

Course Outline

COURSE: LAWS 5706B Special Topics In Conflict Resolution: Gladue Writer Training

TERM: Fall Term 2017

CLASS: **Day & Time:** Monday, October 23 through Friday, October 27, 8:30 a.m. to 4:30 p.m.
Room: Please check with Carleton Central for current room location

INSTRUCTOR: Jane Dickson, PhD(Law)

CONTACT: **Office:** D592 Loeb Building
Office Hrs: M-W-F, 12:00-1:00 p.m., or by appointment
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Academic Accommodations:

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 the 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. For more details visit the Equity Services website: <http://carleton.ca/equity/>

Religious obligation: write to the 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. For more details visit the Equity Services website: <http://carleton.ca/equity/>

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 **Letter of Accommodation** to the instructor 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*). **Requests made within two weeks will be reviewed on a case-by-case basis.** Please consult the PMC website (www.carleton.ca/pmc) for the deadline to request accommodations for the formally-scheduled exam (*if applicable*).

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://carleton.ca/equity/>

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.

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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.

<http://carleton.ca/law/current-students/>

COURSE DESCRIPTION

In 1996 the federal government undertook an extensive revision of the sentencing provisions of the Canadian Criminal Code (R.S.C. 1985, c. C-46). Among these revisions was s.718.2(e) which targeted the over-use of incarceration by requiring judges to consider alternatives to imprisonment for all offenders, but especially for Indigenous offenders. Three years later, the Supreme Court of Canada reinforced the remedial goals of the section in its decision in *R. v. Gladue* 1 S.C.R. 688, instructing judges to consider the “unique background and circumstances” of Indigenous offenders and any ‘reasonable alternatives to incarceration when sentencing them. In this and a series of decisions which followed Gladue, the Court has reinforced the centrality of Gladue requirements in sentencing Indigenous offenders and stressed the importance of ‘Gladue reports’ in meeting those requirements. This course will further the goals of Gladue by training students in best practices in Gladue, including ethical and appropriate research practices in interviewing, ethnocultural and historical research, the importance of balancing cultural and legal imperatives in the form, content and structure of the reports, and crafting reasonable and realistic sentencing recommendations. This skills acquisition will be further informed by discussion of Indigenous cultures and histories in Canada, historical trauma, historical trauma effects and intergenerational effects, current realities facing Indigenous communities, criminal justice system structures and processes, and the practical challenges of researching, writing and delivering high quality Gladue reports to communities and courts.

REQUIRED TEXTS

All readings in this course are available online and will be listed for each day of the course on the CULearn site.

FORMAT OF THE COURSE

This course is taught through a combination of lectures, guest speakers, seminar discussions and in-class skills development activities.

EVALUATION

Assessment of the skills acquired in this course will be as follows; full details of each assessment can be found on the course CULearn page and will be discussed fully in class:

1. Gladue Research Project: 75%
 - a. Interview and Research Assessment: 25% (Combined Peer and Instructor Assessment)
Students will be required to conduct mock interviews, research cultural and historical background pertinent to the background and experiences of the person who is the subject of the mock report, and relevant and appropriate programs and resources informing the Gladue recommendations.
 - b. Mock Gladue Report: 50%
Students will combine their research and interview results into a Gladue report which will be submitted to the instructor within 2 weeks of completing the course. The report will be assessed for (1) consistency with judicial direction on the form, tone, content and structure of reports; (2) depth of information about the subject of the report, their community, nation, culture and history; (3) integration of subject information and life history with relevant scholarly research, ie, historic trauma, historic trauma effects, intergenerational effects; (4) clarity of connection between subject's risks and needs as articulated in the report and the sentencing options provided in the report, as well as viability of those options; (4) adequacy of the report in terms of style, syntax, grammar, etc., referencing and citation.
2. Class Participation: 25%

Please note: 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

Lecture notes and power point slides will be posted online for each day of the course; students should have reviewed the notes and slides before attending class.

DAY ONE: The Criminal Law Process and the Role of Gladue

Readings:

1. The Organization and Structure of Canadian Law: "The Courts and other Forms of Dispute Resolution", in Patrick Fitzgerald, Barry Wright & Vincent Kazmierski (2010) *Looking at Law. Canada's Legal System*. Toronto: LexisNexis, pp.107-120.
2. "Julian Roberts, Andrew A. Reid (2017) "Aboriginal Incarceration in Canada since 1976: Every Picture Tells the Same Story", *Canadian Journal of Criminology and Criminal Justice*, vol.59, no.3, pp.313-345.
3. Samantha Jeffries and Christine E.W. Bond (2012) "The Impact of Indigenous Status on Adult Sentencing: A Review of the Statistical Research Literature from the United States, Canada and Australia", *Journal of Ethnicity in Criminal Justice*, vol.10, pp.223-243.

Optional Resources:

1. Curt Taylor Griffiths (2015) *Canadian Criminal Justice: A Primer*, 5th edition. Toronto: Nelson Education.
2. Patrick Fitzgerald, Barry Wright & Vincent Kazmierski (2010) *Looking at Law: Canada's Legal System*, LexisNexis Canada.

3. Canadian Judicial Council, website located at: https://www.cjc-ccm.gc.ca/english/resource_en.asp?selMenu=resource_courtsystem_en.asp
4. <http://lawfacts.ca>).

DAY TWO: The Gladue Case and Current Legal Standards for Gladue Reports

Readings:

1. R. v. Gladue [1999] 1 S.C.R. 688
2. R. v. Ipeelee [2012] 1 S.C.R. 433
3. Kelly Hannah-Moffat and Paula Marutto (2010) "Re-contextualizing pre-sentence reports: Risk and race", *Punishment and Society*, vol.12, no.3, pp.262-282.
4. Paula Marutto and Kelly Hannah-Moffat (2016) "Aboriginal Knowledges in Specialized Courts: Emerging Practices in Gladue Reports", *Canadian Journal of Law and Society*, vol.31, no.3, pp.451-471.

Optional Resources:

1. Andrew Welsh & James R. P. Ogloff (2008) Progressive Reforms or Maintaining the Status Quo? An Empirical Evaluation of the Judicial Consideration of Aboriginal Status in Sentencing Decisions, *Canadian Journal of Criminology and Criminal Justice*, 50(4) 491-517.
2. Brian R. Pfefferle (2006) Gladue Sentencing: Uneasy Answers to the Hard Problem of Aboriginal Over-Representation, *Manitoba Law Journal*, 32(2) 113-143.
3. Council of Yukon First Nations (2013) Yukon Gladue: Research and Resource Identification Project, online at: <http://cyfn.ca/wp-content/uploads/2013/09/Yukon-Gladue-Report-2015.pdf>
4. Samantha Jeffries & Philip Stenning (2003) Sentencing Aboriginal Offenders: Law, Policy and Practice in Three Countries", *Canadian Journal of Criminology and Criminal Justice*, 56(4) 453-454.
5. Philip Stenning & Julian Roberts (2001) Empty Promises: Parliament, The Supreme Court, and the Sentencing of Aboriginal Offenders", 64 *Saskatchewan Law Review*.
6. Sébastien April & Myléne Magrinelli (2013) Gladue Practices in the Provinces and Territories. Ottawa: Department of Justice, Research and Statistics Division. Online at: http://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr12_11/rr12_11.pdf

DAY THREE: Key Components of Gladue Reports and Submissions, and Why They Matter

Readings:

1. Amy Bombay, Kimberly Matheson & Hymie Anisman (2014) "The Intergenerational Effects of Residential Schools: Implications for the concept of historical trauma", *Transcultural Psychology*, 51(3), 320-338.
2. Les B. Whitlock, Gary W. Adams, Dan R Hoyt & Xiaojin Chen (2004) "Conceptualizing and Measuring Historical Trauma Among American Indian People", *American Journal of Community Psychology*, 33(3/4) 119-130.

3. Theresa Evans-Campbell (2008) "Historical Trauma in American Indian/Native Alaska Communities. A Multilevel Framework for Exploring Impacts on Individuals, Families, and Communities", *Journal of Interpersonal Violence*, 23(3) 316-338.
4. Maria Yellow Horse Brave Heart (2003) "The historical trauma response among natives and its relationship with substance abuse: A Lakota illustration", *Journal of Psychoactive Drugs* 35 7-13.

Optional Resources:

5. British Columbia Legal Services Society, (2014) *Gladue Primer*. Vancouver, BC, BCLSS Gladue Pilot Project, online at:
<http://www.legalaid.bc.ca/resources/pdfs/pubs/Gladue-Primer-eng.pdf>
6. British Columbia Legal Services Society, (2013) *Gladue Myths & Facts: Information for Lawyers*, online at:
<http://gladureports.org/wp-content/uploads/2014/04/gladueMythsFactsInformationSheet.pdf>
7. The Aboriginal Healing Foundation, website is located at: <http://www.ahf.ca/>. (The Foundation was closed in September 30, 2014, but the site remains open and most of its publications can be accessed through the site. The publications in its Research Series are excellent and many of them are directly relevant to Gladue.)
8. The Truth and Reconciliation Commission, website is located at:
<http://www.trc.ca/websites/trcinstitution/index.php?p=3>
9. *The Canadian Encyclopedia*, 'Aboriginal Peoples', website located at:
<http://www.thecanadianencyclopedia.ca/en/>
10. University of British Columbia, *Indigenous Foundations*, website located at:
<http://indigenousfoundations.arts.ubc.ca/>
11. Indian Residential Schools Settlement, *List of Indian Residential Schools*, website located at:
<http://www.residentialschoolsettlement.ca/schools.html>

DAY FOUR: Interviewing, Researching and Constructing Viable Sentencing Recommendations

Readings:

1. Mark Klemper (2000) "Navigating Life Review Interviews with Survivors of Trauma", 27[2] *Oral History Review* 67-83.
2. Theresa Naswba Marsh, Diana Coholic, Sheila Cote-Meek and Lisa M. Majavits (2015) "Blending Aboriginal and Western Healing Methods to Treat Intergenerational Trauma with Substance use Disorder in Aboriginal People who live in Northeastern Ontario, Canada" 12 *Journal of Harm Reduction* 14-30.
3. Ryan Reynolds (2012) "Trauma and the Relational Dynamics of Life-History Interviewing" 43(1) *Australian Historical Studies* 78-88.

Optional Resources:

1. *Correctional Services Canada National Facilities Directory*, website located at:
<http://www.csc-scc.gc.ca/institutions/001002-0001-eng.shtml>. Most provinces will also have a site or page which provides locations and contact information for provincial institutions (for example, BC facilities are listed at <http://www2.gov.bc.ca/gov/content/justice/criminal-justice/corrections/correctional-centres>) Most sites will also provide information about programming as well as contact information for institutions.

2. Government of Canada, *List of Addiction Treatment Facilities for First Nations and Inuit*, website located at: <http://healthycanadians.gc.ca/healthy-living-vie-saine/substance-abuse-toxicomanie/help-aide/treatment-centres-traitement-eng.php>
3. Correctional Services Canada. Aboriginal programming offered by Correctional Services Canada, online at: <http://www.csc-scc.gc.ca/aboriginal/002003-1007-eng.shtml>.
4. Correctional Services Canada. Healing Lodges, online at: <http://www.csc-scc.gc.ca/aboriginal/002003-2000-eng.shtml>.
5. Correctional Services Canada. Aboriginal Program Facilitators, online at: <http://www.csc-scc.gc.ca/careers/003001-1204-eng.shtml>.
6. Addictions Treatment for First Nations and Inuit, online at: <https://www.canada.ca/en/health-canada/services/substance-abuse/get-help/addictions-treatment-first-nations-inuit.html>

DAY FIVE: Writing Sacred Stories: Final Comments on the Form, Content and Structure of Gladue Reports

Readings:

1. Jane Dickson, "Writing Gladue Reports and Preparing for the Possibility of Speaking before Decision-Makers", Indigenous Perspectives Society, 2017, pp.1-51.
2. Redacted Gladue Report A – Inuit
3. Redacted Gladue Report B - Mohawk