

**EQUALITY, HUMAN RIGHTS AND SOCIAL JUSTICE**  
**LAW 378**  
**FALL TERM 2011**

**Instructor:** Hester Lessard    Room 237    [hlessard@uvic.ca](mailto:hlessard@uvic.ca)

**Units/Hours:** 1.5 units, requiring three hours per week class time  
Classes meet at 3:30-5:00 pm on MW in Rm 204

**Prerequisite:** Students must have completed the first year course in Canadian constitutional law or an equivalent or obtain the permission of the instructor.

**Class Format**

The course is a seminar. Classroom time will consist of discussion, mini lectures, classroom exercises, and presentations by students and guests.

**Classroom Climate**

An inclusive, respectful, and diverse classroom environment is crucial to our work in this course. To ensure that all class members feel welcomed and equally able to contribute to class discussions, both I as instructor and you as students must endeavor to be respectful in our language, our examples, and the manner in which we conduct our discussions and group work. We have both an ethical and legal obligation to support this kind of environment. For your reference, you may wish to consult the University's Discrimination and Harassment Policy (<http://web.uvic.ca/uvic-policies/pol-1000/1150HPP.html>). The University of Victoria and the Faculty of Law are committed to promoting, providing and protecting a positive, supportive and safe learning and working environment for all its members. I expect all aspects of this class to be conducted with this commitment in mind. If you have any concerns about the climate of the class, please feel free to contact me or the Associate Dean.

**Course Description**

The focus of this seminar is pragmatic and engages directly with the role of law and of legal conceptions of equality in struggles by equity seeking groups and individuals for social justice in Canada. Nonetheless, we will start with a few theoretical questions about the multidimensional character of notions of justice and equality before turning to an examination of the relation of social movements to law and social change. After this brief look at theoretical frameworks and political struggles involving "rights talk", we spend several sessions discussing the institutional and jurisprudential frameworks of human rights law. Although the seminar by no means deals comprehensively with human rights law, we will look at some of the current challenges and tensions within human rights doctrine. In addition we will analyze the tension between the categorical language of grounds based discrimination jurisprudence and the fluidity of identities and identity politics. Here, the deployment by equality seekers of the concept of intersectional identities to resolve this tension will be a key focus.

We will then shift our gaze to constitutional equality debates. Although all of you have some grounding in *Charter* equality law from your first year constitutional law course, we will spend some sessions reviewing the s. 15 jurisprudence and teasing out some of the main conundrums facing the courts today.

Having perused the themes and challenges that shape human rights and equality law, we will step back and place this area of law in the larger context of current political rationalities. In particular, we will place the turn by many social movements to rights based strategies in the context of the consolidation of support for neo-liberal ideas and practices in the political sphere, including the dismantling and privatization of many public supports and programs directed at social equality. A key question at this stage is how does law and legal equality doctrine relate to these larger political shifts?

We then return to a more doctrinal focus and examine the recent jurisprudence on governmental equity initiatives and s. 15(2) of the *Charter*. Subsequently, methodological questions will be discussed, in particular practical concerns about the meaning and application of the much touted ``contextual approach`` to adjudicating equality claims. A guest speaker will then explore Amartya Sen`s capabilities framework and its salience to complex human rights claims in developing countries in which rights to work and rights to health and environment are often sharply at odds. Here we ask, how might this experience in the international sphere inform the resolution of conflicting rights in the domestic, Canadian sphere. Canadian law will once more be our direct focus as we turn next to a case study on sexual harassment decisions under human rights codes. Finally, we conclude the substantive portion of the course with an examination of the relevance of theories of care and of democracy to equality jurisprudence and struggles by equality seeking groups.

The remainder of the course will consist of the presentation of student papers. If time permits, a final class will be devoted to weaving together the key themes and questions explored in the course and that remain for future study.

### **Course Materials**

Colleen Sheppard`s book *Inclusive Equality: The Relational Dimensions of Systemic Discrimination in Canada* (Montreal and Kingston: McGill Queens Press 2010) is required reading and is available at the University Bookstore. Required readings are also contained in the supplementary materials available on reserve in the Law Library.

### **Course Objectives**

- Critically analyse the relationship between social movements, law and social change in Canada.
- Acquire basic knowledge of the legal and jurisprudential frameworks for pursuing anti-discrimination and equality claims in Canada.
- Extend and deepen knowledge of current strategic and jurisprudential challenges in the human rights arena.

- Analyze a social justice problem of concern and critically assess the ways in which human rights and equality law address those concerns.
- Develop oral presentation and writing skills.

## Evaluation

- One Paper Presentation: Worth 15%.** Students will be organized into panels to present their papers during the last weeks of the course. Completed papers are not required at this stage. However, students should have completed a first draft at by this time and should submit short advance readings in the form of an outline or summary of their paper's main points one week in advance of their presentation. Students may also include short excerpts from periodical literature, cases, or reports in the advance readings. Each student will have roughly 30 minutes to present their paper. Efforts will be made, where possible, to organize students into panels that reflect the directions or themes pursued in their research papers. Students should think about how to draw their audience into the discussion of their paper through discussion questions and interactive components.
- Class Participation. Worth 10%.** This mark is based on attendance, and preparation for class. Students also will be asked to participate as commentators and responders to class readings throughout the term. You are expected to attend every class and to come having done the readings and any assignments. Absence without a legitimate excuse may result in a loss of up to 10 points on your overall grade.
- Paper: Overall Worth 75%.** A research paper is required along with a short description of your topic and the main themes of your paper and a short bibliography. **All submissions should be by email.**

**Description of Topic/Themes: Possible deduction of 5%:** The description should be between 200-500 words. It is due on **September 28th by 9 a.m.** You will not be graded on this but failure to submit on time will result in a deduction of 5 grade points from your overall mark.

**Annotated Bibliography: Possible deduction of 5%:** You must submit a bibliography by **October 12th at 9 a.m.** It should consist of at least two items - essays, book chapters or policy reports – that you have read in relation to your paper topic. These two items must be accompanied by a short description of what the article/chapter is about and why you did or did not find it helpful. Each of the two notations should be 100-250 words in length. The bibliography should also list at least three additional essays or book chapters or policy reports you have identified that you plan to read for your project. You will not be graded on the bibliography but failure to submit on time will result in a deduction of 5 grade points from your overall mark.

**Paper: 75%:** The length of the paper should be 5000-6250 words exclusive of footnotes and bibliography. The topic should relate to the broad themes of the course and class discussions. A more detailed description of my expectations regarding the paper will be distributed, and some class time will be taken discussing how to go about writing a paper and presenting your work. Students who wish to write a longer paper in order to fulfill the major paper requirement may do so with permission of the instructor. Please consult with me about this before **September 28<sup>th</sup>** and indicate on your topic description that your written work is in fulfillment of your major paper requirement. Major papers must be 7500-8750 words in length exclusive of footnotes and bibliography. Students who write major papers must fulfill all the other course requirements.

Submission of a first draft of your paper is not required. However, I will give comments on first drafts but **only** if I receive them before **November 7<sup>th</sup> at noon.**

Final papers are due on **December 5<sup>th</sup> at 4 pm.** Students who miss the deadline for the final paper risk losing up to 5 points on their overall grade for the course for each day the paper is late.

**Key Dates for Paper\***

(does not include date of submission of advance readings for panel  
or date of panel presentation)

September 28 by 9:00 a.m.	Topic/Themes Indicate if Major Paper	200-500 words	Pass/Fail - 5% Penalty
October 12 by 9:00 a.m.	Bibliography	Two notes: 100-200 words each Plus three titles	Pass/Fail - 5% Penalty
November 7 by noon.	First Draft		Optional
December 5 by 4:00 p.m.	Final Draft	5000-6,250 words exclusive of footnotes	75 %