

COURSE OUTLINE

COURSE:	LAWS 3504 A - <i>Law and Aboriginal Peoples</i>
TERM:	Fall 2012
PREREQUISITES:	LAWS 2005 [1.0] (no longer offered) or LAWS 2501 or LAWS 2502 or LAWS 3500 or LAWS 3503 or LAWS 3503 [1.0] (no longer offered) or LAWS 3509.
CLASS: Day & Time:	Fridays 2:35PM – 5:25PM
Room:	Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Michelle M. Mann, B.A., LL.B., LL.M.
CONTACT:	Office: B442 LA
Office Hrs:	Fridays 12 – 1:30 pm .
Email:	michelle_mann@carleton.ca

The Paul Menton Centre for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at **613-520-6608** or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable). For Religious and Pregnancy accommodations, please contact Equity Services, x. **5622** or their website: www.carleton.ca/equity

COURSE DESCRIPTION

This course is designed to provide an introductory but comprehensive understanding of the basic elements of Canadian law relating to Aboriginal peoples in Canada. Particular emphasis will be placed on Aboriginal perspectives, Canada's constitutional and statutory frameworks, jurisprudence and case law. Theory and law will also be considered in light of real world practice. Supplemental readings are suggested and will be particularly useful where a student is uncertain about an aspect of the course. The objective of the course is to understand the basics of the current state of Aboriginal law and to be able to analyze and think critically about the law as it relates to Aboriginal peoples.

CLASS FORMAT

Classes will consist of lectures and class discussion. Questions are encouraged. Students are expected to attend all classes and to have completed the readings before attending classes. Certain classes will also include guest speakers, videos and group exercises. Guest speakers will be confirmed as the course progresses.

REQUIRED TEXT**(a) The following textbook is required:**

Olthius, Kleer, Townshend and Shin Imai. *Aboriginal Law Handbook*. (Toronto: Carswell, 2012) 4th ed.

(b) The following textbook is recommended:

David W. Elliott, *Law and Aboriginal Peoples in Canada* (Concord, ON: Captus Press, 2005) 5th ed.

(c) Texts on Reserve

You will be required to read extensively from the following texts:

David W. Elliott, *Law and Aboriginal Peoples in Canada* (Concord, ON: Captus Press, 2005) 5th ed.

Maria Morellato ed. *Aboriginal Law Since Delgamuukw* (Aurora: Canada Law Book, 2009).

Both are available on reserve in the MacOdrum library. *Law and Aboriginal Peoples in Canada* is also available in the bookstore.

(d) Supplemental readings

As identified in the syllabus.

Supplementary reading material is identified in this syllabus, most of it on the internet and certain items on reserve, as indicated. Additional material may be posted on WebCT. I will apprise you well in advance when content will be posted there.

EVALUATION

The evaluation objective is a balanced assessment, based on several kinds of criteria spread out over the course. Numerical grades are used for the course components: for numerical / letter grade equivalents, see the *Undergraduate Calendar*. Assignments and examinations cannot be re-scheduled because of travel plans, etc. See the *Undergraduate Calendar* for general faculty and University examination regulations.

To better understand expectations and how papers will be graded please see the grading rubric to be posted on WebCt by September 21.

Extensions will not be granted, except for (i) disabling illness, verified by a medical certificate indicating precise period of disablement or (ii) death or serious illness in immediate family, verified by certificate of death or medical certificate. The instructor must be notified of the illness or death before the case comment/paper deadline.

I. Case Comment: 10%

Due on September 28, 2012 at the beginning of class.

500 – 750 words (approximately two – three pages); double spaced, 1.5-inch margins.

Including footnotes/endnotes.

No additional research required or permitted; however, you should read the case in its entirety.

A *comment* is a critical analysis of a given case. All students are expected to prepare a case comment on their choice of the cases that have been read up to this point in the course. The case comment should focus on a critical evaluation and discussion of the case and the legal reasoning employed by the judge(s) to decide it. You should also consider the sources of law relied on by the judge(s), the majority and dissenting opinions and whether you think the decision as a whole is persuasive or not.

Case comments should include the style of cause, an introductory statement about the case including what you will be discussing, a short summary of the facts and decision, your overall opinion and analysis of the case, and finally, a conclusion.

Case comments returned October 12, 2012 at the end of class.

II. Case Comment: 10%

Due October 19, 2012 at the beginning of class.

500 - 750 words (approximately two –three pages); double spaced, 1.5-inch margins.

Including footnotes/endnotes.

No additional research required or permitted; however, you should read the case in its entirety.

You must choose a different case than the one you used for the first case comment.

A *comment* is a critical analysis of a given case. All students are expected to prepare a second case comment on their choice of the cases that have been read up to this point in the course. The case comment should focus on a critical evaluation and discussion of the case and the legal reasoning employed by the judge(s) to decide it. You should also consider the sources of law

relied on by the judge(s), the majority and dissenting opinions and whether you think the decision as a whole is persuasive or not.

Case comments should include the style of cause, an introductory statement about the case including what about it you will be discussing, a short summary of the facts and decision, your overall opinion and analysis of the case, and finally, a conclusion.

Case comments returned November 2, 2012 at the end of class.

III. Course Paper: 40%

Due on November 2, 2012 at the beginning of class.

2000 words (approximately eight pages); double spaced, 1.5-inch margins. Including footnotes/endnotes.

Additional research required. You should read the cases in their entirety.

You may **not** write your paper on the same cases as you used in your case comments.

The paper should explain the topic and clearly state the question it is going to answer. A list of possible topics and research questions is provided below.

The paper should also clearly articulate your opinion or position on this question in the form of a thesis. You *must* advance a position or opinion on the issue.

It must be well-prepared, with proper citation, footnotes or endnotes, and bibliography. In all matters of legal citation and form, papers must comply with the *McGill Guide*.

Additional research sources *must* be employed. These sources can be scholarly articles found in legal or other academic journals, books, Canadian including provincial case law and statutes, provincial and federal government policy papers, etc. As part of your additional research sources, you may use the course textbook and the cases you have discussed in early course assignments.

You must cite each source at least once.

Proper paragraphs are required, as well as introductory and concluding sentences. You may also use headings to organize your thoughts and ideas.

Important qualities are: good organization and use of sources comprehensive, up-to-date treatment of the subject matter, originality (i.e. no quoting or paraphrasing of secondary sources without explicit acknowledgment), accuracy (in grammar, spelling and law), conciseness, reasoned analysis (discussion of pros and cons, comparisons, assessments, concrete examples, logical arguments, etc.), and clarity, gender-appropriate language (e.g., avoiding use of male gender where both genders are relevant). See also the research, writing, and citation guides listed below.

The paper must be researched and written entirely and exclusively by the student who submits it. All use of other peoples' words or ideas must be fully and clearly acknowledged. Work (a) that contains plagiarism - from the web or elsewhere, or (b) that was previously or is concurrently submitted for credit in this course, or (c) that was or is submitted for credit in any other course, will be given no credit. It is a very serious academic offence, subject to the penalties in the Department of Law's *Policy and Procedure Statement* below.

Keep quotations to a minimum. Where you use words or thoughts of others, give full credit. Identify all words of others in quotation marks or in indented single-space passages, and link these to endnotes or footnotes. If you paraphrase, use your own words and fully acknowledge all the original sources.

- The paper must be an original computer-printed document on standard-sized paper, with a title page. Pages must be numbered and firmly stapled. Students must keep an extra copy of the completed paper.
- Marks will be deducted for failure to submit it on time – at the rate of 5% per day late, including weekends.
- Papers handed in on time will be returned in class on November 30, 2012.

The course paper is central to LAWS 3504A, and research and writing skills are as important as substantive knowledge. Use the research and writing guides listed below. Look at the paper and electronic resources at MacOdrum Library, the reference works in the Department of Law's Law Resource Centre at D494 Loeb, Quicklaw, WestlaweCarswell, and other electronic data bases, and internet search engines and other research tools. As well, make good use of the Writing Tutorial Service (Learning Support Services, Room 411 MacOdrum Library), the Student Academic Success Centre (SASC, 302 Tory) and the Learning Commons (4th Floor, MacOdrum Library, 613-520-2600 ext. 1125).

Although you are free to consult me, you may write your paper on any of the following topics *without* obtaining prior approval from me:

1. "Discuss some of the legal issues surrounding Indian Residential schools."
2. "Discuss the rule of law with respect to Aboriginal peoples."
3. "Discuss who is an Aboriginal person under Canadian law."
4. "Discuss some of the legal challenges of First Nations women with respect to Indian status and/ or Band membership."
5. "Discuss the constitutional framework for Aboriginal law."
6. "Discuss the legal significance of treaties and how they are interpreted."
7. "Discuss what Aboriginal rights are."
8. "Discuss how treaties and Aboriginal rights are constitutionally protected."
9. "Discuss how Aboriginal title is constitutionally protected."
10. "Discuss Métis rights as protected by section 35"
11. "Discuss fiduciary duties."
12. "Discuss the duty to consult."
13. "Discuss Aboriginal Self-Government."
14. "Discuss Aboriginal Sentencing Principles."

IV. Final Examination: 40%
December, tbd, 2012

Length: 3 hours, multiple-choice and short essay questions. Exam will be discussed in last class on November 30.

CLASS SCHEDULE

Please note: Guest speakers are tentative and will be confirmed as the course progresses.

Class 1: September 7, 2012

Topic: Introduction & Indian Residential Schools

Readings:

Aboriginal Law Handbook, pages 375-384.

Native Women's Association of Canada. *From Residential Schools to Prisons*. (Ottawa: Native Women's Association of Canada, n.d.). http://www.nwac.ca/sites/default/files/imce/WEBSITES/201104/insert1_final%20web%20-english.pdf

Supplementary Readings:

A Guide to the Indian Residential Schools Settlement:

<http://resources.lss.bc.ca/pdfs/pubs/A-Guide-to-the-Indian-Residential-Schools-Settlement-eng.pdf>

R. v. Quash, 2009 YKTC 54, [2009] YJ No.

72 <http://www.canlii.org/en/yk/yktdoc/2009/2009yktdoc54/2009yktdoc54.html>

Class 2: September 14, 2012

Topic: Rule of Law and Aboriginal Peoples

Readings:

Aboriginal Law Handbook, pages 661-677.

Henco Industries Limited v. Haudenosaunee Six Nations Confederacy Council, 82 OR (3d) 721; 277 DLR (4th) 274; 240 OAC 119 (ON CA). <http://www.canlii.org/en/on/onca/doc/2006/2006canlii41649/2006canlii41649.html>

Frontenac Ventures Corporation v. Ardoch Algonquin First Nation, 2008 ONCA 534. <http://www.canlii.org/en/on/onca/doc/2008/2008onca534/2008onca534.html>

R. v. Dantimo, [2009] OJ No. 655 (ON

SC) <http://www.canlii.org/en/on/onsc/doc/2009/2009canlii6627/2009canlii6627.html>

Supplementary Readings:

Lon L. Fuller "Positivism and Fidelity to Law: A Reply to Professor Hart" (1958) 71 Harv L Rev 630. Available online in pdf.

H.L.A. Hart, “Positivism and the Separation of Law and Morals” (1958) 71 Harv L Rev 593. Available online in pdf.

Laura DeVries. *Conflict in Caledonia Aboriginal Land Rights and the Rule of Law*. (Vancouver: UBC Press, 2011). First two chapters available online in pdf.

Class 3: September 21, 2012

Topic: Aboriginal Peoples, Status Indians and Band Membership/Citizenship

Guest Speaker: Teresa Edwards, Director of International Affairs and Human Rights at Native Women’s Association of Canada.

Readings:

Aboriginal Law Handbook, pages 6-8 and 239-248.

Law and Aboriginal Peoples in Canada, pages 13 – 24.

Basic Demographics: <http://www.statcan.gc.ca/daily-quotidien/111207/dq111207a-eng.htm>.

McIvor v. Canada, 2009 BCCA 153.

<http://www.aadnc-aandc.gc.ca/eng/1100100032433/1100100032434>

Sawridge First Nation v. Canada, 2008 FC 322.

http://www.canada.com/story_print.html?id=b1223963-2f29-470d-9f5c-97ad55f7d2c1&sponsor=

Native Women’s Association of Canada. “Aboriginal Women And Unstated Paternity An Issue Paper” Prepared for the National Aboriginal Women’s Summit June 20-22, 2007 NL. <http://www.lynngehl.com/uploads/5/0/0/4/5004954/nwac-paternity.pdf>

Supplementary Readings:

Law and Aboriginal Peoples in Canada, pages 221-235.

McIvor v. Canada (Registrar of Indian and Northern Affairs), 2009 BCCA

153. <http://www.canlii.org/en/bc/bcca/doc/2009/2009bccca153/2009bccca153.html>

Gender Equity in Indian Registration

Act <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=4901865&File=27>

Michelle Mann. *Indian Registration: Unrecognized and Unstated Paternity*. (Ottawa: Status of Women Canada, 2005). http://www.lynngehl.com/uploads/5/0/0/4/5004954/mann_2005.pdf

Michelle Mann. “Disproportionate & Unjustifiable: Teen First Nations Mothers and Unstated Paternity Policy” *Canadian Issues*, Winter 2009.

Class 4: September 28, 2012

Topic: The Constitutional Framework

*****CASE COMMENT #1 DUE AT START OF CLASS*****

Readings:

Aboriginal Law Handbook, pages 1 – 18, 571-574.

Law and Aboriginal Peoples in Canada, pages 65 – 71.

John Borrows. *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010). Chapter 1, available online in pdf.

Supplementary Readings:

Law and Aboriginal Peoples in Canada, pages 299 – 314.

Class 5: October 12, 2012

Topic: Treaties

Readings:

Law and Aboriginal Peoples in Canada, pages 51 – 60, 272 – 298.

Supplementary Readings:

Peter W. Hutchins, “Cede, Release and Surrender: Treaty- Making, the Aboriginal Perspective and the Great Judicial Oxymoron or Let’s Face It – It Didn’t Happen” in Maria Morellato ed. *Aboriginal Law Since Delgamuukw* (Aurora: Canada Law Book, 2009) pages 431- 464. On reserve.

*****Case comment #1 returned at end of class*****

Class 6: October 19, 2012

Topic: Aboriginal and Treaty Rights Part I

*****CASE COMMENT #2 DUE AT START OF CLASS*****

Readings:

Aboriginal Law Handbook pages 29-42; 71-84.

Peter Hogg, “The Constitutional Basis of Aboriginal Rights” in Maria Morellato ed. *Aboriginal Law Since Delgamuukw* (Aurora: Canada Law Book, 2009) pages 3-16. On reserve.

Supplementary Readings:

Law and Aboriginal Peoples in Canada, pages 75 -82, 108-118.

Class 7: October 26, 2012

Topic: Aboriginal and Treaty Rights Part II

Readings:

Aboriginal Law Handbook pages 127 – 132; 97-116.

Law and Aboriginal Peoples in Canada, pages 125 – 149.

Supplementary Readings:

Law and Aboriginal Peoples in Canada, pages 353-381.

*****Case comments returned to students at end of class*****

Class 8: November 2, 2012

Topic: Fiduciary Duties

*****PAPERS DUE AT START OF CLASS*****

Readings:

Law and Aboriginal Peoples in Canada, pages 86 – 98.

Dr. James Reynolds, “The Spectre of Spectra: The Evolution of the Crown’s Fiduciary Obligation to Aboriginal Peoples since Delgamuukw” in Maria Morellato ed. *Aboriginal Law Since Delgamuukw* (Aurora: Canada Law Book, 2009) pages 107-144. On reserve.

Supplementary Readings:

Law and Aboriginal Peoples in Canada, pages 330 – 337.

*****Case comment #2 returned to students at end of class*****

Class 9: November 9, 2012**Topic: Honour of the Crown and Duty to Consult**

Guest Speaker: Bruno Steinke, Director, Aboriginal Affairs and Northern Development Canada Consultation and Accommodation Unit.

Readings:

Aboriginal Law Handbook, pages 53-66.

Arthur Pape, “The Duty to Consult and Accommodate: A Judicial Innovation Intended to Promote Reconciliation” in Maria Morellato ed. *Aboriginal Law Since Delgamuukw* (Aurora: Canada Law Book, 2009) pages 313-331. On reserve.

“Natives Inc” The Globe and Mail, July 14, 2012, page 3: <http://www.theglobeandmail.com/news/politics/natural-resources-to-define-first-nations-leaders-next-term/article4416981/>

“Benefits for Aboriginals” Enbridge, <http://www.northerngateway.ca/economic-opportunity/benefits-for-aboriginals/>

“B.C. First Nations Dispute Enbridge Pipeline Claims” CBC News, <http://www.cbc.ca/news/canada/british-columbia/story/2012/06/06/bc-northern-gateway-first-nations.html>

Class 10: November 16, 2012**Topic: Aboriginal Self-Government**

Guest Speaker: Bruce Littlejohn, Senior Counsel, Aboriginal Affairs and Northern Development Canada, Negotiations, Northern Affairs and Federal Interlocutor.

Readings:

Aboriginal Law Handbook pages 163-172.

The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government:
<http://www.aadnc-aandc.gc.ca/eng/1100100031843>

James O'Reilly, “Aboriginal Self-Government” in Maria Morellato ed. *Aboriginal Law Since Delgamuukw* (Aurora: Canada Law Book, 2009) pages 373-391. On reserve.

Gordon Christie. *Aboriginal Nationhood and the Inherent Right to Self-Government*. Research Paper for the National Centre for First Nations Governance May, 2007.
Online: fngovernance.org/ncfng_research/gordon_christie.pdf

Supplementary Readings:

Law and Aboriginal Peoples in Canada, pages 190 – 203.

Class 11: November 23, 2012

Topic: Aboriginal Justice

Readings: *Aboriginal Law Handbook* pages 589-597; 621-631.

Gladue Primer, Legal Services Society of British Columbia, **Section 1** online:
<http://www.lss.bc.ca/publications/pub.php?pub=388>

R. v. Gregoire, 2009 NLTD 21.

Supplementary Readings:

Jonathan Rudin, *Aboriginal Peoples and the Criminal Justice System* (Paper prepared for the
Ippeewash Inquiry) online
at: http://www.attorneygeneral.jus.gov.on.ca/inquiries/ippeewash/policy_part/research/index.html

Class 12: November 30, 2012

Topic: Course Overview & Exam Review

*****PAPERS RETURNED AT END OF CLASS*****

Research, writing, and citation guides

The paper must follow the legal citation requirements in the McGill Law Journal, *Canadian Guide to Uniform Legal Citation*, 6th ed. (Scarborough, Ont.: Carswell, 2006). For basic elements of the McGill *Guide*, see Department of Law, Carleton University, *Legal Style Sheet for Term Papers* <<http://www.carleton.ca/law/style.htm> > and Queen's University, *Legal Citation: Legal Research Materials* <<http://library.queensu.ca/law/lederman/legalcit.htm> >.

The following additional may also be helpful for style and grammar:

The Canadian Style. A Guide to Writing and Editing, rev. ed. (Toronto, Dundurn Press, 1997).

Please consider using the Writing Tutorial Service if you have concerns about or wish to improve your academic writing skills: <http://www1.carleton.ca/sasc/writing-tutorial-service/>

DEPARTMENTAL POLICY AND PROCEDURE

For further instructions regarding prerequisites, assignments, and grading, etc., see the Department of Law's *Policy and Procedure Statement* and the relevant pages of the *Undergraduate Calendar*.

OTHER

Please see the Department of Law's *Policy and Procedure Statement* and Carleton University's *Undergraduate Calendar* for further information:

<http://www1.carleton.ca/law/ccms/wp-content/ccms-files/policy2008.pdf>

<http://www4.carleton.ca/calendars/ugrad/current/university/academicyear.html>