



INTERNATIONAL INDIGENOUS STUDIES PROGRAM

*INDG 343 L01 – Fall 2019
Indigenous Law in Canada*

Course Day/ Time:	Mondays 17:00-19:45
Course Location:	SS 010
Instructor:	Nathalie Whyte
Telephone:	403.400.5173
Office:	SS 721
Email:	nathalie.whYTE@ucalgary.ca
Office Hours:	by appointment

COURSE DESCRIPTION:

Examination of the special legal and constitutional principles, provisions and instruments that have an impact on Indigenous individuals, governments and organizations. Topics covered may include Aboriginal rights, Treaty rights, self-government, fiduciary duties, the Royal Proclamation of 1763, the Indian Act, the 1982 Constitution, and pivotal court decisions.

COURSE OBJECTIVES & LEARNING OUTCOMES:

Aboriginal and Treaty rights law in Canada is a specialized area of law. This course will look at how Aboriginal and Treaty rights are addressed in Canadian common law. This course will aim to combine some of the theoretical (decolonization, critical legal theory) with the practical (procedure, process, case studies). Students will gain a general understanding of the laws in Canada as they apply to Aboriginal and Treaty rights, as well as various legal processes.

Students will engage in a critical analysis of the Canadian legal system, and be able to identify some of its limits and constraints as well as future possibilities. Students will begin to learn legal reasoning skills and how to access resources to enable them to continue to learn in this area of law.

Course content may be provided through class lectures, assigned readings, in-class discussion, film, and/or guest lecturers.

REQUIRED TEXTBOOK(S):

Lorraine Land and Matt McPherson, eds. *Aboriginal Law Handbook*, 5th ed (Toronto: Thomson Reuters Canada Limited, 2018)

- This textbook is available for purchase at the campus bookstore, it is also available at the University Library – reserve/desk for 2-4 hour holds.

Other course readings will be posted to D2L

COURSE COMPONENT WEIGHTS AND DUE DATES:

COMPONENT	WEIGHTING	DUE DATES
Attendance / Participation	10%	ongoing
Case Brief	20%	October 21, 2019
Essay	45%	November 30, 2019
• Essay Topic and Outline		BY October 25, 2019
Self / Class reflection	25%	December 3, 2019
Total	100%	

COURSE SCHEDULE & TOPICS: Please note - the schedule is tentative and may change as the need arises. In addition, further readings may be posted to D2L.

1	September 9	Introduction to the Course
•	Review course syllabus	
•	Film: Kanehsatake: 270 Years of Resistance by Alanis Obomsawin (2 hours)	
2	September 16	Colonization, Decolonization, Critical Legal Theory – Context and Analysis
•	Required Readings:	
	○ Textbook - Chapters 1 pp. 1-12, Chapter 9 pp. 211-217	
	<u>At least one of the following:</u>	
	○ D2L - Peter McFarlane and Nicole Schabus eds. <i>Whose Land Is It Anyway? A Manual for Decolonization</i> edited by, 2017 Federation of Post-Secondary Educators of British Columbia.	
	○ D2L - Monture-Angus, Patricia. <i>Locating Aboriginal Peoples in Canadian Law: One Aboriginal Woman's Journey Through Case Law and the Canadian Constitution.</i> Law Thesis (LLM) York University, Toronto: 1988 Chapters 1 and 5	
	○ D2L - Tracey Lindberg. <i>Critical Indigenous Legal Theory.</i> PhD Thesis, Faculty of Law, University of Ottawa. Ottawa: 2007 PP. 109-129 (Indigenous Analysis)	
	○ D2L - Carol Alyward. <i>Canadian Critical Race Theory: Racism and the Law,</i> Halifax: Fernwood Publishing, 1999, Chapters 1,4,5	

3	September 23	Terms, Legal Resources - Case Brief Exercise
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- Required Readings:
 - D2L: Margaret McCallum, Deborah Schmedemann, Christina Kunz. *Synthesis: Legal Reading, Reasoning, and Writing in Canada*, 4th Edition. LexisNexis Canada, 2017 Chapter 3
 - D2L: *Canadian Guide to Uniform Legal Citation*, 9th ed (Toronto: Thomson Reuters, 2018), a.k.a. the *McGill Guide*
 - Online: CanLII: Canadian Legal Information Institute online: <https://www.canlii.org/en/>

4	September 30	The Canadian Legal Framework - Overview
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- Required Readings:
 - Textbook – Chapter 2 pp. 13-28, 34
 - D2L: other readings may be posted

5	October 7	Aboriginal and Treaty Rights – the Law and Case Studies
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- Required Readings:
 - Textbook – Chapter 3 pp. 45-66, 67
 - D2L – other readings may be posted

6	October 14	No Class
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7	October 21	Aboriginal and Treaty Rights – Modern Treaties and Treaty Making Processes
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- Required Readings:
 - Textbook – Chapter 3 pp. 66-67 Chapter 4 pp. 83-87, 89-95, 99-101
 - D2L – other readings may be posted

8	October 28	The Law on the Duty to Consult - Case Studies
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- Required Readings:
 - Textbook – Chapter 7 pp. 157-176
 - D2L – other readings may be posted

9	November 4	The Law on the Duty to Consult - Case Studies
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- Required Readings:
 - Textbook – Chapter 7 pp. 157-176
 - D2L – other readings may be posted

10	November 11	No Class
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11	November 18	Land and Land Claims – Case Studies (Injunctions / Blockades)
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- Required Readings:
 - Textbook – Chapter 26 pp. 619-640
 - D2L – other readings may be posted

12	November 25	Land and Land Claims – Case Studies (TLE, Specific Claims)
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- Required Readings:
 - Textbook – Chapter 4 pp. 83-89, 95-99
 - D2L – other readings may be posted

13	December 2	Looking Ahead
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- Required Readings:
 - D2L – Sylvia McAdam (Saysewahum). *Nationhood Interrupted: Revitalizing nehiyaw Legal Systems*, Saskatoon: Purich Publishing Ltd. 2015 Chapters 5 and 6
 - D2L – Arthur Manuel. *Unsettling Canada, a National Wake Up Call*, Toronto: Between the Lines, 2015 Chapters 1 and 17
 - D2L – other readings may be posted

ASSIGNMENTS

All assignments will be submitted through the D2L dropbox by 23:59 on the day that they are due.

There will be three assignments:

1. Case Law Brief (20%)

- You will chose a case (relating to Aboriginal and Treaty rights law), and provide a case brief in a format and in accordance with the criteria provided to you in class (and posted to D2L).
- The Case Law Brief will be 1-2 pages.

2. Self Reflection / Class Reflection (25%)

- This will be a journaling exercise. The purpose of this exercise is to provide space for self-reflection regarding issues looked at in this class.
- Students will write 1-2 paragraphs following each class with their own observations, thoughts, comments on course readings, class discussions and/or questions will be posted on D2L for students to consider and respond to in order to complete this exercise.
- 1-2 paragraphs for each class, no more than 10 pages total.
- This is an informal writing exercise, your goal for this assignment is to provide your personal analysis and reflection after each class.

3. Essay (45%)

- The essay will be 10 pages (excluding authorities) on a topic related to what is covered in the course.
- All students must have their topic approved by the instructor in advance. A 1 (one) page outline will also be submitted (worth 5%), that is, the outline will receive a pass or fail grade. There will be no grade assigned for this, but its submission will help the student ensure they are on track.
- It is expected that at least one case and at least two secondary sources will be referenced in the list of authorities.
- Essays will be graded on a percentage scale mirroring the course's letter grade/percentage scale. Guidelines for what different quality essays can look like can be found below.

Format:

Topic and one page outline:

- Include the topic of the essay – what will the essay address?
- The outline will identify the thesis statement or question/issue to be examined
- Include general positions/arguments to put forward
- Point form is acceptable

All Essays must be:

- Type written (except where an exception has been granted by the instructor)
- Double Spaced
- Size 12 Times New Roman Font
- Left and Right Margins set at 1" or 2.54 cm
- Top and Bottom Margins set at 1.25" or 3.17 cm
- 10 pages (excluding authorities)

The essay must contain:

- An introduction – which will include a thesis statement (what will be argued)
- The body – which will contain the arguments supporting your thesis and will reference authorities. Use of transitioning sentences (that link one point to the next).
- A Conclusion – summarizes the ideas put forth in the essay, and is linked back to the thesis statement.
- Citations – must cite at least one case and at least two secondary sources.
- List of Authorities – last page of document, which will list all caselaw and secondary sources referred to in the essay. Note the List of Authorities will not count as part of 10 pages.

Submission of Assignments:

Assignments are to be handed in to the D2L dropbox by 23:59 on the day on which they are due. Please do not send your assignments by email, it will be considered received when it has been uploaded to D2L.

Please also note, D2L provides confirmations of successful uploads. The first in the form of a “check mark” on your screen, the second in a confirmation email. If you do not receive this, your assignment was likely not uploaded, please try again. Please keep the email as proof of upload. It is the student’s responsibility to ensure assignments are uploaded successfully.

WRITING

Written assignments are often required in International Indigenous Studies courses and the quality of writing skills, including but not limited to such elements as grammar, punctuation, sentence structure, clarity, and organization, will be taken into account in the determination of grades. Students are encouraged to make use of the services offered through Writing Support Services in the Student Success Centre (3rd floor of the Taylor Family Digital Library) or at <http://www.ucalgary.ca/ssc/writing-support>

PARTICIPATION

It is expected that students will attend each class, complete all assigned readings for each week, and come to class prepared to discuss and respond to questions. The student’s participation grade will depend on your active participation in class discussions and activities. Class attendance and participation are necessary components of this course. An attendance sheet will be circulated at the start of each class.

Please let the instructor know (by e-mail) ahead of time if you will be missing a class, and the reason for the absence.

MID-TERM EXAMINATION

None

FINAL EXAMINATION

None

GRADE SCALE:

The International Indigenous Studies Program uses the percentage conversion scale below. Your final grade will be converted to the University's official 4-point scale at the end of term. The interpretation of the undergraduate university grading system can be found at <http://www.ucalgary.ca/pubs/calendar/current/f-1.html>.

A+	96-100
A	90-95.99
A -	85-89.99
B+	80-84.99
B	75-79.99
B-	70-74.99
C+	65-69.99
C	60-64.99
C-	55-59.99
D+	53-54.99
D	50-52.99
F	0-49.99

Although the A+ is solely an honorary grade that entails no additional points in the four-point system (described above), an A+ will be used to distinguish excellent work that exceeds expectations in style, intellectual depth and breadth, sophistication, creativity and originality.

LATE PENALTIES

Extensions will not be granted without documentation provided within the 48 hour period leading up to an assignment's deadline. Learning to manage one's time is a key component of university life, and students are expected to plan out their term work accordingly.

Deadlines will be treated seriously. Late assignments, those without an extension granted by the instructor, will be docked 3 per cent per day including weekends. Assignments more than 7 days late will not be marked and shall receive a mark of 0%. This policy applies to all assignments. A description of the calculation of grades can be found below.

INSTRUCTOR GUIDELINES

Please e-mail me through D2L.

If you have any questions about the readings, assignments or the course in general, please feel free to contact me. E-mail is best, and I will try to respond within 24-36 hours. If you call my cell, and you do not reach me directly, please do not leave a voicemail, send an e-mail instead.

Students requiring assistance are encouraged to speak to the instructor before, during or after class. Should you wish to meet, please telephone or email to make an appointment. It is to the student's advantage to keep such appointments.

It is expected students will participate in class. Cell phones shall not be used during class time, please ensure that cell phones are turned off when you enter the classroom. If a situation arises that you must keep your phone on, for example, you are a mother/father and a sick child is at home and possibly may need to contact you, then please let me know at the start of the class so that I am aware of the situation.

Tablets, lap top computers etc may be used for the purposes of taking class notes. Browsing the web or watching videos during lecture is extremely disruptive to others around you and will not be tolerated.

IMPORTANT POLICIES AND INFORMATION

Supporting Documentation and the Use of a Statutory Declaration

As stated in the University Calendar:

Students may be asked to provide supporting documentation for an exemption/special request. This may include, but is not limited to, a prolonged absence from a course where participation is required, a missed course assessment, a deferred examination, or an appeal. Students are encouraged to submit documentation that will support their situation. Supporting documentation may be dependent on the reason noted in their personal statement/explanation provided to explain their situation. This could be medical certificate/documentation, references, police reports, invitation letter, third party letter of support or a statutory declaration etc. The decision to provide supporting documentation that best suits the situation is at the discretion of the student. Students cannot be required to provide specific supporting documentation, such as a medical note.

Students can make a Statutory Declaration as their supporting documentation (available at ucalgary.ca/registrar). This requires students to make a declaration in the presence of a Commissioner for Oaths. It demonstrates the importance of honest and accurate information provided and is a legally binding declaration. Several registered Commissioners for Oaths are available to students at no charge, on campus. For a list of locations to access a Commissioners for Oaths, visit ucalgary.ca/registrar.

Falsification of any supporting documentation will be taken very seriously and may result in disciplinary action through the Academic Discipline regulations or the Student Non-Academic Misconduct policy.

This statement is accessible at: <https://www.ucalgary.ca/pubs/calendar/current/m-1.html>

Please note that while the form of supporting documentation provided is at the discretion of the student, the instructor has the discretion not to accept the supporting documentation if it does not corroborate the reason(s) given for the exemption/special request.

Absence From a Mid-term Examination:

Students who are absent from a scheduled term test or quiz for legitimate reasons are responsible for contacting the instructor via email within 48 hours of the missed test to discuss alternative arrangements. A copy of this email may be requested as proof of the attempt to contact the instructor. Any student who fails to do so forfeits the right to a makeup test.

Deferral of a Final Examination:

Deferral of a final examination can be granted for reasons of illness, domestic affliction, and unforeseen circumstances, as well as to those with three (3) final exams scheduled within a 24-hour period. Deferred final exams will not be granted to those who sit the exam, who have made travel arrangements that conflict with their exam, or who have misread the examination timetable. The decision to allow a deferred final exam rests not with the instructor but with Enrolment Services. Instructors should, however, be notified if you will be absent during the examination. The Application for Deferred Final Exam, deadlines, requirements and submission instructions can be found on the Enrolment Services website at <https://www.ucalgary.ca/registrar/exams/deferred-exams>.

Appeals:

If a student has a concern about the course or a grade they have been assigned, they must first discuss their concerns with the instructor. If this does not resolve the matter, the student then proceed with an academic appeal. The first step in an academic appeal is to set up a meeting with the Department Head. Appeals must be requested within 15 days of receipt of the graded assignment.

Student Accommodations:

Students seeking an accommodation based on disability or medical concerns should contact Student Accessibility Services; SAS will process the request and issue letters of accommodation to instructors. For additional information on support services and accommodations for students with disabilities, visit www.ucalgary.ca/access/.

Students who require an accommodation in relation to their coursework based on a protected ground other than disability should communicate this need in writing to their Instructor.

The full policy on Student Accommodations is available at

<http://www.ucalgary.ca/policies/files/policies/student-accommodation-policy.pdf>.

University Regulations:

Students are responsible for familiarizing themselves with the University policies found in the Academic Regulations sections of the Calendar at www.ucalgary.ca/pubs/calendar/current/academic-reg.html.

Plagiarism and Other Forms of Academic Misconduct:

Academic misconduct in any form (e.g. cheating, plagiarism) is a serious academic offence that can lead to disciplinary probation, suspension or expulsion from the University. Students are expected to be familiar with the standards surrounding academic honesty; these can be found in the University of Calgary calendar at <http://www.ucalgary.ca/pubs/calendar/current/k-5.html>. Such offences will be taken seriously and reported immediately, as required by Faculty of Arts policy.

Copyright Legislation:

As stated in the University of Calgary Calendar, Academic Regulations, “students are required to read the University of Calgary policy on Acceptable Use of Material Protected by Copyright and requirements of the copyright act to ensure they are aware of the consequences of unauthorised sharing of course materials (including instructor notes, electronic versions of textbooks etc.). Students who use material protected by copyright in violation of this policy may be disciplined under the Non-Academic Misconduct Policy.”

<https://www.ucalgary.ca/policies/files/policies/acceptable-use-of-material-protected-by-copyright.pdf> and <https://laws-lois.justice.gc.ca/eng/acts/C-42/index.html>

Freedom of Information and Protection of Privacy (FOIP):

FOIP legislation requires that instructors maintain the confidentiality of student information. In practice, this means that student assignment and tests cannot be left for collection in any public place without the consent of the student. It also means that grades cannot be distributed via email. Final exams are kept by instructors but can be viewed by contacting them or the main office in the Department of Political Science. Any uncollected assignments and tests meant to be returned will be destroyed after six months from the end of term; final examinations are destroyed after one year.

Evacuation Assembly Points:

In the event of an emergency evacuation from class, students are required to gather in designated assembly points. Please check the list found at www.ucalgary.ca/emergencyplan/assemblypoints and note the assembly point nearest to your classroom.

Faculty of Arts Program Advising and Student Information Resources:

For program planning and advice, visit the Arts Students’ Centre in Social Sciences 102, call 403-220-3580 or email artsads@ucalgary.ca. You can also visit arts.ucalgary.ca/advising for program assistance.

For registration (add/drop/swap), paying fees and assistance with your Student Centre, contact Enrolment Services at (403) 210-ROCK [7625] or visit their office in the MacKimmie Library Block.

Important Contact Information:

Campus Security and Safewalk (24 hours a day/7 days a week/365 days a year)

Phone: 403-220-5333

Faculty of Arts Undergraduate Students’ Union Representatives

Phone: 403-220-6551

Email: arts1@su.ucalgary.ca, arts2@su.ucalgary.ca, arts3@su.ucalgary.ca,
arts4@su.ucalgary.ca

Students’ Union URL: www.su.ucalgary.ca

Graduate Students’ Association

Phone: 403-220-5997

Email: askgsa@ucalgary.ca

URL: www.ucalgary.ca/gsa

Student Ombudsman
Phone: 403-220-6420
Email: ombuds@ucalgary.ca

Campus Mental Health Resources:
SU Wellness Centre: <http://www.ucalgary.ca/wellnesscentre/>
Campus Mental Health Strategy: <https://www.ucalgary.ca/mentalhealth/>

Facebook Group for Indigenous Studies Program
<https://www.facebook.com/groups/UC.IIST/>

INDG Program Website
<http://www.ucalgary.ca/indg/>

Writing Symbols Lodge (Native Centre) Website
<https://www.ucalgary.ca/nativecentre>
