

LAWS 2120.03

Aboriginal Peoples (Winter 2009)

Class time: Thursdays, 4:30 – 6:30, Room 308

Professor: Naiomi Metallic

Office: Burchell Hayman Parish, 1801 Hollis Street, Suite 1800

Tel: 428-8344

Email: nmetallic@burchells.ca

Office hours: By appointment (send me an email) and I am also happy to stick around after class to meet with students.

This course is designed to familiarize students with the current moment in Aboriginal law. In the initial classes, we will set the stage for understanding the broad, political, historic and cultural context in which contemporary issues arise. The majority of classes, however, will engage with recent jurisprudence that illustrate and defines the relationship and obligations between Aboriginal peoples, the Canadian state, industry, the public, as well as between Aboriginal peoples themselves. The thematic questions which we will engage throughout the course are (1) the limitations and strengths of law as a tool for shaping a just and healthy relationship, (2) what a just society looks like, and (3) 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.

Evaluation:

Major paper: 75%

Reaction papers: 15%

Class participation: 10%

Please see attached guidelines regarding the major paper and reaction papers.

Required materials:

There is a casebook for this class (2007-2008 Aboriginal Peoples casebook). There will be times when readings in the casebook will be supplemented or replaced by material provided as handouts. Changes to the reading list will be announced, and handouts provided, in class a week in advance.

Supplemental materials may also be distributed to students for guest lectures.

Course schedule:

Please note that this entire schedule is subject to amendment, at the instructor's discretion.

Jan. 8	Introduction	
Jan. 15	Aboriginality	Ch. II & Ch. III
Jan. 22	Equality and Charter Issues	Ch. IV
Jan. 29	Residential Schools	To be distributed
Feb. 5	The Fiduciary Relationship	Chap. V
Feb. 12	Consultation with the Crown and Industry	Chap. VI
Feb. 13	Major Paper Proposal Due	
Feb. 19	Criminal Justice	Chap. VII
Feb. 26	Reading Week – No Class	
March 5	Aboriginal Title	Chap. VIII
March 12	Self-Government	Chap. IX
March 19	Oral History	Chap. X
March 26	Taxation, Garnishment and Seizure	Chap. XI
April 2	Class Cancelled	
April 3	Major Paper Due	

Guidelines for Major Research Paper (value 75%)

1) Paper Proposal: due Friday, February 13, 2009, by noon

Paper topics must be approved by the instructor. All students must submit, in writing, a 1-2 page paper proposal on or before Friday, February 13, 2009, at noon. The proposal is to be email to the instructor at nmetallic@burchells.ca.

The proposal must clearly identify:

- a) the proposed paper topic;
- b) the anticipated thesis;
- c) why the paper topic is relevant;
- d) a point-form outline of issues which the student expects to address; and
- e) a preliminary list of primary and secondary sources.

I will review the proposals and assess whether your chosen topic is appropriate as the subject of a major paper. I will also give you feedback on your outline and list of sources. Students who fail to submit a paper proposal may run the risk of choosing an inappropriate topic, which will result in poor performance. Examples of what can constitute an inappropriate major paper topic include: a topic which is too broad, does not engage a substantive body of jurisprudence, is too descriptive, or in the judgment of the instructor is repetitive of materials covered in other classes.

2) Major Paper: due Friday, April 3, 2009, by 4 pm

Papers must be submitted in hard copy at the Law School's reception by 4 pm on Friday, April 3, 2009. Please ensure that your papers are date/time stamped. 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.**

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* is not acceptable. As well, as it is very easy to post text to the internet, 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.

Plagiarism:

All students in this course must read

- the University policies on plagiarism and academic honesty referenced in the Policies and Student Resource sections of the plagiarism.dal.ca website, and
- the Law School policy on plagiarism, as set out in the Law School Regulations (available in hard copy from the Associate Dean's office and online at: http://law.dal.ca/current_students/course_selectin_materials/regulations_handbook/ or
- the Orientation Handbook (provided to all first year students and available online at http://law.dal.ca/Files/First_Year_Handbook_2006-2007.pdf

Any paper or assignment submitted by a student at Dalhousie Law School 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, 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.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.

MELP Certificate:

Students who wish to use this course for MELP purposes must have their paper proposal approved both by myself as well as by the MELP Director.

Guidelines for Reaction Papers (15%)

Each student will write a brief paper in response to the assigned readings materials for **THREE (3)** of the classes.

The purpose of assigning these papers is three-fold. First, to make it more likely that students will arrive at class ready to discuss the materials at a more sophisticated level. Second, to give students feedback on their writing before being required to write a major research paper. And third, to give students the opportunity to consciously shape class discussion as you may be asked to lead class discussion on issues raised within your reaction paper.

The reaction papers are to be 2-3 pages in length, double-spaced, and must be **emailed to the instructor by noon on the Tuesday before the relevant class**. *Late commentaries will not be accepted for evaluation purposes*. The reaction papers may be circulated to class members.

Content of reaction papers:

Students are to identify one or more issues, concerns or questions about the assigned materials which you would like to see brought up in class, and explain why this issue merits spending class time on.

Reaction papers can address pragmatic or analytic issues. For example, you may have concluded that the court directions in a certain case to First Nations or to the Crown appear to be impossible to implement (or, once implemented, that they will not address the problem that led the parties to litigate in the first place!). In this case you may argue there is value in class discuss because we need to be prepared to give clients guidance on how to comply with the law, but you will need to be clear as to where the directions from the court falls short. As to analytic concerns, some readings pay perplex you because you believe them inconsistent with precedents, or alternatively may cheer you because you believe the court's reasoning soundly advances the jurisprudence. Similarly, you may wish to speak to a factor or ideological assumption which you see as guiding the outcome in cases but which remains unspoken in the reason themselves. **In all cases, your reaction paper must demonstrate a critical engagement with the assigned materials. No value will be awarded for descriptive summaries of the materials.**

Where possible, I will draw upon your discussion points and may ask you to draw upon your reaction paper and introduce or lead discussion.

Students with Disabilities

Dianne Pothier is the Faculty Advisor to students with disabilities. Students with disabilities must self-identify to Professor Pothier if they have any in-class or study concerns or needs. Students with disabilities who wish to request accommodation regarding exam writing or other aspects of evaluation must make the request in writing to the Studies Committee. For information about accommodation, students should speak to Professor Elizabeth Hughes or Associate Dean Michael Deturbide. Material for the Studies Committee can be given to Gwen Verge.

