

COURSE OUTLINE

COURSE:	LAWS 4504C - <i>Aboriginal Criminal Justice</i>
TERM:	Winter 2013
PREREQUISITES:	Fourth-year Honours standing and one of LAWS 2004 [1.0] (no longer offered), LAWS 2301, LAWS 2302.
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:	By appointment
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 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 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.

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) Texts on reserve

You will be required to read from the following source on reserve in the MacOdrum library:

John D. Whyte, ed. *Moving Toward Justice: Legal Traditions and Aboriginal Justice* (Saskatoon: Purich Publishing, 2008). .

(c) Supplemental readings

As identified in the syllabus. Additional material may be posted on WebCT. 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 Presentation: 10%

Due in class from January 18 – April 5, 2013 (over 10 classes).

Two to three presentations per class.

Students will select/be assigned one source from the required reading list and will present an overview of the source in that class for approximately 15 -20 mins.

At the end of the overview, students will be expected to pose questions related to the reading to facilitate discussion.

No additional research required

Within the week following their presentation, students will be notified by e-mail of their grade with instructor's comments.

Presentations should include the title and author, an introductory statement about the source, a summary of the main issues/arguments, your overall opinion and analysis of the reading and finally, questions for facilitated discussion.

Some of the sources are longer and more complicated than others; the difficulty level will be taken into consideration in evaluation. Similarly, more in depth analysis is required of shorter sources than of more complicated reports.

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

III. Course Paper: 40%

Due February 15, 2013 at the beginning of class.

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 an 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.
- 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 March 8, 2013.**

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 may write your paper on any of the following topics *without* obtaining prior approval from me:

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%

Sentencing Analysis submitted March 15, 2013 in class. Returned March 22 in class if submitted on time.

Complete file submitted by April 5, 2013 at the beginning of class.

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 sentencing, corrections and conditional release.

Each component will be worth 10% of the overall total: 10% for sentencing, 10% for corrections, 10% for 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.

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 11, 2013

Topic: Introduction to Aboriginal Peoples and Criminal Justice.

Class 2: January 18, 2013

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 1 – 27** online

at: 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.

Canadian Criminal Justice Association, “Aboriginal Peoples and the Criminal Justice System” (2000) *The Bulletin* (Ottawa: Canadian Criminal Justice Association). **Parts I, III and IV**

Online: <http://www.ccja-acjp.ca/en/abori.html>

Supplementary Readings:

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

Class 3: January 25, 2013

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.

Pages 8-41

Online: <http://www.chumirethicsfoundation.ca/files/pdf/EmilyAndersonSEEKINGABORIGINALLJUSTICE.pdf>

Ava G. Murphy, “Sentencing Circles and Victims of Domestic Violence” (2010) UBC First Nations Legal Clinic.

Online: http://faculty.law.ubc.ca/cfls/feminist_legal_studies/pdf/AGMurphyWinner2010MKline.pdf

Supplementary Readings:

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

Class 4: February 1, 2013

Topic: Aboriginal Policing (and 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

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

Class 5: February 8, 2013

Topic: Wrongful Convictions / Jury Selection

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

Readings:

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

Online: http://www.gov.ns.ca/just/marshall_inquiry/

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

R v Williams, [1998] 1 SCR 1128.

R. v. Kokopenance, Ontario Court of Appeal, Factum of the Respondent,

Online: <http://fcbarristers.com/Falconer/documents/FactumofNAN.April022012.pdf>

Class 6: February 15, 2012

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>

Wally T. Oppal, Commissioner. *Forsaken The Report of the Missing Women Commission of Inquiry* (British Columbia: Missing Women Commission of Inquiry, 2012) volume I part 4, pages 94-98. <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-Vol-1-web-RGB.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

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

National Post “Ontario Court of Appeal greenlights brothels, sweeps aside many of Canada’s anti-prostitution laws” March 26, 2012 Online:

<http://news.nationalpost.com/2012/03/26/ontario-court-of-appeal-greenlights-brothels-sweeps-aside-many-of-canadas-anti-prostitution-laws/>

Supplementary Readings:

Canada (Attorney General) v. Bedford, 2012 ONCA 186.

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: March 1, 2013

Topic: Sentencing

Readings:

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

R. v. Ipeelee, 2012 SCC 13.

R. v. Corbiere, 2012 ONSC 2405.

R. v. Dantimo, 2009 CanLII 6627 (ON SC).

Supplementary Readings:

R. v. Wells, 2000 SCC 10.

R. v. Jacko, 2010 ONCA 452.

Class 8: March 8, 2013

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, **Section 1** online:
<http://www.lss.bc.ca/publications/pub.php?pub=388>

*****Essays returned at end of class*****

Class 9: March 15, 2013

Topic: Aboriginal Corrections

*****SENTENCING ANALYSIS DUE*******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/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/res/cor/apc/apc-eng.aspx>

Class 10: March 22, 2013**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

*****Sentencing analysis returned at end of class*******Class 11: April 5, 2013****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>

Stephanie Irlbacher-Fox, "Justice Authorities in Self-Government Agreements: The Importance of Conditions and Mechanisms of Implementation" in *Moving Toward Justice: Legal Traditions and Aboriginal Justice* (Saskatoon: Purich Publishing, 2008). On reserve.

John D. Whyte, "Developmental and Legal Perspectives on Aboriginal Justice Administration" in *Moving Toward Justice: Legal Traditions and Aboriginal Justice* (Saskatoon: Purich Publishing, 2008). On reserve.

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>