
Room G111
Thursday 400-700 • Friday 900-1200

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Course Outline

Mental Health and the Law explores the legal frameworks and policy controversies defining law and mental health in the civil, criminal and human rights contexts. The first portion of the course focuses on civil commitment, reviewing the law of involuntary detention, consent and capacity to make treatment decisions, guardianship and substitute decision making, the use of restraints, forced medication, and administrative review proceedings before the Consent and Capacity Board. The second portion of the course examines the mental disorder provisions of the *Criminal Code*, including fitness and risk assessments, findings of "not criminally responsible", diversion from specialized Mental Health Courts, and proceedings before the Ontario Review Board and Court of Appeal. The third portion of the course focuses on patient advocacy, reviewing the important relationship between legal rights, patient empowerment and personal recovery. This portion of the course looks at recent developments in human rights and international law, coroner's inquests, and privacy law. Each seminar throughout the course will tease out common themes and controversies including: professional ethical obligations in assessing client capacity and representing the mentally ill; continuity of care across fragmented health and social services; therapeutic jurisprudence; criminalization of the mentally ill and policing; tensions between individual rights and family involvement; and the expansion of "patient tethering" through community treatment orders and conditional discharges.

Evaluation

- 50% Research paper
- 10% Reflective piece
- 30% Mock judgment of the Consent and Capacity Board
- 10% Class participation

The **research paper** is due December 12, 2014 at noon by submitting a copy in the General Office. Students are required to submit an abstract or outline of the final paper to the instructor by e-mail by November 7, 2014. The research paper shall be a minimum of 3750 words and not exceed 5000 words (approximately 20 pages) excluding bibliography, end notes, or other

attachments. The instructor will distribute a detailed information sheet outlining the expectations for the research paper on the first day of class.

The **reflective piece** invites students to provide a critical analysis of the issues discussed in one of the first four classes, due at noon on either September 18, 2014 (for the first two classes) or Oct 2 (for the third and fourth classes) by submitting a copy in the General Office. Issues discussed include “sanism,” “mad consciousness” and the politics of story telling, as well as the law of forced treatment, capacity and disability accommodation. The reflective piece shall not exceed 1500 words (approximately 5 pages) excluding bibliography and end notes. The instructor will distribute a detailed information sheet outlining the expectations for the reflective piece on the first day of class.

The **mock judgment of the Consent and Capacity Board** challenges students to render a decision from an imagined hearing before the Consent and Capacity Board. Students will provide reasons for their decision based on a provided fact pattern, background documents, and their “hearing notes.” The assignment will be distributed in class on October 3 and is due October 16, 2014 at noon by submitting a copy in the General Office. The judgment shall not exceed 2500 words (approximately 10 pages).

The University's policy on plagiarism and the *Human Rights Code* is available online: <http://www.uwindsor.ca/vp-planning/policies>. The procedure for converting raw scores into letter grades (Senate By-Law 51(2)) is available online: <http://web4.uwindsor.ca/units/senate/main.nsf/SubCategoryFlyOut/CD30CE907E7ABB688525791100589533>.

Objectives

Each class will review legislation and case law, legal procedures, broader policy considerations, and practical advocacy challenges. Students are expected to actively participate and become comfortable discussing the subject matter. Guest speakers will provide unique perspectives on many of the issues covered. Specific learning objectives include:

- developing a critical understanding of the structure of mental health law and its foundational assumptions;
- situating mental health law and related legal institutions and practices within broader social, political and cultural contexts, and comparatively across jurisdictions;
- understanding the diverse viewpoints about what it means to be considered “mad” and how this challenges the legal construction of capacity and mental illness;
- acquiring substantive knowledge of Ontario’s capacity and mental health legislation, including the mental disorder provisions of the *Criminal Code*; *Human Rights Code*; *Mental Health Act*; *Health Care Consent Act, 1996*; *Substitute Decisions Act, 1992*; and *Personal Health Information Protection Act*;

- understanding professional ethical obligations in assessing client capacity to instruct, and representing persons where capacity is in question;
- appreciating the various administrative and adjudicative rights available to patients and patient advocates, and becoming familiar with the function of mental health tribunals;
- conducting independent legal research and contributing to discussions in a seminar format.

Students are encouraged to observe a hearing of the Consent and Capacity Board, which are customarily open to the public. In Windsor, hearings generally take place at Hotel Dieu Grace Hospital. They are typically scheduled on the day before the hearing. Contact the CCB Registrar, Lorissa Sciarra (lorissa.sciarra@ontario.ca) to find out about scheduled hearings.

Arrangements are also being made for a defense counsel to guide students on a tour of Windsor's criminal Mental Health Court. Hearing dates will be discussed on the first day of class.

Required Materials

- Hiltz and Szigeti, *A Guide to Consent and Capacity Law in Ontario, 2014 Edition* (LexisNexis Canada, 2013, ISBN 9780433474883)
- Mental Health and the Law Course Pack (digitally distributed through the CLEW site)
- *Criminal Code of Canada* ss. 2, 16, and part XX.1

Week 1 • September 4

Introduction to mental health and the law

- How and why do mental disabilities matter to lawyers?
- Overview of the Ontario mental health system in relation to legal practice
- The multiple intersections between mental health, decision-making capacity and the law
- Review of the course syllabus
- Key terms

Required Materials

- Psychiatric Patient Advocate Office, "Introduction to Rights Advice" in *Rights Adviser Training Manual* (Toronto: Queen's Printer, 2011) at Chapter 1, 1 – 26
- Legal Aid Ontario, "Mental Health Strategy Consultation Paper" (December, 2013, online: <http://www.legalaid.on.ca/MHS>)

Week 1 • September 5

Discussing Disability and the Law

- Who are we talking about when we refer to the "mentally ill"? How do we understand mental illness?
- Sanism, mad consciousness, and the politics of storytelling: perspectives on (and controversies in) mental health and the law
- The freedom to be different? Civil and criminal detention
- Legal professional ethics and mentally ill clients – some issues to think about at the beginning of this course (and to return to at the end – see November 23)

Required Materials

- Eric Fabris, *Tranquil Prisons: Chemical Incarceration under Community Treatment Orders* (Toronto: University of Toronto Press, 2011) chapters 1 and 2
- Anita Szigeti, "Lunacy, Laws and Lawyers – text of the speech given at Man Pride 2013" (Toronto: Centre for Addiction and Mental Health, July 10 2013)
- Pat Capponi, "Here is Your Diagnosis and Your Bullet Proof Vest: Wear in Poor Health" (guest blog on Open Policy Ontario, August 4, 2013, online: <http://openpolicyontario.com/here-is-your-diagnosis-and-your-bullet-proof-vest-wear-in-poor-health-guest-blog-by-pat-capponi/>)
- Lucy Costa et. al., "Recovering our Stories: A Small Act of Resistance" (6 *Studies in Social Justice Volume 1* (2012), 85 – 101)
- Michael Perlin, "On Sanism" (1992) 46 *SMU Law Review* 373
- Deborah Kaplan "The Definition of Disability: Perspectives of the Disability Community" (1999-2000) 3 *Journal of Health Law & Policy* 352
- Sandy Simpson, "Doctors and Lawyers" (*The British Journal of Psychiatry* (2005) 187: 389), in reply to Sarkar & Adshead, "Black robes and white coats: who will win the new mental health tribunals?" (*British Journal of Psychiatry* (2005) 186: 96-98)

Supplementary Materials

- Valerie Williams, *'Sanism', A Socially Acceptable Prejudice: Addressing the Prejudice Associated with Mental Illness in the Legal System* (PhD Thesis, University of Tasmania Faculty of Law, November 2013)
- "National Strategy, National Treatment: Can Mental Health Care Be Fixed?" *The Agenda* with Steve Paikin (May 8, 2012) <http://theagenda.tv.org/episode/177054/national-strategy%2C-national-treatment>
- Mental Health Commission of Canada (2012): *Changing Directions, Changing Lives: The Mental Health Strategy for Canada* (Calgary: MHCC), online: <http://strategy.mentalhealthcommission.ca/pdf/strategy-text-en.pdf> (see esp. 11-12, 26-38)

- Legislative Assembly of Ontario, Select Committee on Mental Health and Addictions, *Final Report: Navigating the Journey to Wellness: The Comprehensive Mental Health and Addictions Action Plan for Ontarians* (2nd Session, 39th Parliament, 2010), online: http://www.ontla.on.ca/committee-proceedings/committee-reports/files_pdf/Select%20Report%20ENG.pdf (see esp. 13 – 18)
- Ontario Ministry of Health and Long-Term Care Advisory Group, *Respect, Recovery, Resilience: Recommendations for Ontario's Mental Health and Addictions Strategy* (December 2010), online: http://health.gov.on.ca/en/public/publications/ministry_reports/mental_health/mental_health_report.pdf
- *R. v. Brown* (2013 ONCJ 207) at paras. 1 – 18, 181 – 226
- Robert Whitaker, “The Patient’s Reality” in *Mad in America: Bad Science, Bad Medicine and the Enduring Mistreatment of the Mentally Ill* (Cambridge: Perseus, 2001) at 161 – 193
- *Remembrance of Patients Past: Patient Life at the Toronto Hospital for the Insane, 1870-1940* (Toronto: Oxford University Press Canada, 2000; re-published, unrevised, University of Toronto Press, 2009)
- “Teaching Radical History: Mad People’s History.” *Radical History Review* 94 (Winter, 2006): 170-82
- Peter Beresford, “What Have Madness and Psychiatric System Survivors Got to Do with Disability and Disability Studies?” *Disability and Society* 15 (2000): 167 – 72

Week 2 • September 18

Capacity to consent to treatment

- Rebutting the presumption of capacity to consent to treatment
- How does the law manage fluctuating capacity?
- What is the scope of “treatment”? When does a “material change in treatment” occur?
- The presumption of capacity and “informal” patients – youth and the elderly
- Oversight mechanisms: rights advice and the Consent and Capacity Board

Required Materials

- *Health Care Consent Act* – Parts I, II (treatment), V (Consent and Capacity Board) – focus on ss. 1, 2, 4, 5, 10, 11, 15, 18, 20, 21, 22, 25, 26, 32, 70, 70.1, 75, 80
- *Mental Health Act* Reg. 741, s. 15
- Hiltz & Szigeti, 167 – 191
- Psychiatric Patient Advocate Office, “Incapacity to Consent to Treatment” in *Rights Adviser Training Manual* (Toronto: Queen’s Printer, 2011) at Chapter 3, 1 – 15
- College of Physicians and Surgeons of Ontario, “Policy #4-05, Consent to Medical Treatment” (online: <http://www.cpso.on.ca/uploadedFiles/policies/policies/policyitems/Consent.pdf>)
- *Starson v. Swayze*, 2003 SCC 32 (majority decision only)

- *AC v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30
- *M.N. v. Klukach*, 2004 CanLII 6325 (ON SC)
- *N. (Re)*, 2008 CanLII 69846 (ON CCB)
- Consent and Capacity Board decisions on sexuality, smoking and drug use: *Re: RF (TB-07-1230)* (2007 CanLII 32895) and *Re: W (TO-06-0853/54)* (2006 CanLII 11661)
- Consent and Capacity Board, "Applying for a Review of Capacity to Make Decisions with Respect to Treatment (Form A)"
<http://www.ccboard.on.ca/english/publications/documents/forma-treatment.pdf>

Supplementary Materials

- *Conway v. Jacques*, [2002] O.J. No. 2333 (O.C.A.)
- *Fleming v. Reid* (1991), 4 OR (3d) 74 (CA)
- Michel Silberfeld, "Capacity Assessment: Ontario" in Bloom and Schneider (eds.), *Law and Mental Disorder: A Comprehensive and Practical Approach* (Toronto: Irwin Law, 2013) at 1063-1078
- Law Commission of Ontario, *Legal Capacity, Decision-Making and Guardianship Discussion Paper* (Toronto: Law Commission of Ontario, May 2014), online: <http://lco-cdo.org/capacity-guardianship-discussion-paper.pdf>
- Patricia Peppin, "Informed Consent" in Downie, Jocelyn et. al. *Canadian Health Law and Policy* (3rd ed) (LexisNexis, 2007), pp. 189-221
- Monique Dull, "Starson v. Swayze, 2003-2008: Appreciating the Judicial Consequences" *Health Law Journal V. 17* (2009)
- Michael Bay, "1933-2003: Lessons from 70 Years of Experience with Mental Health, Capacity and Consent Legislation in Ontario" (2004) 24 *Health L. Can.* 36
- Brian Hoffman, *The Law of Consent to Treatment in Ontario* (2nd ed.) (Toronto: Butterworths, 1997), 1-36 and 49-80
- MacArthur Network on Mental Health and the Law, *The MacArthur Treatment Competence Study (Executive Summary)*, (1995; updated May 2004)
www.macarthur.virginia.edu/treatment.html
- Amy James, "Psychiatric Power and Informed Consent in Post-World War II Canada" (2002) 22 *Health L. Can.* 101

Week 2 • September 19

Incapacity to Manage Property, Personal Care, and Guardianship

- Powers of Attorney for Personal Care and Property
- Substitute Decision Makers (SDMs): best interests and hierarchy of decision makers in authorizing treatment and managing property
- The role of the Public Guardian and Trustee in investigations and as SDM
- Conflicts between patients and SDMs, and challenging a SDM

- End-of-life decision making and the withdrawing of treatment
- Advance treatment directives: the uses and abuses of negative and positive rights

Required Materials

- *Mental Health Act*, Part III “Estates”
- Hiltz & Szigeti, 23 – 49; 315 – 320
- *Substitute Decisions Act, 1992*, Part I – s. 2, 6 to 10, 15, 16, 16.1, 17, 20, 20.2, 20.3, 22, 24, 25, 27, 31, 31.1, 32, 37, 40, 42, 62, 79
- *Health Care Consent Act*, s. 20, 21 and 37
- Consent and Capacity Board, Information Sheet, “Applying for a Review of Capacity to Make Decisions to Manage Property (Form 18)”
<http://www.ccboard.on.ca/english/publications/documents/form18.pdf>
- *Cuthbertson v. Rasouli*, 2013 SCC 53
- *Bon Hillier v. Milojevic*, 2010 ONSC 4514
- *Fiacco v. Lombardi*, 2009 CanLII 46170 (ON SC)
- *Bartoszek v. Ontario (Consent and Capacity Board)* (2002 OJ No 3800 (SJ))
- *Saunders v. Bridgepoint Hospital* (2005 OJ No. 5531 (SCJ))
- *Re Koch* (1997, 33 OR (3d) 485)
- Judith Wahl, “Options for Advance Care Planning”, Advocacy Centre for the Elderly (2009)
- Jane E. Meadus, “Admissions to Long-Term Care Homes: Are Evaluations of Capacity Being Conducted in Accordance with the Law?” (ACE, July 2010)

Supplementary Materials

- Office of the Public Guardian and Trustee, Powers Of Attorney And “Living Wills”: Some Questions And Answers –
www.attorneygeneral.jus.gov.on.ca/english/family/pgt/livingwillqa.pdf
- Margaret Isabel Hall, "Mental Capacity in the (Civil) Law: Capacity, Autonomy and Vulnerability" (McGill Law Journal, forthcoming) (June 12, 2012)
(<http://ssrn.com/abstract=2083249>)
- Israel Doron, “Elder Guardianship Kaleidoscope –A Comparative Perspective”
International Journal of Law Policy and the Family 16 (2002), 368-398
- Robert Gordon, “Adult Protection Legislation in Canada: Models, Issues and Problems”
(2001) 24 *International Journal of Law & Psychiatry* 117
- Daniel L. Ambrosini et al., “Psychiatric Advance Directives and the Right to Refuse Treatment in Canada” 52 *The Canadian Journal of Psychiatry* 6 (2007)
- Goddard, J. , “The Substitute Decisions Act: A Law of Unintended Consequences” in Brian A. Schnurr and Kenneth I. Shulman (eds.), *Law Society of Upper Canada Special Lectures 2010: A Medical-Legal Approach to Estate Planning and Decision Making for Older Clients* (Toronto: Irwin Law, 2011)

Week 3 • October 2

Involuntary Detention in the Civil Mental Health System and Community Treatment Orders

- From the community to the hospital: involuntary detention as a revolving door to access health care
- The committal paradigm: the “need for treatment” vs. “dangerousness” vs. “mental deterioration”
- Why does Ontario separate capacity from voluntariness? How does this compare to other jurisdictions?
- Coercion and the use of “privileges”, AWOL patients, transfer rights, and refusing treatment
- Oversight mechanisms: rights advice and the Consent and Capacity Board

Required Materials

- *Mental Health Act* – s. 1, 6, 7, 15-18, 20 – 24, 27 – 29, 34, 38, 39, 41
- Hiltz & Szigeti, 279 – 305
- *SE (Re)*, 2010 CanLII 41574 (ON CCB)
- *RC (Re)*, 2010 CanLII 15629 (ON CCB)
- *In the Matter of A.* (June 25, 2002, C.C.B)
- *In the Matter of S.K.* (January 4, 2004, C.C.B.)
- Consent and Capacity Board decisions on psychological harm: *L.I.* (TO-03-0898) and *R. v. McCraw*, [1991] 3 SCR 72
- Toronto Acute Care Alliance, "Presentation to Toronto Central LHIN ED Network" (April 26, 2012)
- Psychiatric Patient Advocate Office, “Involuntary Status” in *Rights Adviser Training Manual* (Toronto: Queen’s Printer, 2011) at Chapter 2, 1 – 14
- Gray, John E. and O'Reilly, Richard L., “Protecting the Rights of People with Mental Illness: Can We Achieve both Good Legal Process and Good Clinical Outcomes?,” *23 Health L. Canada* 25 (2002)
- Appelbaum, Paul, “Almost a Revolution; An International Perspective on the Law of Involuntary Commitment,” 25(2) *J. Am. Acad. Psychiatry Law* 135, 1997
- Dawson, John and Szmukler, George, “Fusion of mental health and incapacity legislation”, *British Journal of Psychiatry* (2006), 188, 504-509

Supplementary Materials

- Daniel Ambrosini and Lucie Joncas, "Civil Commitment: A Cross-Canada Check-Up" in Bloom and Schneider (eds.), *Law and Mental Disorder: A Comprehensive and Practical Approach* (Toronto: Irwin Law, 2013) at 1029-1061 (see esp. comparative tables)
- Aaron A. Dhir, “The Maelstrom of Civil Commitment in Ontario: Using Examinations Conducted During Periods of Unlawful Detention to Form the Basis of Subsequent Involuntary Detention under Ontario’s Mental Health Act” (2003) 24 *Health Law Can.* 9

- Paul Chodoff, “Involuntary Hospitalization of the Mentally Ill as a Moral Issue”, *Am. J. of Psychiatry* 141:3 March 1984
- Stephen J. Morse, “A Preference for Liberty: The Case Against Involuntary Commitment of the Mentally Disordered” (1982) 70 *Cal. L. Rev.* 54
- Consent and Capacity Board, Information Sheet, *Applying for a Review of Involuntary Status (Form 16)* – www.ccboard.on.ca/english/publications/documents/form16.pdf

Community Treatment Orders

- Is there such a thing as “less restrictive involuntary detention?”
- Do CTOs raise *Charter of Rights* concerns when enforced through powers of entry, restrictions on places of residency, or restrictions to freedom of movement and association?
- Have procedural rights protections around CTOs become *pro forma*?
- Coercion and queue jumping: are patients able to access services, programs and community care without a CTO?

Required Materials

- *Mental Health Act* – ss.33.1 - 33.9
- Health Care Consent Act s. 70.1
- Hiltz & Szigeti, 305 – 315
- Psychiatric Patient Advocate Office, “Community Treatment Orders” in *Rights Adviser Training Manual* (Toronto: Queen’s Printer, 2011) at Chapter 7, 1 – 20, and policy “Best Efforts in Providing Rights Advice on CTOs”
- Dreezer & Dreezer Inc., Report on the Legislated Review of Community Treatment Orders, Required Under Section 33.9 of the Mental Health Act (December 2005) – Chapter 1, Executive Summary at pp. 9-20
<http://www.health.gov.on.ca/en/common/ministry/publications/reports/dreezer/dreezer.pdf>
- *Thompson v. Attorney General of Ontario*, 2011 ONSC 2023

Supplementary Materials

- Ministry of Health and Long-term Care – “Mental Health – Legislated Review of Community Treatment Orders (Malatest Report)” May 2012
http://www.health.gov.on.ca/en/common/ministry/publications/reports/mental_health/cto_review_report.pdf
- Anita Szigeti, “Ontario’s Community Treatment Orders: How Did We Get There and Where Do We Go Now?” (2001) 21 *Health L. Can.* 66
- O’Reilly, Richard, “Why Are Community Treatment Orders Controversial?” *Can J Psychiatry* 2004; 49:579–584
- Carver, Peter, “A New Direction in Mental Health Law,” in Caulfield, Timothy A. and Von Tigerstrom, Barbara (eds.), *Health Care Reform and the Law in Canada* (Edmonton: Univ. of Alberta Press, 2002) Read only pp. 190-214

- Jennifer Honig and Susan Stefan, "New Research Continues to Challenge the Need for Outpatient Commitment" (2005) 31 New Eng. J. on Crim. & Civ. Confinement 109
- Winick, Bruce J., Outpatient Commitment: A Therapeutic Jurisprudence Analysis, 9 Psych. Pub. Pol. and L. 107 (2003).
- Dawson, John, "Fault-lines in Community Treatment Order Legislation", 29 International Journal of Law and Psychiatry (2006) 482 (read discussion of CTO's starting at 489).
- Donnelly, Mary "Community-based care and compulsion: What role for human rights?", (2008) 15 JLM 1

Week 3 • October 3

The Use of Restraint in the Psychiatric System

- The use of chemical, environmental and physical restraint
- Is restraint a form of treatment? What is "emergency treatment"?
- The legality of pre-assessment restraint by police and hospital emergency room staff
- Suicide and legal liability: is there a human right to accessing health care?

Required Materials

- *Mental Health Act* s. 1, 6, 14, 17 – 19, 27 – 28, 33, 53
- *Mental Health Act* Reg. 741/09 s. 7.2
- *Patient Restraints Minimization Act*
- *Health Care Consent Act* s. 7, 18, 25 – 28
- Hiltz & Szigeti, 191 – 196
- Juan E. Méndez, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment" (New York: UN General Assembly, 22nd Session of the Human Rights Council, February 1, 2013; GE.13-10577 & A/HRC/22/53)
- *R. v. Webers*, [1994] O.J. No. 2767 (Gen. Div.)
- *S.M.T. v. Abouelnasr*, [2008] O.J. No. 1298 (S.C.J.)
- *Mullins v. Levy*, 2009 BCCA 6
- *Marshall v. Durham Regional Police Service*, 2010 HRTO 1359
- *Savage v South Essex Partnership NHS Foundation Trust* [2008] UKHL 74
- *D Borough Council v. A.B.* [2011] EWHC 101 (COP)
- Office of the Chief Coroner of Ontario, Verdict Explanation and Recommendations at the Inquest into the Death of Jeffrey James (2008) – <http://www.sse.gov.on.ca/mohltc/PPAO/en/Documents/sys-inq-jam.pdf>
- H. Archibald Kaiser, "Restraint and Seclusion in Canadian Mental Health Facilities: Assessing the Prospects for Improved Access to Justice" (2001) 19 Windsor Y.B. Access Just. 391

Supplementary Materials

- Elyn R. Saks, "The Use of Mechanical Restraints in Psychiatric Hospitals" (1986) 95 Yale L.J. 1836
- Mary-Jane Dykeman, "Addressing Systemic Issues in Women's Mental Health: An Inquest into the Death of Cinderella Allalouf" (1999) 1:1 Women's Health & Law 15

Week 4 • October 16

Forensic Mental Health System

- Criminal code findings of "unfit to stand trial" and verdicts of "not criminally responsible"
- The role and function of the Ontario Review Board and Ontario Court of Appeal
- How does the *Mental Health Act* and *Health Care Consent Act* intersect with the *Criminal Code*?
- Disposition orders, conditional and absolute discharges

Required Materials

- "NCR: Not Criminally Responsible" (directed by John Kaster, 2012) – screened in class, see trailer online:
https://www.nfb.ca/film/ncr_not_criminally_responsible/trailer/ncr_not_criminally_responsible_trailer
- *Criminal Code of Canada, s. 2, 16, Part XX.1 "Mentally Disordered Offenders"*
- *Mental Health Act s. 25*
- Network Magazine, "Navigating the Forensic System" (Toronto: Canadian Mental Health Association (2009), v. 24(2) at 14-15), online:
http://ontario.cmha.ca/files/2009/03/winter_2009.pdf
- Toronto Justice Collaborative, "Navigating the Youth Criminal Mental Health System" (Toronto: CAMH, 2013)
- Richard Schneider, "Mental Health Courts and Diversion" in Bloom and Schneider (eds.), *Law and Mental Disorder: A Comprehensive and Practical Approach* (Toronto: Irwin Law, 2013) at 155-177
- Rakesh Lamba, "The Provincial and Territorial Review Boards" in Bloom and Schneider (eds.), *Law and Mental Disorder: A Comprehensive and Practical Approach* (Toronto: Irwin Law, 2013) at 673-701
- Gary Chaimowitz, "Bail and Mentally Disordered Accused: The Expert's Role" in Bloom and Schneider (eds.), *Law and Mental Disorder: A Comprehensive and Practical Approach* (Toronto: Irwin Law, 2013) at 201-211
- Ministry of the Attorney General Crown Policy Manual, Mentally Disordered/Developmentally Disabled Offenders: Diversion (March 31, 2006) –
<http://www.mentalhealthcourt.ca/pages/7/Diversions.html>
- Ontario Review Board, "Wording of Custodial Disposition Orders" (Manual of Operating Guidelines, Provincial Psychiatric Hospitals, June 1995)
- *R. v. Taylor*, [1992] O.J. No. 2394 (CA)
- *R. v. Swain* [1991] 1 S.C.R. 933 (Lamer C.J. decision)

Supplementary Materials

- Hy Bloom, "Fitness to Stand Trial" in Bloom and Schneider (eds.), *Law and Mental Disorder: A Comprehensive and Practical Approach* (Toronto: Irwin Law, 2013) at 211-248
- Hy Bloom, "Not Criminally Responsible on Account of Mental Disorder" in Bloom and Schneider (eds.), *Law and Mental Disorder: A Comprehensive and Practical Approach* (Toronto: Irwin Law, 2013) at 263-296
- Richard Schneider, "Sentencing the Mentally Disordered Accused" in Bloom and Schneider (eds.), *Law and Mental Disorder: A Comprehensive and Practical Approach* (Toronto: Irwin Law, 2013) at 703-711
- R. Schneider and H. Bloom, "R. v. Taylor: A Decision Not in the Best Interests of Some Mentally Ill Accused" (1996) 38 Crim. L. Q. 183

Week 4 • October 17

Forensic Mental Health System Continued

- Mental health courts continued
- Habeus corpus rights and delays in assessment, transfer, and residual rights
- Diversion, conditional and absolute discharges, and community supports

Required Materials

- *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625
- *R. v. Mazzei*, [2006] 1 S.C.R. 326
- *R. v. Morrissey*, 2007 ONCA 770 (CanLII)
- *R. v. Conway*, 2010 (SCC)
- Anita Szigeti and Erin Dann, "Holding the Not Criminally Responsible, Responsible: Federal Government Introduces Bill C-14: the NCR Reform Act" (35 *For the Defence* 2, 18-27)
- Helen Kurdin, "Against use of Psychotronic Weapons. My arrest by the Toronto Police on the 3d of June, 2013", online: <https://www.youtube.com/watch?v=yLlI4-7uPgM>
- Michele Peterson-Badali, et. al., *A Process Evaluation of the Community Youth Court Final Report for the Department of Justice, Canada* (March 2014)
- *B. (Re)* (2008 CanLII 42415, Ont. CCB); see also *British Columbia (Forensic Psychiatric Services Commission) v. British Columbia (Mental Health Act Review Panel)* [2001] BCJ No. 2518
- *R. v. Rogers* (1990), 2 C.R. (4th) 192 (B.C.C.A.)
- *Mental Health Centre Penetanguishene v. Ontario (Rea)*, [2010] O.J.No. 1044
- *R. v. Hneihen*, 2010 ONSC 535

Supplementary Materials

- Lora Patton, "Toronto's 102 Court: An Experiment in Accidental Policy" in *Honouring the Past, Shaping the Future - 25 Years of Progress in Mental Health Advocacy and Rights Protection* (Toronto: Psychiatric Patient Advocate Office, 2008) at 189-191
- E. Lea Johnston, "Theorizing Mental Health Courts" (2010), SSRN, University of Florida Levin College of Law Research Paper No. 2010-21
- Richard Schneider, Hy Bloom & Mark Heerema, *Mental Health Courts: Decriminalizing the Mentally Ill* (Toronto: Irwin Law, 2006)

Week 5 • October 30

Human Rights and Mental Health

- How does the *UN Convention on the Rights of Persons with Disabilities* challenge Ontario's consent and capacity framework?
- Are the Consent and Capacity Board and Ontario Review Board courts of competent jurisdiction to hear Charter of Rights and human rights issues?
- Discrimination in the provision of mental health care: case studies
- Human rights and workplace accommodation of mental illness

Required Materials

- *Human Rights Code of Ontario*, s. 1 – 13, 17, 24, 47
- *UN Int'l Convention on the Rights of Persons with Disabilities* and Optional Protocols
- Hiltz & Szigeti, 571 – 575
- H. Archibald Kaiser, "Law and Psychiatry in the Age of the Convention on the Rights of Persons with Disabilities" in Bloom and Schneider (eds.), *Law and Mental Disorder: A Comprehensive and Practical Approach* (Toronto: Irwin Law, 2013) at 1333-1354
- *Adga Group Consultants Inc. v. Lane*, 91 O.R. (3d) 649, 2008 CanLII 39605
- *Walkinshaw v. Complex Services Inc.*, 2011 HRTO 1977
- *Savage v South Essex Partnership NHS Foundation Trust* [2008] UKHL 74
- C. Lauber et al. "What About Psychiatrists' Attitude to Mentally Ill People?" (2004) 19 Eur. Psych. 423, adopted in Canadian Psychiatric Association 2010 Position Statement "The Psychiatrist's Role in Addressing Stigma and Discrimination" - http://xa.yimg.com/kq/groups/18710349/184288044/name/CPA_PositionStatementVol55No11.pdf

Supplementary Materials

- Rees, Nils, "International Human Rights Obligations and Mental Health Review Tribunals", 10 *Psychiatry Psychol. & L.* 33 2003
- Aart Hendriks, "UN Convention on the Rights of Persons with Disabilities," *European Journal of Health Law* 14 (2007) 273-298.
- Kanter, Arlene S., "The Promise and Challenges of the UN Convention on the Rights of Persons with Disabilities", *Syracuse Journal of International Law and Commerce*; Spring

2007; 34, 2; 287-308 only

Week 5 • October 31

Guest Lecture: Youth Mental Health System

Guest TBD

- What is the structure of the youth mental health system in Ontario?
- What advocacy, support, and legal protections are available to mentally ill youth?
- What issues and law are particular to the youth mental health system?

Required Materials

- See supplemental handouts

Supplementary Materials

- See supplemental handouts
- Nicholas Bala et. al., "Minors and Capacity to Consent to Treatment" in Bloom and Schneider (eds.), *Law and Mental Disorder: A Comprehensive and Practical Approach* (Toronto: Irwin Law, 2013) at 1079-1090

Week 6 • November 13

Privacy Rights

- The conflict between patient privacy rights and family members
- Accessing client records: practical and legal difficulties
- Case studies: privacy issues in mobile crisis teams, police background checks
- Oversight and complaint mechanisms: the Privacy Commissioner and hospital policies
- Defining the "circle of care": a weak approach to privacy rights?

Required Materials

- *Mental Health Act* s. 35
- *Personal Health Information Protection Act* – focus on s. 1 – 2, 3(1 – 3), 4 – 9, 18 – 30, 35 – 39, 40 – 41, Part V, 56 – 57, 61 - 65
- Hiltz & Szigeti, 419 – 424
- Police Record Check Coalition, "PRCC Advocacy Guide to Mental Health Records" (<http://www.mentalhealthpolicerecords.ca/docs/guides/PRCCInfoGuide2012.pdf>)
- *J.N. v. Durham Regional Police Service* (2011 ONSC 2892)
- Information and Privacy Commissioner, Orders HO-002, 004, 005, 007 and 008
- Ann Cavoukian, *Crossing the Line: The Indiscriminate Disclosure of Attempted Suicide Information to U.S. Border Officials via CPIC* (Toronto: Privacy Commissioner of Ontario,

April 2014), online:

http://www.ipc.on.ca/images/Resources/indiscriminate_disclosure.pdf

- Information and Privacy Commissioner, "Circle of Care: Sharing Personal Health Information for Health-Care Purposes" (September 2009) (<http://www.ipc.on.ca/images/Resources/circle-care.pdf>)
- Kate Dewhirst and Richard Schneider, "Privacy and Privilege" in Bloom and Schneider (eds.), *Law and Mental Disorder: A Comprehensive and Practical Approach* (Toronto: Irwin Law, 2013) at 1003-1028

Supplementary Materials

- Gibson, Elaine, "Health Information: Confidentiality and Access", in Downie, Jocelyn et. al. *Canadian Health Law and Policy* (3rd ed) (LexisNexis, 2007), pp. 223-255
- Community Care Information Management System (<https://www.ccim.on.ca/default.aspx>)
- Ontario Association of Chiefs of Police, "Guideline for Police Record Checks" (http://www.mentalhealthpolicerecords.ca/docs/guides/OACP_Guideline.pdf)
- *de Pelham v. Mytrak Health Systems* (2009 HRTO 172)

Week 6 • November 14

Legal Professional Ethics in the Mental Health System

- Capacity to instruct counsel – is it appropriate for legal counsel to rely on a medical opinion of capacity to instruct?
- Balancing the duty to advance a client's case and to follow his/her instructions
- The increasing role of *amicus curiae* in civil and mental health cases

Required Materials

- *Law Society of Upper Canada, Rules of Professional Conduct: 2.02(6), 2.03(2), 2.03(3), 2.04(14), 4.01(1), 4.06(3)*
- *Bon Hillier v. Milojevic*, 2010 ONSC 435
- *Walkinshaw v. Complex Services Inc.*, 2011 HRTO 1977
- Ed Montigny, "Notes on Capacity to Instruct Counsel" (ARCH Disability Law Centre, 2011)
- Marshall Swadron, "Representing the Incapable Client in Capacity Proceedings" (LSUC 12th Annual Estates and Trusts Summit, November 2009)
- Judith Wahl, "Capacity and Capacity Assessment in Ontario" (CBA Elderlaw Programme March 24-25, 2006)
- Legal Aid Ontario, "Consent and Capacity Panel Standards," at http://www.legalaid.on.ca/en/info/panel_standards.asp

- Michael Perlin, "And My Best Friend, My Doctor/Won't Even Say What It Is I've Got: The Role And Significance Of Counsel In Right To Refuse Treatment Cases", (2005) 42 San Diego L. Rev. 735

Supplementary Materials

- *Smith v. Jones* [1999] 1 S.C.R. 455 – <http://scc.lexum.umontreal.ca/en/1999/1999rcs1-455/1999rcs1-455.html>
- Lora Patton, "Providing Services to Clients with Serious Mental Illness: New Challenges and Opportunities for Community Legal Clinics" (2004) 10 J. Law & Social Pol. 20
- Tremblay, Paul A., "On persuasion and Paternalism: Lawyer Decision making and the Questionably Competent Client," 1987 *Utah L. Rev.* 515 1987
- Law Society of New South Wales, "When a Client's Capacity is in Doubt" (2009) (<http://www.lawsociety.com.au/idc/groups/public/documents/internetcontent/023880.pdf>)
- Slobogin, Christopher and Mashburn, Amy, "The Criminal Defense Lawyer's Fiduciary Duty to Clients With Mental Disability," 68 *Fordham L. Rev.* 1581 1999-2000.
- Romano Diana A. "The Legal Advocate and the Questionably Competent Client in the Context of a Poverty Law Clinic 35 *Osgoode Hall L.J.* (1997) 737-761.
- T. Carney, F. Beaupert, J. Perry and D. Tait, "Advocacy and participation in Mental health cases: Realisable Rights or pipe-dreams?," at www.mhrb.vic.gov.au/publications/documents/AdvocacyinMH.doc
- Megan Seto, "Killing Ourselves Depression as an Institutional, Workplace and Professionalism Problem" (LSUC, 2011) (<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487888>)

Helpful Ancillary and Reference Resources

- Consent and Capacity Board – Information Sheets <http://www.ccboard.on.ca/scripts/english/publications/infosheets.asp>
- Office of the Chief Coroner for Ontario – CanLII database of verdicts and recommendations <http://www.canlii.org/en/on/onocco/>
- Ontario Review Board – QuickLaw database of disposition orders (QL)
- Psychiatric Patient Advocate Office – InfoGuides to the Mental Health System http://www.sse.gov.on.ca/mohltc/ppao/en/Pages/InfoGuides/ListofallInfoGuides.aspx?openMenu=smenu_InfoGuides
- ConnexOntario – comprehensive 24/7 Hotline of mental health services in Ontario <http://www.connexontario.ca/>
- Designated Psychiatric Facilities under the Mental Health Act ("Schedule 1 Facilities") <http://www.health.gov.on.ca/en/common/system/services/psych/designated.aspx>

- Designated Hospitals under the Criminal Code and Youth Criminal Justice Act
http://www.health.gov.on.ca/en/common/system/services/psych/designated_cc.aspx
- Mental Health Forms – Ontario Central Forms Repository
<http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/MinistryResults?Openform&SRT=T&MAX=55&ENV=WWE&STR=1&TAB=PROFILE&MIN=014&BRN=41&PRG=41>
- *Honouring the Past, Shaping the Future - 25 Years of Progress in Mental Health Advocacy and Rights Protection* (Toronto: Psychiatric Patient Advocate Office, 2008),
online: <http://www.sse.gov.on.ca/mohltc/ppao/en/Documents/pub-ann-25.pdf>