health law terms and principles
- To understand Indigenous health and how laws, legislation and policy shape and affect it
- To learn basic legal research skills and become familiar with recognizing and analyzing legal issues in a health-related context
- To explore and analyze current health system issues through the lenses of law and policy
- To exercise and demonstrate effective written analytical and communication skills.

## ATTRIBUTES OF JSGS GRADUATES

1. Management, Governance, and Leadership: Ability to inspire support for a vision or course of action and successfully direct the teams, processes, and changes required to accomplish it.
2. Communication and Social Skills: Ability to communicate effectively and build enduring, trust-based interpersonal, professional relationships.
3. Systems Thinking and Creative Analysis: Ability to identify key issues and problems, analyze them systematically, and reach sound, innovative conclusions.
4. Public Policy and Community Engagement: Ability to understand how organizational and public policies are formulated, their impact on public policy and management and how to influence their development.
5. Continuous Evaluation and Improvement: Commitment to on-going evaluation for continuous organizational and personal improvement.
6. Policy Knowledge: Ability to analyze and contribute content to at least one applied policy field.

## COURSE CONTENT AND APPROACH

### READINGS

Various online sources or PDFs available on UR courses

#### **Required:**

Hardcastle, Lorian. 2019. *Introduction to Health Law in Canada*. Ontario: Emond Montgomery Publications Limited

#### **Not Mandatory but suggested:**

Y. Boyer, *Moving Aboriginal Health Forward: Discarding Canada's Legal Barriers* (Purich Publishing, 2014).

If there is difficulty accessing these sources, please contact me.

Each module will involve required readings and/or activities (e.g., viewing a news article or video, reviewing a website, etc.). Reviewing these materials in a thoughtful, analytical manner is an essential part of this course. Students will be expected to incorporate these materials in their discussion forum participation.

Supplementary materials and/or activities will also be suggested for some modules. Supplementary content is not required but will provide additional background and introduce different perspectives on the topics being considered.

**EVALUATION**

<b>Method of Evaluation</b>	<b>% of Total Course Grade</b>	<b>Time Frame/Due-Date</b>
<b>Discussion Forum Engagement</b>	<b>20%</b>	<b>On-going throughout term</b>
<b>Case Law Analysis</b>	<b>20%</b>	<b>October 4 at midnight</b>
<b>1Mid Term Exam</b>	<b>30%</b>	<b>Opens Nov 3 at noon to Nov 8 at midnight</b>
<b>Research Paper</b>	<b>30%</b>	<b>Dec 13 at midnight</b>

This course is divided into modules. Each module focuses on a particular topic and involves a set of readings, content with associated activities, and a discussion forum. The course will be loosely structured in two parts. We will begin by obtaining a basic understanding of key concepts in health law and policy. We will then go on to explore legal, policy and ethical issues surrounding a select assortment of special topics. The initial grounding in fundamental health law principles will enable students to critically examine the multi-faceted nature of issues in this domain. Students will examine the tensions that frequently emerge between law, policy and ethics in these challenging areas, and will have the opportunity to take a broad and interdisciplinary approach to their analysis. Ideally, students will finish the course with a greater capacity to understand the relevant legal framework within which the health system operates, to engage in critical analysis of issues at the intersection of law and policy, and to identify where there may be potential legal implications of issues they may encounter in the health sector.

Given the large and continually growing range of emerging issues in health law and policy, our aim will not be a comprehensive examination of this field. Rather, we will adopt a ‘big picture’ approach and will develop a general framework for approaching and analyzing health law and policy issues. A focus on law and policy, and the relationship between them, will remain a consistent theme throughout the course. At the same time, our discussions will accommodate assessing issues from various interdisciplinary perspectives, recognizing that students will bring diverse backgrounds to the class.

Indigenous people have a disparaging health status. It is important to understand why and how health policy has particularly negatively affected the health of Indigenous peoples in Canada. Two complete modules will look at some of the underlying reasons and policies and laws that have been the source of this dilemma. Indigenous issues and policy will be noted throughout the other modules when presented.

This is a graduate level course prepared for professional students. Each of you brings unique expertise and experience to the class which you are encouraged and indeed expected to share. The success of this

course and the quality of your experience will depend largely on your own level of engagement. The course is designed to be a joint learning experience for which we all share responsibility.

***Please note that previous legal training is not required. It should also be noted that this course is not intended to provide or replace legal advice, nor will it equip students to do so.***

<b>Module 1: Orientation and Course Overview</b>	<b>Sept. 2 to Sept. 6 (midnight)</b>
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This introductory module will facilitate group introductions and will include an overview of the course structure, content, expectations and methods of evaluation. We will look at interpretations of “health law” and “health law and policy”, and will confirm the definition or scope we will adopt for the purpose of this class. This session will encourage students to develop a critical appreciation of the relationship between law and legal values and the direction of medical, bioethical and health system practice and policy. It will also give students an opportunity to get comfortable with the online learning environment and with navigating the resources available in our virtual classroom space (URCourses). It will include recorded videos and PowerPoint lectures which will be posted in the various modules.

<b>Module 2: The Canadian Legal System</b>	<b>Sept. 7 to Sept. 13 (midnight)</b>
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This module will provide an overview of the Canadian legal system, including the structure of the courts and legal processes. It will also review legislative structures and examine their place in establishing the legal framework within which the health system operates.

***Required:***

- Hardcastle, Lorian. 2019. *Introduction to Health Law in Canada*. Ontario: Emond Montgomery Publications Limited, Chapter 1: The Legal Structure of the Canadian Health Care System, pp. 1 – 19.
- Department of Justice, Canada, *Canada’s Court System* (2020): <http://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/index.html> (please read all but the bilingual action plan). Accessed July 29, 2020.
- Library of Parliament, *The Legislative Process: From Government Policy to Proclamation*, PRB 2015-52-E, 1 September 2015. Accessed July 29, 2020. PDF available in URCourses. <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/InBriefs/PDF/2015-52-e.pdf>.

Review the following websites and familiarize yourself with the background information presented:

- Definitions: <http://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/06.html>
- Civil vs. Criminal cases: <http://www.justice.gc.ca/eng/csj-sjc/just/08.html>
- Where our legal system comes from: <http://www.justice.gc.ca/eng/csj-sjc/just/03.html>
- What is the law: <http://www.justice.gc.ca/eng/csj-sjc/just/02.html>

**Module 3: Introduction to Legal Analysis and Legal Research    Sept. 14 to Sept. 20 (midnight)**

This module will introduce legal analysis and reasoning. It will also help students develop a basic understanding of legal research skills and familiarity with various legal research tools.

**Required:**

- Review the following website: “Best Guide to Canadian Legal Research”: <http://www.canlii.org/t/2bm3>
- For the purpose of this module, pay particular attention to the sections on “Research Essentials” and “Writing & Analysis.”  
**NOTE:** this is an excellent legal research resource and you may want to refer to it throughout the semester when you are working on your assignments or have questions about what you are reading.

See also, Melanie R Bueckert et al, The Canadian Legal Research and Writing Guide, Canadian Legal Information Institute, 2018 CanLII Docs 161, <http://www.canlii.org/t/2bm3>.

**Supplementary:**

- Queen’s University Library. 2019. “Legal Research Manual.” Accessed July 29, 2020. <https://guides.library.queensu.ca/legal-research-manual/overview>.

**Module 4: Health Law – the Basics****Sept. 21 to Oct. 4 (midnight)\*2 weeks\***

This module will provide an introduction to key health law principles. We will cover the fundamentals of essential topics including medical negligence (duty of care, standard of care, damage, causation and defences), informed consent, substitute decision-making, fiduciary duties and vicarious liability.

**Because of the complexity and importance of these foundational topics, we will spend two weeks on this module.**

**Required (1<sup>st</sup> week)**

- Hardcastle, Lorian. 2019. *Introduction to Health Law in Canada*. Ontario: Emond Montgomery Publications Limited, Chapter 2: Negligence Claims Against Health Professionals, pp. 19 – 32.
- Irvine, J. “Medical Negligence: The Essential Elements”, ch. 6 in *Canadian Medical Law; An Introduction for Physicians, Nurses and other Health Care Professionals*, 4<sup>th</sup> Ed. J Irvine, P Osborne, M Shariff (Thomson Reuters Canada Ltd, 2013), pp. 91-150. PDF available in URCourses.
- See Canadian Nurse Protective Society (CNPS) in general at: [www.cnps.ca](http://www.cnps.ca). See also Infolaw, Negligence. PDF available in URCourses.

- See: The Canadian Medical Protective Association (CMPA) in general at: <https://www.cmpa-acpm.ca/en/about/what-we-do>
- Kendall Latimer, "Daughter launches lawsuit against Sask. doctor who saw her mother hours before death" July 9, 2018, online: <https://www.cbc.ca/news/canada/saskatchewan/claim-launched-against-cheshenchuk-1.4739577>.

**Required (2<sup>nd</sup> week):**

- Yvonne Boyer, Judith Bartlett, "*External Review, Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women*," Saskatoon, Saskatchewan, July 22, 2017. PDF available in URCourses.
- The Provincial Implementation Team Report on the Recommendations of the Brian Sinclair Inquest Report, March 12, 2015. PDF available in URCourses. Also read the facts from the Inquest document in the supplementary reading.
- Brian Sinclair Working Group, *Out of Sight: A summary of the events leading up to Brian Sinclair's death and the inquest that examined it and the Interim Recommendations of the Brian Sinclair Working Group*, September 2017, <http://ignoredtodeathmanitoba.ca/index.php/2017/09/15/out-of-sight-interim-report-of-the-sinclair-working-group/>.
- Waite, M. 2005. "To Tell the Truth: The Ethical and Legal Implications of Disclosure of Medical Error." *Health Law Journal* 13: 1-33. PDF available in URCourses.

**Supplementary:**

- Inquest into the Matter of the Fatalities Inquiries Act, in the Matter of the Death of Brian James Sinclair. PDF available in URCourses.
- Levinson, W. 2009. "Disclosing Medical Errors to Patients: A Challenge for Health Care Professionals and Institutions." *Patient Education and Counselling* 76(3): 296-299. PDF available in URCourses.
- "Are there risks to acting as a good Samaritan?" *CMPA*. 2015. <https://www.cmpa-acpm.ca/en/advice-publications/browse-articles/2015/are-there-risks-to-acting-as-a-good-samaritan>.
- "CMA Code of Ethics and Professionalism." *Canadian Medical Association*. 2018. <https://policybase.cma.ca/documents/policypdf/PD19-03.pdf>.

<b>Module 5 and 6: Indigenous Health, the Law and Policy Oct. 5 to October 18 (midnight)* 2 weeks*</b>
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This module will look at the health rights of Indigenous peoples in Canada. The source and content will be examined as well as the current Canadian health policies that affect Indigenous people in Canada. There will be focus on jurisdictional issues, the division of powers and Constitutionally protected rights.

Because of the complexity and importance of these foundational topics, we will spend two weeks on this module.

**Required:**

- Y. Boyer, *Moving Aboriginal Health Forward: Discarding Canada's Legal Barriers* (Purich Publishing 2014). Pages: 92 to 120, 126 to 155, 157 to 163. PDF available in URCourses.
- Hardcastle, Lorian. 2019. *Introduction to Health Law in Canada*. Ontario: Emond Montgomery Publications Limited, Chapter 14: Indigenous Health and the Law, pp. 227 – 241.
- See Non-Insured Health Benefits Handbooks. There may be some overlap between the two. Read the first one thoroughly and then read the second one to notice any differences between the perspectives. Online:
  - <https://www.yumpu.com/en/document/view/37987436/nihb-handbook-pdf-first-nations-health-directors-association> (First Nations perspective)
  - [https://www.canada.ca/content/dam/hc-sc/migration/hc-sc/fniah-spnia/alt\\_formats/pdf/pubs/nihb-ssna/yhb-vss-inuit/yhb-vss-inuit-eng.pdf](https://www.canada.ca/content/dam/hc-sc/migration/hc-sc/fniah-spnia/alt_formats/pdf/pubs/nihb-ssna/yhb-vss-inuit/yhb-vss-inuit-eng.pdf) (Inuit perspective)
- United Nations Declaration on the Rights of Indigenous Peoples. PDF available in URCourses.
- Josee G Lavoie, "Medicare and the care of First Nations, Metis and Inuit" *Health Economics, Policy and Law*, 2018, 13(3-4), pp 280-298. PDF available in URCourses.

**Supplementary – Reading list for those who are interested:**

- Larry Chartrand, Maskikiwenow, *The Métis Right to Health Under the Constitution of Canada and Under Selected International Human Rights Obligations*. PDF available in URCourses.
- *Determinants of Indigenous Peoples' Health: Beyond the Social*, 2<sup>nd</sup> Ed., Margo Greenwood, Sarah De Leeuw & Nicole Marie Lindsay eds (CSP Books Inc., 2018).
- Gary Geddes, *Medicine Unbundled: A Journey through the Minefields of Indigenous Health Care* (Heritage House Publishing, 2017).
- Daschuk, James William. *Clearing the plains: Disease, politics of starvation, and the loss of Aboriginal life*. Vol. 65. University of Regina Press, 2013
- Pelley, Lauren. 2018. "Mistreated, the legacy of segregated hospitals haunts Indigenous survivors." *CBC*. Accessed February 12, 2020. <https://www.cbc.ca/news2/interactives/sh/jTCWPYgkNH/mistreated>.
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- Natasha MacDonald-Dupuis. 2015. "The Little-Known History of How the Canadian Government Made Inuit Wear 'Eskimo Tags'" *VICE Newsletter*. Accessed on February 12, 2020 [https://www.vice.com/en\\_ca/article/xd7ka4/the-little-known-history-of-how-the-canadian-government-made-inuit-wear-eskimo-tags](https://www.vice.com/en_ca/article/xd7ka4/the-little-known-history-of-how-the-canadian-government-made-inuit-wear-eskimo-tags).

- Qikiqtani Inuit Association. 2014. "Qikiqtani Truth Commission Final Report: Achieving Saimaqatigiingniq. Thematic Reports and Special Studies 1950–1975." Iqaluit, NU. Accessed on February 13, 2020  
[https://www.qtcommission.ca/sites/default/files/public/thematic\\_reports/thematic\\_reports\\_english\\_final\\_report.pdf](https://www.qtcommission.ca/sites/default/files/public/thematic_reports/thematic_reports_english_final_report.pdf).
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- Wilk, Piotr, Alana Maltby, and Martin Cooke. 2017. "Residential schools and the effects on Indigenous health and well-being in Canada—a scoping review." *Public Health Review*. 38(8). Accessed February 26, 2020.<https://publichealthreviews.biomedcentral.com/articles/10.1186/s40985-017-0055-6>.
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- Redvers, Nicole, Justina Marianayagam, and Be'sha Blondin. 2019. "Improving access to Indigenous medicine for patients in hospital-based settings: a challenge for health systems in northern Canada." *International Journal of Circumpolar Health* 78: 1-5.
- Dunning, Norma. 2012 Reflections of a disk-less Inuk on Canada's Eskimo identification system. *Erudit*36(2):209-226. <https://www.erudit.org/en/journals/etudinuit/2012-v36-n2-etudinuit0607/1015985ar/>

<b>Module 7: The Charter of Rights of Freedoms</b> <b>Charter Challenges to Health Policy</b>	<b>Oct. 19 to October 25 (midnight)*</b>
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In this module we will consider the impact the Canadian Charter of Rights and Freedoms has had on health policy in Canada, with a focus on previous Charter challenges.

**Required:**

- Reis N. "Charter Challenges", ch. 14 in *Canadian Health Law and Policy, 4<sup>th</sup> Ed.*, J. Downie, T. Caulfield, C. Flood eds (LexisNexis Canada Inc. 2011), pp. 614-651. PDF available in URCourses.
- Bryan Thomas & Colleen M Flood, "A successful Charter challenge to medicare? Policy options for Canadian provincial governments" (2018) *Health Economics, Policy and Law* 13: 433-449. PDF available in URCourses.
- David R Boyd, "No taps, no toilets: First Nations and the constitutional right to water in Canada" (2011) 57 *McGill Law Journal*. PDF available in URCourses.

**Supplementary:**

- Colleen M Flood & Sujith Xavier, "Health Care Rights in Canada: The Chaoulli Legacy" (2008) *International Journal of Law and Medicine*. PDF available in URCourses.

<b>Module 8: Administrative Law in the Health Context</b>	<b>Oct. 26 to Nov 1 (midnight)</b>
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This module will include an overview of key Administrative Law principles, with a particular focus on how they relate to the functioning of different healthcare-related bodies (boards, tribunals, etc.). Jordan's Principle will be discussed in the context of evolving case law.

**Required:**

- Evan Fox-Decent & Alexander Pless. "The Charter and Administrative Law Part I: Procedural Fairness", ch. 6 in *Administrative Law in Context*, 3<sup>rd</sup> ed., Colleen Flood, Lorne Sossin eds (Emond Publishing 2017), pp. 237-252. PDF available in URCourses.
- *Pictou Landing Band Council v. Canada (Attorney General)*, 2013 FC 342 (CanLII). PDF available in URCourses.
- *Jordan's Principle*. PDF available in UR Courses.
- Canadian Paediatric Society, "Jordan's Principle: Are We Doing Enough?", online: <https://www.cps.ca/en/status-report/jordans-principle>.

**Supplementary:**

- Anand, Raj, Edelstein, Wong-Chong, Christine. 2012. "A Survey of Recent Developments on Judicial Review of Professional Discipline Decisions" *Canadian Journal of Administrative Law & Practice* 25(2): 147-178. PDF available in URCourses.

**Note:** this is a long and somewhat dense article but it provides a useful update on law and practice in this area and also illustrates how precedent evolves. Those who are interested may find it useful to skim the article and focus on the sections/issues that you find most engaging.

- First Nations Child & Family Caring Society of Canada, online: <https://fncaringsociety.com/>. This is an excellent resource for understanding how the administrative tribunal system works in practice and what happens when the government does not comply with a decision of the Human Rights Tribunal.

<b>Module 9: Organ Donation</b>	<b>Nov 2 – Nov 8 (midnight)</b>
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In this module we will explore organ donation law and policy in Canada. In so doing, we will consider the feasibility and desirability of alternate legislative and policy approaches that seek to increase donation rates.

**Required:**

- T. Caulfield, E. Nelson, B. Goldfeldt, 2014. "Incentives and organ donation: What's (really) legal in Canada?" *Canadian Journal of Kidney Health and Disease* 1(7): doi: 10.1186/2054-3581-1-7. PDF available in URCourses.
- Downie, J., Shea, A. and Rajotte, C. 2008. "Family Override of Valid Donor Consent to Postmortem Donation: Issues in Law and Practice." *Transplantation Proceedings* 40: 1255-1263. PDF available in URCourses.

- Anita E. Molzahn, Rosalie Starzomski, Michael McDonald, and Chloe O’Loughlin. “Aboriginal Beliefs About Organ Donation: Some Coast Salish Viewpoints.” *Canadian Journal of Nursing Research* 36(4): 110-128. PDF available in URCourses.

**Supplementary:**

- CIHI e-Statistics on Organ Transplants, Waiting Lists and Donors (2017). <https://www.cihi.ca/en/e-statistics-on-organ-transplants-waiting-lists-and-donors>.
- Amina Zafar, “How the family veto creates a grey zone around Canada’s organ donation policy.” (2016) online: <https://www.cbc.ca/news/health/organ-donation-family-veto-1.3874985>.
- Downie, J., Kutcher, M., Rajotte, C. and Shea, A. 2009. “Eligibility for organ donation: a medico-legal perspective on defining and determining death.” *Canadian Journal of Anesthesia* 56(11): 851-863. PDF available in URCourses.
- Sonny Dhanani, “Why we need a clear definition of when death occurs” online: <https://www.theglobeandmail.com/opinion/article-why-we-need-a-clear-definition-of-when-death-occurs/>
- Alex MacPherson, “Province takes first steps to improve organ donation rates.” (2018) online: <https://thestarphoenix.com/news/local-news/organ-donation>.
- Medical News Today, “Organ donation: is an opt-in or opt-out system better?” online: <http://www.medicalnewstoday.com/articles/282905.php>.
- World Economic Forum, “Spain has a lesson for the rest of the world about organ donation.” online: <https://www.weforum.org/agenda/2018/06/spain-leads-the-world-in-organ-donation-what-s-stopping-other-countries-catching-up?>

**FALL READING WEEK – NOV 9**

**Module 10: End-of-Life Law & Policy**

**Nov 16 to 22 (midnight)**

In this module we will examine end of life law and policy issues, with a focus on recent court cases in Canada and the associated debates. On June 17, 2016, the federal government’s Bill C-14 *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)* received royal assent and became law in Canada. As a result of receiving royal assent, the provisions of Bill C-14 which amend the *Criminal Code* now form part of the *Code* and set out the circumstances when medical assistance in dying will not be considered a criminal offence.

**Required:**

- Hardcastle, Lorian. 2019. *Introduction to Health Law in Canada*. Ontario: Emond Montgomery Publications Limited, Chapter 6: End of Life Care and the Law, pp. 91-104

- *Truchon v. Procureur général du Canada*, [2019] R.D.Q. no 4276 (Trunchon Case Summary) PDF available in URCourses.
- Canadian Nurses Protective Society, “Medical Assistance in Dying: What Every Nurse Should Know.” (2016) online: <http://www.cnps.ca/index.php?page=348#g1>.
- The Halifax Group: MAiD Legislation at a Crossroads: Persons with Mental Disorders as Their Sole Underlying Medical Condition, January 2020: <https://irpp.org/wp-content/uploads/2020/01/MAiD-Legislation-at-a-Crossroads-Persons-with-Mental-Disorders-as-Their-Sole-Underlying-Medical-Condition.pdf>
- Canadian Medical Association, “Medical Assistance in Dying.” PDF available in URCourses.
- Jocelyn Downie & Jennifer A Chandler, “Interpreting Canada’s Medical Assistance in Dying Legislation” (March 2018) IIRP Report. PDF available in URCourses.
- Carrie Bourassa et al, Completing the Circle: End of Life Care with Aboriginal Families, online: [http://www.virtualhospice.ca/en\\_US/Main+Site+Navigation/Home/For+Professionals/For+Professionals/The+Exchange/Current/Completing+the+Circle\\_++End+of+Life+Care+with+Aboriginal+Families.aspx](http://www.virtualhospice.ca/en_US/Main+Site+Navigation/Home/For+Professionals/For+Professionals/The+Exchange/Current/Completing+the+Circle_++End+of+Life+Care+with+Aboriginal+Families.aspx).
- Michael Anderson & Gemma Woticky, “The End of Life is an Auspicious Opportunity for Healing: Decolonizing Death and Dying for Urban Indigenous People.” *International Journal of Indigenous Health* 13(2): 48-60. PDF available in URCourses.

**Supplementary:**

- Royal Society of Canada Expert Panel: End-of-Life Decision Making (2011): <https://rsc-src.ca/en/end-life-decision-making>. Royal Society of Canada Expert Panel: End-of-Life Decision Making (2011). PDF available in URCourses.

Note: this is a substantive document (117 pages in total). It is included as a supplementary resource and can be consulted in whole or in part according to your level of interest in the area. You are by no means required or even suggested to read the entire document for the purpose of this module.

- Improving End-of-Life Care in First Nations Communities Research Team, Lakehead University (2015), Developing Palliative Care Programs in First Nations Communities: A Workbook, Version 1. Online: [www.eolfn.lakeheadu.ca](http://www.eolfn.lakeheadu.ca)
- *Truchon v. Procureur général du Canada*, [2019] R.D.Q. no 4276. PDF available in UR courses

**Module 11: Public Health Law****Nov 23-29 (midnight)****Required:**

- Hardcastle, Lorian. 2019. *Introduction to Health Law in Canada*. Ontario: Emond Montgomery Publications Limited, Chapter 10: Public Health Law, pp. 159-173.
- Lawrence O Gostin. 2004. "Health of the People: The Highest Law?" *Journal of Law, Medicine & Ethics* 32(3): 509-515. PDF available in URCourses.
- Davies, C. and Shaul, R. 2010. "Physicians' legal duty of care and legal right to refuse to work during a pandemic." *Canadian Medical Association Journal* 182(2): 167-170. PDF available in URCourses.
- Reis, N. 2007. "Legal issues in disease outbreaks: judicial review of public health powers." *Health Law Review* 16(1): 11-17. PDF available in URCourses.
- Y. Boyer, *Moving Aboriginal Health Forward: Discarding Canada's Legal Barriers*, Saskatoon: Purich 2014, 15-28. PDF available in URCourses.

**Supplementary:**

- Reis, N. 2005. "Quarantine and the Law: the 2003 SARS Experience in Canada (A New Disease Calls on Old Public Health Tools)." *Alberta Law Review* 43(2): 529-547. PDF available in URCourses.
- P'ng, Justin. 2020. "Work refusals during the COVID-19 Pandemic: What employers need to know about the right to refuse unsafe work." Accessed March 22, 2020.  
<https://www.fasken.com/en/knowledge/2020/03/19-covid-19-work-refusals-during-the-pandemic/>
- Government of Canada. 2020. "Coronavirus disease (COVID-19)." Accessed April 10, 2020:  
<https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19.html>
- Denoon, D. 2010. Michelle Obama's Plan to End Childhood Obesity Epidemic, online:  
<https://www.webmd.com/children/news/20100511/michelle-obama-plan-to-end-child-obesity-epidemic#1>
- Canada. *Obesity in Canada: A Whole-of-Society Approach for a Healthier Canada*. Report of the Standing Senate Committee on Social Affairs, Science and Technology, March 2016. PDF available in URCourses.
- See: Government's Role in Addressing Childhood Obesity, online: <https://www.canada.ca/en/public-health/services/childhood-obesity/government-role-addressing-childhood-obesity.html>.

**Module 12: Human Subjects Research****Nov 30 to Dec 6 (midnight)**

In this last special topic module, we will review research ethics governance in Canada (in the context of human subjects research), including an overview of the Tri-Council Policy Statement and a review of

relevant case law and common law principles. We will look at a number of specific issues and challenges currently facing stakeholders in health-focused research such as, for example, the requirements of informed consent, research with vulnerable populations, managing incidental findings and the legal duties/potential legal liability of researchers and research ethics boards.

**Required:**

- Hardcastle, Lorian. 2019. *Introduction to Health Law in Canada*. Ontario: Emond Montgomery Publications Limited, Chapter 11: Regulation of Health Research, pp. 177-191.
- Become generally familiar with the contents of the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans and its general approach (in other words, note the areas that are covered and skim a section, affording attention to the use of commentary to assist with clarifying the intent and application of its provisions). PDF available in URCourses. See also: [http://www.pre.ethics.gc.ca/eng/education\\_tutorial-didacticiel.html](http://www.pre.ethics.gc.ca/eng/education_tutorial-didacticiel.html)
- First Nations Information Governance Centre. First Nations Principles of OCAP: Ownership, Control, Access and Possession, online: <https://fnigc.ca/ocapr.html>.

**Supplementary:**

- Zarzeczny, A. and Caulfield, C. 2012. "Legal Liability & Research Ethics Boards: The Case of Neuroimaging and Incidental Findings." *International Journal of Law and Psychiatry* 35(2): 137-145. PDF available in URCourses.
- FNIGC, "Ownership, Control, Access and Possession: The Path to First Nations Information Governance." PDF available in URCourses.
- Inuit Tapiriit Kanatami, "National Inuit Strategy on Research." PDF available in URCourses.
- Quebec Native Women Inc., "Guidelines for Research with Aboriginal Women." PDF available in URCourses.

<b>Module 13: Course Wrap-up &amp; Synthesis</b>	<b>Dec. 7 to 8 (midnight)</b>
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There are final wrap up questions in this module, please note it is a short module.

**Reminder: Final Paper Due Sunday, Dec 13<sup>th</sup> by midnight in Saskatchewan.**

**EVALUATION**

Details on the requirements for each assignment follow below. Sample marking guides are available on our URCourses site. Please see the JSGS Grade Descriptors found on page 10 of the Graduate Student Handbook, available here: [https://www.schoolofpublicpolicy.sk.ca/documents/student-resources/2018-19\\_JSGS%20handbook\\_UofR-FINAL.pdf](https://www.schoolofpublicpolicy.sk.ca/documents/student-resources/2018-19_JSGS%20handbook_UofR-FINAL.pdf).

All assignments are due by midnight Saskatchewan time (**please be aware of time changes and note that Saskatchewan does not observe daylight savings time**). Assignments must be submitted online using the Assignments upload tool in our URCourses site. Marks and feedback may be returned using the same tool. For each assignment, you will receive comments made as annotations on your submitted documents and more general comments if applicable. In the alternative, depending on my travel schedule, I may return your marked assignment by email and will notify the class of when they are ready.

PLEASE NOTE: This course uses a version of Turnitin that is integrated into URCourses. There are a few specific things to note about our use of Turnitin:

Turnitin is a tool for online submission and grading; this will be its primary function in this course. It also offers an originality checking function which can provide an opportunity for students to improve their assignments (e.g., by making sure citations are complete and accurate, etc.) before a final submission.

Students can choose to view an “originality report” for their assignment. Originality reports are not designed to identify plagiarism but identify high degrees of similarity. Similarities can occur for a variety of reasons (e.g., improperly formatted citations, common phrases or expressions, etc.). If, for example, your originality report identifies improperly formatted citations, you can fix the problem with your assignment and resubmit any time before the due date.

Student papers will NOT be stored on Turnitin.

Students are NOT required to create or use a personal Turnitin account. All assignment submissions and viewing of marks and feedback are accessed through our URCourses site.

Naming of Assignment Documents: Please use the following format when naming your assignments:

Last name\_assignment name

For example: YOURLASTNAME\_CASELAW\_ANALYSIS.DOC

**THIS IS VERY IMPORTANT.** When I download the papers and your name isn't on it is very time consuming to dig through and find out who you are especially if you don't put your name within the assignment. These will not be marked.

Document Format: Please submit your assignments as a **Word document** to facilitate proper commenting and marking.

- **Writing Style:** Effective and professional communication skills (both oral and written) are an important competency in our graduate programming. As such, writing style will always be part of the evaluation of

your assignments. Presenting your work in a polished manner that uses professional formatting and avoids typos and clear grammatical errors is an important element of success in this course.

- **Referencing:** As discussed further below, academic integrity is of paramount importance and is taken very seriously. Anytime you use material (e.g., ideas, data, etc.) from someone or somewhere else, you must reference your source. A wide variety of citation styles exist. For the purpose of consistency, the Johnson-Shoyama Graduate School of Public Policy uses the Chicago Manual of Style's **in-text, author date** system. Please note the in-text, author date system does not use footnotes or endnotes. There is a quick referencing guide that provides helpful examples of this referencing style available on our URCourses. Students can also access the full online version of the Chicago Manual of Style (16<sup>th</sup> Edition) through the University of Regina library. As addressed in further detail below, legal sources can be referenced either using the Chicago Manual of Style's approach, or the approach outlined in Module 3. If you have any questions about referencing, please get in touch early on.

## DESCRIPTION OF ASSIGNMENTS

- **Discussion Forum Engagement (20% - Ongoing)**  
Active, meaningful participation is essential to success in an online course, particularly at the graduate level. Although the discussion forums will be closely monitored by the instructor, they are intended to primarily be an opportunity for peer-to-peer discussion and debate.

Participation in the module-specific discussion forums should be the primary focus and will largely determine the marks awarded for this assignment. Participation in the "Current Events" forum will also be recognized and considered in the evaluation. Details on both forums provided below.

Although posting regularly is clearly a necessary aspect of good participation, frequent posts lacking in substance will not be highly rewarded. At a bare minimum, students should post at least once a module in the module specific discussion forums. Engagement will be assessed on a module-by-module basis in accordance with the below criteria, meaning students cannot make up for a lack of participation over the term by robust participation in the final few weeks. Ideally, students will engage in *discussion* with one another which will involve a series of back-and-forth postings occurring over the course of the week in which a module is open.

Throughout the course we will engage with a large volume of material and associated discussions so it is important to keep postings concise and on-point. Please limit each posting to **no more than 200 words**.

### Module-Specific Discussion Forums

Each module will include a discussion forum which is intended to play a similar role to that of live discussions in a seminar-style course. Questions for discussion will be provided to guide the initial discussion. The discussion forum is where students are expected to engage critically with the material and to contribute their own thoughts and questions. It will also provide an opportunity for students to

exchange ideas as well as share their personal experiences and expertise, in a way that adds to the group's analysis of the course materials.

The Module-Specific Discussion Forums will be available only when a given module is running (see dates in the course outline below, and note that modules open at 8 a.m. on Mondays and close at midnight on the designated Sunday). It is important to be timely with your participation and be active on the site throughout each module so that there is a real opportunity for back-and-forth discussion with your peers.

After the introductory module, the class will be divided into smaller groups for the discussion forums to facilitate a more coherent discussion. I also like to randomly mix up the groups about half way through the class as well.

### **“Current Events” Forum**

The “Current Events” Forum presents an opportunity for us to engage with one another in discussions about current health developments in health law and policy. I will post links to relevant news stories as they occur and encourage students to do the same, and to share their reactions/thoughts/ideas, as they relate to the content of this course. This forum is intended to raise awareness of the extent to which health law and policy challenges receive focus in mainstream media and, in so doing, demonstrate the salience and on-going relevance of the issues we are addressing. Ideally, it will also encourage us all to view media stories and current events through a health law and policy lens.

**Evaluation Criteria** for evaluation of Discussion Forum Engagement include assessment of the following:

- Degree of participation: How active is the student in the forums?
- Understanding of the subject matter: To what degree do the posts demonstrate a strong and correct understanding of the subject matter under discussion?
- Effective use of course materials: To what degree do the posts effectively integrate course materials (e.g., readings, presentations) into the analysis and, by extension, demonstrate that the student has read and thought critically about the material?
- Communication style: To what degree are the posts written in a clear, concise and thoughtful manner?
- Critical thinking & insight: To what degree do the posts demonstrate that the student is approaching the subject matter in a critical and analytical manner? To what degree do the posts reflect unique or creative insights?
- Peer engagement: To what degree do the posts reflect thoughtful, respectful engagement with the ideas of others? Does the student engage in a discussion (i.e. exchange of ideas) with peers? Does the discussion help advance the group's analysis? Does the student demonstrate effective leadership (e.g., by offering carefully reasoned answers, asking well thought-out questions, supporting others, etc.)?

Please also see the ***JSGS Participation Guidelines***, available at:

<http://www.schoolofpublicpolicy.sk.ca/documents/student-resources/student-participation-guidelines-2014.pdf> for additional information regarding general participation expectations.

➤ **Case Law Analysis (20% - Due Oct 4 by midnight Saskatchewan time)**

Each student must complete a case law analysis. Choose one of the following cases as the basis for your case law analysis (PDFs of both available on our UR Courses site in the Resources section):

1. Tomeh v. Cheah, 2013 ONSC 6074
2. Todd v. Pegado, 2014 ONSC 2783

**The case law analysis should include the following elements:**

- 1. Case name and citation:** Set out the parties and the citation (which, recall from Modules 2 & 3, will tell the reader what level of court heard the case, when, and where they can find the decision).
- 2. Facts:** Provide a brief summary of the essential facts of the case. It is best if you do not merely reproduce what was in the judgment, but instead summarize it in your own words. Doing so allows you to determine which facts are most relevant to the decision.
- 3. Issue(s):** Outline briefly, usually in one to two sentences, the central issue(s) before the court. In other words, identify what legal issues the court has to decide.
  - 4. Held:** Set out what the court concluded/decided in the case.
- 5. Ratio:** Provide a brief summary (usually one to two sentences) of the legal rule or principle emerging from the case (or upon which the case was based); the ratio is sometimes known as the rationale for the decision. It is the legal principle the case stands for. The Ratio should be framed as a statement.
- 6. Analysis:** This section is where you set out key elements from the court's reasons. Questions you will want to consider include:
  - a. What facts were most persuasive to the court?
  - b. Did the decision turn on a particular legal principle?
- c. To what extent was the decision guided by precedent (previous court cases) or legal framework (e.g., statute)?
- 7. Personal Reflections** (note: This is *not* typically included in case law analysis but is for the purpose of this class only):
  - a. Was there anything surprising to you in the decision?

- b. Did you agree/disagree with the court's approach, the decision and/or the result? Did you wish it had turned out differently?
- c. Was there anything in the decision that you struggled with?
- d. How do you think this case fits in the bigger health policy 'picture'? Does it have particular policy implications? Is it likely to shift policy? Does it reveal, reflect or respond to a potential policy gap?

Case law analyses are generally intended to be very short and concise. They are meant to capture the key elements of a case and are generally used to assist in larger legal research projects. They should be drafted in such a way that a reader does not need to read the actual case to understand what happened, and why. In other words, the analysis should present the essential 'take-aways' from the case. They must be able to be referenced quickly (i.e. obtaining the right balance between detail and brevity is key to success).

The key purposes of this exercise are threefold: first, to familiarize students with a logical and systematic approach to reading case law; second, to provide an opportunity for students to practice the critical assessment skills necessary to identify and understand the key aspects of a case, and third, to enhance understanding about and appreciation for judicial reasoning.

***Important Notes...***

Keep in mind the parameters and purpose of the assignment as set out above. Being clear and concise is essential in this exercise. You will need to exercise your judgment when determining what information to include and what to leave out. Distilling a case down to its essential elements is not only a key tool in terms of legal research and analysis, it also demonstrates your level of understanding of the material and your ability to think critically and in an analytical way about the decision and what it means. As is always the case in graduate school, the quality of your writing is important.

A case summary of this nature should be no longer than **250 words** (often shorter) - excluding the personal reflections section. The personal reflections section should be an **additional 1-2 paragraphs**. Please submit in a word document. **I will only mark the first 250 words**. Reminder, don't forget to name your file with **your** last name first and ensure it is in your document, like this: LASTNAME,CASE LAW SUMMARY.DOC

➤ **Mid Term Exam on Moodle (30% - Opens Nov 3 at noon to Nov 8 at midnight)**

An online midterm exam based on the substantive portion of this class (Module 1 to the start of Module 9 not including Module 9) will be available from **Nov 3 at noon to Nov 8 at midnight**. The questions will consist of true and false and multiple choice. There will be 30 questions and you will have about 1 minute per question and one attempt at your answer.

➤ **Research Paper (30% - Due Dec 13 by midnight Saskatchewan time)**

Each student will complete a short research paper. The topic of the paper will be the student's choice, but it must be an issue falling squarely within the scope of health law and policy, as defined during the introductory module. If in doubt, please discuss your proposed topic with the instructor.

The paper is not intended to be a descriptive paper. Rather, it should be an analysis of a defined issue and must include a **clear thesis**. Students will be expected to demonstrate an ability to recognize the multi-faceted nature of the issue under consideration, be able to identify and assess relevant issues/aspects of the topic and show critical analysis of existing or proposed theories, recommendations and/or responses. Sources should reflect a balanced and interdisciplinary review of material and must acknowledge the relevant legal context (e.g., relevant legislation and guiding precedent).

There are many ways to write a good research paper. Individual professors, reviewers and editors will have varying views, and different disciplines may favour particular approaches. For the purpose of this class, I will be taking the following elements into consideration:

- Topic - Is the topic an issue that is clearly relevant to the subject matter of the course?
- Research - Does the paper reflect consultation of appropriate sources, demonstrate adequate coverage within the scope of the topic as it was defined, and suggest a systematic search of the relevant literature? Does it display a balanced and interdisciplinary review of material?
- Thesis - Is there a clear thesis where the main idea or point of view is clearly expressed? Is the point of view clear, objective and focused appropriately (i.e. neither too narrow nor too broad)?
- Discussion & Analysis - Are differing points of view acknowledged and relevant issues or aspects of the topic recognized? Is the evaluation and analysis of information balanced, accurate and fair? Does the analysis demonstrate an ability to recognize the multi-faceted nature of the issue under consideration? Does it show critical analysis of existing or proposed theories, recommendations and/or responses (as appropriate to the topic)?
- Conclusion - Does the writer come to a clear and logical conclusion? Does the conclusion flow rationally from the analysis?
- Referencing - Are sources properly referenced (per the Chicago Manual of Style) and the ideas of others acknowledged appropriately?
- Writing Style - What is the quality of the writing style (grammar, spelling, etc.)? Is the content logically organized? Is there a nice flow to the paper?

Please note the above list of general questions is intended as a tool to help you assess your own work. It is not a comprehensive list of all relevant factors, nor does it prescribe a set format for your paper (i.e. please do not take the different points as mandatory section headings). Marking for this assignment will follow the JSGS Grade Descriptors available in the Student Resources section of the JSGS website, at: [https://www.schoolofpublicpolicy.sk.ca/documents/student-resources/2018-19\\_JSGS%20handbook\\_UofR-FINAL.pdf](https://www.schoolofpublicpolicy.sk.ca/documents/student-resources/2018-19_JSGS%20handbook_UofR-FINAL.pdf)

The paper should be **no longer than 10 pages** (excluding the reference list but including any tables or appendices), **double spaced**, in **12-point font** with 1-inch margins. Any portion of a paper that exceeds the page limit will not be considered as to do so would be unfair to students who comply with the limits; the final mark will be adjusted accordingly.

Papers must follow the Chicago Manual of Style's in-text, author date approach to referencing for non-legal sources (note: this approach does not use footnotes or endnotes). Legal citations can follow the format discussed in Module 3.

Please note that while not required, any research involving humans (e.g., interviews, surveys, questionnaires, etc.) must be approved in advance by the University of Regina Research Ethics Board. Specific policies and procedures can be found at: <https://www.uregina.ca/research/policies-forms-top/research-policies.html>

The paper should be accompanied by a cover page which indicates the title of the paper, author's name and student ID number, course title and number, instructor's name and the date. Please submit in a word document and label your submission in the subject line with your last name first name, like this:

YOURLASTNAME, CASE LAW ASSIGNMENT.DOC

### **LATE ASSIGNMENTS**

If an assignment is submitted late without an approved extension, five percent (5%) per day will be deducted from the grade for that assignment. Extensions are only granted in exceptional circumstances, which are generally unanticipated and outside the student's control (e.g., illness, family emergency). If such a situation should arise, please contact the professor as soon as possible.

### **STUDENTS REQUIRING ACCOMMODATIONS**

University of Regina (U of R): Students in this course who, because of a disability, may have a need for accommodations are encouraged to discuss this need with the instructor and to contact the Coordinator of Special Needs Services at (306) 585-4631.

U OF S: Students in this course who, because of a disability, may have a need for accommodations are encouraged to discuss this need with the instructor and to contact Disability Services for Students (DSS) at 966-7273.

### **STUDENTS EXPERIENCING STRESS**

University of Regina (U of R): Students in this course who are experiencing stress can seek assistance from the University of Regina Counselling Services. For more information, please see the attached document, visit this website: <http://www.uregina.ca/student/counselling/contact.html>, or call (306) 585-4491 between 8:30 a.m. to 4:30 p.m. Saskatchewan time Monday to Friday.

### **ACADEMIC INTEGRITY AND CONDUCT**

U of R: Ensuring that you understand and follow the principles of academic integrity and conduct as laid out by the University of Regina (available at <http://www.uregina.ca/gradstudies/grad-calendar/policy-univ.html>) is vital to your success in graduate school. Ensuring that your work is your own and reflects both your own ideas and those of others incorporated in your work is important: ensuring that you acknowledge the ideas, words, and phrases of others that you use is a vital part of the scholarly

endeavour. If you have any questions at all about academic integrity in general or about specific issues, contact your course instructor to discuss your questions.

U OF S: Understanding and following the principles of academic integrity and conduct as laid out in the University of Saskatchewan's Guidelines for Academic Conduct is vital to your success in graduate school (available at [www.usask.ca/university\\_secretary/council/reports\\_forms/reports/guide\\_conduct.php](http://www.usask.ca/university_secretary/council/reports_forms/reports/guide_conduct.php)). Ensuring that your work is your own and reflects both your own ideas and those of others incorporated in your work is important: ensuring that you acknowledge the ideas, words, and phrases of others that you use is a vital part of the scholarly endeavour. If you have any questions at all about academic integrity in general or about specific issues, contact any faculty member and we can discuss your questions.

**Enjoy the Class, Remember:**

***When health is absent, wisdom cannot reveal itself, art cannot manifest, strength cannot fight, wealth becomes useless, and intelligence cannot be applied.***

**Herophilus**