



**DALHOUSIE  
UNIVERSITY**

SCHULICH SCHOOL OF LAW

## **Aboriginal Peoples and the Law / LAWS 2280.3** Winter 2019

**Class hours:** 11:00 am – 12:20 pm (Weldon room 204)

**Instructor:** Naomi Metallic

**Office:** W 424

**Office Phone:** 902-494-4500

**Office Hours:** By appointment (send me a email if you want to meet)

**Email:** [naomi.metallic@dal.ca](mailto:naomi.metallic@dal.ca)

### **Course Description**

The purpose of the proposed course is to provide students with exposure to and an understanding of major legal issues affecting Indigenous peoples in Canada. This course is designed as an introduction to the laws and primary issues pertaining to the Indigenous peoples of Canada. Students may also be introduced to some comparative aspects of Aboriginal law, particularly with regard to U.S. Federal Indian law, experiences in other parts of the world, and with the U.N. Declaration on the Rights of Indigenous Peoples.

The course will examine the foundational principles of historical and contemporary Aboriginal rights law. Some of these issues revolve around rights to land, but also traditional rights of sustenance, governance, human rights, service delivery, international law, and reconciliation. Interaction with the federal and provincial levels of government will also play a critical role, regarding, for example, treaty issues, reserve creation, and legislative matters. We will build upon the foundation which students are exposed to in Constitutional Law, in particular. These issues will be uncovered through an examination of relevant case law, treaties, statutes, and other materials.

The emphasis in the course is on Canadian law pertaining to the Aboriginal peoples of Canada, not Indigenous law, which is derived from legal traditions of Indigenous peoples. That being said, Canadian law has evolved significantly in recent years and has attempted to incorporate Aboriginal perspectives, laws, customs, and traditions into Canadian Aboriginal rights jurisprudence. The course will thus engage with this transition, while not purporting to train students in Indigenous law itself.

### **Learning Management System Site Information**

Course materials, class Powerpoints and other class materials will be posted to Brightspace. Class announcements will also be posted to Brightspace, as well as sent to students by email (via Brightspace).

## Required Readings

1. John J. Borrows & Leonard I. Rotman, *Aboriginal Legal Issues: Cases, Materials & Commentary*, 5<sup>th</sup> ed.
2. A *Statutory, Policy and Treaty Supplement*, available as a pdf on Brightspace.
3. Occasionally, some classes will include additional readings that will be posted/linked on Brightspace.

## Additional References Resources

The most comprehensive and up-to-date doctrinal text on Canadian law affecting Indigenous peoples is **Jack Woodward's loose-leaf entitled, *Native Law***. It is available at the Dunn Library (KB 79 .I6 W911 vol. 1 and 2).

Another useful doctrinal text is **Shin Imai's 2017 *Annotated Aboriginal Law: the Constitution, Legislation and Treaties***. It is available at the Dunn Library (KB 79.16 A611).

For a comprehensive text on Métis issues, see **Jean Teillet's *Métis Law in Canada***. It is available at the Dunn Library (KB 79.16 T26).

Occasionally, I will posted additional resources (news articles, scholarly articles, reports, etc.) for your information on Brithtspace.

## Class Schedule

Class #	Date	Topic
1	January 8	The Relationship Begins
2	January 10	The <i>Indian Act</i> : Past and Present
3	January 15	Federalism 1
4	January 17	Federalism 2
5	January 22	Crown Obligations 1
6	January 24	Crown Obligations 2
7	January 29	Aboriginal Rights 1
8	January 31	Aboriginal Rights 2
9	February 5	Aboriginal Title 1

10	February 7	Aboriginal Title 2
11	February 12	Treaty Rights 1
12	February 14	Treaty Rights 2
13	February 26	Treaty Rights 3
14	February 28	Duty to Consult 1
15	March 5	Duty to Consult 2 <i>Guest lecturer – David Laidlaw</i>
16	March 7	Governance 1
17	March 12	Governance 2
18	March 14	Governance 3
19	March 19	Identity & Equality Issues 1
20	March 21	Identity & Equality Issues 2
21	March 26	Child Welfare
22	March 28	Taxation
23	April 2	Criminal Law 1
24	April 4	Criminal Law 2
	<i>April 16</i>	<i>Final Exam</i>

## Evaluation

### 1) Access to Justice Project - 25%

- Due date: **Monday, March 11, 2019 by 12:30 pm** by email to [naomi.metallic@dal.ca](mailto:naomi.metallic@dal.ca).
- This assignment takes account of the significant need for education and legal information in the area of Aboriginal law, both by members of the general public and by members of Indigenous community (as well as by many members of the legal profession).
- **Students will design and delivery an access to justice work project to provide legal information on an area of Aboriginal law.**
- The project can take the form of:

- A pamphlet
  - A Question & Answer document
  - A Guide or Toolkit
  - A podcast
  - A video presentation
  - A comic strip or animation
  - Any other format with my approval
- The goal of these projects is to explain an area or topic within Aboriginal law in a clear, understandable and engaging way in order to assist persons who are not legally trained gain a better appreciation of the topic. For example:
    - A project could convey how taxation of First Nations peoples works.
    - A project could explain how courts recognize treaty rights and challenges that exist for Indigenous peoples in proving their treaty rights.
    - A project could unpack the significance of a major court decision (so long as the student situates the case in the larger context in which it fits in Aboriginal law).
    - A project could provide a summary of the content of a statute or regulation that impact on Aboriginal people.
    - A project could explain a current governmental law, policy or initiative and provide some initial critical assessment of it (e.g., the proposed Indigenous Language Rights bill).
  - Depending on the topic chosen, student may wish to undertake some additional research beyond materials in class in order to prepare their projects.
  - Written products should generally be between 2 to 5 pages (doubled-spaced, 12-point font), and audio/visual products should be no longer than 10-15 minutes in length.
  - Students may work on projects individually or in groups of 2 or 3 (but note that students in groups will all receive the same grade).
  - Projects will be assessed on the following criteria:
    - Accessibility to a non-legal audience (information conveyed clearly, concisely and in plain language).
    - The material is presented in an engaging way, such that it will hold the attention of non-legal readers.
    - The information provided is accurate and complete (balanced with the need to convey the information in an accessible and engaging way).
  - Students who do well on the assignment will be invited to have their project shared with the public online through posting on the Chancellor's Chair of Aboriginal Law and Policy website.

- Students must submit a **proposal** for their project no later than **Monday, February 11, 2019, 12:30 pm** by email to [naiomi.metallic@dal.ca](mailto:naiomi.metallic@dal.ca). Proposals should contain the following:
  - Whether students is doing an individual or group project (only one proposal need be submitted for a group project).
  - Identify the subject matter of the project and a one-paragraph description of the manner in which the legal information will be covered and anticipated content, including any additional research the student(s) intend to undertake.
  - Any particular technology requirements for the project and whether the student(s) requires any assistance or equipment to complete the project. Dalhousie students have access to a number of applications through Brightspace and Dal Online that can be accessed (e.g., Panopto, PowerPoint, etc.).

## 2) Final Exam — 75%

- Date and time: Tuesday, April 16, 2019, 9:30 am to 1 pm (3 hours + 30 minutes reading time)
- Examinable material: all assigned reading and all content and material addressed in class.
- Open book: Students will be permitted to bring into the exam hard copies of the course materials, and their notes.
- Using exam4 software

## Inclusivity

Dalhousie University is committed to a welcoming and respectful working and learning environment that is free from harassment and discrimination. We encourage open dialogue, however members of the class are expected to refrain from speaking or behaving in ways that are harmful to others, through racism, homophobia, sexism, or other derogatory treatment based on characteristics protected under the Nova Scotia *Human Rights Act*. Please do not hesitate to speak with me if you have questions or concerns, or see [www.dalrespect.dal.ca](http://www.dalrespect.dal.ca) for further information on resources and supports.

## Mi'kmaq Land Acknowledgement

Dalhousie University is situated in Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq People. This territory is covered by the “Treaties of Peace and Friendship” which Mi'kmaq and Wolastoqiyik (Maliseet) people first signed with the British Crown in 1725. The treaties did not deal with surrender of lands and resources but in fact recognized Mi'kmaq and Wolastoqiyik (Maliseet) title and established the rules for what was to be an ongoing relationship between nations.

## **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, Academic Michael Deturbide or the Director of Student Services and Engagement Dana-Lyn Mackenzie as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require 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 (902) 494-2836.

## **Submission of Major Papers and Assignments**

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.

### **Additional Student Resources**

- General Academic Support – Advising Halifax:  
[https://www.dal.ca/campus\\_life/academic-support/advising.html](https://www.dal.ca/campus_life/academic-support/advising.html)
- Fair Dealing Guidelines <https://libraries.dal.ca/services/copyright-office/guidelines/fair-dealing-guidelines.html>
- Student Health Services - [https://www.dal.ca/campus\\_life/health-and-wellness.html](https://www.dal.ca/campus_life/health-and-wellness.html)
- Counselling- [https://www.dal.ca/campus\\_life/health-and-wellness/frequently-asked-questionsaugust-2017.html](https://www.dal.ca/campus_life/health-and-wellness/frequently-asked-questionsaugust-2017.html)