
COURSE: **Métis Law and the question of Indigeneity in Canada.**

LAWS 5903X - Contemporary Topics in Legal Studies

TERM: **Fall 2017**

PREREQUISITES: **None**

DAY: **Mondays**

TIME: **11:35 am-2:25 pm**

ROOM: **TBD**

INSTRUCTOR: **Sebastien Malette, Ph.D.**

CONTACT: **Office:** **D591 Loeb**
Office Hrs.: **Fridays, 9:00 a.m. to 11:30 a.m, or by appointment**
Telephone: **520-2600 ext. 3681 during office hours only**
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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 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://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://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 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*). **Requests made within two weeks will be reviewed on a case-by-case basis.** After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. 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.

Student Services: The Centre for Student Academic Support (CSAS) is a centralized collection of learning support services designed to help students achieve their goals and improve their learning both inside and outside the classroom. CSAS offers academic assistance with course content, academic writing and skills development. Visit CSAS on the 4th floor of MacOdrum Library or online at carleton.ca/csas

More information on the University's **Academic Integrity Policy** can be found at:
<http://carleton.ca/studentaffairs/academic-integrity/>

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/>

1. COURSE OBJECTIVES AND CONTENT

The object of this course is to provide an understanding of some basic elements of the law relating to Métis peoples in Canada, with an emphasis on the constitutional framework, the changing case law, and the politics of Métis identity. The course will address important areas such as the history of Métis peoples to see how legislative actions have legalized Métis identities. In particular, students will engage with the subject of Métis uprisings, mobilisations, as well as governmental responses, including in Ontario and innovatively in Québec. The course will further examine contemporary struggles on the subject of Métis identities in Canada. It will emphasize on the historical shift caused by the entry of the Métis peoples in the Constitution of Canada in 1982. Engaging the process of "legalisation" that affects our current understanding of "Métis ethnogenesis," students will be introduced to a selected range of court cases from Powley (2003) to Daniels (2016). The advanced component of this course asks the student to probe the question of what is Indigeneity in light of the reading and discussions.

2. CLASS FORMAT

The classes will consist of seminars. 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.

3. READINGS

(a) Required reading

- Podruchny, C., Macdougall, B., & St-Onge, N. (2012). *Contours of a people: Metis family, mobility, and history*. Norman: University of Oklahoma Press.

One copy of the **REQUIRED READING textbook** has been placed on reserve in the Carleton library under the LAWS 5903 Malette heading, in the Reserved Reading section. Each of the assigned **extra weekly Required Readings** will be made available on CuLearn. Textbooks will be available in the Carleton Bookstore.

(b) Optional/Recommended readings

- Adams, C., Peach, I., Dahl, G., Scholars Portal, & eBOUND Canada. (2013). *Métis in canada: History, identity, law & politics* (First, first printing, 2013. ed.). Edmonton, Alberta, Canada: The University of Alberta Press.
- Ens, G. J., Sawchuk, J., & Scholars Portal. (2015). *From new peoples to new nations: Aspects of metis history and identity from the eighteenth to the twenty-first centuries*. Toronto [Ontario];London;Buffalo;: University of Toronto Press.
- Foxcurran, R., Malette, S., & Bouchard, M. (2016). *Songs upon the rivers: The buried history of the french-speaking canadiens and metis from the great lakes and the mississippi across to the pacific*. Montreal: Baraka Books.

4. EVALUATION

Participation: 10%

In-class Attendance and Class Participation (10%)

Oral presentation 20%

Critical commentary on Indigeneity and the Law: on Nov 15, 2017 20%

Course Paper: Dec 5, 2017 50%

Failure to complete all assignments and exams in the course will result in the student receiving a failing grade for the course. Deferrals are granted by the Registrar's Office. Standing in a course is determined by the course instructor subject to 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 Dean.

5. TOPIC SCHEDULE

Knowledge and understanding of the readings material will help ensure that you can contribute to class discussions and pass the examinations. Please make sure to consult CUlearn to access extra reading material on each subject below.

Readings for the first seminar (“Who are the Métis Peoples?”):

- Auguste-Henri de Trémaudan. “Chapter 3.” In Trémaudan, A. H. d. (1982). *Hold high your heads: History of the métis nation in western canada*. Winnipeg: Pemmican.
- Johann Georg Kohl. “Chapter 16.” In Kohl, J. G. (1860). *Kitchi-gami: Wanderings around lake superior*. London: Chapman and Hall.

Readings for the second seminar (“Identities and Legal Entrapment”):

- John E Foster. “The Métis: The People and the Term.” In Douaud, P. C., & University of Regina. Canadian Plains Research Center. (2007). *The western métis: Profile of a people*. Regina: University of Regina, Canadian Plains Research Center.
- Gerald Ens. “The Battle of Seven Oakes and the articulation of a Métis National Tradition, 1811-1849.” In Podruchny, C., Macdougall, B., & St-Onge, N. (2012). *Contours of a people: Metis family, mobility, and history*. Norman: University of Oklahoma Press.

Readings for the third seminar (Métis In/Out of Treaties):

- Victor P. Lytwyn. “In the Shadows of the Honorable Company. Nicolas Chatelain and the Métis of Fort Frances.” In Podruchny, C., Macdougall, B., & St-Onge, N. (2012). *Contours of a people: Metis family, mobility, and history*. Norman: University of Oklahoma Press.

Readings for the fourth seminar (On Métis Identities)

- Sawchuk, J. (2001). Negotiating an identity: Métis political organizations, the Canadian government, and competing concepts of aboriginality. *American Indian Quarterly*, 25(1), 73-92.
- Chretien, A. (2008). From the "other natives" to the "other metis". *Canadian Journal of Native Studies*, 28(1), 89.

Readings for the Fifth seminar (The Powley case)

- R. v. Powley, [2003] 2 S.C.R. 207, 2003 SCC 43
- Jeremy Patzer, “Even When We’re Winning, Are We Loosing?” In Adams, C., Peach, I., Dahl, G., Scholars Portal, & eBOUND Canada. (2013). *Métis in Canada: History, identity, law & politics* (First, first printing, 2013. ed.). Edmonton, Alberta, Canada: The University of Alberta Press.

Readings for the Sixth seminar (Struggles and new exclusions)

- Chris Andersen, Settling for community? Juridical visions of historical metis collectivity in and after R. v. Powley / Chris Anderson. In Podruchny, C., Macdougall, B., & St-Onge, N. (2012). *Contours of a people: Metis family, mobility, and history*. Norman: University of Oklahoma Press.
- Chapter 9. In Foxcurran, R., Malette, S., & Bouchard, M. (2016). *Songs upon the rivers: The buried history of the french-speaking canadiens and metis from the Great Lakes and the Mississippi across to the Pacific*. Montreal: Baraka Books.

Readings for the seventh seminar (Successes and failures)

- R v. Hirsekorn, 2010 ABPC 385
- Nicole St-Onge and Carolyn Podruchny, "Scuttling along a spider's web: mobility and kinship in metis ethnogenesis" In Podruchny, C., Macdougall, B., & St-Onge, N. (2012). *Contours of a people: Metis family, mobility, and history*. Norman: University of Oklahoma Press.

Readings for the eighth seminar (Obligations)

- O'Toole, D. (2008). Metis claims to "indian" title in Manitoba, 1860-1870. *Canadian Journal of Native Studies*, 28(2), 241.
- Manitoba Metis Federation Inc. v. Canada (Attorney General), [2013] 1 SCR 623, 2013 SCC 14

Readings for the ninth seminar (the *Daniels* case)

- Charlotte A. Bell. "Beyond Space and Time — A Purposive Examination of Section 91(24) of the Constitution Act, 1867." In Mallet, M., & Wilson, F. (2008). *Métis-crown relations: Rights, identity, jurisdiction and governance*. Toronto: Irwin Law.
- Daniels v. Canada (Indian Affairs and Northern Development), [2016] 1 SCR 99, 2016 SCC 12

Readings for the tenth seminar (anxieties)

- Jacqueline Peterson. Red River redux: métis ethnogenesis and the Great Lakes region. In In Podruchny, C., Macdougall, B., & St-Onge, N. (2012). *Contours of a people: Metis family, mobility, and history*. Norman: University of Oklahoma Press.
- Chapter 16. The Métis from Ontario. In Ens, G. J., Sawchuk, J., & Scholars Portal. (2015). *From new peoples to new nations: Aspects of metis history and identity from the eighteenth to the twenty-first centuries*. Toronto [Ontario];London; Buffalo;: University of Toronto Press.

Reading for the eleventh seminar:

- Report: Canada's Residential Schools: The Métis Experience.

Conclusion:

- Joyce Green. Don't Tell Us Who We Are (Not): Reflections on Métis Identity. *aboriginal policy studies*, Vol. 1, no. 2, 2011, pp. 166-170.

6. DESCRIPTION OF EVALUATIONS

A. Oral presentation

Oral presentation will be 60 minutes long. They will discuss the material assigned to students from a critical perspective, highlighting the issues and concepts in a clear and concise fashion. The issue of Métis identity and the Law in relation to the weekly assigned reading should be central to the contribution. Presentation should aim for originality, clarity and theoretical sophistication. Following the presentation, the student will be in charge of leading the discussion in class. The usage of power point is encouraged. No media or film over 15 minutes is allowed.

B. Critical commentary on the question of Indigeneity in Canada (20%)

This short paper will consist of a critical commentary/analysis. This assignment will be based on a careful reading of chapter 1, from John Borrow's *Freedom and Indigenous Constitutionalism* (UofT, 2016). It requires an in-depth yet concise analysis of John Borrow's position, as well as a critical engagement with the notion of Indigeneity in relation to Law. The short paper will be between 1500-2000 words word-processed pages at 12, 1.5 line spacing, excluding endnotes, etc.). 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 referred to below. At least two extra references must be added to the paper to support your critical commentaries. (not from the reading material attached to the course)

C. Course paper on Métis Law and the question of what Indigeneity is in Canada (50%)

(a) General Requirements

The course paper is central to this course, 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's Law Resource Centre at D494 Loeb, Quicklaw, WestlaweCarswell, 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.

(i) **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. The topic will be determined/discussed on the first class.

(ii) **format**

The paper must be between 3500-4000 words (between 15-20 typed or word-processed pages at 12, 1.5 line spacing, excluding endnotes, etc.). 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* referred to below.

(iii) **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.

(iv) *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.

(v) *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 Dec 5, 2017, 5pm, and must be uploaded via CuLearn. 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. No credit is given for papers submitted after the University's final submission deadline.

(b) Research, writing, and 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, 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, 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).

6. DEPARTMENTAL POLICY AND PROCEDURE

For further instructions regarding prerequisites, assignments, and grading, etc., see the Department of Law and Legal Studies *Policy and Procedure Statement* and the relevant pages of the *Calendar*.