

Course Outline

COURSE:	LAWS 4702 A: Special Topics in Criminal Justice and Social Policy: The Gladue Requirements in Theory and Practice
TERM:	Fall 2024
PREREQUISITES:	LAWS 2908 & Fourth-Year Honours Standing
CLASS:	Day & Time: Wednesdays 14:35 - 17:25 Room: 230 Tory Building
INSTRUCTOR:	Jane Dickson, PhD (Law)
CONTACT:	Office Hrs: Wednesdays, 13:00-14:00, D592 Loeb (in-person) Thursdays, 9:30-10:30 (via Zoom) Telephone: 613-520-2600, ex.3686 Email: jane.dickson@carleton.ca (please note that email is the most reliable way to contact the instructor; please use this email and NOT the Brightspace email system)
BRIGHTSPACE:	https://brightspace.carleton.ca/d2l/home/290220 Students must be able to access and use Brightspace for this course. Email to instructor, lecture slides, assignments and many video resources are available only through this modality. Contact ITS for assistance if required at https://carleton.ca/its.

Acknowledgement & Affirmation

Anishinaabemowin

Ni manàdjiyànàniḡ Màmìwininì Anishinàbeg, oḡoḡ kà nàḡadawàbandadjig iyo akì eko weshkad. Ako nongom eḡa wìkàd kì mìḡiwewàdj.

Ni manàdjiyànàniḡ kakina Anishinàbeg ondaje kaye oḡoḡ kakina eniyagizidjig enigokamigàḡ Kanadàng eji ondàpinangig endàwàdjìḡ Odàwàng.

Ninisidawinawànàniḡ kenawendamòdjig kije kikenindamàwin; weshkinìgidjig kaye kejejàdizidjig. Nigijeweninmànàniḡ oḡoḡ kà nìḡàni sòḡideyedjig; weshkad, nongom; kaye àyànikàdj.

*We pay respect to the Algonquin people, who are the traditional guardians of this land.
We acknowledge their longstanding relationship with this territory, which remains unceded.
We pay respect to all Indigenous people in this region, from all nations across Canada, who call
Ottawa home.
We acknowledge the traditional knowledge keepers, both young and old. And we honour their
courageous leaders: past, present.*

Calendar Course Description:

Examination of a selected topic in criminal justice and social policy.

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Following the decision of the Supreme Court of Canada in 1999, the ‘*Gladue* requirements’ have become a mandatory consideration in any case involving an Indigenous offender and a possible loss of liberty. Despite over 20 years of *Gladue*, Indigenous incarceration rates continue to climb and courts and counsel struggle with how best to implement *Gladue* and incorporate it in a safe and meaningful way into the criminal justice journey of Indigenous people. This course will engage with the law relating to *Gladue*, the theory behind *Gladue* as a remedial measure, and how the law and theory play out in practice in the criminal courts from bail through sentencing, and beyond into the correctional system. Students will be encouraged to engage actively in class and will hear from those on the ‘front lines’ of *Gladue*: *Gladue* writers, the Ontario Court of Justice, defense & Crown counsel, and police.

Course Materials

Required Reading: All required readings will be made available through each class module on Brightspace.

Evaluation:

There are three formal evaluation components to this course:

1. Critical Reading Responses: 4 x 10% each; 40% of total grade.
2. Final Exam: 35% of total grade
3. Participation: 25% of total grade.

Critical Reading Summaries: Students will be required to submit 500-750 word (i.e., two to three pages double spaced) critical reading responses that will respond to specific questions provided by the instructor and which pertain to topics discussed in class (so there is a direct link between this course requirement and your participation grade). The due dates for these papers are:

Critical Summary 1: September 27th by 4:30 p.m. via Brightspace
Critical Summary 2: October 18th by 4:30 p.m. via Brightspace
Critical Summary 3: November 8th by 4:30 p.m. via Brightspace
Critical Summary 4: November 29th by 4:40 p.m. via Brightspace

Critical Summaries must include correct citations compliant with the *Canadian Guide to Uniform Legal Citation*, 10th edition (the McGill Guide). Marks will be deducted for inadequate or incorrect citation. Marks will also be allocated for effective writing.

The critical reading summaries will be assessed out of 10% each for a possible total of 40%.

Class Participation: Students will be expected to engage at a level commensurate with their final year of undergraduate studies and in a manner that demonstrates understanding of and engagement with the readings. Please note that attendance is not participation, so please come to class prepared and ready to engage with your peers, the Instructor and the speakers.

Participation will be assessed out of 25%.

Final Examination: The final examination in this course will be a two-hour, short essay examination, written in-person during the formally-scheduled Examination Session. The exam will consist of 5 questions that will require answers of up to 250-500 words. These questions will be selected by the Instructor from a list of 7 questions that will be distributed in class on November 23rd and which students will prepare in advance. You will be permitted to bring a single 8 x 10 piece of paper, with standard margins and 12 point font, single-spaced, with notes **ON ONE SIDE ONLY**, to assist you in responding to the 5 questions. Each response will be assessed out of 7 marks. Please note that you will be required to submit your notes page with your examination booklet.

The final examination will be assessed out of 35%.

Important Notes on Evaluation:

You must complete all components of the Evaluation to receive a passing mark in the course. Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. No grades are final until they have been approved by the Department and the Dean.

LATE PENALTIES AND EXTENSIONS

Late Submission Policy: Deadlines for submission of assignments are set prior to the start of term and clearly communicated in class and in this course outline. It is expected that students will plan accordingly and endeavour to meet those deadlines. Where this is not possible, students may submit the paper late and their grade will be reduced by a late penalty that will accrue at a rate of 2 marks for each day punctuating the deadline and their submission of the paper via Brightspace.

Students are not required to request extensions but are asked to inform the Instructor as a courtesy that their paper will be submitted after the deadline.

Students are reminded that all course requirements must be met in order to pass the course; thus where an assignment is submitted so late that a grade of '0' is inevitable, the assignment must be submitted or the student will be unable to pass the course.

Grade Appeals: Students who have questions about the grade they receive on an assignment or who wish to challenge the grade must contact the instructor via email to request a review/appeal of their grade within one week of the posting of the disputed mark on BS. Requests for grade reviews must be in writing and must clearly outline the grounds upon which the student is seeking the review. Appeals submitted in any other fashion will not be accepted or considered. Consideration of requests for reviews/appeals that fall outside the one-week timeline are solely at the discretion of the Instructor.

Carleton University assumes all students will conform to the University's Academic Integrity Policy. Please be mindful of that policy, especially as regards plagiarism.

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

COURSE SCHEDULE

Week 1: (September 4th)

Topic: Course Introduction and Sharing of Expectations

Material:

- Overview of the Course Outline & Q&A on assignments

Week 2: (September 11th)

Topic: The Legal Foundation of *Gladue*

Required Material/Readings:

- *R v Gladue* [1999] 1 SCR 688.
- *R v Ipeelee* [2012] 1 SCR 43.
- *R v Kehoe* 2023 BCCA 2.

Week 3: (September 18th)

Topic: The Sociohistorical Context of *Gladue*

Required Material/Readings:

- Joseph Gone et al, "The Impact of historical trauma on health outcomes for Indigenous

populations in the USA and Canada: A Systemic Review” (2019) 74:1 American Psychologist 20.

- Maria Yellow Horse Brave Heart, “The Historical Trauma Response Among Natives and Its Relationship with Substance Abuse: A Lakota Illustration” (2011) 35:1 Journal of Psychoactive Drugs 7.
- Krista Maxwell, “Historicizing historical trauma theory: Troubling the transgenerational transmission paradigm” (2014) 51:3 Transcultural Psychiatry 407.

Week 4: (September 25th)

Topic: Why *Gladue*?

Guest Speaker: Justice Joseph Bovard, Ontario Court of Justice and Judge of the first *Gladue* Court in Canada

Required Material/Readings:

- Darcy J. Coulter et.al, “Culture, Strengths and Risk: The Language of Pre-Sentence Reports in Indigenous Sentencing Courts and Mainstream Courts” (2023) 50:1 Criminal Justice and Behavior 76.
- Judah Oudshoorn, “Theorizing a way out of reformist reforms: Gladue reports and penal abolition” (2023) 0:0 Punishment & Society 1.
- Hardie Rath-Wilson, “Constitutionalizing *Gladue* Rights: Critical Perspectives and Prospective Paths Forward” (2021) 44:5 Man LJ 29.

Week 5: (October 2nd)

Topic: Gladue, Policing and the challenge of Indigenous over-incarceration

Guest Speaker: Chief Eric Stubbs, Ottawa Police Service

Required Material/Readings:

- Jean-Denis David & Megan Mitchell, “Contacts with the Police and the Over-Representation of Indigenous Peoples in the Canadian Criminal Justice System” (2021) 63:2 Canadian Journal of Criminology and Criminal Justice 23.
- Chris Cunneen & Juan Tauri, “Policing, Indigenous peoples and social order” in *Indigenous Criminology* (Policy Press: Chicago, 2016).
- Rick Ruddell & John Kiedrowski, “Reforming Indigenous policing: Understanding the context for change” (2020) 5:4 Journal of Community Safety & Well-Being 144.

Week 6: (week of October 9th)

Topic: *Gladue* at Bail

Guest Speaker: Her Worship Louise Logue, Ontario Court of Justice

Required Material/Reading:

- Sean Gallop, “11(e) Shattered: The Historic and Continued Breaching of Indigenous Persons Right to Reasonable and Timely Bail” (2021) 44:6 Man LJ 170.
- Jillian Rogin, “*Gladue* and Bail: The Pre-Trial Sentencing of Aboriginal People in Canada” (2017) 95:2 Canadian Bar Review 325.
- Laura Berger, Abby Deshman, Nicole Myers & Shakir Rahim, “Still Failing. The Deepening Crisis of Bail and Pre-Trial Detention in Canada. Canadian Civil Liberties Association, 2024.

Week 7: (October 16th)**Topic: *Gladue* from the perspective of Counsel****Guest Speaker: John Ramsay, Assistant Crown Attorney, Ottawa****Required Material/Reading:**

- Benjamin Ewing & Lisa Kerr, “Reconstructing *Gladue*” (2023) University of Toronto Law Journal: https://utpjournals.press/doi/10.3138/utlj-2023-0017#_i3
- Nate Jackson, “The Substantive Application of *Gladue* in Dangerous Offender Proceedings: Reassessing Risk and Rehabilitation for Aboriginal Offenders” (2015) 20:1 Canadian Criminal Law Review 77.
- Michele I. Bertrand et.al, “*We have centuries of work undone by a few bone-heads: A Review of Jury history, a Present Snapshot of Crown and Defense Counsel Perspectives on Bill C-75’s Elimination of Peremptory Challenges, and Representativeness Issues*” (2020) 43:1 Man LJ 111.

Week 8: October 21-25 - Reading Week**Week 9: (October 30th)****Topic: *Gladue* from the perspective of *Gladue* writers.****Guest Speaker: Michel Belledent, *Gladue* Manager, Tungasvingaat Inuit, Ottawa****Required Material/Reading:**

- Carmela Murdocca, “Understanding *Gladue* from the Perspective of Indigenous People” (2021) 69 Criminal Law Quarterly 377.
- Kris Inwood & Evan Roberts, “‘Indians are the Majority of the Prisoners?’ Historical Variations in Incarceration Rates for Indigenous Women and Men in British Columbia” (2020) 59:3 The Howard Journal of Crime and Justice 350.
- Michaela M. McGuire & Danielle J. Murdoch, “(In)-justice: An exploration of the dehumanization, victimization, criminalization, and over-incarceration of Indigenous women in Canada” (2022) 24:4 Punishment & Society 529.

Week 10: (November 6th)**Topic: *Gladue* in the context of Corrections****Guest Speaker: Hazel Miron, Indigenous Advisor to the Correctional Investigator****Required Material/Reading:**

- Madison Parker, “Decades in Crisis: A Critical Analysis of the Underuse of Sections 81 and 84 of the Corrections and Conditional Release Act and its Role in the Systemic Neglect of Indigenous Rehabilitation and Reintegration” (2021) 44:5 Man LJ 96.
- Paul Robinson et.al., “Overrepresentation of Indigenous persons in adult provincial custody, 2019/2020 and 2020/2021” (2023) Statistics Canada no.85-002.
- Jane Dickson, “Making an ‘ASH’ out of *Gladue*: The Bowden Experiment” (2021) 44:5 Manitoba Law Journal 1.

Week 11: (November 14th)

Topic: Visit to Ottawa Indigenous Peoples Court, Ottawa Courthouse, 151 Elgin Street, Courtroom 5, 2 pm. Please note that the visit to the court on November 14th will replace the seminar on November 13. If you are unable to attend Court on the 14th, you are welcome to visit and observe the Court in session any other Thursday of the term.

Required Material/Readings:

Week 12: (November 20th)

Topic: *Gladue* at sentencing

Guest Speaker: His Honour David Berg, Indigenous Peoples Court, Ontario Court of Justice

Required Material/Readings:

- Kyle McCleery, “‘Resort to the Easy Answer’: *Gladue* and the Treatment of Indigenous NCRMD Accused by the British Columbia Review Board” (2021) 54 UBC Law Rev 151.
- Jane Dickson & Kory Smith, “Exploring Canadian Judiciary’s Experiences with and Perceptions of *Gladue*” (2021) 63:3 Canadian Journal of Criminology and Criminal Justice 23.

Week 13: (November 23rd)

Topic: Work Session on Final Take Home Exam

Required Material/Readings:

- No readings

Department Policies and Regulations

PLAGIARISM

The University Academic Integrity Policy defines plagiarism as “*presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one’s own.*” This includes reproducing or paraphrasing portions of someone else’s published or unpublished material, regardless of the source, and presenting these as one’s own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas

or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, artworks, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, material on the internet and/or conversations.

Examples of plagiarism include, but are not limited to:

- any submission prepared in whole or in part, by someone else, including the unauthorized use of generative AI tools (e.g., ChatGPT);
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another's data or research findings without appropriate acknowledgement;
- submitting a computer program developed in whole or in part by someone else, with or without modifications, as one's own; and
- failing to acknowledge sources through the use of proper citations when using another's work and/or failing to use quotations marks.

Plagiarism is a serious offence that cannot be resolved directly by the course's instructor. The Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of "F" for the course.

STATEMENT ON STUDENT MENTAL HEALTH

As a University student you may experience a range of mental health challenges that significantly impact your academic success and overall well-being. If you need help, please speak to someone. There are numerous resources available both on- and off-campus to support you.

For more information, please consult <https://wellness.carleton.ca/>

Emergency Resources (on and off campus):

- <https://carleton.ca/health/emergencies-and-crisis/emergency-numbers/>

Carleton Resources:

- Mental Health and Wellbeing: <https://carleton.ca/wellness/>
- Health & Counselling Services: <https://carleton.ca/health/>
- Paul Menton Centre: <https://carleton.ca/pmc/>
- Academic Advising Centre (AAC): <https://carleton.ca/academicadvising/>
- Centre for Student Academic Support (CSAS): <https://carleton.ca/csas/>
- Equity & Inclusivity Communities: <https://carleton.ca/equity/>

Off Campus Resources:

- Distress Centre of Ottawa and Region: (613) 238-3311 or TEXT: 343-306-5550, <https://www.dcottawa.on.ca/>
- Mental Health Crisis Service: (613) 722-6914, 1-866-996-0991, <http://www.crisisline.ca/>

- Empower Me: 1-844-741-6389, https://studentcare.ca/rte/en/IHaveAPlan_CarletonUniversityUndergraduateStudentsCUS_A_EmpowerMe_EmpowerMe
- Good2Talk: 1-866-925-5454, <https://good2talk.ca/>
- The Walk-In Counselling Clinic: <https://walkincounselling.com>

ACADEMIC ACCOMMODATIONS

The instructor recognizes that students may on occasion require accommodations to meet course requirements. As a general rule, the university oversees and ensures accommodations and it is not necessary to discuss these in detail with the Instructor. If you have a university-approved accommodation that requires Instructor support, please inform the Instructor via email within the first two weeks of the term or as soon as you are aware an accommodation may be required. For more information about academic accommodations, please consult the Equity Services website: <https://carleton.ca/equity/accommodation/academic/students/>

Department Policy:

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations: <https://carleton.ca/law/current-students/>.