

COURSE OUTLINE

COURSE:	LAWS 3504 A - <i>Law and Aboriginal Peoples</i>
TERM:	Fall 2013
PREREQUISITES:	Prerequisite(s): 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:	Wednesdays 11:35 AM – 14:25 PM
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:	by appointment before class.
Email:	michelle_mann@carleton.ca

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: 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*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.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 critical analysis, 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.

Some copies of the *Aboriginal Law Handbook* may be available used at the Campus Bookstore.

(b) Texts on Reserve

You will be required to read from the following text on reserve:

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

Some copies of *Law and Aboriginal Peoples in Canada* may be available used at the Campus Bookstore.

(c) 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 cuLearn. I will apprise you 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 assignment expectations and how papers will be graded please see cuLearn and attend class.

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 deadline.**

Late assignments will be penalized by 5% per day including weekends.

All components must be completed in order to obtain a passing grade.

I. Attendance: 10%

- Students are expected to attend all classes, to have read the materials and to participate individually and in group work.
- Students are expected to attend full classes and will not receive an attendance grade for a class unless they attend the entire class.

II. Quiz: 10%

- In - class quiz on **October 9, 2013**.
- Multiple choice questions on material covered to date in the course.
- Students will be expected to be up to date on the reading materials and in class discussions.
- Grades from the quiz will be available electronically by October 23.

III. Course Paper: 40%

- Due on November 13, 2013, in class.**
- Students must keep a copy of their paper.
- 2000 – 2500 words; double spaced, 1.5-inch margins. Footnotes/endnotes extra.
- The paper should explain the topic and clearly state the question it is going to answer. A list of topics 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.

You should read any cases in their entirety.

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 have a title page and pages must be numbered.

Marks will be deducted for failure to submit it on time – at the rate of **5% per day late, including weekends.**

For papers handed in on time, grades will be available electronically by December 4, 2013.

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).

You must write your paper on one of the following subjects, with the instructor available to help you refine your topic:

1. "Discuss some of the legal and policy 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 legal significance of treaties and their interpretation."
6. "Discuss the legal complexities and impacts of the division of powers as it relates to Aboriginal peoples."
7. "Discuss section 15 of the *Charter* in its application to Aboriginal peoples".

IV. Final Examination: 40%
December, tbd, 2013

Limited open book formal final examination. Length: 3 hours, short and long essay questions. Exam will be discussed in last class.

CLASS SCHEDULE

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

Class 1: September 11, 2013

Topic: Introduction & Aboriginal Peoples, Indian Status and Band Membership

Readings:

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

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

Supplementary Readings:

Law and Aboriginal Peoples in Canada, pages 13 – 24; 221-235. On reserve.

McIvor v. Canada, 2009 BCCA 153.

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

Gender Equity in Indian Registration

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

Class 2: September 18, 2013

Topic: The Constitutional Framework

Readings:

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

John Borrows. *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010). Chapter 1, pages 3- 19 available online in pdf .

Supplementary Readings:

Law and Aboriginal Peoples in Canada, pages 65 – 71; 299 – 314.

Class 3: September 25, 2013**Topic: The Constitutional Framework Continued****Readings:**

Corbiere v. Canada (Minister of Indian and Northern Affairs), [1999] 2 SCR 203 <http://www.canlii.org/en/ca/scc/doc/1999/1999canlii687/1999canlii687.html>

R. v. Kapp, 2008 SCC 41, [2008] 2 SCR 483 <http://www.canlii.org/en/ca/scc/doc/2008/2008scc41/2008scc41.html>

Class 4: October 2, 2013**Topic: Treaties**

Guest speaker: to be confirmed

Readings:

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

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.

Class 5: October 9, 2013**Topic: Indian Residential Schools & QUIZ****Readings:**

Aboriginal Law Handbook, pages 375-384; 589-592.

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

R. v. Quash, 2009 YKTC 54, [2009] YJ No. 72 <http://www.canlii.org/en/yk/ykctc/doc/2009/2009ykctc54/2009ykctc54.html>

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. Gladue [1999] 1 SCR

688 <http://www.canlii.org/en/ca/scc/doc/1999/1999canlii679/1999canlii679.html>

Class 6: October 16, 2013

Topic: Aboriginal and Treaty Rights Part I

Guest speaker: to be confirmed

Readings:

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

Supplementary Readings:

R. v. Sparrow [1990] 1 SCR 1075

R. v. Van der Peet, [1996] 2 SCR 507

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

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.

*****GRADES FOR QUIZ AVAILABLE ELECTRONICALLY*****

Class 7: October 23, 2013

Topic: Aboriginal and Treaty Rights Part II

Guest speaker: to be confirmed

Readings:

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

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

Supplementary Readings:

Delgamuukw v. British Columbia, [1997] 3 SCR 1010.

R. v. Powley, 2003 SCC 43.

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

October 30: Reading Week, no class.

Class 8: November 6, 2013

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>

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 9: November 13, 2013

Topic: Fiduciary Duties

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

Readings:

Law and Aboriginal Peoples in Canada, pages 86 – 98; 330 – 337. On reserve.

Supplementary Readings:

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.

Class 10: November 20, 2013**Topic: Honour of the Crown and Duty to Consult****Guest speaker: to be confirmed****Readings:**

Aboriginal Law Handbook, pages 53-66.

Aboriginal Affairs and Northern Development Canada. *Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011*. **Pages 1- 28**.

<http://www.aadnc-aandc.gc.ca/eng/1100100014664/1100100014675>

“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/>

Supplementary Readings:

Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73.

Taku River Tlingit First Nation v. British Columbia (Project Assessment Director), 2004 SCC 74.

Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), 2005 SCC 69.

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.

Class 11: November 27, 2013**Topic: Aboriginal Self-Government****Guest Speaker: to be confirmed.****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>

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.

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

Class 12: December 4, 2013**Topic: Course Overview & Exam Review**

*****GRADES FOR PAPERS AVAILABLE ELECTRONICALLY*****

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>