

## Indigenous Governance (Winter 2019)

**Class time:** Wednesdays, 2:30 pm to 4:20 pm, Room 411  
**Professors:** Constance MacIntosh & Naiomi Metallic  
**Office:** 321 / 424  
**Tel:** 494-3554 / 494-4500  
**Email:** [constance.macintosh@dal.ca](mailto:constance.macintosh@dal.ca) / [naiomi.metallic@dal.ca](mailto:naiomi.metallic@dal.ca)  
**Office hours:** By appointment (eg – send us an email suggesting 2 or 3 potential times over a 2-3 day period).

This seminar course is intended for students who want to obtain a deeper appreciation of governance systems and structures that currently apply to First Nation communities pursuant to the *Indian Act* and other federal legislation and policy, spanning areas such as elections, the exercise of Band Council authority through resolutions and by-laws, membership, essential services program devolution, land issues and economic development, employment and human rights issues on reserve, and dispute resolution mechanisms. This course will also examine systems beyond the *Indian Act*, including systems that First Nations communities are currently engaging in and aspiring towards, such as self-government and greater implementation of customary and Indigenous law. This course will be useful for students who intend to work closely with First Nations communities or organizations and government departments servicing those communities. As opposed to being a general survey of the legal and policy issues affecting Indigenous Peoples in Canada, like the Aboriginal Peoples and the Law course, this course will make governance issues affecting First Nations communities its focal point.

### Required materials:

Chapters for each class will be uploaded to Brightspace. Supplemental materials may also be distributed to students for guest lectures.

### Class Schedule: Indigenous Governance, Winter 2019

Jan 9	Indigenous Governance in Canada – Past, Present and Future	Ch 1
Jan 16	Indigenous Governance in a Comparative Context	Ch 2
Jan 23	The Road to Self-Government in Canada <i>Tips on researching and writing a major paper</i>	Ch 3
Jan 30	Rediscovering / Implementing Indigenous Law, Jurisdictions and Institutions	Ch 4
Feb 6	Formation of Indigenous Governments	Ch. 5
Feb. 8	<i>Major Paper Proposal due by 3 pm</i>	-
Feb 13	Powers of Indigenous Governments	Ch 6

Feb 20	<i>NO CLASS – READING WEEK</i>	-
Feb 27	Essential Service Delivery & Program Devolution	Ch. 7
Mar 6	Financing of Indigenous Governments Guest Speaker: David Laidlaw on Joint Stewardship (2 <sup>nd</sup> hour)	Ch. 8
Mar 13	Economic development and taxation issues <i>Short in-class presentations on major paper (part 1)</i>	Ch. 9
Mar 20	Liabilities of Indigenous Governments <i>Short in-class presentations on major paper (part 2)</i>	Ch. 10
Mar 27	Membership, Citizenship and Residency <i>Short in-class presentations on major paper (part 3)</i>	Ch 11
Apr 3	Land Management, Housing and Matrimonial Property <i>Any remaining presentations</i>	Ch 12

### **Evaluation:**

1. Class participation: 10%
2. Reaction papers: 15%
3. Major Paper proposal and short presentation on topic: 5%
4. Major paper: 70%

#### ***1) In-Class Participation (10%)***

You will be evaluated on the basis of the on-going quality of your contributions to class discussions and group exercises and activities at each class throughout the semester. This will consist of demonstrated preparedness for informed discussion, willingness to contribute and to make space for others to contribute, informed and respectful responsiveness to the contributions of your classmates, relevance of your comments to the topic at hand, and attendance.

#### ***2) Reaction papers (15%)***

Each student will write a brief paper in response to the assigned readings materials for **THREE (3)** of the classes. At the first class, a sign-up sheet for class reaction papers will be made available at the break and students will be required to identify which classes they will write discussion/reaction papers for. The number of students who can sign up for each class will be limited to six.

The purpose of assigning these papers is three-fold:

- (1) To make it more likely everyone will arrive ready to discuss the materials at a more sophisticated level.

- (2) To give students feedback on their writing before they are required to write a major research paper.
- (3) To give students the opportunity to more explicitly shape class discussion – indeed, you may be asked to lead class discussion on issues raised within your reaction paper.

The discussion/reaction papers are to be 2 pages in length, double-spaced, and must be **emailed to the instructors by noon on the MONDAY before the class on the materials in question is to be held**. *Late discussion papers will not be accepted for evaluation purposes*. The papers may be anonymously circulated to class members and guest speakers.

**Content of discussion/reaction papers:** Discussion/reaction papers are not descriptive summaries of the assigned readings, nor are they a ‘case comment’ which (for example) just explains the ratio of a decision. **They must:**

- 1) identify one or more issues about the set of assigned materials which you would like to see brought up in class,
- 2) **explain why** this issue merits spending class time on it
- 3) offer a tentative **exploration** of the issue.

Reaction papers can address pragmatic or analytic issues. For example, you may have concluded that legislation or policy guidelines appear to be challenging to successfully implement (or, once implemented, that they may not address the issue that lead to their enactment.) In this case you may argue there is value in class discussion because we need to be prepared to give clients guidance on how to work with the deficiencies, or to lobby for change (and you will also need to be clear as to where the legislation/policy falls short). Alternatively, you may see opportunities that communities appear to have not yet acted upon, and so wish to discuss the practical aspects of how to enable communities to activate those opportunities. As to analytic concerns, some readings may disturb you because they (for example) appear to show a system which perpetuates dependence or is premised on Indigenous communities requiring undue levels of oversight. Other readings may suggest the power of anti-colonial strategies, leading you to wish to bring up how ideological assumptions play out in guidelines and practices. ***In all cases, your response must demonstrate a critical engagement with a substantive aspect of the assigned materials. No value will be awarded for just providing descriptive summaries of the materials.***

### ***3) Major Paper proposal and short (3-5 min) presentation on topic: 5%***

#### ***a) Paper Proposal: Due Friday, February 9, 2019, by 3 pm***

Please note that all paper proposals must be approved by the instructors. Students are to hand-in a written 1-2 page proposal, meeting the criteria set out below. The proposal is to be emailed to the instructors at [constance.macintosh@dal.ca](mailto:constance.macintosh@dal.ca) and [naiomi.metallic@dal.ca](mailto:naiomi.metallic@dal.ca). This proposal must clearly identify:

- the proposed paper topic,
- the anticipated thesis,
- why the paper topic is relevant,
- a point-form outline of issues which the student expects to address, and

- a preliminary bibliography of sources.

We will review all proposals and give feedback on those submitted by the deadline. Student will receive credit (up to 3%) for submitting their proposal by the deadline and for addressing the criteria set out above. (Students will not be graded on the *substance* of their paper proposal.)

We will devote a portion of Class 3 on how to research / write a major paper and major paper proposal. Students have a broad range of choice of paper topics, however, please avoid choosing a topic that is too broad, does not engage a substantive body of jurisprudence, is too descriptive, or is too repetitive of materials covered in other classes. We are happy to meet with any student who may want to brainstorm topics in advance of the deadline of the paper proposal.

***b) Short, in-class presentation on paper topic: March 13, 20, 27 (and potentially April 3)***

After students' major paper proposal have been submitted and returned, we will devote half of several classes to having each student present on their paper topic. You will have a total of 10 minutes. Presentations should be short (around 5 minutes in length, with remaining time for questions and discussion). Students may prepare a **1 page handout** of their paper (i.e, an outline). Students are NOT expected to prepare a PowerPoint presentation. This is intended as an opportunity to obtain feedback and suggestions from your peers on your proposed paper. The best presentations are ones where the student avoids reading their paper outline, and instead tells us what their argument is, why it is important, key elements of how they support their argument, and indicate what aspects of the paper they want feedback on.

***4) The Major Paper: Due by Friday April 12, 2019 at 3 pm***

**Papers must be submitted in paper form and electronically by the due date and time.** Submit a hard copy to reception (Julie Harnish's office, on the 1st floor), and ensure it is date/time stamped. Email the instructors a copy at [constance.macintosh@dal.ca](mailto:constance.macintosh@dal.ca) and [naiomi.metallie@dal.ca](mailto:naiomi.metallie@dal.ca) by the due date and time. Late papers will be penalized, pursuant to a penalty to be determined by the Studies Committee.

Papers will be evaluated according to the Faculty of Law's Major Paper Guidelines, which identifies the following key criteria: (a) research, (b) organization: logic/coherence, (c) analysis-insight-synthesis, (d) literary style and (e) originality. The Guidelines are reproduced in the Law Calendar. **Please review the Guidelines to ensure you understand the basis for evaluation.**

**Research Support:** One class may be a research skill refresher session, held at the library and lead by a research librarian. It will be tailored to researching Indigenous governance issues. Students are also invited to book a one-on-one personal one-hour long research planning session with either Mark Lewis or David Michels. This session should be booked after you have a fairly decent idea of your specific research project. [david.michels@dal.ca](mailto:david.michels@dal.ca); [mark.lewis@dal.ca](mailto:mark.lewis@dal.ca)

**A note on sources:**

\*Where a document is available both on the web/internet and in paper format, **the paper format must be referenced** unless the electronic format has page or paragraph numbers which allow for

pinpoint citations. For example, references to the on-line *Royal Commission Report on Aboriginal Peoples* are not acceptable. As well, students are responsible for ensuring that any on-line “publication” cited in your paper (as evidence of a fact, to illustrate support for or against an argument, etc.,) is reliable for the purposes for which you cite it.

### Student Requests for Accommodation

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean Michael Deturbide or the Director of Student Services as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require medical documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) 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.

### Submission of Papers - Policy on Use of Originality Checking Software

Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties: <https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

Please note students may also be 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

### Plagiarism

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <http://www.dal.ca/faculty/law/current-students/jd-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.