

COURSE: LAWS 3504 A – Law and Aboriginal Peoples

TERM: Fall 2009

PREREQUISITES: LAWS 2005 or LAWS 3503 or LAWS 3503 [1.0] (no longer offered) or LAWS 3509

CLASS: Day & Time: Friday, 1135-1425
Room: Please check with Carleton Central for current room location

INSTRUCTOR: Meredith Porter, LL.B., LL.M.
(CONTRACT)

CONTACT: Office: Rm C476 LA (Contract Instructors' Office)
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"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 16, 2009 for December examinations** and **March 12, 2010 for April examinations**.

For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

The core purpose of this course is to introduce a number of key elements of Canadian law as it relates to the historical and contemporary experiences of Aboriginal peoples in Canada. Students will be introduced to issues in constitutional law, an overview of case law and legislation. This course cannot possibly cover all issues related to this wide-ranging, ever-evolving area of law. However, through class discussion, lectures, selection of research topics for a course paper, course readings and suggested supplemental readings students will have the opportunity to engage in many key topics and perspectives.

CLASS FORMAT

Classes will consist of introductory/review lectures of weekly readings and topics. These lectures will generally occur at the start of each class in order to introduce each weekly topic. Students are encouraged to ask questions during lectures, and discussion of topics/issues is also encouraged at this time. Students are expected to participate in weekly exercises/activities which will follow each lecture in the second part of the class. Students are expected to come to class regularly, and stay for the entire class. Students are also expected to come to class having completed the weekly readings, and ready to discuss subject-matter and questions thoroughly and thoughtfully.

REQUIRED READING MATERIALS

All **REQUIRED READING** materials have been placed on reserve in the Carleton library under the LAWS 3504 heading, in the Reserved Reading section. At least two copies of each of the assigned weekly Required Readings have been placed in the reserve section to ensure that students can gain access to them more easily. Several of the optional readings have also been placed on reserve; however, optional readings that are available on the internet have generally not been placed on reserve in the library.

EVALUATION

(All components must be completed in order to get a passing grade)

20% Participation

In-Class Attendance (10%) and Class Participation (10%)

It is the student's responsibility to personally sign the student class attendance sheet each week. Each student is expected to be present each week, and for the entire class session. Full credit towards the 5% In-Class Attendance will not be awarded to students who have missed classes, or whom have missed portions of classes (without reasonable cause). Class Participation credit will be given for thoughtful, informed and prepared discussions which reflect that a student has completed the weekly readings and has engaged with the subject-matter. Quality of participation is more important than the number of times a student speaks.

30 % Reading Responses x 3

3 (three) Weekly Reading Responses (10% each)

A Reading Response paper is a short essay that reflects critical thought and analysis of weekly assigned readings. A Reading Response is not merely a summary of the material read/reviewed. Students will be expected to self-select three weekly assigned readings (or group of readings) and develop a Reading Response essay **TO BE HANDED IN AT THE START OF THE CLASS FOR WHICH THE READINGS WERE ASSIGNED**. Reading Responses will **NOT** be accepted for readings assigned in previous weeks. Students will be expected to identify aspects of one of the weekly readings, or all the readings assigned for a particular week, and clearly demonstrated their understanding of the subject-matter through the development of critical argument and/or reasoned perspective.

Credit will be awarded on the basis of Response content, originality, communication and presentation of thought & perspective. Responses should be well-organized, draw upon a number of sources, current, logical and accurate with respect to grammar, spelling, citation and reference to law. Students are cautioned against over-reliance on case headnotes, dated case-law, and should avoid excessive quotations and paraphrasing. Each Response should be approximately 750-1000 words (3 or 4 double-spaced pages).

In order to facilitate productive feedback to students, at least one of the Reading Responses must be completed by October 16, 2009.

50% Research Paper

- 1) **Requirements:** The course paper is central to LAWS 3504, and research and communication skills are at least as important as substantive knowledge. Students are encouraged to attend instructor's office hours with any questions, problems, for clarification and advice towards successfully completing the research paper requirements. **The Research Paper is due at the beginning of class on November 27th, 2009.**
- 2) **Topics:** All students must write a course research paper on one of the topics listed by the instructor. This list will be presented and reviewed during the first class, and will continue to be available to students through Carleton WebCT. Papers written on other topics will not be accepted or receive credit.
- 3) **Format:** The paper should be between 2200-2500 words (11 – 15 double-spaced pages, excluding footnotes/endnotes). It must be well-organized, using proper citation, and include a complete bibliography. For proper citation see the McGill *Guide* (McGill Law Journal, Canadian Guide to Uniform Legal Citation, 6th ed. (Scarborough, Ont.: Carswell, 2006)).

- 4) Late Papers: A late penalty will be applied to research papers handed in after the beginning of the class on which they are due: **November 27th, 2009**. The penalty will be **1 mark per day late** (for example, if the paper is awarded a B+ grade but is late by one day, the grade awarded will be B). Late papers must be stamped by the Department of Law. Extensions may be granted by the instructor, on reasonable grounds, for reasons which may include medical or other issues for which in all cases proper written documentation must be provided.
- 5) Plagiarism: Please refer to the Departmental Course-Related Policy and Procedure Statement (<http://www.carleton.ca/law/policy.htm>) regarding plagiarism. Plagiarism means passing off the work of another as one's own ideas or own work, without giving due credit to the original source. Plagiarism will not be tolerated.

CLASS SCHEDULE

- Sep 11**
- Introduction and background discussion.
 - Review of course outline.
 - Review of course evaluation components.

Sep 18 – *Who are the Aboriginal Peoples?*

- Required Readings:
- 1) *From Time Immemorial: A Demographic Profile*. Report of the Royal Commission on Aboriginal Peoples, Volume 1: Looking Forward, Looking Back. (Ottawa: Minister of Supply and Services, 1996).
 - 2) *Constitution Act, 1982*, section 91(24) & section 35(1).
 - 3) *Indian Act*, (R.S., 1985, c. I-5), section 5-17.

Suggested supplemental readings:

Aboriginal Peoples and the Law: Indian, Métis and Inuit Rights in Canada. Edited by Bradford W. Morse. Revised 1st Edition. Ottawa: Carleton University Press, 1991. (Chapter 1: Aboriginal Peoples and the Law, by Bradford W. Morse).

James S. Frideres, Rene Gadacz. 6th ed. *Aboriginal People in Canada: Contemporary Conflicts*. (Toronto: Prentice Hall, 2001).

Aboriginal People and Other Canadians: Shaping New Relationships. Edited by Martin Thornton and Roy Todd. Ottawa: University of Ottawa Press, 2001

Sep 25 – *Aboriginal Rights in Canada*

- Required Readings:
- 1) D.W. Elliot, 5th ed. *Law and Aboriginal Peoples in Canada* (North York, Ontario: Captus Press, 2005). Chapter 3: Aboriginal Rights before *Calder*.

Suggested supplemental readings:

Aboriginal Peoples and the Law: Indian, Métis and Inuit Rights in Canada. Edited by Bradford W. Morse. Revised 1st Edition. Ottawa: Carleton University Press, 1991. (Chapter 3: Aboriginal Title, by David W. Elliot).

Oct 2 – *Aboriginal Rights (cont'd)*

- Required Readings:
- 1) D.W. Elliot, 5th ed. *Law and Aboriginal Peoples in Canada* (North York, Ontario: Captus Press, 2005). Chapter 4: Aboriginal Rights from *Calder* to *Guerin*.
 - 2) *R. v. Sparrow*, [1990] 1 S.C.R. 1075. (headnote only)
 - 3) *R. v. Van der Peet*, [1996] 2 S.C.R. 507. (headnote only)
 - 4) *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010. (headnote only)
 - 5) *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R.

Suggested supplemental readings:

Reference Re Manitoba Language Rights, [1985] 1 S.C.R. 721.
R. v. Marshall, [1999] 3 S.C.R. 533.
Mitchell v. M.N.R., [2001] 1 S.C.R. 911.
R. v. Powley, [2003] 2 S.C.R. 207

Oct 9 – No Class.

Oct 16 - Treaties

Required Readings: 1) D.W. Elliot, 5th ed. *Law and Aboriginal Peoples in Canada* (North York, Ontario: Captus Press, 2005). Chapter 5: Indian Treaties.

Suggested supplemental readings:

Aboriginal Peoples and the Law: Indian, Métis and Inuit Rights in Canada. Edited by Bradford W. Morse. Revised 1st Edition. Ottawa: Carleton University Press, 1991. (Pre-Confederation Treaties (Chapter 4), by Bruce H. Wildsmith; and Post-Confederation Treaties (Chapter 5), by Norman K. Zlotkin).

Mary Locke Macaulay. *Aboriginal & Treaty Rights Practice.* (Toronto, Carswell, 2000).

Oct 23 – Taxation

- Guest lecturer – Maxime Faille, Partner/National Team Leader (Aboriginal Law), GOWLINGS.

Required Readings: 1) R. Nowegijick, [1983] 1 S.C.R. 29
 2) *Williams v. Canada*, [1992] 1 S.C.R. 877
 3) *Canada v. Folster* [1997] 3 F.C. 269 (C.A.)
 4) *Bastien v. Canada*, 2009 FCA 108
 5) *Ballantyne v. The Queen*, 2009 TCC 325

Oct 30 – Aboriginal Claims

Required Readings: 1) Bradford W. Morse, *The Resolution of Land Claims* (Chapter 10), in *Aboriginal Peoples and the Law: Indian, Métis and Inuit Rights in Canada.* Edited by Bradford W. Morse. Revised 1st Edition. Ottawa: Carleton University Press, 1991.
 2) Bill C-30, the *Specific Claims Tribunal Act.*

Suggested supplemental readings:

D.W. Elliot, 5th ed. *Law and Aboriginal Peoples in Canada* (North York, Ontario: Captus Press, 2005). (Chapter 11: Aboriginal Claims).

Nov 6 – Self-Government

Required Readings: 1) D.W. Elliot, 5th ed. *Law and Aboriginal Peoples in Canada* (North York, Ontario: Captus Press, 2005). (Chapter 12: Aboriginal Self Government).

Suggested supplemental readings:

Aboriginal Self-Government in Canada: Current Trends and Issues, 3rd Edition. Edited by Yale D. Belanger. (Saskatoon: Purich Publishing, 2006).

Craig Proulx, *Current Directions in Aboriginal Law/Justice in Canada.* *Canadian Journal of Native Studies*, Vol. 20, No. 2, 2000, pp. 371-409.

Nov 13 – Aboriginal Women and the Law

Required Readings: 1) Mavis A. Erickson, (2001). *Where are the Women?: Report of the Special Representative on the Protection of First Nations Women's Rights*. Final Report to the Honorable Robert Nault, Minister, Indian and Northern Affairs, Canada.

Suggested supplemental readings:

Patricia A. Monture-Okanee, *The Roles and Responsibilities of Aboriginal Women: Reclaiming Justice*. *Saskatchewan Law Review*, Vol. 56, No. 2, 1992, pp. 237-266.

Assembly of First Nations, *First Nations Matrimonial Property Law Resource Handbook* (2007). www.afn.ca.

Nov 20 – Aboriginal/Crown Relations: Towards Reconciliation

Required Readings: 1) Constance McIntosh, Associate Professor, (Dalhousie Faculty of Law). "The Doctrine of Reconciliation in Chief Justice McLachlin's Court". Paper presented at the 2009 Constitutional Law and Human Rights Conference, June 19, 2009: Ottawa.

Suggested supplemental reading:

Dwight Newman and Danielle Schweitzer, *Between Reconciliation and the Rule(s) of Law*. (2008) 41 *UBCL Rev.* 249.

Kent McNeil, *Reconciliation: Legal Conception(s) and Faces of Justice*. Printed in *Moving toward justice: legal traditions and Aboriginal justice*, John Whyte, ed. (Saskatoon: Purich Publishing, 2008).

Nov 27 – Aboriginal Peoples and the Justice System: An Overview

- Research Papers Due at beginning of class.

Required Readings: 1) *R. v. Gladue*, [1999] 1 S.C.R. 688.
2) Jackson, Michael. "Locking Up Natives in Canada" (1988-89), 23 *U.B.C. L. Rev.* 215.

Suggested supplemental readings:

Barbara Gray, Pat Lauderdale. *The Great Circle of Justice: North American Indigenous Justice and Contemporary Restoration Programs*. *Contemporary Justice Review*, Vol. 10, No. 2, June 2007, pp. 215-225.

Carol LaPrairie. (1995). *Community Justice or Just Community? Aboriginal Communities in Search of Justice*. *Canadian Journal of Criminology*, Vol. 37, No. 4, October 1995, pp. 521-545.

Carol LaPrairie. *Conferencing in Aboriginal Communities in Canada: Finding Middle Ground in Criminal Justice*. *Criminal Law Forum*, Vol. 6, No. 3, October 1995, pp. 576-599.

Kent Roach, Jonathan Rudin. *Gladue: the Judicial and Political Reception of a Promising Decision*. *Canadian Journal of Criminology*, Vol. 42, No. 3, July 01, 2000, pp. 355-388.

Susan Zimmerman. "The Revolving Door of Despair": *Aboriginal Involvement in the Criminal Justice System*. *University of British Columbia Law Review*, Vol. 26, Special Edition on Aboriginal Justice, 1992, pp. 367-426.

Dec 4 – Conclusion: The Way Forward

Required Readings: 1) Federal Government's Apology – delivered by Prime Minister Stephen Harper in the House of Commons, June 11, 2008
2) *Laying the Foundation of a Renewed Relationship*. Report of the Royal Commission on Aboriginal Peoples, Volume 5 – Renewal: A Twenty Year Commitment. (Ottawa: Minister of Supply and Services, 1996)