

Advanced Aboriginal Peoples & the Law Seminar (Fall 2018)

Class time: Mondays, 4: to 5:50 pm, Room 308

Professor: Constance MacIntosh

Office: 329

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Office hours: By appointment

This course is designed to familiarize students with the current moment in Aboriginal law. The majority of the classes will work with commentary on topics such as property interests, identity and citizenship, juries and other interactions with criminal justice, tensions associated with extractive industries and Aboriginal rights, inquests and inquiries, essential services delivery such as clean water, reconciliation, and resurgence. The thematic question we will engage throughout the course is whether existing jurisprudence and policy enable or impede the development of a healthy and just relationship between Aboriginal peoples, the Canadian public, the State, and industry, and between various Aboriginal peoples themselves. This, of course, raises the question of what a healthy and just relationship looks like.

Required materials: See Class Reading List. All readings will be uploaded to Brightspace.

Class Schedule: Aboriginal Peoples - Fall 2018

Class #	Date	Topic
1	Sept. 10	National & International Context, From RCAP to the Reconciliation Framework – Note we will be leaving the law school by 4:10 to walk over to the Provincial Archives, and then returning to the law school at approximately 5 pm for the remainder of our classtime.
2	Sept. 17	Intersections with Criminal Justice
3	Sept. 24	Essential Services: Spotlight on Reserve Water Quality & <i>Tips on researching and writing a major paper</i>
4	Oct. 1	Equality & Recognition
-	<i>Oct. 8</i>	<i>No class – Thanksgiving Holiday</i>
5	Oct. 15	Extractive Industries
6	Oct. 22	Property Interests
	<i>Oct. 24</i>	<i>Major paper proposal due by 3 pm</i>
7	Oct. 29	Section 35, Reconciliation & Resurgence
8	Nov. 5	Inquiries and Inquests

-	Nov. 12	No class – Reading Week
9	Nov. 19	Indigenous Law (Note: If we have more than 12 students we will likely add a few in-class presentations on major paper to the end of today’s class)
10	Nov. 26	Short in-class presentations on major paper (part 1)
11	Dec. 3	Short in-class presentations on major paper (part 2)
-	Dec. 13	Major Paper Due by 11am

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 during 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 capped.

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 me at constance.macintosh@dal.ca by 4pm on the SATURDAY before the class on the**

materials in question is to be held. *Late discussion papers will not be accepted for evaluation purposes.* Early submissions are welcome.

Content of discussion/reaction papers: Discussion/reaction papers are not descriptive summaries of the assigned readings. They are to show your engagement with the full set of assigned readings. (I.E. Commenting on one article, in isolation, is not sufficient). They must:

- 1) Explicitly identify one or more **issues** arising from 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 discuss how one or more of the readings (a government policy or proposal, or position advanced in a journal article or legal brief) may serve to improve or risks damaging Crown-Indigenous relations, or advances Indigenous rights or interest (or, alternative, the position of the Crown). As to analytic concerns, some readings may perplex you because you believe them inconsistent with precedents, or alternately may cheer you because you believe the reasoning is sound and helpful. Similarly, you may wish to speak to a factor or ideological assumption which you see as underlying a policy or journal article but which remains unstated. Or, you may want to directly respond to or challenge a position set forth in a government policy or journal article. ***In all cases, your response must demonstrate a critical engagement with a substantive aspect of the assigned materials. No value will be awarded for descriptive summaries of the materials.***

3) Major Paper proposal and short presentation on topic: 5%

a) Paper Proposal: Due Wednesday, October 24, 2017, by 3:30 pm

Please note that all paper proposals must be approved by the instructor. Students are to hand-in a written 1-2 page proposal, meeting the criteria set out below. The proposal is due **Tuesday, October 24, 2017**, by 3:30 pm, to be emailed to constance.macintosh@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.

I will review all proposals and give feedback. Student will receive credit 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, to 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. I am 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: November 26 and December 3

After students' major paper proposal have been submitted and returned, in Classes 10 and 11, each student will have approximately **12-15 minutes** to present and receive feed-back on their paper topic. (Students are NOT expected to prepare a PowerPoint presentation, although you may find it helpful to have a one page outline). This is intended as an opportunity to obtain feedback and suggestions from your peers on your paper. Please allocate your time such that you present for 7-8 minutes and then have 7-8 minutes for dialogue. Students will receive full credit (2%) for simply participating.

4) The Major Paper: Due Thursday, December 13 by 11 am

Papers should be submitted to me both in hard copy and electronically at my email address, constance.macintosh@dal.ca. 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.** To review the "Major Paper Guidelines" to go https://www.dal.ca/content/dam/dalhousie/pdf/law/Academic%20Information%20Syllabi%20Moots%20Regulations/major_paper_guidelines.pdf.

Research Support: One class is schedule to 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; mark.lewis@dal.ca

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 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

3. 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.