

School of Community and Regional Planning (SCARP)
University of British Columbia
COURSE OUTLINE

Course Number	PLAN 553
Course Credit(s)	3.0
Course Title	Indigenous Law, Governance and Community Planning
Term	Fall 2018
Dates/Times	Tuesdays, 6:30-9:30

Instructor	Crystal Reeves
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Office Hours	By Appointment

Short Course Description (maximum 45 words)

This course will introduce students to the laws within which Indigenous Peoples in Canada, and particularly in British Columbia, live, and which impact their communities and Nations. Students will gain an understanding of how law and governance inform planning with Indigenous communities.

Course Format

The class meets once each week for a three-hour session, with a 30 minute break. The format varies. The first part of the session may be lecture and discussion, a film, or a guest presentation. The second part of the class will be student group presentations of specific materials and student led discussion or small group learning.

All students must come to class prepared to discuss the readings, to offer insights, to ask questions and to participate in all class activities.

Course Objectives

This course engages students in understanding the relationships between Canadian Aboriginal law, Indigenous law and governance and how to apply knowledge of these concepts to community planning practice. This course will give you an awareness of Indigenous laws as existing in different First Nation communities in British Columbia and their importance in governance. The course will provide you with an understanding of Aboriginal Rights and Title, as provided for in Canada's Constitution and through important legal cases in Canada, as well as the necessity for consultation and accommodation with First Nations when projects impact their title and rights. You will also learn about how federal and provincial laws impact upon Indigenous communities in Canada, with a particular focus on the Indian Act. You will also be provided an overview of historic treaties made with First Nations in Canada, as well as learn about the modern day treaty making process in British Columbia. You will also learn about specific laws impacting economic and social development in Indigenous communities in Canada, and the response of Indigenous communities to the application of state laws. Finally, you will learn about self-government and land claims agreements in Canada.

Throughout the course, the following issues will guide our review and discussion of Indigenous law and governance:

- Law as a tool of colonialism and Indigenous peoples' resistance
- Reconciling notions of collective rights and individual rights
- Law as power
- Issues of recognition and identity
- Essentialism
- Law and gender
- Tensions between different legalities and processes of negotiation

Learning Outcomes

1. Provide students with a strong foundation for understanding the multiple legal contexts that give shape to Indigenous communities in Canada and impact upon Indigenous peoples lives and Indigenous governance.
2. Students will be able to discuss theoretical and substantive areas of specific Canadian Aboriginal law relating to lands, resources, social and economic development, and governance in Indigenous communities in Canada which may inform Indigenous planning practices.
3. Students will be able to demonstrate the application of critical perspectives on the relationship between law and colonialism, law and power and Indigenous resistance to them, as well as use of law to strengthen Indigenous governance.
4. Students will be able to demonstrate competency in applying practical and theoretical tools to discussions about the role of law in Indigenous communities and governance, the how law informs planning with Indigenous communities and how it may inform a student's thesis and/or planning interests.

Attendance

Attendance is required in all classes. Attendance will be taken at each class.

Course Format

Class Discussion and Attendance – 10%

We will spend class time engaging in discussion of the required course readings. Students are expected to read all readings for the given week, reflect on the content of the readings and arrive to class prepared to pose critical questions about the readings and their application to the practice of planning. Students will be provided a total course grade for class discussion and attendance based on the degree to which they are in attendance in class and the degree to which they regularly participate in class discussion.

Major Research Paper Outline – 15%

The purpose of the outline is to help students plan and prepare their major research paper that

will be due at the end of the course. The outline will assist students in identifying an appropriate research topic and to begin identifying sources of research. It will also allow for early recognition of any ethical obligations students may need to fulfill undertaking their research, as well as allow for critical feedback on their research paper. Further explanation of the research outline will be discussed in the first week of class.

Article Précis, Class Presentation and Facilitated Discussion – 40%

Two students will choose one class theme. Each student in the team will be responsible for preparing their own 5 page total précis of 2 different articles for the class theme. The articles are listed in the course syllabus below. The précis will include a brief synopsis of each article (no more than 2 pages), with the rest of the précis being the student's analysis, critique and engagement with the articles (3 pages). The students will then work together to prepare a class presentation that relates to their précis and lead a class discussion about the themes, issues or questions that arise from their articles and précis. The students' presentation and class discussion will be 60 minutes, to start at the beginning of their chosen class. The team presentation and discussion can be an opportunity for creativity and can involve a variety of facilitation and discussion techniques.

Major Research Paper – 35%

3000-3500 words (1.5 spacing; 12 point Times New Roman font; 1" margins)

The student will choose a topic area pertaining to law and Indigenous peoples in Canada. The student will be expected to research the topic using library and online resources. The paper will include a description of the issue or topic, will provide an overview of the legal issue(s) involved, and may examine particular Indigenous peoples' engagement with, and response to, the legal issues in question. The final part of the paper will involve a reflective discussion about how foregoing analysis can inform the student's theory and practice of planning with Indigenous communities. There will be further discussion of how to approach this assignment in the first week of the course.

The late paper policy for this course is strict. Every major research paper will be deducted 2% from its total final grade for each day it is late.

Below is a table that summarizes the relationship between each assignment and grade.

Assignment	Grade (%)	Due Date
Class Discussion and Attendance	10%	N/A
Major Research Paper Outline	15 %	Due date is 3 rd Week of Class.
Article Précis, Class Presentation and Facilitated Discussion	40% (Précis (20%) and Class Presentation and Facilitation (20%))	Date set for each course offering at the first class.
Major Research Paper	35%	Date set for each course offering.

Course Requirements

There are no prerequisites for this course.

Assessment, Evaluation and Grading

The course is graded on a numeric (percentage basis) with the total percentage being converted into a letter grade as per UBC graduate student grading standards. Below is a summary of the key evaluation criteria for each course assignment

Evaluation Criteria for Class Discussion (10%)

Students engagement with the readings and a commitment to attend and participate in class is the backbone of a good quality graduate course. As such, this course places an importance on demonstrating these students qualities and provides 10% of the total course grade toward this area. Students that show up to all classes, complete the readings and present critical questions and thoughtful discussion points on a regular basis will secure the full 10% of this course element.

Evaluation Criteria for Major Research Paper Outline (15%)

This assignment helps students demonstrate their research skills and their knowledge of the course subject matter by assembling a clear outline and explanation of their approach to developing their major research paper. The quality and depth of the research in the outline will be assessed out of a total of 7.5%. The quality of the outline will be assessed in terms of writing clarity, grammar, and analytical rigour and will be assessed out of a total of 6%.

Evaluation Criteria for the Precis and Class Presentation (40%)

This assignment aims to provide students with the opportunity to demonstrate their understanding of a specific topic in the course, based on course readings, and provide an analysis and critique of those issues. The student will then present the topic as well as their analysis to the class in 1 hour presentation and facilitation of class dialogue. It is intended to provide a creative pathway to engage the whole class in a collective discussion through a stimulating presentation on a topic consistent with the course objective. The evaluation criteria for this assignment includes two parts: (A) For the precis: analysis of content and critique (10%); synopsis of article (10%); (B) presentation of content (5%); creativity in presentation (5%); class engagement strategy and its relationship to content of article(s) (10%).

Evaluation Criteria for Major Research Paper (35%)

The major research paper is expected to be one of the major ways by which students demonstrate the learning outcomes of the course by showing both expertise in particular knowledge areas relevant to the course and applying this understanding through critical analysis and reflection on planning practice. The evaluation criteria for the major research paper are noted in the table below.

Grade for quality and depth of research, including engagement with a variety of relevant sources of information, including scholarly research.	35%
Grade for clarity of writing and rigour of analysis: (a) discussion of legal issue; (b) discussion of Indigenous peoples engagement with, and response to the legal issue	35%
Grade for reflective discussion about relation between the analysis in the paper and the student's theory and practice of planning with Indigenous communities	30%
Total grade	100

Required Readings

1. Course Readings (Canvas).
2. Borrows, John, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) (E-Book).
3. Olthuis, Kleer, Townshend, Imai, *Aboriginal Law Handbook* (Carswell Publishing, 4th Edition, July 2012; 5th Edition to be published September 13, 2018) (On Reserve).
4. Harris, R. Cole, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (UBC Press, 2002) (E-Book).

Course Schedule

Week 1: Introduction to Indigenous Law and Governance Course

Assigned Reading for Week 1

Borrows, John, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010), Chapters 1-2

Comoroff, John L., "Colonialism, Culture, and the Law: A Foreword" (2001) 26(2) *Law & Social Inquiry*, 305

Overview of: Course outline, requirements, assignments and grading, language and behaviour that promotes an inclusive, safe learning environment

Lecture

1. Introduction to Legal Traditions
2. Law and Society: considering law and colonialism and law as power
3. Introduction to Indigenous Legal Traditions

Class discussion on students' perceptions of law and governance.
Class discussion regarding law as colonialism and law as power.

Week 2: Musqueam Law and Governance

This class will tentatively take place on Musqueam Territory where Musqueam elder(s) and other knowledgeable people will introduce students to Musqueam laws and governance.

Students should reflect on what laws and teachings impacted them the most. Students will also consider how Musqueam laws and teachings connect with their own understanding of law.

Assigned Reading for Week 2

Borrows, John, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010), Chapters 3, 5, 6

Friedland, Hadley, "Practical Engagement with Indigenous Legal Traditions on Environmental Issues: Some Questions" for *A Symposium on Environment in the Courtroom: Key Environmental Concepts and the Unique Nation of Environmental Damage*, University of Calgary, March 23-24, 2012

Anderson, Kim, Barbara Clow, Margaret Haworth-Brockman, "Carriers of water: aboriginal women's experiences, relationships, and reflections" (2013) *Journal of Cleaner Production* 60: 11-17

Week 3: Federal and Provincial Powers under the Constitution and Cooperative Federalism

Lecture

In the first part of this class, we will focus on the Constitution of 1867 and the concept of cooperative federalism. In the second part of the class, we will focus on the development of Canada's constitution in 1982 with reference to Aboriginal peoples in Canada. We will use the film clips as a basis for discussion.

Film Clips: CBC Digital Archives: A Time for Action: Renewal of Canada's Constitution; Native People Fight for Constitution; and, Our Home and Native Land

Assigned Reading for Week 3

Ladner, Kiera "Treaty Federalism: An Indigenous Vision of Canadian Federalism" in F. Rocher and M. Smith (eds.) *New Trends in Canadian Federalism, 2nd Edition*. 2003. Toronto: University of Toronto Press, p. 167-194

Chartrand, Paul L. A. H., ed., *Who are Canada's Aboriginal Peoples? Recognition, Definition and Jurisdiction* (Saskatoon: Purich Publishing, 2002), Chapter 1

Alcantara, C. and Z. Spicer, "A New Model for Making Aboriginal Policy? Evaluating the Kelowna Accord and the Promise of Multilevel Governance in Canada" *Canadian Public Administration* (June 2016) 59:2, pp 183-203

Week 4: Indian Act Part 1

Lecture

This class will focus on the development of the Indian Act and previous provisions under the Act, as well as the role of INAC/AANDC in administering the Act. This week will also focus on elections, membership and bylaw making powers under the act.

Assigned Reading for Week 4

Olthuis, Kleer, Townshend, Imai, *Aboriginal Law Handbook, TBD*

Macedougall, Brenda, "The Power of Legal and Historical Fiction(s): The Daniels Decision and the Enduring Influence of Colonial Ideology" (2016) *The International Indigenous Policy Journal* 7:3, Article 1

Provar, John, "Reforming the Indian Act: First Nations Governance and Aboriginal Policy in Canada" (2003) 2 *Indigenous L.J.* 117

Sanderson, Douglas, "Overlapping Consensus, Legislative Reform and the *Indian Act*" (2014) *Queen's Law Journal* 39:2

Week 5: Indian Act Part 2 and other Acts Pertaining to Reserve Land

Lecture

In this class we will focus on lands, housing and resource issues under the Act. We will also discuss the development of the First Nations Land Management Act and other legislation dealing with land use on Reserve Lands

Case Study: TBD

Assigned Reading for Week 5

Harris, R. Cole, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (UBC Press, 2002). Chapters 1, 7, 8 and 9

Olthuis, Kleer, Townshend, Imai, *Aboriginal Law Handbook*, TBD

Thomas, Isaac, "First Nations Land Management Act and Third Party Interests" (2004-2005) 42 *Alta. L. Rev.* 1047

Week 6: Aboriginal Title

Lecture

In this class, we will explore the foundations of Aboriginal Title in Canada, and the role of First Nations and the Courts in defining Aboriginal title in British Columbia. We will also consider some of the challenges and constraints in Aboriginal Title Claims in British Columbia.

Assigned Reading for Week 6

Napoleon, Val, "Tsilhqot'in Law of Consent" (2015) 48 *UBC Law Review* 873

Macintosh, Constance, "*Tsilhqot'in Nation v. BC*: Reconfiguring Aboriginal Title in the Name of Reconciliation" (2014) 47 *UBC Law Review* 168

Borrows, John, "The Durability of Terra Nullius: *Tsilhqot'in Nation v. British Columbia*" (2015) 48 *UBC Law Review* 701.

Excerpts from: *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44. To be handed out in Class

Week 7: Aboriginal Rights

Lecture

In this class, we will explore the legal development of Aboriginal Rights in Canada, considering

the inclusion of Aboriginal Rights in s. 35 of the Constitution and seminal Aboriginal Rights cases in Canada. We will also consider critiques of Aboriginal Rights jurisprudence.

Assigned Reading for Week 7

Borrows, John, "Tracking Trajectories: Aboriginal Governance as an Aboriginal Right" (2005) 38:2 U.B.C. L. Rev. 285

Olthuis, Kleer, Townshend, Imai, *Aboriginal Law Handbook*, TBD

Luther, Emily, "Whose "Distinctive Culture"?: Aboriginal Feminism and R. v. Van der Peet" (2010) 8:1 *Indigenous L.J.* 27

Suzanne vonder Porten et. al. "Recommendations for marine herring policy change in Canada: Aligning with Indigenous legal and inherent rights," *Marine Policy* 74 (2016), 68-76

Week 8: Consultation and Accommodation

Lecture

In this class, students will learn about Crown's consultation and accommodation obligations towards First Nations in Canada. We will consider the seminal consultation case of *Haida v. The Queen*, as well as the development of caselaw after Haida.

Assigned Reading for Week 8

Imai, Shin and Ashley Stacey, "Municipalities and the Duty to Consult Aboriginal Peoples: A Case Comment on *Neskonlith Indian Band v. Salmon Arm (City)*" (2014) 47:1 U.B.C. L. Rev 293

Reynolds, Jim. *Aboriginal Peoples and the Law: A Critical Introduction* (Vancouver, Purich Books 2018), Chapter 6

Schreiber, Dorothee, "First Nations, Consultation, and the Rule of Law: Salmon Farming and Colonialism in British Columbia" (2006) 30(4) *American Indian Culture and Research Journal* 19

Tucker, Kathryn, "Reconciling Aboriginal Rights with International Trade Agreements: *Hupacasath First Nation v. Canada*" (2013) *JSDLP-RDPDD* 9:2, p. 110

Watch: Blue Gold: The Tsilhqot'in Fight for Teztan Biny (Fish Lake)

Week 9: Self Government and Land Claims Agreements

Lecture

In this class, we will examine the different self-government and land claims agreements that have been negotiated between First Nations in British Columbia and the Crown. We will examine both the benefits of the agreements as well as some challenges in implementing the agreements.

Assigned Readings for Week 9

Samson, Colin "Canada's Strategy of Dispossession: Aboriginal Land and Rights Cessions in Comprehensive Land Claims" (2016) *Canadian Journal of Law and Society* 31:1, pp. 87-110

Dalton, Jennifer, "Aboriginal Title and Self Government in Canada: What is the True Scope of Comprehensive Land Claims Agreements?" (2006) 22 *W.R.L.S.I.* 29

Coates, Ken S. and W.R. Morrison, "From Panacea to Reality: The Practicalities of Canadian Aboriginal Self-Governance Agreements" in Yale D. Belanger, ed., *Aboriginal Self-Government in Canada: Current Trends and Issues, 3rd Edition* (Saskatoon: Purich Publishing, 2008)

Week 10: Treaties

Lecture

Students will be exposed to the history of treaty making between Canada's Aboriginal peoples and the Crown, as well as learn about the modern day treaty process in British Columbia. The students will learn about the struggle to have treaty promises honoured by the Crown, the establishment of the Nisga'a Treaty, as well as discuss some of the issues around the current treaties being negotiated under the BC Treaty Process.

Film: *Dancing in Both Worlds: The Nisga'a Nation Series* (DVD) 2007

Assigned Readings for Week 10

Blomley, Nicholas, "The Ties that Bind: Making Fee simple in the British Columbia Treaty Process" (2015) *Transactions* 40, p. 168-179

Craft, Aimée, "Living Treaties, Breathing Research" (2014) *Canadian Journal of Women and the Law* 26:1, pp. 1-22

Morales, Sarah, "(Re)Defining "Good Faith" through *Snuw'uyulh*, in J. Borrows and M. Coyle, eds. *The Right Relationship: Re-imagining the Implementation of Historical Treaties* (Toronto: U of T Press, 2017)

Week 11: Economic Development

Lecture

In this class, students will learn about some of the economic development initiatives Aboriginal peoples are undertaking. Students will learn about some of the laws relating to economic development on First Nations territories and on reserve, as well as discuss some of the complexities in creating and negotiating economic opportunities.

Guest Speakers: TBA

Assigned Readings for Week 11

Gilmour, Brad and B. Mellett, "The role of Impact and Benefit Agreements in the Resolution of Project Issues with First Nations" (2013) *Alberta Law Review* 51:2, p. 385

Fidler, Courtney and Michael Hitch, "Impact and Benefit Agreements: A Contentious Issue for Environmental and Aboriginal Justice" (2007) 35 (2) *Environments: A Journal of Interdisciplinary Studies* 49

Hanna, Darwin, *Legal Issues on Indigenous Economic Development* (Toronto: Lexis Nexis Canada, 2017), Chapters 1 and 4

Week 12: Issues in Indigenous Governance

Lecture

In our final class, we will examine the resurgence of Indigenous Governance in Canada.

Assigned Readings for Week 12

Borrows, John and Leonard I. Rotman, "Aboriginal Legal Issues, Cases, Materials and Commentary, 5th Edition (Toronto, Lexis Nexis, 2018), Chapter 1

Dubois, Janique and Kelly Sanders, "Rebuilding Indigenous nations through constitutional development: a case study of the Métis in Canada," *Nations and Nationalism* 23 (4), 2017, 878–901

Simms, R. et al. "Navigating the Tensions in Collaborative Watershed Governance: Water Governance and Indigenous Communities in British Columbia, Canada" (2016) *Geoforum* 73, pp. 6-16

Bouvier, Noelle and Ryan Walker, "Indigenous Planning and Municipal Governance: Lessons from the Transformative Frontier," *Canadian Public Administration*, Vol 61(1), March 2018, pp 130-134

Academic Integrity

The academic enterprise is founded on honesty, civility, and integrity. As members of this enterprise, all students are expected to know, understand, and follow the codes of conduct regarding academic integrity. At the most basic level, this means submitting only original work done by you and acknowledging all sources of information or ideas and attributing them to others as required. This also means you should not cheat, copy, or mislead others about what is your work. Violations of academic integrity (i.e., misconduct) lead to the breakdown of the academic enterprise, and therefore serious consequences arise and harsh sanctions are imposed. For example, incidences of plagiarism or cheating may result in a mark of zero on the assignment or exam and more serious consequences may apply if the matter is referred to the President's Advisory Committee on Student Discipline. Careful records are kept in order to monitor and prevent recurrences.

A more detailed description of academic integrity, including the University's policies and procedures, may be found in the Academic Calendar at <http://calendar.ubc.ca/vancouver/index.cfm?tree=3,54,111,0>.