

JSGS 841 – HEALTH LAW AND POLICY

UNIVERSITY OF REGINA CAMPUS	
INSTRUCTOR:	Amy Zarzeczny
PHONE:	306-337-3345
E-MAIL:	amy.zarzeczny@uregina.ca
OFFICE HOURS:	By appointment (video and phone meetings available)
OFFICE LOCATION:	334.6 CB, 2155 College Avenue, College Avenue Campus
TERM:	Fall 2021
ROOM:	Online
DATE AND TIME:	This is an online course with no mandatory meeting times. There will however be a series of live webinars. Students are strongly encouraged to attend wherever possible, and to watch the recordings when they cannot join the live meeting. Please see our URCourses site for the meeting schedule.

LAND ACKNOWLEDGEMENT

The University of Saskatchewan campus of the Johnson Shoyama Graduate School of Public Policy is situated on Treaty 6 Territory and the Homeland of the Métis, while the University of Regina campus is situated on Treaty 4 Territory and the Homeland of the Métis. We pay our respect to the First Nation and Métis ancestors of this place and reaffirm our relationship with one another. As we engage in Remote Teaching and Learning, we would also like to recognize that others will be attending this course from other traditional Indigenous lands. I ask that you take a moment to make your own Land Acknowledgement to the peoples of those lands. In doing so, we are actively participating in reconciliation as we navigate our time in this course, learning and supporting each other.

HONOUR CODE

At the Johnson Shoyama Graduate School of Public Policy (JSGS), we believe honesty and integrity are fundamental in a community dedicated to learning, personal development, and a search for understanding. We revere these values and hold them essential in promoting personal responsibility, moral and intellectual leadership, and pride in ourselves and our University.

As JSGS students, we will represent ourselves truthfully, claim only work that is our own, and engage honestly in all academic assignments.

Please note: this syllabus is provided in advance of the start of the term to aid students with their preparation but may be subject to revision until the start of class.

Since articulated standards and expectations can influence attitudes, and because each of us shares the responsibility for maintaining academic integrity (see below for details on academic integrity at the JSGS), we are committed to upholding the Academic Honor Code.

Academic Honour Pledge

As a member of the JSGS community, I pledge to live by and to support the letter and spirit of JSGS's Academic Honour Code.

Please note: *The Honour Pledge should be included on every assignment submission (can be as a Header or Footer, on a title slide, or on a title page, as applicable).*

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 followed by examination of topical issues in this domain.

LEARNING OBJECTIVES

- To develop familiarity with essential health law terms and principles;
- To practice basic legal research skills and gain familiarity with recognizing and analyzing legal issues as they might arise in health-related contexts;
- To explore and analyze health system issues through a law and policy lens, and
- To exercise and demonstrate effective communication skills.

MHA PROGRAM COMPETENCIES

1. Health Services and Health Status - Ability to analyze health services and other factors that impact health status and demonstrate a commitment to improving the health status of individuals, families, and communities.
2. 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.
3. Communication and Interpersonal Skills - Ability to communicate effectively and build enduring, trust-based professional relationships.
4. Systems Thinking and Creative Analysis - Ability to identify key issues and problems, analyze them systematically, and reach sound, innovative conclusions.
5. Public Policy and Community Engagement - Ability to understand how organizational and public policies are formulated, their impact on healthcare organizations and communities, and how to influence their development.
6. Continuous Evaluation and Improvement - Commitment to on-going evaluation for continuous organizational and personal improvement.

COURSE CONTENT AND APPROACH

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. We will begin by obtaining a basic

understanding of key concepts in health law and policy. We will then go on to explore legal and policy issues surrounding a select assortment of special topics.

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 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. ***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.***

USE OF VIDEO AND RECORDING OF THE COURSE

There will be live webinars scheduled throughout the course. These webinars will be held using Zoom and will be recorded to support students who may not be able to attend live due to work or family conflicts, connectivity challenges, or other restrictions. As a result, the University of Regina may collect students' images, voices, names, personal views and opinions, and course work under the legal authority of *The Local Authority Freedom of Information and Protection of Privacy Act*. Recordings will be posted only in our protected learning management system, and will be made available only to registered students in the course.

Students who participate in a Zoom session with their video on or utilize a profile image are consenting to have their video or image recorded (including anything visible in the background). If you have concerns with such recording, be sure to keep your video off and do not use a profile image. In addition, students who un-mute their microphone during class and participate orally are consenting to have their voices, and personal views and opinions recorded. If you are unwilling to consent to this recording, please do not un-mute your microphone during class. If you have any questions about the collection or use of your personal information, please contact your instructor.

COPYRIGHT

Course materials are provided to you based on your registration in a class, and anything created by your professors and instructors is their intellectual property, unless materials are designated as open education resources. This includes exams, PowerPoint/PDF slides and other course notes. Additionally, other copyright-protected materials created by textbook publishers and authors may be provided to you based on license terms and educational exceptions in the Canadian Copyright Act (see <http://laws-lois.justice.gc.ca/eng/acts/C-42/index.html>).

Before you copy or distribute others' copyright-protected materials, please ensure that your use of the materials is covered under the University's Fair Dealing Copyright Guidelines available at <https://www.uregina.ca/copyright/guidelines/fair-dealing.html>. For example, posting others' copyright-protected materials on the open web is not covered under the University's Fair Dealing Copyright Guidelines, and doing so requires permission from the copyright holder.

REQUIRED READINGS

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.

Course Textbook*: Nelson, Erin, and Ubaka Ogbogu. 2018. *Law for Healthcare Providers*. Ontario: LexisNexis. [hereafter Nelson and Ogbogu 2018]

**Note: This text is a user-friendly resource that covers many of the central topics of this course. However, if you do not wish to incur the cost of purchasing the text, you can draw on the other required and supplementary materials to gain similar foundational content.*

SUPPLEMENTARY MATERIALS

Supplementary materials will also be suggested for each module. These materials are not required but will provide additional background and introduce different perspectives on the topics being considered. The intent is **not** that you review all supplementary materials. Rather, you are advised to pick and choose which of the supplementary materials to review depending on your areas of interest and/or challenge.

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

***Note: This text is not required but is a helpful resource for those looking for additional information. You are not required to purchase it in addition to the required text. However, some students may find it a useful alternative or supplement.*

COURSE OUTLINE AND ASSIGNMENTS

Module 1: Orientation and Course Overview	Aug. 30 – Sept. 5
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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, 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.

Required:

- Nelson and Ogbogu 2018, Introduction (pp 1-4).

Module 2: The Canadian Legal System	Sept. 6 - 12
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This module will provide an overview of the Canadian legal system, including our Constitutional division of powers, 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. PDF available in URCourses.

- Department of Justice. 2015. “Canada’s Court System”. Accessed July 9, 2019. <http://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/pdf/courten.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>
- Library of Parliament. 2012. “The Legislative Process: From Government Policy to Proclamation, PRB 08-64E”. Accessed July 9, 2019. <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/InBriefs/PDF/2015-52-e.pdf>.

Module 3: Introduction to Legal Research & Law Reform	Sept. 13 - 19
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This module will provide an introduction to legal research and law reform. It will help students develop a basic understanding of legal research skills and familiarity with various legal research tools. We will also explore the role of independent law reform bodies in Canada. Together, the topics in this module will help set the foundation for key course assignments.

Required:

- Makdisi, Michael, and John Makdisi. 2009. “How to write a case brief for law school; Excerpt reproduced from *Introduction to the Study of Law: Cases and Materials*, 3rd Ed.” Ontario: LexisNexis. Accessed July 9, 2019. <https://www.lexisnexis.com/en-us/lawschool/pre-law/how-to-brief-a-case.page>.
- The International Cooperation Group of the Department of Justice of Canada. “Law reform agencies” (published March 2004, last modified 2015-01-07). <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/ilp-pji/lr-rd/page1.html>.

Recommended Legal Research Resources:

- Bueckert, Melanie, André Clair, Maryvon Côté, Yasmin Khan and Mandy Ostick, eds. 2019. “The Canadian Legal Research and Writing Guide (formerly the Best Guide to Canadian Legal Research).” Accessed July 9. legalresearch.org .
 ** NOTE: this is a helpful legal research resource and you will likely want to refer back to it often throughout the semester when you are working on your assignments or have questions about what you are reading. For this module, review the table of contents and become familiar with the available content and key terms.
- Queen’s University Library. 2019. “Legal Research Manual.” Accessed July 9. <https://guides.library.queensu.ca/legal-research-manual>
 ** This resource includes various descriptions and resource links that may prove useful to you as you develop your legal research skills throughout this course.

Supplementary:

- Moore, Marcus. 2018. “The past, present and future of law reform in Canada” *The Theory and Practice of Legislation* 6(2): 225-261.

Module 4: Tort Liability – Part I
Sept. 20 – 26

This module will provide an introduction to key health law concepts and principles related to tort liability in a healthcare context. We will cover the fundamentals of essential topics including medical negligence (duty of care, standard of care, injury or harm, causation and defences), institutional liability and vicarious liability. The complex topic of consent will be covered in more detail in a subsequent module.

Required:

- Nelson and Ogbogu 2018, Chapter 2: Medical Negligence and Professional Regulation (pp 23-46).
- Irvine, John. 2013. "Medical Negligence: The Essential Elements." In *Canadian Medical Law; An Introduction for Physicians, Nurses and other Health Care Professionals, 4th Ed*, edited by John Irvine, Philip Osborne, Mary Shariff, and Barney Sneiderman, 91-150. Ontario: Thomson Reuters Canada Ltd. [PDF available in URCourses].

Module 5: Tort Liability – Part II
Sept. 27 – Oct. 3

In this module, we will explore tort law in the context of broader health system policy initiatives including quality improvement, collaborative care, and innovative care delivery models.

Required:

- Hardcastle, Lorian. 2017. "Legal Mechanisms to Improve Quality of Care in Canadian Hospitals" *Alberta Law Review* 54(3): 681-696.
- Ries, Nola. 2016. "Innovation in Health Care, Innovation in Law: Does the Law Support Interprofessional Collaboration in Canadian Health Systems?" *Osgoode Hall Law Journal* 54: 87-124. ** only paras. 1-11, and 28-56 for this module
- Vogel, Lauren. 2019. "Rise of medical AI poses new legal risks for doctors." *CMAJ* 191(42): E1173-E1174; DOI: <https://doi.org/10.1503/cmaj.1095823>.

Supplementary:

- Hardcastle, Lorian. 2010. "Systemic accountability through tort claims against health regions." *Health Law Review* 40-44. <https://login.libproxy.uregina.ca:8443/login?url=http://link.galegroup.com/apps/doc/A221339575/EAIM?u=ureginalib&sid=EAIM&xid=2e65f5ab>
- Greenberg, Anastasia. 2017. "Artificial Intelligence in Health Care: Are the Legal Algorithms Ready for the Future?" *McGill Journal of Law and Health; Blog*. <https://mjhlh.mcgill.ca/2017/10/06/artificial-intelligence-in-healthcare-are-the-legal-algorithms-ready-for-the-future/>

Module 6: Consent
Oct. 4 – Oct. 10

This module will involve a close look at consent, including the elements of valid consent and informed consent. It will also consider the question of capacity and reflect on the relationship between consent and autonomy.

Required:

- Nelson and Ogbogu 2018, Chapter 3: Consent and Informed Consent (pp 59-102).
- Sarah Burningham, Christen Rachul and Timothy Caulfield. 2013. “Informed Consent and Patient Comprehension: The Law and the Evidence”. *McGill Journal of Law and Health* 7(1): 123.
<http://www.canlii.org/t/7gp>.

Supplementary:

- McGivern, Paul and Natalia Ivolgina. 2013. “Legal Liability in Informed Consent Cases: What are the Rules of the Game?”. *McGill Journal of Law and Health* 7(1): 129-143.
- Adjin-Tettey, Elizabeth. 2018. Rights and Tort Law: Respecting Children’s Decisional Autonomy for Medical Interventions. *Supreme Court Law Review* 84(2d): 161-199.
- Waite, Michael. 2005. “To Tell the Truth: The Ethical and Legal Implications of Disclosure of Medical Error.” *Health Law Journal* 13: 1-33.
<https://login.libproxy.uregina.ca:8443/login?url=https://search.proquest.com/docview/212149864?accountid=13480>

Module 7: Indigenous Health, Law & Policy in Canada
Oct. 12 – Oct. 17*
Oct. 11 – Thanksgiving, no class activity

This module will serve as an introduction to some of the legal frameworks that directly impact the health-related rights of Indigenous Peoples in Canada. Consideration will be given to historical context, current disparities and initiatives such as cultural safety in the healthcare context.

Required:

- Nelson and Ogbogu 2018, Chapter 1: Indigenous Peoples and Health Care (pp 5-21).
- Lavoie, Josee. 2018. “Medicare and the care of First Nations, Metis and Inuit.” *Health Economics, Policy and Law* 13(3-4): 280-298.
https://www.cambridge.org/core/services/aop-cambridge-core/content/view/2CCEC7B7C8639A028F2CB037130AC4A7/S1744133117000391a.pdf/medicare_and_the_care_of_first_nations_metis_and_inuit.pdf.

Supplementary:

- Boyer, Yvonne. 2011. "First Nations, Métis and Inuit Health and the Law: A framework for the Future" (Order No. NR98138). Dissertation available from ProQuest Dissertations & Theses Global. (1364607222). Accessed July 9, 2010.
<https://login.libproxy.uregina.ca:8443/login?url=http://search.proquest.com/docview/1364607222?accountid=13480> [*** Chapters 6 -9 are particularly important in the context of this module].
- Muise, Gertie Mai. 2019. "Enabling cultural safety in Indigenous primary care." *Healthcare Management Forum* 32(1): 25-31. Doi: 10.1177/0840470418794204
<https://login.libproxy.uregina.ca:8443/login?url=http://dx.doi.org/10.1177/0840470418794204>
- Truth and Reconciliation Commission of Canada. 2015. "Truth and Reconciliation Commission of Canada: Calls to Action." Accessed July 9, 2019.
http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf.
- 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).
<https://publichealthreviews.biomedcentral.com/articles/10.1186/s40985-017-0055-6>.

Module 8: The Charter of Rights of Freedoms & Health Policy	Oct. 18 - Oct. 24
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In this module we will consider the impact that the Canadian *Charter of Rights and Freedoms* has had on health policy in Canada, with a particular focus on previous *Charter* challenges.

Required:

- Reis, Nola. 2011. "Charter Challenges." In *Canadian Health Law and Policy, 4th Ed.*, edited by Jocelyn Downie, Timothy Caulfield, and Colleen Flood, 614-655. Ontario: LexisNexis Canada Inc. [PDF available in URCourses].

Supplementary:

- Thomas, Bryan & Colleen M Flood. 2018. "A successful Charter challenge to medicare? Policy options for Canadian provincial governments", *Health Economics, Policy and Law* 13: 433-449.
- Klein, Alana. 2012. "Section 7 of the Charter and the Principled Assignment of Legislative Jurisdiction." *Supreme Court Law Review* 57 (2d): 59-72.
<https://digitalcommons.osgoode.yorku.ca/sclr/vol57/iss1/4>
- Wilkie, Cara & Meryl Zisman Gary. 2011. "Positive and Negative Rights Under the *Charter*: Closing the Divide to Advance Equality." *Windsor Review of Legal and Social Issues* 30: 37-59.
<https://login.libproxy.uregina.ca:8443/login?url=https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:535F-H410-00KD-K0KH-00000-00&context=1516831>

Module 9: Administrative Law & Professional Regulation
Oct. 25 – 31

This module will include an overview of key Administrative Law principles, with a focus on how they relate to the functioning of different health care-related bodies (boards, tribunals, etc.). It will also cover the role of professional regulation in health system governance.

Required:

- Nelson and Ogbogu 2018, Chapter 2: Medical Negligence and Professional Regulation (pp 46-56).
- Collier, Roger. 2012. "Professionalism: the privilege and burden of self-regulation." *Canadian Medical Association Journal* 184(14): 1559-60. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3470617/>
- Boyd, Neil. 2007. "Administrative Law: The State and Its Duty to Be Fair." In *Canadian Law; an introduction, 4th Ed.*, edited by Neil Boyd, 299-327. Toronto: Nelson Thomson Learning. [PDF available in URCourses].

Supplementary:

- Ries, Nola. 2016. "Innovation in Health Care, Innovation in Law: Does the Law Support Interprofessional Collaboration in Canadian Health Systems?" *Osgoode Hall Law Journal* 54: 87-124. ** paras. 1-27 for this module
- Zarzeczny, Amy. 2017. "The Role of Regulation in Health Care – Professional and Institutional Oversight." In *Canadian Health Law and Policy, 5th Ed.*, edited by Joanna Erdman, Vanessa Gruben, and Erin Nelson. Ontario: LexisNexis. [PDF available in URCourses].

Module 10: Public Health Law
Nov. 1 – Nov. 7

In this module we will consider issues in public health law. Our focus will not be on public health as a general health policy issue or field of practice, but rather on public health *law* and issues associated with the legal regulation of public health. We will consider the appropriateness and desirability of legal interventions that restrict individual autonomy and consider the tensions involved in balancing individual interests with those of the population as a whole. We will also look at law as a tool for achieving particular policy objectives focused on improving and/or protecting the health of populations.

Required:

- Reis, Nola. 2013. "Legal Foundations of Public Health in Canada." In *Public Health Law and Policy in Canada*, edited by Timothy Caulfield, Tracey Bailey, and Nola Reis. Ontario: LexisNexis. [PDF available in UR Courses].
- Flood, Colleen, Vanessa MacDonnell, Bryan Thomas & Kumanan Wilson. 2020. "Reconciling civil liberties and public health in the response to COVID-19" *Facets* (12 November 2020). <https://doi.org/10.1139/facets-2020-0070>

- Gostin, Lawrence. 2004. "Health of the People: The Highest Law?" *Journal of Law, Medicine & Ethics* 32(3): 509-515. <https://login.libproxy.uregina.ca:8443/login?url=http://dx.doi.org/10.1111/j.1748-720X.2004.tb00164.x>

Supplementary:

- Gostin, Lawrence, Eric Friedman & Sarah Wetter. 2020. "Responding to Covid-19: How to Navigate a Public Health Emergency Legally and Ethically" *Hastings Centre Report* (March-April) Mar;50(2):8-12. doi: 10.1002/hast.1090.
- von Tigerstrom, Barbara. 2007. "Healthy Communities: Public Health Law at the Supreme Court of Canada." In *Health Law at the Supreme Court of Canada*, edited by Joceyln Downie, and Elaine Gibson, 81. Toronto: Irwin Law. [PDF available in UR Courses].
- Reis, Nola, and Barbara von Tigerstrom. 2010. "Roadblocks to laws for healthy eating and activity." *Canadian Medical Association Journal* 182(7): 687-692. <https://login.libproxy.uregina.ca:8443/login?url=http://dx.doi.org/10.1503/cmaj.091403>.

FALL READING WEEK

Nov. 8 – Nov. 13

Module 11: End-of-Life Law & Policy

Nov. 15 – Nov. 21

In this module we will examine end of life law and policy issues, with a focus on Medical Assistance in Dying (MAID) and topics that remain unsettled in this domain.

Required:

- Government of Canada, "Medical assistance in dying". <https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html> (modified 2021-03-18).
- Dalhousie University's Health Law Institute's website on End of Life Law & Policy in Canada (pay particular attention to the sections on "Palliative Interventions"; "Assisted Dying" and "Withholding and Withdrawal": <http://eol.law.dal.ca/>.
- Nelson and Ogbogu 2018, Chapter 7: End of Life Care (pp 189-212).

Supplementary:

- Wiebe, Ellen, Stefanie Green & Kim Wiebe. 2020. "Medical assistance in dying (MAiD) in Canada: practical aspects for healthcare teams" *Annals of Palliative Medicine* 10(3): 3586-3593. <http://dx.doi.org/10.21037/apm-19-631>.
- Downar, James, et al. 2020. "Early experience with medical assistance in dying in Ontario, Canada: a cohort study" *CMAJ* 192(8) E173-E181; DOI: <https://doi.org/10.1503/cmaj.200016>.

- Council of Canadian Academies. 2018. “*State of Knowledge on Medical Assistance in Dying for Mature Minors, Advance Requests, and Where a Mental Disorder is the Sole Underlying Medical Condition; Summary of Reports.*” Accessed July 9. 2019. <https://cca-reports.ca/wp-content/uploads/2018/12/MAID-Summary-of-Reports.pdf>.

Module 12: Organ Donation	Nov. 22 – Nov. 28
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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:

- Nelson and Ogbogu 2018, Chapter 6: Organ Donation (pp 163-187).
- Caulfield, Timothy, Erin Nelson, and Brice 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. <https://journals.sagepub.com/doi/full/10.1186/2054-3581-1-7>
- Weiss, Matthew, et al. 2020. “Survey of Canadian intensivists on physician non-referral and family override of deceased organ donation”. *Can J Anesth* 67: 313–323. <https://doi.org/10.1007/s12630-019-01538-x>.

Supplementary:

- Krmptotic, Kristina & Cynthia Isenor, “Deceased organ donation in Nova Scotia: Presumed consent and system transformation”. 2020. *Healthcare Management Forum* 33(5): 210-213.
- Fast Facts from the Canadian Donation and Transplantation Research Program (topics include “Public Solicitations for Solid Organs...”; “Living Donation”; “Death Determination & Deceased Organ Donation”; “Ethics”; “Consent”; “Incentives”). <https://cdtrp.ca/en/publications/fast-facts/>

Module 13: Governing Human Subjects Research	Nov. 29 – Dec. 5
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In this module, we will review research ethics governance in Canada for 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 facing stakeholders in health-focused research such as, for example, research with vulnerable populations, managing incidental findings and the legal duties/potential legal liability of researchers and research ethics boards.

Required:

- Nelson and Ogbogu 2018, Chapter 8: Health Research (pp 213-244).
- Become generally familiar with the contents of the 2nd edition (2018) of the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* and its general approach (in other word, note the areas covered and skim a section, noting the use of commentary to aid in clarifying the

intent and application of its provisions), available at: https://ethics.gc.ca/eng/policy-politique_tcps2-eptc2_2018.html

- First Nations Information Governance Centre. First Nations Principles of OCAP: Ownership, Control, Access and Possession, online: <https://fnigc.ca/ocapr.html>
- Zimmerman, Susan. 2005. "Translating Ethics into Law: Duties of Care in Health Research Involving Humans." *Health Law Review* 13(2 & 3): 13-18.
<https://login.libproxy.uregina.ca:8443/login?url=http://search.proquest.com/docview/206291683?accountid=13480>.

Supplementary:

- Zarzeczny, Amy, and Timothy Caulfield. 2012. "Legal Liability & Research Ethics Boards: The Case of Neuroimaging and Incidental Findings." *International Journal of Law and Psychiatry* 35(2): 137-145.
<https://login.libproxy.uregina.ca:8443/login?url=http://dx.doi.org/10.1016/j.ijlp.2011.12.005>.
- Czoli, Christine, Michael Da Silva, Randi Zlotnik Shaul, Lori d'Agincourt-Canning, Christy Simpson, Katherine Boydell, Natalie Rashkovan, and Sharon Vanin. 2011. "Accountability and pediatric physician-researchers: are theoretical models compatible with Canadian lived experience?" *Philosophy, Ethics, & Humanities in Medicine* 6: 15.
<https://doi.org/10.1186/1747-5341-6-15>

EVALUATION

Method of Evaluation	% of Total Course Grade	Time Frame/Due-Date
Engagement (participation in live webinars and discussion forum activity)	15%	On-going throughout term
Case Brief	15%	October 4 th
Law Reform Project Proposal: (1) Powerpoint (2) Presentation	15%	(1) October 25 th (2) To be schedule the week of October 25 th
Group Project – Commissioners' Decision Report	20%	November 17 th
Law Reform Project Submission	35%	December 10 th

Descriptions of each assignment follow below. Please see the marking guide in our URCourses site for details on assessment.

All assignments are due by 8:00 am Saskatchewan time. ***Please be aware of time changes and note that Saskatchewan does not observe daylight savings time.***

All assignments must be submitted using the Assignments upload tool in our URCourses site. Marks and feedback will be returned using the same tool. Please ensure you keep a copy of all work submitted for evaluation in this course until you have received your final grade. If you have questions or concerns about marks on any assignments, please send me an email outlining what is unclear or where you are struggling. Please refer directly to the assignment description and marking guides. We can then schedule a meeting to discuss the assignment. I suggest students take a minimum of three days before reaching out, to ensure sufficient time to review and reflect on the work and any feedback.

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 and that 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 (i.e. for the file name when you save the document before uploading it):

Last name_assignment name

For example: Zarzeczny_Case Brief

- **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 site. Students can also access the full online version of the Chicago Manual of Style through the University of Regina library.

Legal sources can be referenced either using the Chicago Manual of Style's format, or the approach outlined in Module 3. If you have any questions about referencing, please get in touch early on.

DESCRIPTION OF ASSIGNMENTS:

ENGAGEMENT (15%)

Active, meaningful engagement is essential to success in an online course, particularly at the graduate level. Engagement will be assessed through participation in the live webinars and via activity in the course discussion forums. Engagement is assessed on a module-by-module basis, meaning students cannot make up for a lack of participation over the term by robust participation in the final few weeks.

There are 2 types of discussion forums in this course: (i) module-specific discussion forums, and (ii) a “Current Events” forum. The module-specific discussion forums are where students are expected to engage critically with the material and to contribute their own thoughts and questions. They also provide an opportunity for students share their personal experiences and expertise. Each module’s forum will only be available for posting while the module is running. 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. Although the discussion forums will be closely monitored by the professor, they are intended to primarily be an opportunity for peer-to-peer discussion.

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 150 words.**

CASE BRIEF (15% - Due October 4th, midnight Saskatchewan time)

Each student must complete a case brief on a case that will be provided (PDF on our URCourses site). A case brief is an analytical tool often used by lawyers as part of their research when considering a legal issue. It provides a way of distilling the large amount of often complex information that is presented in judicial decisions into the key elements that are most important when it comes to the meaning and implications of the decision. A good case brief accurately captures the critical elements of a decision in a clear and concise manner. It 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 case brief should present the essential ‘take-aways’ from the case.

The case brief should include the following elements:

- i. **Case name and citation:** Set out the parties and the proper 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).
- ii. **Procedural History:** Note the judicial history of the case (e.g., if it is an appeal from a trial court decision of the Court of Queen’s Bench).

- iii. **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.
- iv. **Issue(s):** Outline briefly, usually in one to two sentences, the central issue(s) before the court. In other words, identify what legal issue(s) the court was considering.
- v. **Held:** Set out what the court concluded/decided in the case.
- vi. **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.
- vii. **Analysis:** This section is where you set out key elements from the court's reasons. Questions you will want to consider include (note: this is *not* intended to be a comprehensive list):
 - a. What facts were most persuasive to the court?
 - b. Did the decision turn on a particular legal principle?
 - c. What role did precedent (previous court cases) and positive law (statutes and regulations) play in the decision? (e.g., Did the court determine it was bound by precedent? Did it distinguish the case on its fact so as to avoid being bound by a particular precedent?)

The case brief should be a **maximum of 400 words**.

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.

LAW REFORM PROJECT PROPOSAL (15% - Due October 25th, 8:00 am SK time)

Students will prepare a proposal for a Law Reform Project Proposal on a topic of their choice. The topic must be relevant to health law and policy. **Please see the Law Reform module in our URCourses site for important context and background information.**

The proposal will be presented to the class, using a powerpoint presentation. The powerpoint slides must be submitted by 8:00 am (SK time) on Monday, October 25th, using the submission link in the Assignments block of the course site. The presentations will be scheduled during the week of October 25th, in accordance with availability.

Students will have **5 minutes** to present. The powerpoint presentation can have a maximum of **5 slides** (not including a final slide where any references can be listed). The proposals are intended to be brief and concise, and to present a roadmap of where the student intends this work to go. This is a preliminary step toward the final Law Reform Project Submission (described below).

The Law Reform Project Proposal should include the following elements:

- i. **Topic:** Describe the policy issue or problem that you think the Law Reform Commission should explore. Make sure you clearly identify the relevant jurisdiction (i.e. the issue should be situated in a particular province or territory, or be one of federal jurisdiction).
- ii. **Case for Reform:** Explain why you think this topic is important and/or timely, from a public policy perspective.
- iii. **Context:**

- a. Identify the legal framework (e.g. legislation, guiding common law principles) that governs your topic area as well as any relevant policy guidance.
 - b. Explain what is problematic about the current status quo (e.g. identify the problems, gaps, ambiguities, enforcement limitations, etc.).
- iv. **Recommendation(s):** Explain what you think your proposed law reform solution to the issue you have identified. It is recognized this is an early stage of the work and your recommendation(s) may change after you have completed your research and analysis for the final submission.

GROUP PROJECT – COMMISSIONERS’ DECISION REPORT (20% - Due November 17th, 8:00 am SK time)

Students will be placed into groups, in which they will take on the roles of Commissioners with the Law Reform Commission. Each group of Commissioners will be responsible to consider the Law Reform Project Proposals of a select number of their colleagues. Together, each group of Commissioners will prepare a written report identifying which Law Reform Project they would recommend proceed to a full review. Given the limited resources of the Law Reform Commission, only one project can go forward.

The Commissioners’ Decision Report should include the following elements:

- i. **Recommendation:** Identify which project will be recommended to proceed to a full review.
- ii. **Reasons:** In explaining their decision, the Commissioners should consider the following factors:
 - a. Suitability – Is law reform the best way to deal with the issue? Is it a matter of F/P/T jurisdiction? How politicized is the issue?
 - b. Topicality – Is the issue topical/current? Is it on the policy agenda? Is it likely to get the attention of government? How pressing is the issue?
 - c. Feasibility – Is the proposed scope of the project reasonable? How doable would it be to implement the recommended reform?
- iii. **Feedback:** The Commissioners should give brief feedback regarding each of the proposals they heard. It is critical that this feedback be supportive, constructive and professional. It may include questions to contemplate, areas to explore, and/or implications to consider in the preparation of the final project submission.

The Commissioners’ Decision Report can be a **maximum of 1,500 words**.

LAW REFORM PROJECT SUBMISSION (35% - Due December 10th, 8:00 am SK time)

Each student will prepare a written Law Reform Project Submission on the same topic as their Law Reform Project Proposal, using the feedback received from that process to strengthen the final submission.

The Law Reform Project Submission should include the following elements:

- i. **Topic:** Describe the policy issue or problem that you think the Law Reform Commission should explore.
- ii. **Case for Reform:** Explain why this topic is important and/or timely, from a public policy perspective.
- iii. **Context:**
 - a. Identify the legal framework (e.g. legislation, guiding common law principles) that governs your topic area as well as any relevant policy guidance.

- b. Explain what is problematic about the current status quo (e.g. identify the problems, gaps, ambiguities, enforcement limitations, etc.). Make sure you use appropriate sources of evidence (e.g. peer reviewed literature, primary sources, etc.) to support your argument.
- iv. **Recommendation(s):** Explain your proposed law reform solution to the issue you have identified. Identify and address any important considerations related to implementation.

The Law Reform Project Submission can be a **maximum of 2,000 words**.

LATE ASSIGNMENTS

5% will be deducted per day for late assignments, subject to extensions 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 WITH SPECIAL NEEDS

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.

University of Saskatchewan (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

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 document posted on our URCourses site, 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. Unfortunately, support cannot currently be provided to students resident outside the province.

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).

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.

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ACKNOWLEDGEMENTS

My thanks go to Dr. Yvonne Boyer who has taught other sections of this course and who has made particularly valuable contributions to the material related to Indigenous law and policy.

JSGS GRADE DESCRIPTIONS

85+ excellent

A superior performance with consistent strong evidence of:

- a comprehensive, incisive grasp of the subject matter;
- an ability to make insightful critical evaluation of the material given;
- an exceptional capacity for original, creative and/or logical thinking;
- an excellent ability to organize, to analyze, to synthesize, to integrate ideas, and to express thoughts fluently; and
- an excellent ability to apply theories to real-world problems and intersect with related disciplines.

80-85 very good

An excellent performance with strong evidence of:

- a comprehensive grasp of the subject matter;
- an ability to make sound critical evaluation of the material given;

- a very good capacity for original, creative and/or logical thinking;
- an excellent ability to organize, to analyze, to synthesize, to integrate ideas, and to express thoughts fluently; and
- a strong ability to apply theories to real-world problems and intersect with related disciplines.

75-80 good

A good performance with evidence of:

- a substantial knowledge of the subject matter;
- a good understanding of the relevant issues and a good familiarity with the relevant literature and techniques;
- some capacity for original, creative and/or logical thinking;
- a good ability to organize, to analyze, and to examine the subject material in a critical and constructive manner; and
- some ability to apply theories to real-world problems and intersect with related disciplines.

70-75 satisfactory

A generally satisfactory and intellectually adequate performance with evidence of:

- an acceptable basic grasp of the subject material;
- a fair understanding of the relevant issues;
- a general familiarity with the relevant literature and techniques;
- an ability to develop solutions to moderately difficult problems related to the subject material; and
- a moderate ability to examine the material in a critical and analytical manner.

Below 70% is a failing grade

Please note that JSGS course averages typically fall in the range of 78-82%.