

## COURSE OUTLINE

<b>COURSE:</b>	<b>LAWS 4504B - <i>Aboriginal Criminal Justice</i></b>
<b>TERM:</b>	<b>Winter 2014</b>
<b>PREREQUISITES:</b>	<b>Fourth-year Honours standing and LAWS 2301, LAWS 2302.</b>
<b>CLASS: Day &amp; Time:</b>	<b>Wednesdays 11:35PM – 2:25PM</b>
<b>Room:</b>	<b>Please check with Carleton Central for current room location</b>
<b>INSTRUCTOR:</b>	<b>Michelle M. Mann, B.A., LL.B., LL.M.</b>
<b>(CONTRACT)</b>	
<b>CONTACT:</b>	<b>Office: B442 LA</b>
<b>Office Hrs:</b>	<b>By appointment</b>
<b>Email:</b>	<b>michelle_mann@carleton.ca</b>

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](mailto: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 covers Aboriginal peoples and the administration of Canadian criminal justice including policing, courts, corrections and conditional release (parole). We will consider the effects of past and present policies, processes and laws. We will also consider Aboriginal women within the criminal justice system and traditional Aboriginal and self government approaches. Particular emphasis will be placed on Aboriginal perspectives, Canada's statutory frameworks, jurisprudence and case law. Theory and law will also be supplemented by real world practice reflected in the assignments. Supplemental readings are suggested and will be particularly useful where a student is uncertain about an aspect of the course.

## **CLASS FORMAT**

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

## **REQUIRED TEXT**

**(a) No textbook required.**

**(b) Supplemental readings**

As identified in the syllabus. Additional material may be posted on CuLearn. I will apprise you well in advance when content will be posted there.

## EVALUATION

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

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 regulations.

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.**

### I. Attendance and Participation: 20%

☐ Students are expected to attend all classes, to have read the materials and to participate individually and in group work.

### II. Class Discussion Facilitation: 10%

☐ **Due in class from January 15 – April 2, 2014 (over 11 classes).**

☐ One to two facilitated discussions per class.

☐ Two students will select/be assigned to one question from a list and will present a synopsis of that issue and the assigned readings and then facilitate class discussion for approximately 30 minutes.

☐ It is expected that the two students on each question will present differing views and opinions.

☐ The two students will be expected to pose questions related to the readings on this topic to facilitate class discussion.

☐ No additional research required, but it is allowed.

☐ Within the week following their presentation, students will be notified on CuLearn of their grade.

☐ Presentations should include a summary of the main issue, your overall opinion and analysis of the readings as assigned and finally, questions for facilitated discussion.

☐ Students should not write their essays on the same subject as their in-class facilitation.

☐ **Students who miss the class in which they are scheduled to facilitate discussion will require a doctor's note or will be subject to losing the 10%.**

### III. Course Paper: 40%

☐ **Due February 12, 2014 in class or online at CuLearn.**

☐ 3 000 – 3 500 words; double spaced, 1.5-inch margins. Footnotes/endnotes and bibliography additional.

- ☐ The paper should explain the topic and clearly state the question it is going to answer. A list of possible subject areas is provided below.
- ☐ Feel free to discuss the refinement of your topic with the instructor, or to provide a thesis or outline for feedback.
- ☐ 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 course materials and cases discussed.
- ☐ **Students should not write their essays on the same subject as their in-class facilitation.**
- ☐ 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 have a title page. Pages must be numbered. Students must keep a 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/ graded on CuLearn by March 12, 2014.**

The course paper is central to LAWS 4504C, 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 should write your paper on one of the following topics:

1. Theories Explaining Aboriginal Over-Representation in the Justice System
2. Alternative Aboriginal Justice Approaches
3. Aboriginal Policing (and Aboriginal Gangs)
4. Wrongful Convictions / Jury Selection
5. Stolen Sisters / Prostitution Law Reform/ Trafficking in Aboriginal Women
6. Aboriginal Self-Government in Criminal Justice.

#### **IV. Case File: 30%**

☐ **Gladue report due in class March 12. Returned March 19 in class if submitted on time.**

☐ **Complete file submitted by March 26, 2014 on CuLearn.**

☐ Over the course of three classes and on their own time, students will work on a case file for an Aboriginal offender, taking the offender through *Gladue* report, sentencing, corrections and conditional release.

☐ Each component will be worth 10% of the overall total: 10% for *Gladue* report, 10% for sentencing, 10% for corrections and conditional release.

☐ All three components will constitute one case file.

☐ In class analysis of the files will be done in groups; however case files will be written and evaluated individually.

☐ Each component will be written as an analysis, with proper paragraphs, as well as introductory and concluding sentences. You may also use headings to organize your thoughts and ideas.

☐ Footnotes and bibliography will **not** be necessary for this exercise.

☐ Additional research **not** required.

☐ Each component will be approximately 3 pages double spaced, Times New Roman 12.

☐ Important qualities are: solid understanding of the application of *Gladue* principles, innovative problem solving, good organization, originality, conciseness, and clarity.

## CLASS SCHEDULE

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

**Class 1: January 8, 2014**

**Topic: Introduction to Aboriginal Peoples and Criminal Justice.**

**Readings:**

Jonathan Rudin, *Aboriginal Peoples and the Criminal Justice System* (Paper prepared for the Ipperwash Inquiry, 2006) Introduction & Overrepresentation **Pages 4 – 20** online at:  
[http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy\\_part/research/index.html](http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/index.html)

**Class 2: January 15, 2014**

**Topic: Theories Explaining Aboriginal Over-Representation in the Justice System**

**Readings:**

Jonathan Rudin, *Aboriginal Peoples and the Criminal Justice System* (Paper prepared for the Ipperwash Inquiry, 2006) **Pages 20 – 27** online at:  
[http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy\\_part/research/index.html](http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/index.html)

Hadley Friedland, “Different Stories: Aboriginal People, Order, and the Failure of the Criminal Justice System” (2009) 72 Sask L Rev 105.

**Supplementary Readings:**

Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide* (Ottawa: Canada Communication Group, 1995).

**Class 3: January 22, 2014**

**Topic: Alternative Aboriginal Justice Approaches**

**Guest Speaker:** Ed Buller, former Director, Aboriginal Corrections Policy Unit, Public Safety Canada.

**Readings:**

David Milward, “Making the Circle Stronger: an Effort to Buttress Aboriginal Use of Restorative Justice in Canada against Recent Criticisms” (2008) 4.3 IJPS 124.

Emily Anderson, “The Feather, The Gavel, The Sentencing Circle and The Smudge - And Where They All Have Their Place: Seeking Aboriginal Justice in Canada” (2007) University of Alberta. Online:

<http://www.chumirethicsfoundation.ca/files/pdf/EmilyAndersonSEEKINGABORIGINALJUSTICE.pdf>

*R. v. Morris* 2004 BCPC 43.

*R. v. Morris* 2004 BCCA 305.

### **Supplementary Readings:**

Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide* (Ottawa: Canada Communication Group, 1995).

### **Class 4: January 29, 2014**

#### **Topic: Aboriginal Policing / Aboriginal Gangs**

### **Readings:**

Jonathan Rudin, *Aboriginal Peoples and the Criminal Justice System* (Paper prepared for the Ipperwash Inquiry, 2006) **Pages 28 - 40** online at:  
[http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy\\_part/research/index.html](http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/index.html)

Wally T. Oppal, Commissioner. *Forsaken The Report of the Missing Women Commission of Inquiry* (British Columbia: Missing Women Commission of Inquiry, 2012) Volume IIB part 4A pages 217-238 <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-Vol-2B-web-RGB.pdf>

Mark Totten, "Aboriginal Youth and Violent Gang Involvement in Canada: Quality Prevention Strategies" (2009) 3 *IPC Review* 135. Online:  
<http://www.sciencesociales.uottawa.ca/ipc/eng/documents/IPCR3Totten.pdf>

### **Supplementary Readings:**

Report of the Aboriginal Justice Inquiry of Manitoba, *The Justice System and Aboriginal People*, **ch. 16**, (Winnipeg: The Aboriginal Justice Inquiry, 1991). Online:  
<http://www.ajic.mb.ca/volumel/chapter16.html>

Don Clairmont, *Aboriginal Policing In Canada: An Overview of Developments in First Nations* (Paper prepared for the Ipperwash Inquiry, 2006) online at:  
[http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy\\_part/research/index.html](http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/index.html)

**Class 5: February 5, 2014****Topic: Wrongful Convictions / Jury Selection**

**Guest Speaker:** Stephen Bindman, Special Advisor on Wrongful Convictions, Justice Canada

**Readings:**

*R. v. Kokopenace*, 2013 ONCA 389. (on appeal to the SCC)

*Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41.

*R v Williams*, [1998] 1 SCR 1128.

**Supplementary Readings:**

Royal Commission on the Donald Marshall, Jr., Prosecution, *Findings and Recommendations*, vol. 1 (Halifax: Royal Commission on the Donald Marshall, Jr., Prosecution 1989) **Pages 1- 18**.

Online: [http://www.gov.ns.ca/just/marshall\\_inquiry/](http://www.gov.ns.ca/just/marshall_inquiry/)

**Class 6: February 12, 2014****\*\*\*ESSAYS DUE\*\*\*****Topic: Stolen Sisters / Prostitution Law Reform/ Trafficking in Aboriginal Women****Readings:**

Amnesty International, *Stolen Sisters Discrimination and Violence Against Indigenous Women in Canada*, (United Kingdom, Amnesty International, 2004). Online:

<http://www.amnesty.org/en/library/asset/AMR20/001/2004/en/48f05a31-d589-11dd-bb24-1fb85fe8fa05/amr200012004en.pdf>

Anette Sikka, *Trafficking of Aboriginal Women and Girls in Canada*, Aboriginal Policy Research Series (Ottawa: Institute on Governance, 2009) Online:

[http://www.gangprevention.ca/sites/default/files/2009\\_trafficking\\_of\\_aboriginal\\_women.pdf](http://www.gangprevention.ca/sites/default/files/2009_trafficking_of_aboriginal_women.pdf)

Michelle Mann, “Two Tiered Prostitution Law- Aboriginal Women in the Sex Trade” (Fall 2009) *Canadian Diversity* 103. On reserve electronically in the MacOdrum library.

*Canada (Attorney General) v. Bedford*, 2012 ONCA 186. (on appeal to the SCC)



**Supplementary Readings:**

Wally T. Oppal, Commissioner. *Forsaken The Report of the Missing Women Commission of Inquiry Executive Summary* (British Columbia: Missing Women Commission of Inquiry, 2012) <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

Wally T. Oppal, Commissioner. *Forsaken The Report of the Missing Women Commission of Inquiry* (British Columbia: Missing Women Commission of Inquiry, 2012) <http://www.missingwomeninquiry.ca/obtain-report/>

**Class 7: February 26, 2014****Topic: Sentencing****Readings:**

*R. v. Gladue*, [1999] 1 SCR 688.

*R. v. Ipeelee*, 2012 SCC 13.

Michelle Mann. "Mitigating Sentencing: Aboriginal Sentencing Principles in a non-Aboriginal Context" Part Two, *Common Ground - an Examination of Similarities between Black & Aboriginal Communities* APC 29 CA (2009). Online: <http://www.publicsafety.gc.ca/cnt/rsrsrcs/pblctns/cmmn-grnd/index-eng.aspx#part2>

**Supplementary Readings:**

*R. v. Wells*, 2000 SCC 10.

**Class 8: March 5, 2014****Topic: Sentencing****Readings:**

David Milward and Debra Parkes, "Gladue: Beyond Myth and Towards Implementation in Manitoba" *Man. L.J.* 35.1 (2011) 84.

Kent Roach & Jonathan Rudin, "Gladue: The Judicial and Political Reception of a Promising Decision" (2000) 42.3 *Can J Crim* 355.

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

**Class 9: March 12, 2014****Topic: Aboriginal Corrections**

**\*\*\*Gladue Report Due in Class\*\*\***

**Readings:**

Mann, Michelle. *Good Intentions, Disappointing Results: A Progress Report on Federal Aboriginal Corrections* (Ottawa: Office of the Correctional Investigator, 2009). Online: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20091113-eng.aspx>

Mandy Wesley. Marginalized: The Aboriginal Women's experience in Federal Corrections APC 33 CA (2012). Online: <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnlzd/index-eng.aspx>

**\*\*\*Essay grades available on CuLearn\*\*\***

**Class 10: March 19, 2014****Topic: Conditional Release**

**Guest Speaker:** Heather MacLeod, Manager, Aboriginal and Diversity Initiatives, Parole Board of Canada.

**Readings:**

David Milward. "Sweating it Out: Facilitating Corrections and Parole in Canada through Aboriginal Spiritual Healing" *Windsor Yearbook of Access to Justice* 29.1 (2012): 27-72. Online: [http://works.bepress.com/cgi/viewcontent.cgi?article=1006&context=david\\_milward](http://works.bepress.com/cgi/viewcontent.cgi?article=1006&context=david_milward)

**\*\*\*Gladue report returned at end of class\*\*\***

**Class 11: March 26, 2014****Aboriginal Self-Government in Criminal Justice**

**\*\*\*CASE FILE DUE\*\*\***

**Readings:**

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>

Canaries in the Mines of Citizenship: Indian Women in Canada, Joyce Green, 2001, *Canadian Journal of Political Science*, Citizenship and National Identity, Vol. 34, No. 4, pp. 715-738.

Law Commission of Canada, *Justice Within: Indigenous Legal Traditions* (Discussion Paper) (Ottawa: Law Commission of Canada, 2006), online: Dalhousie University Library

<http://dalspace.library.dal.ca/bitstream/handle/10222/10229/ILT%20Discussion%20Paper%20EN.pdf?sequence=1>

## **Class 12: April 2, 2014**

### **Moving Forward and Wrap Up**

Jonathan Rudin, *Aboriginal Peoples and the Criminal Justice System* (Paper prepared for the Ipperwash Inquiry, 2006) **Pages 46 - 68** online at:

[http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy\\_part/research/index.html](http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/index.html)

Lisa Monchalin, *Reducing Crime Affecting Urban Aboriginal People: The Potential for Effective Solutions in Winnipeg* (PhD. thesis, University of Ottawa, Department of Criminology 2012)

**Chapter 10** online at: [www.ruor.uottawa.ca/en/bitstream/.../Monchalin\\_Lisa\\_2012\\_thesis.pdf?...](http://www.ruor.uottawa.ca/en/bitstream/.../Monchalin_Lisa_2012_thesis.pdf?...)

**\*\*\*\* Case File Grades on CuLearn\*\*\*\***

### **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>