



POLI 3351 FDE / INDI 3351 FDE: Indigenous Peoples and the Law  
Political Science / Lakehead University  
Fall 2025

### **Instructor Information**

Instructor:	Mary McPherson
Office Location:	On Zoom
E-mail:	Mmmcphe@lakeheadu.ca
Office Hours:	On Wednesday evenings from 6pm-8pm I will hold drop-in office hours over Zoom. A link will be provided on the D2L course site. If this time does not work for you, I am available by appointment.

### **Course Description**

An examination of the unique legal position of Indigenous Peoples in Canada with particular emphasis on the political, economic and social impact of the law. Topics to be dealt with include: International Law and Indigenous people, Indigenous identity in Canada, the nature of Aboriginal title, the scope of Indigenous rights, pre-and post-confederation treaties (particular emphasis on treaties in northwestern Ontario), land claim negotiations (specific and comprehensive land claims), self-government, constitutional developments, and the nature of amendments to the Indian Act.

Please note that throughout this course, I will use the following Canadian legal terminology:

- when I say “Aboriginal”, I am referring to “Aboriginal peoples” as defined under section 35 of the *Constitution Act, 1982*,
- when I say “Indian”, I am referring to “status Indians” as defined under the *Indian Act* and other legislation, and as repeated in the case law,
- when I say “Indigenous”, I am referencing recent Canadian legislation which adopt the word “Indigenous,” and those Indigenous to Turtle Island bearing in mind this term encompasses many different nations and worldviews.

### **Course Format**

This is an asynchronous course that will rely heavily on the use of the D2L course site. Every Friday, I will post a pre-recorded lecture under the “content” heading of the course site that will speak to the readings, the topic, and student participation under the “discussions” heading of the course site.

### **Course Learning Objectives**

By the end of this course, students will be able to:

- Analyze critical issues in Canadian law as it relates to Indigenous peoples,
- Interpret legal judgments and relate those judgments to the social and political contexts experienced by Indigenous peoples,
- Identify persuasive arguments from both sides of an Aboriginal legal issue, and
- Develop an analytic perspective on Aboriginal legal issues that will deepen understanding of current events.

## Assignments and Evaluation

### 30% Participation.

Participation grades will come from your contributions to weekly discussion topics posted on the D2L course site. Every Sunday, I will post a few suggested topics based on the readings for that week. I will also leave open “Other Topics” for you to ask questions or raise topics of your own. I expect you to participate in the discussion topics and engage with the comments of other students. I will make the following exception: for those of you who are uncomfortable with sharing your contributions on the D2L to the point that it prevents you from participating, I ask that you email me your responses to the topics and your responses to your peers with your name, the week, and the topic(s) in the subject line. Weekly topics will remain open from Sunday to Friday.

Your participation grade will not come from the quantity of your posts (although I expect you to post every week), but the quality of your posts. You will be assessed based upon your preparation, your depth of engagement with the course materials, and your ability to offer ideas respectfully. You may relate the readings to current events, your lived experience, or other academic sources in your commentary, so long as you cite the materials you are using.

The purpose of the weekly discussion is 1) to learn from and be challenged by your peers, 2) to have the opportunity to write about and think more deeply about the readings, and 3) to allow me to answer your questions, assess what areas I may need to expand upon in the following week’s lecture, and learn how I can better serve you in your learning process.

### 20% Case Comment.

Submit your chosen case and thesis statement on **October 10<sup>th</sup>** for **5%** and submit the final commentary on **October 27<sup>th</sup>** for **15%**. This paper is a short commentary (**maximum 1200 words**) on a Supreme Court of Canada decision of your choosing, related to Aboriginal law.

You are required to read the entire case, including concurring and/or dissenting opinions. A case comment is not a summary. A case comment provides only a brief summary of the case, including the facts, issue, rule(s), analysis, and conclusion. Your comment should include an analysis where you critically examine the judgment and its jurisprudential, historical, social and/or political contexts. You might argue that the case was decided incorrectly or that the judges used incorrect reasoning to reach their conclusion, although other arguments are welcome. Decisions with concurring or dissenting opinions signal that the majority ruling is controversial. Minority opinions can help you think of opposing reasoning and/or conclusions to a case. You should aim for 3-6 scholarly sources that will support your argument. Do not go over the word count. Instead, practice being concise and to the point as possible in your writing (avoid flowery language), leaving out details that are unnecessary to the case or your argument.

You can structure your summary as follows:

1. Introduction (thesis statement and roadmap),

2. Background (the facts, background, legal issues, etc raised by the case),
3. Your analysis (a critical examination of the judgment supported by secondary sources),
4. Your conclusion.

### **50% Final Take Home Assignment (Open Book)**

Posted on D2L under the “Assignments” heading on December 7 at 12:01am, to be completed by December 9 at 11:59pm. The take home assignment should not take more than a few hours to complete.

### **Artificial Intelligence (AI)**

Using AI, including ChatGPT, for your assignments is not permitted. In this class, I expect you to honour and strengthen your unique intelligence by writing and brainstorming ideas on your own, without the use of generative AI writing tools.

### **Late Assignments**

Late assignments will be subject to a penalty of 5% a day including weekends for up to 10 days after the due date. Exceptions for late assignments can be made. Please communicate with me by email, preferably in advance, if you need an extension.

### **Required Course Text**

All readings will be posted on the D2L course page.

### **Course Schedule (Subject to Change)**

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#### **Week 1 (September 2)**

##### **Course Introduction**

- No required readings

#### **Week 2 (September 8)**

##### **Aboriginal Rights I: What are Rights? What are *Aboriginal* Rights?**

- [\*Declaration on the Rights of Man and the Citizen\*](#) (National Assembly of France, 1789).
- Jeremy Bentham, *Anarchical Fallacies; An Examination of the Declarations of Rights issued during The French Revolution* (1795), excerpt on D2L.
- [\*The Royal Proclamation of 1763\*](#)

#### **Week 3 (September 15)**

##### **Aboriginal Rights II: Narrowed Scope**

- Kai Möller, “Proportionality and Rights Inflation” in Huscroft et al, *Proportionality and the Rule of Law: Rights, Justification, Reasoning* (Cambridge: Cambridge University Press,

2014).

- [R v Van der Peet, \[1996\] 2 SCR 507](#) at paras 1-94.

#### **Week 4 (September 22)**

##### **Aboriginal Rights III: Limited Strength Against Opposing Interests**

- Peter W Hogg, “Interpreting the Charter of Rights: Generosity and Justification” (1990) 28:4 Osgoode Hall Law Journal 817.
- [R v Sparrow, \[1990\] 1 SCR 1075](#)
- [Delgamuukw v British Columbia, \[1997\] 3 SCR 1010](#) at para 165.
- [Tsilhqot’in Nation v British Columbia, 2014 SCC 44](#) at para 125.

#### **Week 5 (September 29)**

##### **Aboriginal Rights IV: Aboriginal Title**

- John J Borrows & Leonard I Rotman, *Indigenous Legal Issues: Cases, Materials & Commentary*, 6 ed (Toronto: LexisNexis, 2023) at pp 194-232, 238-249.
- Aidan Macnab, [“Landmark BC-Haida agreement raises fundamental questions about Aboriginal title and private property”](#) *Canadian Lawyer* (29 July 2024).

#### **Week 6 (October 6)**

##### **Crown Obligations**

- [Haida Nation v British Columbia \(Minister of Forests\), 2004 SCC 73](#) at paras 1-8, 16-28, 31-35, 38-59, 64-80, excerpt on D2L.
- [Mikisew Cree First Nation v Canada \(Minister of Canadian Heritage\), 2005 SCC 69](#) at paras 1-3, 9-11, 13-17, 24-37, 42-69, excerpt on D2L.
- [Rio Tinto Alcan Inc v Carrier Sekani Tribal Council, 2010 SCC 43](#) at paras 39-50, excerpt on D2L.
- [Behn v Moulton Contracting Ltd, 2013 SCC 26](#)
- [Kebaowek First Nation v Canadian Nuclear Laboratories, 2025 FC 319](#) at paras 74-82, 90-92, 96-99, 107-112, 115-125, 129-134, excerpt on D2L.
- Carl Meyer, [“Can Canada’s fast-tracking laws avoid the mistakes of the past?”](#) *The Narwal* (12 June 2025).

#### **Week 7 (October 13)**

## Fall Study Week

No Classes

### Week 8 (October 20)

#### Aboriginal Peoples in Canada's Division of Powers

- [Constitution Act, 1867](#), s 91 and s 92.
- [Indian Act, 1985](#), s 88.
- [Delgamuukw v British Columbia, \[1997\] 3 SCR 1010](#) at paras 177-183, excerpt on D2L.
- [Tsilhqot'in Nation v British Columbia, 2014 SCC 44](#) at paras 128-131, 138-144, 148-152, excerpt on D2L.
- [Reference re An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5](#) at paras 1-2, 22-27, 37-47, 54-55, 60, 67-72, 91-100, 103, 119-127, 131-133, excerpt on D2L.

### Week 9 (October 27)

#### Historic Treaties

- Sébastien Grammond, *Terms of Coexistence: Indigenous Peoples and Canadian Law* (Toronto: Carswell, 2013) at pp 283-314.
- [Ontario \(Attorney General\) v Restoule, 2024 SCC 27](#) at paras 1-6, 10-11, 17-18, 42-43, 65-73, 75-80, 96, 106, 125-127, 136-154, 195-197, 248, 251-252, 254-263, 265-267, 271-272, 283-286, 289-292, 300, 304, excerpt on D2L.
- [Chippewas of Saugeen First Nation v South Bruce Peninsula \(Town\), 2024 ONCA 884](#) at paras 1-3, 9-18, 35-36, 41-67, 69-80, 227-243, excerpt on D2L.

### Week 10 (November 3)

#### Modern Treaties

\*Last day to drop classes without academic penalty is on Friday, November 7\*

- [Dickson v Vuntut Gwitchin First Nation, 2024 SCC 10](#) at paras 1-4, 14-18, 22, 25-26, 38-70, 76-91, 99-103, 117, 136, 144-146, 153-154, 158-159, 163-164, 177-183, 228-229;

Martin and O'Bonsawin JJ dissent at paras 236-237, 260-267, 281-285, 308-316, 322-329, 338-343, 414-416;

Rowe J dissent at paras 425, 431-432, 437-453, 462-463, 477-479, 498-505, excerpt on D2L.

- Johnny Mack, “Hoquotist: Reorienting through Storied Practice” in Hester Lessard et al, eds., *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community* (Vancouver: University of British Columbia Press, 2010) 286.

### **Week 11 (November 10)**

#### **Indigenous Peoples and International Law**

- S James Anaya, *Indigenous Peoples in International Law*, 3<sup>rd</sup> ed (Oxford: Oxford University Press, 2004) at pp 97-128.
- Joshua Nichols, “‘We have never been domestic’: State Legitimacy and the Indigenous Question” in John Borrows et al, eds, *Braiding Legal Orders: Implementing the United Nations Declaration on the Rights of Indigenous Peoples* (Waterloo: Centre for international Governance Innovation, 2019).

### **Week 12 (November 17)**

#### **Indigenous Law as non-State Law and Legal Positivism**

- HLA Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961), Chapter 5.
- Mark Walters, “The Judicial Recognition of Indigenous Legal Traditions: *Connolly v Woolrich* at 150” (2017) 22 Rev Const Stud 347.
- [\*R c Montour and White\*, 2023 QCSC 4154](#) at paras 1234-1236, 1291-1339, excerpt on D2L.

### **Week 13 (November 24)**

#### **Indigenous Law and the Struggle for State Recognition**

- Glen Sean Coulthard, “The Politics of Recognition in Colonial Contexts” in *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014).
- Gordon Christie, “Culture, Self-Determination and Colonialism: Issues around the Revitalization of Indigenous Legal Traditions” (2007) 6:1 Indigenous LJ 13.

## Regulations

It is the responsibility of each student registered at Lakehead University to be familiar with, and comply with all the terms, requirements, regulations, policies and conditions in the Lakehead University [Academic Calendar](#). This includes, but is not limited to, Academic Program Requirements, Academic Schedule of Dates, University and Faculty/School Policies and Regulations and the Fees and Refund Policies and Schedules.

## Academic Integrity

A breach of Academic Integrity is a serious offence. The principle of Academic Integrity, particularly of doing one's own work, documenting properly (including use of quotation marks, appropriate paraphrasing and referencing/citation), collaborating appropriately, and avoiding misrepresentation, is a core principle in university study. Students are strongly advised to familiarize themselves with the Student Code of Conduct - Academic Integrity ("[The Code](#)") - and, in particular, **sections 26 and 83 through 85**. Non-compliance with the Code will NOT be tolerated in this course and the Code will be adhered to in terms of disciplinary action. The Code provides a full description of academic offences, procedures when Academic Integrity breaches are suspected and sanctions for breaches of Academic Integrity.

## Copyright

Students should be aware that all instructional, reference, and administrative materials prepared for this course are protected in their entirety by copyright. Students are expected to comply with this copyright by only accessing and using the course materials for personal educational use related to the course, and that the materials cannot be shared in any way, without the written authorization of the course instructor. If this copyright is infringed in anyway, students may be prosecuted under the Lakehead University Student Code of Conduct – Academic Integrity, which requires students to act ethically and with integrity in academic matters and to demonstrate behaviours that support the University's academic values.

**Supports for Students** – there are many resources available to support students. These include but are not limited to:

- [Health and Wellness](#)
- [Student Accessibility Centre](#)
- [Library](#)
- [Academic Support Zone](#)
- [Indigenous Student Services Centre](#)
- [International](#)
- [Student Central](#)

Lakehead University is committed to achieving full accessibility for persons with disabilities. Part of this commitment includes arranging academic accommodations for students with disabilities and/or medical conditions to ensure they have an equitable opportunity to participate in all of their academic activities. If you are a student with a disability and think you may need accommodations, you are strongly encouraged to contact Student Accessibility Services (SAS) and register as early as possible. For more information, please contact [Student Accessibility Services](#) (Thunder Bay:

SC0003, (807) 343-8047 or [sas@lakeheadu.ca](mailto:sas@lakeheadu.ca) Orillia: OA 1030, (705) 330-4010 ext. 2103 or [oraccess@lakeheadu.ca](mailto:oraccess@lakeheadu.ca))

As a university student, you may sometimes experience mental health concerns or stressful events that interfere with your academic performance and negatively impact your daily activities.

All of us can benefit from support during times of struggle. If you or anyone you know experiences academic stress, difficult life events or feelings of anxiety or depression, Student Health and Wellness is here to help. Their services are free for Lakehead Students and appointments are available. You can learn more about confidential mental health services available on and off campus at [lakeheadu.ca/shw](http://lakeheadu.ca/shw).

Remember that getting help is a smart and courageous thing to do- for yourself, for those you care about, and for those who care about you. Asking for support sooner rather than later is almost always helpful.