1. COURSE DESCRIPTION/PURPOSE

The purpose of the course is to provide students with exposure to and an understanding of major legal issues affecting Aboriginal peoples in Canada. This course is designed as an introduction to the laws and primary issues pertaining to the Aboriginal peoples of Canada – the Indian, Inuit, and Metis peoples. Students will also be introduced to some comparative aspects of Aboriginal law, particularly with regard to U.S. Federal Indian law.

A critical part of the understanding is developing an appreciation of the constitutional issues affecting Aboriginal peoples and their Aboriginal and Treaty rights. The development and critical examination of the foundational principles of historical and contemporary Aboriginal rights law will form the basis of the course. Many of these issues revolve around rights to land, but also traditional rights of sustenance and governance. Specific issues to be examined are listed below under “Topics.” These issues will be uncovered through a critical examination of relevant case law, academic commentaries, treaties, statutes, and other materials.

I do not presume any previous background in Aboriginal issues from students enrolled in the course. The emphasis in the course is on Canadian law pertaining to Aboriginal peoples, not Aboriginal customary law, which is derived from Aboriginal customs and traditions. That being said, Canadian law has evolved significantly in recent years and has attempted to incorporate Aboriginal ideas, customs, and traditions into Canadian Aboriginal rights jurisprudence. Notwithstanding this change, Canadian law and Canadian legal understandings remain paramount within this country’s Aboriginal rights jurisprudence. Students will have the opportunity to examine more specific elements of these larger issues, or issues not directly covered in class discussion, though their term papers.

2. LEARNING OUTCOMES

After taking this course, students will better understand and appreciate many of the foundational legal issues affecting Aboriginal peoples in Canada and the constitutional issues affecting them and their Aboriginal and Treaty rights. They will understand critical distinctions between Aboriginal and non-Aboriginal conceptions of land and land ownership, the meaning, structure, and implications of Aboriginal treaties, how Aboriginal and Treaty rights affect Aboriginal peoples’ use of land and resources, and the historical and contemporary nature of Crown-Aboriginal relations. They will be able to recognize distinctions among the various Aboriginal groups in Canada, understand differences between Aboriginal and Treaty rights, and appreciate the evolution of relations between Aboriginal peoples and the various governing bodies that have existed in Canada. Students will learn the impact of Canadian constitutionalism upon Aboriginal peoples and the
challenges faced by Aboriginal and non-Aboriginal peoples in the constitutional recognition and accommodation of Aboriginal and Treaty rights within the Canadian constitutional structure.

3. READINGS

Required course readings are found in the following materials:


Available in the bookstore.

Additional, shorter readings and handouts may be assigned as needed. Please check BBLOnline regularly for class updates and reading additions.

4. METHOD OF INSTRUCTION/CLASS PARTICIPATION

The course will be comprised of a combination of lectures, student presentations, and class discussion. I will generally lecture when introducing new material/concepts or at the beginning of new sections of the course. I hope to stimulate as much class discussion as possible by working with the materials and from the introductions I provide.

Students are expected to arrive in class on time and prepared to discuss assigned readings. Students should focus not only on the facts/issues raised by the readings, but should attempt to draw links or analogies between cases/issues to provide a greater context for understanding the development of applicable laws and policies. Although I generally do not direct specific questions at individuals, students should be sufficiently knowledgeable about the day’s readings to follow, initiate and participate in class discussion.

As indicated in “Method of Evaluation,” below, students will receive a participation grade in this class.

5. METHOD OF EVALUATION

The grading for this course will be comprised of 3 parts:

1. Research paper: 80% of the course grade;
2. Paper Topic Presentation: 10% of the course grade, and;
3. Class Participation: 10% of the course grade.

Paper Topics: Research paper topics need not be restricted to issues covered in class, but obviously need to have an Aboriginal law focus. They may look at single issues, comparative studies, or involve theoretical analyses. While not a course requirement, you may speak to me about your paper topic to ensure that it is feasible, there are adequate materials available, and that you have sufficient time to work on it. I am happy to assist you in selecting paper topics or to discuss your paper with you over the course of the term. I will read and comment on brief outlines, but not paper drafts, since that would restrict my ability to assist in the
development of paper topics and to assist students in teasing out particular issues or obstacles with their paper topics should they arise. I am happy to work with students to help ascertain or refine paper topics.

**Paper Length:** The length for the major paper will be a minimum of 25 pages, not including cover page, bibliography and appendices. There is no maximum length allowed for the paper, though in practice they will not normally exceed 40 pages in length. Subject to this guideline, the length of the paper ought to reflect the space required to create a cogently-argued and well-written piece adequate to the topic chosen.

Papers will be due on the last day of classes for the term, which is April 6, 2016, at noon. Late penalties will be assessed in order to maintain uniformity and fairness in grading among students: see [http://www.dal.ca/faculty/law/current-students/academic-regulations.html](http://www.dal.ca/faculty/law/current-students/academic-regulations.html).

Extensions or special accommodation for papers may only be granted in accordance with the following faculty policy:

**Students with Special Needs/Requests for Accommodation**

Requests for special accommodation for reasons such as illness, injury or personal circumstances will require an application to the Law School Studies Committee. Such requests must be made to Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes as soon as possible, before a scheduled exam or a deadline for an assignment. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require academic accommodation for either classroom participation or the writing of tests and exams should make their request to the Advising and Access Services Center (AASC) prior to or at the outset of the regular academic year. Please visit [www.dal.ca/access](http://www.dal.ca/access) for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at 494-2836, or they may contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information.

**Evaluation of Papers:** Papers will be assessed on the basis of a variety of factors, including analysis, argument, organization, insight, comprehensiveness of research, the ability to combine case precedent and academic commentary with your own thoughts, the ability to provide an even-handed discussion of the topic, and persuasiveness.

**Deadline for Submission:** Friday, April 6, 2016 by noon. **You are not to use your name or student number on the cover page. Your examination number is to be used instead,** in accordance with faculty policy.

Potential technical problems should be anticipated in advance by always backing up your work (i.e. having two copies), such as on a flash/thumb drive, and not waiting until the last minute to print your paper. The only guaranteed thing about technology is that it will fail and usually when you need it the most. Expect this and you will avoid problems that might adversely affect your grade in the course.
**Paper Requirements:** All papers MUST include the following:

1. a title page containing your examination number, **NOT:** (1) your name, or; (2) your student number;
2. a list of references (statutes and case law), and;
3. a bibliography [including all published and unpublished materials you refer to (other than statutes and cases), not just those cited in the footnotes].

**Citations:**

Papers are to use footnotes rather than endnotes. Footnotes must correspond to the McGill Style Guide. All case law citations must be made to printed sources where these exist rather than their electronic equivalents. Citations need not be to official reporters, but should be to major reporter series where possible (*i.e.* something in the library). Parallel citations are not required. Pinpoint cites are required (where applicable), either to official paragraph numbers or page numbers in reported judgments, but not to paragraphs or pages corresponding to electronic sources (since those may pertain only to those sources). Articles must also be cited to page numbers in their printed sources rather than to the web, SSRN or any other electronic database.

**General rule of thumb for citations and references:**

1. If you make specific reference to, or quote, a source (article, book, case, section(s) of a statute, etc.), it must be footnoted with a pinpoint citation (*i.e.* specific page, paragraph, or section reference);
2. If you make a general reference to a source, it should be footnoted, but to the source generally and not to any specific page, paragraph, or section number contained within it;
3. If your idea was informed by a source, but not by any specific element of it, the citation method in #2, above, should be used;
4. If you have used and footnoted a source, it should also be included in either the list of references OR bibliography, depending upon the type of source it is (refer back to the descriptions, above);
5. If you have read or perused a source, but have not footnoted it because it did not fall within any of the above rules of thumb, it should nonetheless still be included in either the list of references OR bibliography, as appropriate, because it formed part of your research leading to the production of your paper.
6. If you are still unsure about what to do, please consult with me or a reference librarian.

You must hand in both a hard copy and electronic copy of your paper in some readable format (e.g. on cd-rom, downloadable via thumb drive, or via e-mail attachment sent to my assistant, Cheri Macintosh: Cherilyn.MacIntosh@Dal.Ca). **Failure to provide BOTH a hard copy and electronic copy of your paper entails that the paper is not properly submitted and late penalties may be imposed.**
**Penalty for Late Papers:** 5 mark deduction out of 80 total marks available, as per the following rules: papers handed in on April 6, but after 12:00 p.m. and before 4:30 p.m. are considered to be one day late; papers submitted anytime on April 7 will be considered two days late and so on.

**Paper Topic Presentation:** Presentations are to be brief (5-10 mins.) overviews of your topic sufficient to inform the class about what your paper is about and may include your methodology, any working hypotheses, questions to be answered, theoretical analyses, etc. Each student is to print and distribute, or post to the course BBL site, a brief, point-form handout, 1-2 pages in length, before or at the time they begin their presentations to the class. Precise dates for student presentations will be determined according to the number of students enrolled in the class and the length of time necessary to hold all presentations.

**Class Participation:** The class participation grade assigned will account for regular attendance, discussion in class (assessed on the quality rather than quantity of participation), essay topic presentation and participation in practicums and other exercises.

6. **IMPORTANT INFORMATION ABOUT TERM PAPERS**

A major research paper, such as the paper in this course, requires a considerable amount of work thinking, researching, thinking some more, drafting, editing, re-writing, more editing, and spell-checking. It is not something that can be done properly (or well) at the last moment. The final details (re-reading the paper, editing, and spell-checking) are just as important as the initial researching and writing. Bearing this in mind, please regard the final stages of paper polishing as being on par with the more substantive researching and writing of the paper. You do not want the quality of your work marred by careless mistakes.

A useful discussion of important considerations when writing a term paper follows:

**WRITING RESEARCH PAPERS: 10 TOP TIPS**

By Marshall B. Kapp

*The Law Teacher* (Fall, 1999)

Virtually all law students write at least one legal research paper during their law school career, besides composing the usual array of briefs, memos, and legal instruments. In the experience of grading hundreds of legal research papers, I have accumulated an assortment of pet peeves and compiled a list of tips that other law teachers may find useful to share with their students at the outset of the writing endeavor. Most of these suggestions fall in the category of common sense, which is precisely why they need to be set forth explicitly. Here, I present my “top ten” list.

1. **Analyze and synthesize; don’t just paraphrase.**

Don’t thankfully latch onto one article directly on your topic, wish that you had written that very article, and then spend 25 pages just paraphrasing it, even with proper attribution (i.e., many footnotes, but most of them being id’s). In real legal practice, you will rarely be lucky enough to find one unassailable authority that
conclusively and unarguably resolves your issue. If you can find incontrovertible authority on “all fours” with your case, by all means rely on it. Most of the time, however, the law has to progress by analysis that synthesizes, mainly through analogy and distinction, different pieces of a puzzle. Research papers should reflect that complex process.

2. Avoid sweeping generalizations unless you can back them up with authority.

Legal writing involves argument and persuasion based on a reasoning process beginning with supportable premises, not the mere assertion of a proposition. Statements such as “Congress should repeal the ERISA preemption because all HMO executives care only about the bottom line” may be a hit on the political campaign trail but detract markedly from credibility in legal writing, unless supporting sources can be cited.

3. Avoid the “obvious.”

Unless you are making a really unassailable proposition, such as “The earth revolves around the sun,” using terms such as “obviously,” “clearly,” “of course,” “unarguable,” “simply,” “certainly,” and “well known” raise enormous red flags for the reader.

If you have authority for a proposition, cite it. If you don’t have any authority, perhaps the proposition is not as “obvious” as you thought. Besides, if your point is really that “obvious” to everyone, why waste time and space restating it? And, how can you be so sure that another lawyer won’t come along and disagree with the proposition that you thought was so “clear”? 

4. Name one.

Similarly, terms such as “any,” “several,” “numerous,” “some,” and “widely held” raise flags unless there is citation to examples. Think about how you would respond to a reader who sees such a term used, questions your accuracy, and demands, “Name one!” If you cannot, your bluff has been successfully called.

5. Don’t apologize for your positions.

You rarely need to preface your statements with introductory quasi-apologies or such equivocations as “In my opinion,” “I think,” “I believe,” or “I feel.” First, the reader of legal writing really doesn’t care what the author “thinks,” “believes,” or “feels.” In this genre, the only things that matter are what you can prove or logically support through reasoned analysis and argument.

Second, the reader automatically assumes that any proposition for which you do not cite authority must be your own opinion, so there is no need for the reminder. Just make your points and let them be evaluated for what they’re worth.

6. Any particular law in mind?

Avoid making broad statements such as “doing X is illegal” unless you can explain which specific statute, regulation, or common law rule is being violated, and why. Be especially cautious about making the claim
that “doing X is unconstitutional” unless you can back up that claim with one or more constitutional clause(s).

7. Cite primary sources.

In a legitimate legal discussion, even the least strict constructionists at least begin by examining and citing the relevant law itself. Constitutional clauses, statutes, regulations, and judicial decisions are the primary building blocks of legal analysis; everything else is, literally, commentary. You can’t write a good legal research paper based solely on citations to secondary sources such as law review articles and textbooks. You have to begin with the actual law. Then, you can argue about interpretation. Legal readers, in the first instance, want to know what the law itself says, rather than what some law professor has to say.

8. No gratuitous comments.

Legal writing is not the place for gratuitous comments (e.g., “We should not forget that...” or “Unfortunately, the court disagreed...”) or throwaway lines. Words are the attorney’s only tool, so law students must learn to write as though every statement counts. In the same vein, use of rhetorical questions (e.g., “Why, you might ask ...”) should be minimized in legal writing, in favor of declarative statements. The reader wants to know your position on the issues, and providing your position as an answer to a rhetorical question may strike many readers as a bit condescending or patronizing.

9. Keep the tone serious.

Legal writing does not have to be somber and boring. Indeed, it ought to be creative and interesting. Creativity and provocation must take place, however, within a serious tone. Certain techniques that may fit well into certain other forms of writing (e.g., humor, rhetorical questions, a “whiz bang!!” feel) detract from the purpose of a legal research paper, which is to persuade the reader to agree with – and ultimately to act upon – your argument. The worst criticism that can be leveled against an attorney is “He/she is dishonest,” but the next most devastating is “He/she’s a joke.” An attorney is of little value to the client if others won’t take the attorney seriously, and law students should learn how to begin to earn that respect through their writing style.


In Evidence and elsewhere in the curriculum, law students learn about presumptions and burdens of proof. When it comes to evaluating a law student’s – and eventually a practicing attorney’s – writing and the arguments being made in that writing, most readers start with a presumption that sloppy writing (e.g., misspellings, erroneous punctuation, noun-pronoun disagreement, grammatical mistakes) connotes sloppy thinking. Too many mechanical errors in a text can be so distracting that they obscure almost totally the argument the writer is trying to make. In today’s word-processing age, there is no excuse for turning in a paper that has not been thoroughly reviewed. The student can catch up on sleep after the paper has been submitted.
ABOUT THE AUTHOR:
Marshall B. Kapp teaches at both the Wright State University School of Medicine and the University of Dayton School of Law, 300 College Park, Dayton, OH 45469; (937) 775-3392; fax (937) 775-2851; marshall.kapp@wright.edu.

7. PLAGIARISM

All students in this course must read the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the http://academicintegrity.dal.ca/ website, and the Law School policy on plagiarism, as set out in the law school regulations, available online at http://www.dal.ca/faculty/law/current-students/academic-regulations.html. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Please note students are also required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

a) submit copies of multiple drafts demonstrating development of their work  
b) submit copies of sources  
c) submit an annotated bibliography

8. OFFICE HOURS AND COMMUNICATION

My office is located in Room W425 of the law school. My office phone number is (902) 494-4293.

I will maintain regular office hours this term on Wednesdays from 11:00 a.m. – 12:00 p.m. and from 2:00 p.m. – 3:30 p.m. I am also available to meet you at other times, by appointment or by chance. Students may also feel free to send me questions by e-mail at lrotman@dal.ca.

9. E-MAIL COMMUNICATION

Please ensure that all e-mail communication emanates from your Dalhousie e-mail address. This will reduce the chance of transmitting computer viruses or malware and avoid me mistaking your message as spam and deleting it. To assist with the latter, please indicate on the “RE: ” line of your message that you are in my Aboriginal Law class to avoid having me accidentally delete your message, such as “Re: Question from Aboriginal Law Student I.M. Confused.”
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<tr>
<th>Date</th>
<th>Topic</th>
<th>Assigned Readings</th>
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<tr>
<td>SEPT. 9</td>
<td>Introduction, Distribution of Syllabus</td>
<td>No readings, No readings</td>
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<tr>
<td>SEPT. 23</td>
<td>Aboriginal Governance</td>
<td>B/R, pp. 1-45</td>
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<td>OCT. 7</td>
<td>Getting to Know You ... Student introductions – who are you, why did you choose course, degree of familiarity with Aboriginal law?</td>
<td>No readings</td>
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<td>OCT. 21</td>
<td>Star Trek Voyager – “Death Wish”</td>
<td>No readings</td>
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<td>Discussion of “Death Wish”</td>
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<td>Aboriginal Rights</td>
<td>B/R, pp. 91-117</td>
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<td>Post-Sparrow Considerations of Aboriginal Rights</td>
<td>B/R, pp. 117-46</td>
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<td>NOV. 4</td>
<td>Post-Sparrow Considerations of Aboriginal Rights</td>
<td>B/R, pp. 146-79</td>
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<td>NOV. 18</td>
<td>Early Canadian Aboriginal Title Jurisprudence</td>
<td>B/R, pp. 210-36</td>
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<td>Modern Aboriginal Title Jurisprudence</td>
<td>B/R, pp. 236-82</td>
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<td>Alternatives to Aboriginal Title Litigation</td>
<td>B/R, pp. 282-9</td>
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<td>DEC. 2</td>
<td>Student Paper Presentations</td>
<td>No readings</td>
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<td>Brief, point-form, 1 page handouts; 5-10 minute presentations</td>
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<td></td>
<td>The Changing Face of Treaties</td>
<td>B/R, pp. 295-8</td>
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<td>Conceptualizing Crown-Native Treaties</td>
<td>B/R, pp. 298-329</td>
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<td>JAN. 6</td>
<td>Conceptualizing Crown-Native Treaties</td>
<td>B/R, pp. 298-329</td>
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<td>Modern Canadian Treaty Jurisprudence</td>
<td>B/R, pp. 329-48</td>
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<td>More Recent Considerations of Treaties</td>
<td>B/R, pp. 348-80</td>
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<td>Crown Obligations</td>
<td>B/R, pp. 437-43</td>
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<td>Crown-Native Fiduciary Relations</td>
<td>B/R, pp. 443-84</td>
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**FEB. 3**  
Crown-Native Fiduciary Relations  
Particulars of the Crown’s Fiduciary Obligations  
*B/R, pp. 443-84  
*B/R, pp. 484-516

**FEB. 17**  
**READING WEEK**  
**NO CLASS**

**MAR. 2**  
The Crown’s Duty to Consult  
*B/R, pp. 516-81

**MAR. 16**  
Inuit Rights  
*Métis Rights*  
*B/R, pp. 583-619  
*B/R, pp. 635-72

**MAR. 30**  
*Métis Aboriginal Rights*  
Federalism/Constitutional Issues  
*B/R, pp. 672-87  
*B/R, pp. 689-748

**APR. 6**  
Federalism/Constitutional Issues  
Abrogating/Derogating from Aboriginal Rights  
The *Charter* and Aboriginal Peoples  
*B/R, pp. 749-66  
*B/R, pp. 766-83

**APR. 6**  
**TERM PAPERS DUE**

Term papers are to be submitted to my assistant, Cheri Macintosh. **You are to use your examination number, not your name or student number, on the cover page.** Penalties for late papers are detailed above.