

Course Outline

COURSE:	LAWS 3504 A—Law and Aboriginal Peoples
TERM:	Fall 2021
PREREQUISITES:	LAWS 2501, or LAWS 2502, or LAWS 3500, or LAWS 3503, or LAWS 3509
CLASS:	Day & Time: Tuesdays, September 7, 2021 to December 7, 2021. 11:35 a.m. to 2:25 p.m. EST.
	Room: Please check Carleton Central for current Class Schedule. <i>This is a synchronous online course offered on Zoom in a three-hour lecture format. Links to each week's Zoom meeting will be posted on the course Brightspace page.</i>
INSTRUCTOR:	Jo-Anne Lawless, BA (Hon), Contemporary Studies (Option in Indigenous Studies); MA (Hon), Cultural Analysis and Social Theory; PhD candidate in Law and Legal Studies
CONTACT:	Office Online via Zoom, by appointment. Hours: Email: joanne.lawless@carleton.ca

CALENDAR COURSE DESCRIPTION

The legal situation of Aboriginal peoples in Canada. Topics include status, aboriginal rights, treaties, legislative jurisdiction and the constitutional framework, aboriginal claims, and self-government. Comparative references to aboriginal policy in other countries.

COURSE DESCRIPTION

This synchronous, lecture-based course critically explores the relationship between Indigenous peoples in Canada and the law. We will consider issues of identity, rights, legislative

apparatuses, and governance. The course offers a comparison of approaches to Indigenous peoples in a global framework.

REQUIRED TEXTS

John J Borrows & Leonard I Rotman, *Aboriginal legal issues: Cases, materials, and commentary* (5th ed.). (Markham, Ont.: LexisNexis, 2018).

Textbooks will be available in the Carleton Bookstore; earlier editions are out of date.

Two copies of the textbook have been placed on reserve in MacOdrum library under the LAWS 3504 heading, in the Reserved Reading section.

EVALUATION

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.

Evaluation will be based on the following four elements:

- Attendance and participation in weekly lecture: **20%**
- Participation in weekly online discussion forum: **10% (maximum of ten weeks)**
- Midterm exam: **30%** (October 19, 2021)
- Research Essay **40%** (Due December 8, 2021)

Attendance and Participation in Weekly Lecture: Worth 20 percent of the total grade. Students are expected and encouraged to attend lectures using the Zoom link provided in the course Brightspace page, and to actively participate in lecture activities and discussions.

Participation in Weekly Online Discussion Forums: Worth 10 percent of the total grade. A question regarding the week's theme will be provided each week on the course Brightspace page, and students will be required to engage in conversation with their peers in responding to each week's question. **Full marks can be achieved** if a student provides both a response to the question itself, and engages with a classmate's comments **for ten weeks**. Students must provide responses for **at least six (6) weeks** in order to get a passing grade for this element. The response cutoff is Monday at midnight (for instance, responses to the Week 2 question can be posted up until September 20th at midnight).

Midterm Exam: A midterm take-home exam, worth 30 percent of the total grade, will be posted on the LAWS 3504 A Brightspace page immediately following the October 19th lecture. Students will have twenty-four (24) hours to complete this exam. **The exam will be unavailable after 5 pm on October 20, 2021.**

Research Essay: worth 40 percent of the final grade. The essay will be written on a topic determined by the professor. The paper will be **11-15 double-spaced pages long**; no more, no less, *not* including cover page, footnotes, and bibliography, and must be written in Times New Roman 12-point font. The Law and Legal Studies research librarian will speak to the class on **September 21, 2021** to provide guidance on conducting research and on citing sources in McGill format. Detailed instructions for this assignment will be posted on Brightspace in Week 3.

The research essay will **be due by 4:30 pm EST, on Wednesday, December 8, 2021**, and will be **submitted online** only (no hard copies) through the LAWS 3504 A Brightspace website. You are strongly advised to save your work regularly in multiple ways, and to retain a copy of all submitted papers. Essays submitted past the due date will incur a **late penalty of five percent for each 24-hour period** following the deadline of 4:30 pm EST on the December 8th, including weekends. Papers submitted beyond seven days late will be accepted towards course completion but will receive a mark of 0. Suspected incidents of plagiarism will be reported to the Dean's office, pursuant to Carleton University policy.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

Any late submissions of the annotated bibliography or the final research paper will be penalized **five (5) percent per 24 hour period**, beginning one hour following the assignment deadline. Papers submitted beyond seven days late will be accepted towards course completion but will receive a mark of 0. Late weekly online discussion posts will not be accepted. Extensions will be granted only under the most grave circumstances, and written documentation of the reason for the request will be required.

The granting of extensions is determined by your instructor who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>.

Extensions of longer than 7 days will normally not be granted. In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

SCHEDULE

September 14, 2021. Week 1: Introduction. The Spirit of Decolonization and the Law
Lecture begins at 11:35 a.m. (See Zoom link on Brightspace).

September 21, 2021. Week 2: Governance and Colonialism

Readings:

Borrows & Rotman, *Aboriginal legal issues: Cases, materials, and commentary* (5th ed.) Chapter 1.

Vanessa Sloan Morgan, 'Moving from rights to responsibilities: Extending Hannah Arendt's critique of collective responsibility to the settler colonial context of Canada.' *Settler Colonial Studies* 8, no. 3 (2018): 332-348.

September 28, 2021. Week 3: Aboriginal Rights

Guest speaker: Law and Legal Studies Research Librarian, Julie Lavigne.

Readings:

Kent McNeil, 'Aboriginal Title and Aboriginal Rights: What's the Connection?' *Alta. L. Rev.* 36 (1997): 117.

Borrows & Rotman, Chapter 2.

October 5, 2021. Week 4: Aboriginal Title

Readings:

Borrows & Rotman, Chapter 3.

Kent McNeil, 'Indigenous Law and Aboriginal Title.' *Osgoode Legal Studies Research Paper* 2 (2017).

October 12, 2021. Week 5: Treaties

Readings:

Borrows & Rotman, Chapter 4.

Rima Wilkes, Aaron Duong, Linc Kesler & Howard Ramos, 'Canadian university acknowledgment of Indigenous lands, treaties, and peoples.' *Canadian Review of Sociology/Revue canadienne de sociologie* 54, no. 1 (2017): 89-120.

October 19, 2021: Week 6: Crown Obligations

Guest speaker: Sylva Sheridan, MA. Assessing the Link Between Historical Trauma, Child Removal Policies and Over-representation in the Child Welfare System

Readings:

Borrows & Rotman, Chapter 5.

Richar Stacey, 'Honour in sovereignty: Can Crown consultation with Indigenous peoples erase Canada's sovereignty deficit?' *University of Toronto Law Journal* 68, no. 3 (2018): 405-439.

October 26, 2021. Week 7: NO CLASSESNovember 2, 2021. Week 8: Inuit Rights

A **midterm take-home exam** will be held this week. You will have 24 hours to complete the exam, and it will be posted on the course Brightspace page immediately following this week's lecture.

Guest speaker: TBD

Readings:

Borrows & Rotman, Chapter 6.

Missing and Murdered Indigenous Women and Girls: Inuit-Specific Calls for Justice.
<https://tionario.ca/wp-content/uploads/2020/08/MMIWG-CALLS-FOR-JUSTICE.pdf>

November 9, 2021. Week 9: Métis Rights*Readings:*

Borrows & Rotman, Chapter 7.

Denis Gagnon, 'Symbolic Violence Against the 'Other Métis': The Making of a New Forgotten People in Canada' in Michel Bouchard, Sébastien Malette & Siomonn Pulla, eds, *Eastern Métis: Chronicling and Reclaiming a Denied Past* (Lanham, Maryland: Lexington Books, 2021) 3-21.

November 16, 2021. Week 10: Federalism and Constitutional Issues*Readings:*

Borrows & Rotman, Chapter 8.

John Borrows, 'Challenging historical frameworks: Aboriginal rights, the trickster, and originalism.' *Canadian Historical Review* 98, no. 1 (2017): 114-135.

November 23, 2021. Week 11: Indigenous Women*Readings:*

Borrows & Rotman, Chapter 9.

Kim Anderson, 'Resist' in Kim Anderson, ed, *A Recognition of Being: Reconstructing Native Womanhood*. (Toronto: Sumach Press, 2016) 95-128.

November 30, 2021. Week 12: Indigenous Criminal Justice*Readings:*

Chris Cunneen & Juan Marcellus Tauri, 'Indigenous peoples, criminology, and criminal justice.' *Annual Review of Criminology* 2 (2019): 359-381.

Kayanesenh Paul Williams, 'The Three Words: Peace, Power, and Righteousness' in Kayanesenh Paul Williams, ed, *Kayanerenkó: wa: the Great Law of peace*. (Univ. of Manitoba Press, 2018): 216-224.

December 7, 2021. Week 13: Resistance and Activism*Readings:*

Alex Wilson & Corals Zheng, 'Shifting Social Media and the Idle No More Movement' in Bronwyn Carlson & Jeff Berglund, eds, *Indigenous Peoples Rise Up: The Global Ascendancy of Social Media Activism* (New Brunswick, New Jersey: Rutgers University Press, 2021).

Sarah El Gharib, '10 Indigenous Activists and Artists You Should be Following Right Now.' *Global Citizen*. June 17, 2021.

<https://www.globalcitizen.org/en/content/indigenous-activists-artists-canada/>

COVID-19 PREVENTION MEASURES

All members of the Carleton community are required to follow COVID-19 prevention measures and all mandatory public health requirements (e.g. wearing a mask, physical distancing, hand hygiene, respiratory and cough etiquette) and [mandatory self-screening](#) prior to coming to campus daily.

If you feel ill or exhibit COVID-19 symptoms while on campus or in class, please leave campus immediately, self-isolate, and complete the mandatory [symptom reporting tool](#). For purposes of contact tracing, attendance will be taken in all classes and labs. Participants can check in using posted QR codes through the cuScreen platform where provided. Students who do not have a smartphone will be required to complete a paper process as indicated on the [COVID-19 website](#).

All members of the Carleton community are required to follow guidelines regarding safe movement and seating on campus (e.g. directional arrows, designated entrances and exits, designated seats that maintain physical distancing). In order to avoid congestion, allow all previous occupants to fully vacate a classroom before entering. No food or drinks are permitted in any classrooms or labs.

For the most recent information about Carleton's COVID-19 response and required measures, please see the [University's COVID-19 webpage](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca

Please note that failure to comply with University policies and mandatory public health requirements, and endangering the safety of others are considered misconduct under the [Student Rights and Responsibilities Policy](#). Failure to comply with Carleton's COVID-19 procedures may lead to supplementary action involving Campus Safety and/or Student Affairs.

ACADEMIC ACCOMMODATIONS

Academic Accommodation

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

Pregnancy obligation: Please write to the professor 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 accommodation regarding a formally-scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

Religious obligation: Please write to the professor 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 [click here](#).

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 the professor 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 the professor to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable).

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working, and living environment where sexual violence will not be tolerated, and where survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/equity/sexual-assault-support-services>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation will be provided to students who compete or perform at the national or international level. Please write to the professor 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: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism 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, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence. More information on the University's Academic Integrity Policy can be found at: <https://carleton.ca/registrar/academic-integrity/>.

Accommodation for Student Activities

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<https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit:

<https://students.carleton.ca/services/accommodation/>.

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/student-experience-resources/>.