

Course Outline

COURSE:	LAWS 3504 A – Law and Aboriginal Peoples
TERM:	Winter 2023
PREREQUISITES:	1.0 credit in LAWS at the 2000 level.
CLASS:	Day & Time: Fridays , from January 9 to April 12, 2023 11:35 a.m. to 14:25 p.m.
	Room: Please check Carleton Central for current Class Schedule. 303 St. Patrick's Building.
INSTRUCTOR:	Sebastien Malette, Ph.D.
CONTACT:	Office Hours: Using the Brightspace Online office by appointment) 613-520-2600 x. 3681 Communications by email are preferred. Email: Sebastien.malette@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

The classes will consist of lectures, with opportunity for questions and discussion. Students will be expected to attend classes regularly, to answer questions, and to discuss the issues. Students must read the materials assigned, before the relevant class.

LEARNING OBJECTIVES

The object of LAWS 3504A is to provide an understanding of some basic elements of the law relating to Indigenous peoples in Canada, with an emphasis on the constitutional framework, the changing case law, Aboriginal rights and title. The course can touch only a part of this vast topic. It does not address important areas such as criminal justice and indigenous legal systems. Where possible, students should supplement LAWS3504 with other courses and readings on Indigenous issues.

Borrows, J., & Rotman, L. I. (2022). *Aboriginal legal issues: Cases, materials & commentary* (6th ed.). Markham, Ont.: LexisNexis. 9780433525424

May also be purchased through the Carleton University Bookstore website:

<https://www.bkstr.com/carletonstore/home>)

SUPPLEMENTARY TEXTS

Optional/Recommended readings

- Morellato, M. A. (2009). *Aboriginal law since Delgamuukw*. Aurora, Ont.: Canada Law Book.
- Grammond, S. (2013). *Terms of coexistence: Indigenous peoples and Canadian law*. • Lawrence, B. (2004). *"Real" Indians and others: Mixed-blood urban Native peoples and indigenous nationhood*. Vancouver: UBC Press.

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.

(1) In-class Attendance and Class Participation: 20%

4 short questions distributed during the semester will be made available through Brightspace. These questions will evaluate your comprehension of the weekly reading. It is the student's responsibility to transmit their answer through Brightspace on a word

document on a weekly basis, with their name, student number, copy of the question and their short answer. No late submission will be accepted beyond the deadline set on Brightspace on a weekly basis. It is also the student's responsibility to sign class attendance sheets, and to be present throughout the entire class session. Credit is not given for missed classes or portions of classes. Informal review quizzes may be held from time to time, and considered in the attendance / class participation mark. In class discussions, quality (knowledge of readings and of thought) is more important than quantity.

(2) Course Paper: Due on Last class of the Term (5pm electronically by Brightspace): 40%

The course paper is central to LAWS 3504A, and research and communication skills are at least as important as substantive knowledge. Familiarize yourself with these instructions, heed suggestions made in class, and 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 and Legal Studies' Law Resource Centre at D494 Loeb, Quicklaw, Westlaw, Carswell, and other electronic data bases, and internet search engines and other research tools. Make use of the Writing Tutorial Service at 520-2600, extn. 6632.

Topics

All students must write a course paper on the topic to be assigned by the instructor. Papers on other topics will not receive marks.

Format

The paper must be a maximum of 2200 words (about 11 typed or word-processed pages, excluding footnotes, etc.). It must be well-prepared, with proper citation, a presentation page, footnotes or endnotes, and bibliography. In all matters of legal citation and form, papers must comply with the McGill *Guide* referred to below.

Content

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., rather than pure description or pure subjective opinion), 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.

Originality

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. Avoid case headnotes. Keep quotations and paraphrasing to a minimum. Where you use words or thoughts of others, give full credit for every single word or thought you use. Identify all words of others in quotation marks or in indented single-space passages, and link these to acknowledgments in endnotes or footnotes. If you must paraphrase, use your own words and fully acknowledge all the original sources. All theories, views, and opinions of others must be fully acknowledged.

Presentation

The paper must be a computer-printable document on standard-sized paper using WORD or PDF Outlet, with a title page but no cover. Pages must be numbered. Papers are due on the last day of Term, 5pm, and must be uploaded via Brightspace. An assignment slot in the corridor outside the Departmental Office, Room C473, Loeb Building is available for emergency only (notify me by email for any emergency). Students must keep an extra copy of the completed paper. Marks will be deducted for failure to type or print the paper, or to submit it on time - at the rate of 7% per day late, including weekends. Extensions will not be granted, except for (i) disabling illness, verified by a medical certificate indicating precise period of disablement or (ii) death in immediate family, verified by certificate of date of death. The instructor must be notified of the illness or death before the paper deadline, if possible. No credit is given for papers submitted after the University's final submission deadline.

Citation guides

The paper must follow the legal citation requirements in the *McGill Guide* (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 and Legal Studies, 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> paper must follow the legal citation and format 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 and Legal Studies, 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 works may be helpful:

- Legal research manuals and sites

M.F. Fitzgerald, *Legal Problem Solving: Reasoning, Research and Writing*, 3 ed. (Markham and Vancouver, Butterworths, 2004); M.J. Josipescu and P.W. Whitehead, *Legal Writing and Research Manual*, 6th ed. (Markham, Ont.: LexisNexis Butterworths, 2004); Douglass T. MacEllven et al., *Legal Research Handbook*, 5th ed. (Markham, Ont.: LexisNexis Butterworths, 2003); Aleksandra Zivanovic, *Guide to Electronic Research*, (Markham, Ont.: LexisNexis Butterworths, 2002); C.P. Best, *Legal Research on the Internet*, <<http://legalresearch.org/docs/internet2.html>>.

- Style and grammar manuals

D. Hacker, *A Canadian Writer's Reference*, 3 ed. (Boston: Bedford /St. Martin's, 2004); W. Strunk and E.B. White, *The Elements of Style*, 4th ed. (Boston: Allyn & Bacon, 2000); Editors' Association of Canada, *Editing Canadian English*, 2 ed. (Toronto: Macfarlane Walter & Ross, 2000); D. LePan, *The Broadview Book of Common Errors in English : A Guide to Righting Wrongs*, 3d ed. (Peterborough, Ont. : Broadview Press, 1998); J.A. McFarlane and W. Clements, *The Globe and Mail Style Book: A Guide to Language and Usage* (Toronto: McClelland & Stewart, 1998); *The Canadian Style. A Guide to Writing and Editing*, rev. ed. (Toronto, Dundurn Press, 1997).

- Effective writing guides

N. Lukeman, *The First Five Pages: A Writer's Guide to Staying Out of the Rejection Pile* (New York: Fireside, 2000); J.M. Williams, *Style: Toward Clarity and Grace* (Chicago: U. of Chicago Press, 1990)

- General research and writing manuals

M.E. Northey, L. Tepperman, and J. Russell, *Making Sense in the Social Sciences: A Student's Guide to Writing and Style*, 3d ed. (Toronto: Oxford University Press, 2001); K.L. Turabian, *A Manual for Writers of Term Papers, Theses, and Dissertations*, 6th ed.

(Chicago, University of Chicago Press, 1996); H. Robertson, *The Research Essay; A Guide to Essays and Papers*, 4th ed. (Ottawa: Piperhill Pubs. 1999).

(3) Final Examination (Brightspace quiz): date and hour TBD in April 2023: 40%

Length: 2 hrs. Online. choice of essay or multiple-choice questions, on all term work.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

The granting of extensions is determined by the 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 for 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

The topics are keyed to the headings in the Outline/Table of Contents at the beginning of the coursebook **Aboriginal Legal Issues**. Knowledge and understanding of coursebook material, the lectures, and handouts will help ensure that you can contribute to class discussions and pass the examinations. Sections of the following chapters will be identified in class, for readings. Please make sure to consult Brightspace to access extra reading material on each subject below.

1. Intro: Course Outline. Decolonization and the Law (Consult Brightspace for the readings)
2. Class 1: Governance and Colonialism (Reading 1: Borrows, Chapter 1 and consult Brightspace)
3. Class 2: Aboriginal rights (Reading 2: Borrows, Chapter 2 and consult Brightspace)
4. Class 3: Aboriginal title (Reading 3: Borrows, Chapter 3 and consult Brightspace)
5. Class 4: Treaties (Reading 4: Borrows, Chapter 4 and consult Brightspace)
6. Class 5: Crown obligations (Reading 5: Borrows, Chapter 5 and consult Brightspace)
7. Class 6: Inuit rights (Reading 6: Borrows, Chapter 6 and consult Brightspace)
8. Class 7: Métis rights (Reading 7: Borrows, Chapter 7 and consult Brightspace)
9. Class 8: Federalism/constitutional issues (Reading 8: Borrows, Chapter 8 and consult Brightspace)

10. Class 9: Indigenous women (Reading 9: Borrows, Chapter 9 and consult Brightspace)
11. Class 10: Indigenous Peoples and the Criminal Justice
12. Class 11: Conclusion and revision

Winter 2023 Sessional Dates and University Closures	
<i>Please find a full list of important academic dates on the calendar website:</i> https://calendar.carleton.ca/academicyear/	
January 9, 2023	Winter term begins.
January 20, 2023	Last day for registration and course changes (including auditing) in full winter and late winter courses.
February 20, 2023	Statutory holiday. University closed.
February 20-24, 2023	Winter break. No classes.
March 15, 2023	Last day for academic withdrawal from full winter, late winter, and fall/winter courses.
April 7, 2023	Statutory holiday. University closed.
April 12, 2023	Winter term ends. Last day of full winter, late winter, and fall/winter classes.
April 15-27, 2023	Final examinations in full winter, late winter, and fall/winter courses will be held. Examinations are normally held all seven days of the week.
April 27, 2023	All final take-home examinations are due on this day.

COVID-19 INFORMATION

It is important to remember that COVID is still present in Ottawa. The situation can change at any time and the risks of new variants and outbreaks are very real. There are [a number of actions you can take](#) to lower your risk and the risk you pose to those around you including being vaccinated, wearing a mask, staying home when you're sick, washing your hands and maintaining proper respiratory and cough etiquette.

Feeling sick? Remaining vigilant and not attending work or school when sick or with symptoms is critically important. If you feel ill or exhibit COVID-19 symptoms do not come to class or campus. If you feel ill or exhibit symptoms while on campus or in class, please leave campus immediately. In all situations, you must follow Carleton's [symptom reporting protocols](#).

Masks: Carleton has paused the [COVID-19 Mask Policy](#), but continues to strongly recommend

masking when indoors, particularly if physical distancing cannot be maintained. It may become necessary to quickly reinstate the mask requirement if pandemic circumstances were to change.

Vaccines: Further, while proof of vaccination is no longer required as of May 1 to attend campus or in-person activity, it may become necessary for the University to bring back proof of vaccination requirements on short notice if the situation and public health advice changes. Students are strongly encouraged to get a full course of vaccination, including booster doses as soon as they are eligible and submit their booster dose information in [cuScreen](#) as soon as possible. Please note that Carleton cannot guarantee that it will be able to offer virtual or hybrid learning options for those who are unable to attend the campus.

All members of the Carleton community are required to follow requirements and guidelines regarding health and safety which may change from time to time. For the most recent information about Carleton's COVID-19 response and health and safety requirements please see the [University's COVID-19 website](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca.

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 your 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>

Plagiarism

Plagiarism is presenting, whether intentionally 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 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

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 must be provided to students who compete or perform at the national or international level. Please contact your instructor 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. Read more here: <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/>. \