

TRN412H1F LEC0101+9101 Seminar in Ethics, Society and Law: The Law of Pandemics

Thursdays 10:00 a.m. to noon

Prof Nathalie Des Rosiers

The course will look at the legal consequences of a pandemic: the use of emergency powers and the powers of Public Health units. It will then explore how pandemics affect different groups and different aspects of our legal system: among others, labour and employment law, prison law, mobility rights, privacy and civil liberties.

The course aims to use the COVID pandemic and the legal responses and legal consequences of it as a lenses through which to explore different legal concepts. Because our understanding of the pandemic is constantly evolving, additional materials will be added throughout the course. Students are invited to share materials that they find and scenarios that interest them.

The evaluation is based on two short commentaries on the readings, (or commentaries on books listed as additional reading for the class), class discussions and one final case analysis.

The Instructor

Nathalie Des Rosiers is the Principal of Massey College. She was Dean of Law, University of Ottawa Civil Law (2004-2008), Common Law (2013-2016), General Counsel for the Canadian Civil Liberties Association (2009-2013), President of the Law Commission of Canada (2000 -2004), MPP (Ottawa-Vanier) (2016 - 2019), Minister of Natural Resources and Forestry (Ontario) (Jan 2018 – June 2018). She was also a professor of Law at Western, and headed several academic and non-profit associations (Canadian Association of Law Deans, Federation of Social Sciences and Humanities, Association des juristes d'expression française de l'Ontario).

Her area of expertise is Constitutional Law, Civil Liberties and Women's Issues. A selected list of publications is attached. Her current work focuses on the role of municipalities in the Canadian constitution and the law reform agenda necessitated by the experience of the pandemic.

She can be reached at ndesrosiers@masseycollege.ca. phone number is 416-978-8448; cell: 613-410-2575; You can sign up for an appointment on Tuesday or Thursday afternoons (virtual or in-person) ([please click here and follow the instructions](#)). Drop-in Friday afternoons between 2 and 4 at Massey College (4 Devonshire Place) (virtual or in-person).

Learning Objectives of the Law of Pandemics

1. Knowledge Acquisition

- a. Knowledge of key areas of law covered by the course: emergency powers, federalism, Charter and civil liberties, health and safety law. Every class will identify the key notions that the students are expected to learn.
 - b. Knowledge of key legal concepts discussed in the course. Every class will identify the key notions that the students are expected to know.
2. Skills Development
- a. Reading a statute
 - b. Reading a regulation
 - c. Summarizing a case or legal analysis
 - d. Writing a Commentary
3. Critical Analysis
- a. Identifying possible limitations of legal approaches
 - b. Reflecting on policy approaches dealing with uncertain data and knowledge
 - c. Developing a law reform agenda

Pedagogical Approach

I identify learning objectives for each session. The Seminar will begin with a few introductory remarks on the readings and learning objectives. We will then move to a discussion on a few questions (distributed the week before) on the assigned readings. Guest lecturers will be invited on occasion.

Evaluation

10% - Class participation (responses to questions)

25% - First commentary due on October 1st (maximum 1500 words; students can choose to comment on readings already covered, or provide a commentary on one of the books in the attached list)

25% - Second commentary due on October 22nd (maximum 1500 words; students can choose to comment on readings already covered, or provide a commentary on one of the books in the attached list)

40% - Final Case analysis due on December 3rd (The cases will be distributed on November 5th; the analysis will require research on the part of the students).

Calendar and Readings

Many of the readings are from *Vulnerable: The Law, Policy and Ethics of COVID-19*, edited by Colleen M. Flood, Vanessa MacDonnell, Jane Philpott, Sophie Thériault, and Sridhar Venkatapuram (thereafter *Vulnerable*); in addition, several readings can be found on the site of Policy Options.

September 10th – What is a Pandemic

Readings:

Introduction : Overview of COVID-19: Old and New Vulnerabilities, by Colleen M. Flood, Vanessa MacDonnell, Jane Philpott, Sophie Thériault, and Sridhar Venkatapuram in *Vulnerable*

World Health Organization definition:

https://www.who.int/csr/disease/swineflu/frequently_asked_questions/pandemic/en/

The timeline of intervention of the WHO

<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/interactive-timeline>

The International Health Regulations (2005)

<https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf;jsessionid=F08BD09ED394077ACE25FBFE8DDD19AC?sequence=1>

Other resources: YouTube – Massey Dialogues with Dr. Natasha Crowcroft,

[https://www.youtube.com/watch?v=T-](https://www.youtube.com/watch?v=T-vrfyOKLgA&list=PLZPXynb596cayuaRqolkwq8Zzk9GPYUwq&index=7&t=0s)

[vrfyOKLgA&list=PLZPXynb596cayuaRqolkwq8Zzk9GPYUwq&index=7&t=0s](https://www.youtube.com/watch?v=T-vrfyOKLgA&list=PLZPXynb596cayuaRqolkwq8Zzk9GPYUwq&index=7&t=0s)

September 17th – Emergency Law (1) : Indigenous, Federal, Provincial, Municipal

Readings:

COVID-19 and First Nations' Responses, by Aimée Craft, Deborah McGregor, and Jeffery Hewitt in *Vulnerable*

Quarantine Act, S.C. 2005, c. 20 <https://laws-lois.justice.gc.ca/eng/acts/Q-1.1/index.html>

Emergency Management and Civil Protection Act, RSO 1990, c E 9, s 1. With amendments

Toronto's, Public Health Class Orders https://www.toronto.ca/wp-content/uploads/2020/04/8d2b-MOH-Order-April-1-2020- _with-MOH-electronic-signature.pdf

By-Law 322-2020: <https://www.toronto.ca/legdocs/bylaws/2020/law0322.pdf>

TORONTO MUNICIPAL CODE CHAPTER 59, EMERGENCY MANAGEMENT,
https://www.toronto.ca/legdocs/municode/1184_059.pdf

Colleen Flood and Bryan Thomas, The Federal Emergencies Act: A Hollow Promise in the Face of COVID-19? In *Vulnerable*

Resisting the Siren's Call: Emergency Powers, Federalism, and Public Policy, by Carissima Mathen in *Vulnerable*.

September 24th – Emergency Law (2) : Executive power vs Legislative power

Readings:

Vanessa McDonnell, Ensuring Executive and Legislative Accountability in a Pandemic, in *Vulnerable*

Gregory Webber, The Duty to Govern and the Rule of Law in an Emergency, in *Vulnerable*

Emergency Management and Civil Protection Act, RSO 1990, c E 9, s 1., in particular the recent amendments

October 1st – History of Emergency Law in Canada:

Readings:

- The War Measures Act : Alan Borovoy *At the Barricades*,
- The case of the Public Works Protection Act , Nathalie Des Rosiers , unpublished manuscript : War-time legislation in times of peace.
- Have the Post-SARS Reforms Prepared Us for COVID-19? Mapping the Institutional Landscape *Katherine Fierbeck and Lorian Hardcastle, in Vulnerable*

October 8th – Pandemics and Race

Readings :

- How Should We Allocate Health and Social Resources During a Pandemic? By Sridhar Venkatapuram, in *Vulnerable*
 - Canada’s Blind Spot on Race, Policy Options
 - Systemic Discrimination in Government Services and Programs and Its Impact on First Nations Peoples During the COVID-19 Pandemic, by Anne Levesque and Sophie Thériault in *Vulnerable*
 - Spread of Anti-Asian Racism: Prevention and Critical Race Analysis in Pandemic Planning, by Jamie Chai Yun Liew in *Vulnerable*

October 15th – Pandemics, Disability and Poverty

Readings:

- Not All in This Together: Disability Rights and COVID-19, by Tess Sheldon and Ravi Malhotra, in *Vulnerable*
- Weighing Public Health and Mental Health Responses to Non-Compliance with Public Health Directives in the Context of Mental Illness, by Jennifer A. Chandler, Yasmin Khaliq, Mona Gupta, Kwame McKenzie, Simon Hatcher, and Olivia Lee in *Vulnerable*
- The Punitive Impact of Physical Distancing Laws on Homeless People, by Terry Skolnik, in *Vulnerable*

October 22nd – Pandemics and Women

Readings:

- Sylvia Bashevkin, Women and COVID, Policy Options

- Violence against Women and the Pandemic, Nathalie Des Rosiers (TBD)
- Fault Lines: COVID-19, the Charter, and Long-term Care, by Martha Jackman, in *Vulnerable*.

October 29th - Health and Safety Law and Workers Rights

Readings:

- Privatization and COVID-19: A Deadly Combination for Nursing Homes, Pat Armstrong, Hugh Armstrong, and Ivy Bourgeault , in *Vulnerable*
- A View from the Front Lines of a COVID-19 Outbreak, Jane Philpott, in *Vulnerable*
- Occupational Health and Safety and COVID-19: Whose Rights Come First in a Pandemic? By Katherine Lippel in *Vulnerable* , in *Vulnerable*
- Risking It All: Providing Patient Care and Whistleblowing During a Pandemic, by Vanessa Gruben and Louise Bélanger-Hardy
- Order Made Under Subsection 7.0.2(4) of the Emergency Management Act, O Reg 74/20;
Order Made Under Subsection 7.0.2(4) of the Emergency Management Act, O Reg 77/20.

November 5th– Migrant Workers and Pandemics

Readings:

- Migrant Health in a Time of Pandemic: Fallacies of Us-Versus-Them, by Y.Y. Brandon Chen in *Vulnerable*
- Worked to the Bone: COVID-19, the Agrifood Labour Force, and the Need for More Compassionate Post-Pandemic Food Systems, by Sarah Berger Richardson in *Vulnerable*
- Collective Struggles: A Comparative Analysis of Unionizing Temporary Foreign Farm Workers in the United States and Canada, by Robert Russo, <https://commons.allard.ubc.ca/cgi/>

November 19th - Privacy, Civil Liberties and Pandemics

Readings:

- Civil Liberties vs. Public Health, by Colleen M. Flood, Bryan Thomas, and Dr. Kumanan Wilson in *Vulnerable*
- Privacy, Ethics, and Contact-Tracing Apps, Teresa Scassa, Jason Millar, and Kelly Bronson
- Should Immunity Licences be an Ingredient in our Policy Response to COVID-19? By Daniel Weinstock and Vardit Ravitsky

November 26th - Mobility Rights \ \ Prison Law

Readings:

A) Mobility Rights (Section 6 of The Charter)

Michael Bryant, *Has COVID -19 quietly killed Canadian Confederation?* Globe & Mail August 14th 2020 , A13

CCLA – Statement of Claim

The Right of Citizens Abroad to Return During a Pandemic, by Yves Le Bouthillier and Delphine Nakache, in *Vulnerable*.

B) Prison Law

- COVID-19 in Canadian Prisons: Policies, Practices and Concerns, by Adelina Iftene, in *Vulnerable*

December 3rd – Law Reform Post COVID

Final discussions about what a Law Reform Agenda could look like

Readings: What is Law Reform?

Yves Le Bouthillier, *The Law Commission of Canada* (2007) 22 Can Journal of Law and Society 113

Roderick Macdonald, *Jamais deux sans trois, Once Reform, Twice Commission, Thrice Law* (2007) 22 Can Journal of Law and Society 117

Nathalie Des Rosiers, *In Memoriam: La Commission du droit du Canada \ The Law Commission of Canada, 1997 – 2006* (2007) 22 Can Journal of Law and Society 145

Patricia Hughes, Law Commissions and Access to Justice : What Justice Should We be Talking About? <https://digitalcommons.osgoode.yorku.ca/ohlj/vol46/iss4/3/>

Additional Readings (Books)

Albert Camus, *The Plague*

Daniel E. Dawes, *The Political Determinants of Health*,

Laurie Garrett, *Betrayal of Trust: The Collapse of Global Public Health*

Alexandre Najjar, *La Couronne du Diable : Corona stories (2020)*, available in French, Arabic and Spanish.

David Satcher, *My Quest for Health Equity : Notes on Learning While Leading (Health Equity in America) (2020)* available September 8

James Waldram, D. Ann Herring, T. Keu Young, *Aboriginal Health in Canada: Historical, Cultural and Epidemiological Perspectives*

Selected list of publications – Nathalie Des Rosiers

Books

Peter Oliver, Patrick Macklem, Nathalie Des Rosiers, *The Oxford Handbook of the Canadian Constitution*, (Oxford University Press, 2017)

Margaret Beare, Nathalie Des Rosiers and Abigail C. Deshman, *Putting the State on Trial: The Policing of Protest during the G20 Summit*, UBC Press, 2015

Louise Langevin et Nathalie Des Rosiers, en collaboration avec Marie-Pier Nadeau, *L'indemnisation des victimes de violence sexuelle et conjugale*, 2^e édition, Les Éditions Yvon Blais, 650 p., 2012 (500 p.) – Prix Walter Owen (2014)

Louise Langevin and Nathalie Des Rosiers, *Representing Victims of Sexual and Spousal Abuse*, Irwin Law, 2002 (200 p);

Louise Langevin et Nathalie Des Rosiers, *L'indemnisation des victimes de violence sexuelle et conjugale*, 1997

Commission du droit du Canada, *Qu'est-ce qu'un crime?* (Les Presses de l'Université Laval, 2004)

Law Commission of Canada, *What is a Crime?* (UBC Press, 2004)

Commission du droit du Canada, *La réforme du droit et la frontière entre le public et le privé*, (Les Presses de l'Université Laval, 2003)

Law Commission of Canada, *New Perspectives on the Public-Private Divide*

Chapters in Books and Articles in Peer Reviewed Journals (Partial List)

"Section 1 of the Charter: A Instrument of Accountability", in Peter Biro, ed., *Constitutional Democracy Under Stress: A Time for Heroic Citizenship* (Toronto, Mosaic Press, 2020)

"The Right Investment in Rights", in Dominique Clement, *Debating Rights Inflation*, (Waterloo, Wilfrid Laurier Press, 2018)

« Religions en liberté surveillée? La gouvernance des rapports État/religions au Canada » dans Céline Romainville, Marc Verdussen, Nicolas Bonbled et Atéphanie Wattier, *État et religions* (Bruxelles, Anthémis, 2018)

« Pour une Charte de bonne gouvernance publique » (Hors série, 2015) *Revue québécoise de droit international* 171- 182 <http://www.sqdi.org/fr/revue-collection-vhsn201506.html>

« La représentation des plus démunis" (2015) 3 -4 *Revue belge de droit constitutionnel* 321-329

"An Evaluation Model for Non-Governmental Organizations Engaged in Advocacy" (2014) *51 Osgoode Hall Law Journal* 889 - 917

With Graeme Norton, « Civilian Oversight and the 2010 G20 Summit in Toronto », in Ian D. Scott, *Issues in Civilian Oversight of Policing in Canada* (2014), *Canada Law book*, 111 - 134

- « La liberté d'expression », Encyclopédie juridique JurisClasseur, loose-leaf service, 2013, 2014, 2015, 2016, 2018 (yearly updates)
- « Le droit de dire et le devoir d'écouter - L'espace démocratique, la vulnérabilité et le rôle de la société civile »(2013) 73 *Annales de Droit de Louvain* 21 – 33
- « Les principes de justice fondamentale en matière de sécurité nationale », (2012) 42 *Ottawa Law Review* 369 -389
- « Réflexions critiques sur les implications de la « fraternité » », in Michel Morin, Marie-Claire Cordonier Segger, Fabien Gélinas and Markus Gehring, *Responsibility, Fraternity and Sustainability in Law - In memory of the honourable Charles Doherty Gonthier // Responsabilité, fraternité et développement durable en droit – en mémoire de l'honorable Charles Doherty Gonthier*, (Lexis Nexis, (2012)), 493 - 508
- « Le poids de l'histoire : les années McLachlin et la liberté de religion », dans Adam Dodek et David Wright, *Public Law at the McLachlin Court : The First Decade*, Irwin Law, 2012, pp. 259-275
- “Au-delà de la conjugalité?”, dans Marie-Blanche Tahon, dir., *Une anthropologue dans la cité. Autour de Françoise Héritier*, (Athéna Éditions, Chaire MCD, 2010).
- “Le droit au logement au Canada : un droit inexistant, implicite ou indirect? », dans Marc Verdussen, dir., *Les droits culturels et sociaux des plus défavorisés*, (Bruxelles, Bruylant, 2009) pp. 341-368
- « Liberté, pour l'instant, Égalité, de temps en temps, Fraternité, ... pas encore : les 25 ans de la Charte canadienne », (2009) 45 S.C.L.R. (2d) 123- 159
- “The Criminal Law Power” in Leonard I. Rotman, editor-in-chief, Bruce Elman and Gerald Gall, eds., *Constitutional Law: Cases, Commentary and Principles*, (Toronto: Thomson/Carswell, 2008), 50 p.
- New Dimensions of Law and Gender in Canada*”, in Miyoko Tsujimura, *International Perspectives on Gender Equality and Social Diversity* (Sendai, Japan, Tohoku University Press, 2008) (15 p.)
- «Leadership and Ideas : Law Reform in a Federation », dans Brian Opeskin et David Weisbrot, dir., *The Promise of Law Reform* The Federation Press, Sydney, Australia, 2006, pp. 233-243.
- « La réflexion de son époque - La primauté du droit, la critique égalitaire et la contribution de Madame la juge L'Heureux-Dubé », dans Elizabeth Sheehy, dir., *Adding Feminism to Law: The Contributions of Justice Claire L'Heureux-Dubé*, 2005, pp. 109-132.
- «Peut-on apprivoiser le droit vivant? Enjeux de la réforme du droit», dans Nicholas Kasirer et Pierre Noreau, dir., *Sources et instruments de justice en droit privé*, Les Éditions Thémis, Montréal, 2002, p. 259-267.
- « L'état néolibéral, son environnement juridique et les cultures de transparence et d'imputabilité : une étude de l'écosystème canadien » (2006) 36 *Revue générale de droit* 543 -561
- « Frein, moteur et levier : le droit à l'égalité, les droits économiques et sociaux et le développement des politiques publiques au Canada » in Sheila McIntyre and Sanda Rodgers, *Diminishing Returns, Inequality and the Canadian Charter of Rights and Freedoms*, (Butterworths, Toronto), 213 -227.

« Confidentiality, Human Relationships, and Law Reform”, dans Christine M. Koggel, Allannah Furlong and Charles Levin, *Confidential Relationships. Psychoanalytic, Ethical, and Legal Contexts* (New-York, Editions Rodopi, 2003), pp 229 – 247.

«Rights Are Not Enough: Therapeutic Jurisprudence Lessons for Law Reformers» (2002) 18 *Touro Law Rev.* 443-458. (in Symposium: *The Varieties of Therapeutic Experience* excerpts from the Second International Conference of Therapeutic Jurisprudence, Touro College of Law, NY)

“Competències i relacions interinstitucionals: el Consell de la Federacio” dans Palament de Catalunya, *L’Abast de l’Autonomia Política del Québec //La portée de l’autonomie politique du Québec*, 2006 (pp. 59-67)