

University of Alberta Faculty of Law**Academic Year: 2017-2018****Course Outline: Indigenous Laws: Questions and Methods for Engagement**

Dr. Hadley Friedland

Law 599 –A16, Fall Term 2017

University Policy on Course Outlines: You are required to receive a course outline in every course taken at the University of Alberta. The university's policy about course outlines can be found in §23.4 of the University Calendar. The Calendar is available online at: <http://www.registrar.ualberta.ca/calendar/>

Basic Course Details: This seminar will run on **Wednesdays from 1:00-3:50 pm in Law Centre 191**. Classes start on September 6 and end on November 29th, 2017.

Access to the Instructor:

Office: Law Centre 429

Email: Hadley.friedland@ualberta.ca

Office hours: You are welcome to drop in any time, as I have an open door policy when I am on campus. We can also arrange to meet at a mutually convenient time by email.

Course Description:

The TRC final report calls for greater recognition and use of Indigenous laws in Canada. Many Indigenous communities, justice system professionals and legal scholars are increasingly interested in accessing, understanding and applying Indigenous legal traditions today. Yet *how* to do this raises practical and critical questions. This highly interactive intensive seminar explores some of the current challenges related to this timely subject. Students will identify and critically examine legal theories about the nature and sources of law and reflect on the work of justice and reconciliation in inter-societal contexts. They will have opportunities to practice and evaluate various methods for engaging with Indigenous legal traditions respectfully and robustly, and examine the major questions that arise from engagement in various settings. Students will also actively engage with specific Indigenous (primarily Cree) laws, in a respectful and supportive environment.

Course Objectives/Outcomes:

- Students will explore the concept of law and the societal narratives about law and Indigenous peoples that impact our perceptions, understandings and expectations of law generally and Indigenous laws specifically.
- Students will identify and critically evaluate intellectual and practical challenges to recognizing and working with Indigenous laws today.
- Students will understand and explore critical questions about the risks and benefits of scholarly and professional engagement with Indigenous laws today.
- Students will identify and critically evaluate various methods and resources scholars use for engaging with Indigenous laws.
- Students will build their capacity to apply one or more of the identified methods to ascertain Indigenous legal principles from a specific Indigenous legal tradition.
- Students will build their capacity to apply Indigenous legal principles to problem-solve a practice fact scenario.

Enrolment in TWEN: This course will make use of The West Education Network (known as “TWEN”). TWEN is offered to all law students at no charge by WestlawNext Canada and allows for the creation by the instructor of a course-specific “TWENsite” where one can post copies of handouts, reading materials, supplementary material, and website links. Please enroll in the TWENsite for this course as soon as possible.

Course materials:

The reading list, course outline and related materials, including links to required readings, will be posted on TWEN.

Required texts:

Louis Bird, *The Spirit Lives in the Mind: Omushkego Stories, Lives, and Dreams* (Montreal: McGill-Queens, 2007).

John Borrows, *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010).

Patty Laboucane-Bensen, *The Outside Circle* (Toronto: House Of Anansi Press Inc., 2015).

Recommended text:

Elin Kelsey, *Wild Ideas: Let Nature Inspire Your Thinking* (Toronto: Owlkids, 2015).

Course Evaluation:

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| <p>Professionalism in Intersocietal Contexts (in-class activities) - 20%</p> <p>Due Date: Throughout all classes</p> | <p>The TRC defines reconciliation as everyday practices of building and maintaining respectful relationships. This course is designed as an interactive seminar practicing professional etiquette and respectful engagement and dialogue across cultures and over differences on, at times, difficult, sensitive subjects and painful histories.</p> <p>Your presence and participation are vital for yours and others' learning experience. Students are encouraged to engage in professional, respectful, informed, creative, and critical discussion about the assigned readings and topics.</p> <ul style="list-style-type: none">• Preparation for and active participation in class discussions, including summarizing and presenting one class reading to the group.• Preparation for and active participation in group reflection & application exercises.• Contributing to creating a safe place for everyone to take risks to respectfully engage and explore critical questions. |
| <p>In-class Moot- 20%</p> <p>Due Date: Moots will take place on Nov. 22nd.</p> | <p>Each student will be assigned a participatory role in a moot preparing and applying Cree law to a realistic fact pattern about an issue Indigenous communities may deal with today.</p> <p>Students will also have the opportunity to organize the process and procedures, in the role of authoritative decision-makers, for whatever moot they are not preparing for.</p> <p>Students will be evaluated based on the following criteria:</p> <ul style="list-style-type: none">• Engagement in group legal research, analysis and factum-writing (students will be fully supported through materials and in-class analysis and synthesis)• Quality, respect and persuasiveness of oral argument and dialogue |

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| | <ul style="list-style-type: none"> • Quality, respect and persuasiveness of reasons given for process and procedures used as a decision-maker. |
| <p>Take home Exam - 60%</p> <p>Due Date: Friday, December 8th.</p> <p>E-Submission: Take home Exams should be submitted to the instructor via email no later than 15:00.</p> <p>Take home Exam answers should be submitted in a <i>Word</i> document, using 12" font, and should not exceed 12 double spaced pages, inclusive of footnotes. All footnotes should conform to the latest McGill style guide.</p> | <p>The take home exam will be distributed to students on Wednesday, Nov. 29th. It will consist of specific questions focused on:</p> <ol style="list-style-type: none"> 1. Drafting a written decision, giving reasons based on sources of law, Cree legal principles, and relevant facts, readings or arguments, about the moot issue the student heard in their role an authoritative decision-maker. 2. A critical and personal reflection on the challenges, risks, and benefits of engaging with Cree laws in this way from the student's situatedness, in a law school classroom setting. This may include exploring contradictions, previous life experience, knowledge and attitudes, or draw deeper connections between topics. <p>No further research or readings are required.</p> <p>Students will be evaluated based on the following criteria:</p> <ul style="list-style-type: none"> • Quality, respect and persuasiveness of reasons given in written decision. • Comprehension of subject matter, • Critical analysis of readings and classroom discussions, • Reflections on your own responses and reactions to the discussion, readings and activities. • Synthesis of issues. |

Grading:

As explained in the University Calendar: “Grades reflect judgments of student achievement and must correspond to the associated descriptor. These judgments are based on a combination of absolute achievement and relative performance in a class.”

This chart indicates the letter grades and corresponding descriptors and grade point value used at the University of Alberta for undergraduate students:

Course Grades Obtained by Undergraduate Students

| Descriptor | Letter Grade | Grade Point Value |
|-------------------|---------------------|--------------------------|
| Excellent | A+ | 4.0 |
| | A | 4.0 |
| | A- | 3.7 |
| Good | B+ | 3.3 |
| | B | 3.0 |
| | B- | 2.7 |
| Satisfactory | C+ | 2.3 |
| | C | 2.0 |
| | C- | 1.7 |
| Poor | D+ | 1.3 |
| Minimal Pass | D | 1.0 |
| Failure | F | 0.0 |

Legal and Ethical Obligations:**Academic Integrity:**

The University of Alberta is committed to the highest standards of academic integrity and honesty. Students are expected to be familiar with these standards regarding academic honesty and to uphold the policies of the University in this respect. Students are particularly urged to familiarize themselves with the provisions of the Code of Student Behaviour (online at www.governance.ualberta.ca) and avoid any behaviour that could potentially result in suspicions of cheating, plagiarism, misrepresentation of facts and/or participation in an offence. Academic dishonesty is a serious offence and can result in suspension or expulsion from the University.

Harassment, Discrimination and Duty to Accommodate:

As indicated in the university’s Discrimination, Harassment and Duty to Accommodate Policy, responsibility for achieving a work, study, and living environment free of harassment and discrimination falls on every member of the University community. All members can reasonably expect to pursue their work and studies in a safe and respectful environment. Neither the University nor any members of the University community shall practice or condone any discriminatory or harassing conduct that

adversely affects the pursuit of work and study or life on campus. If you are the victim of discriminatory or harassing behaviour, including online behaviour, advice and assistance may be sought from the Vice-Dean of the Faculty of Law, the Office of Safe Disclosure and Human Rights (OSDHR), or the Office of the Student Ombuds.

Audio or Video Recordings:

Audio or video recording, digital or otherwise, of lectures, labs, seminars or any other teaching environment by students is allowed only with the prior written consent of the instructor or as a part of an approved accommodation plan. Student or instructor content, digital or otherwise, created and/or used within the context of the course is to be used solely for personal study, and is not to be used or distributed for any other purpose without prior written consent from the content author(s).

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Course Readings: Indigenous Laws: Questions and Methods for Engagement

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| Date | Subject | Readings |
|---------|---|--|
| Sept 6 | Foundations: Introductions, Expectations, Experiential Engagement Sources of Law | <ul style="list-style-type: none"> • TRC Calls to Action, no 27, 28, 42, 45 and 50. • John Borrows, <i>Canada's Indigenous Constitution</i> (Toronto: University of Toronto Press, 2010) at 6-58. |
| Sept 13 | Foundations: What is Law? Legal Theories Interactional & Interpretivist legal theory | <ul style="list-style-type: none"> • Joseph Raz, "Can There Be a Theory of Law?" in eds. Martin P. Goldring & William A. Edmundson, <i>The Blackwell Guide to the Philosophy of Law and Legal Theory</i> (Oxford: Blackwell Publishing Ltd., 2005) at 329-331 and 334-337. • Ronald Dworkin, "The Model of Rules" 35 U Chi L Rev 17. • Jutta Brunnée and Stephen J. Toope, <i>Legitimacy and Legality in International Law</i> (Cambridge: Cambridge University Press, 2010) at 1-55. |
| Sept 20 | Foundations: Colonial Sovereignty Stories, Limits, Damage and Doubts | <ul style="list-style-type: none"> • Thomas v. Norris, 1992 CanLii 354 (BCSC) at 28-29 and 33-40. • Patty Laboucan-Bensen, The Outside Circle • Judith Herman, "Introduction" in <i>Trauma and Recovery: The Aftermath of Violence – from domestic violence to political terror</i> (New York: Basic Books, 1997) at 1-4. |
| Sept 27 | Foundations: Reflection/Application: Reconciliation In a multi-jurisdictional Canada, Theories in Practice and Full Spectrum of Sources of Law? | <ul style="list-style-type: none"> • Lance Finch, "The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice" (2012) CLE BC Materials • Jeremy Webber, "The Grammar of Customary Law" (2009) 54 McGill LJ 579 at 581-583 and 599-617. <p>AND:</p> <ul style="list-style-type: none"> • Roderick A. McDonald and Jason MacLean, "Navigating the Transsystemic: No Toilets in the Park." (2005) 50 McGill L.J. 721. |

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| | | <p>OR:</p> <ul style="list-style-type: none"> Rosalie Jukier, "Where Law and Pedagogy Meet in the Transsystemic Contracts Classroom" (2005) McGill L.J. 789. |
| Oct 4 | Methods: Challenges and Resources for engaging with Indigenous laws. | <ul style="list-style-type: none"> John Borrows, <i>Canada's Indigenous Constitution</i>, "Chapter 6: Challenges and Opportunities in Recognizing Indigenous Legal Traditions", at 137-176. Mathew Fletcher, "Rethinking Customary Law in Tribal Court Jurisprudence", (2006) Michigan State University College of Law, Indigenous Law and Policy Centre Occasional Paper Series. |
| Oct 11 | Methods: Methods of Engagement | <ul style="list-style-type: none"> John Borrows, "Outsider Education: Indigenous Law and Land-based Learning" (2016) 33 Windsor Y B Access Just 1. Sarah Morales, "Stl'ul nup: Legal Landscapes of the Hul'Qumi'um mustimuhw" (2016) 33 Windsor Y B Access Just 103. Val Napoleon, Angela Cameron, Colette Arcand and Dahti Scott, "Where's the Law in Restorative Justice?" in Yale Belanger, ed., <i>Aboriginal Self Government in Canada: Current Trends and Issues</i>, 3rd edition (Saskatoon, Purich Publishing Press, 2008). Nancy Sandy, "Stsqey'ulecw re St'exelcenc (St'exelmc Laws from the Lands)" (2016) 33 Windsor Y B Access Just 187. |
| Oct 18 | Methods: Methods of Engagement | <ul style="list-style-type: none"> Howard Norman, <i>Where the Chill Came From: Cree Windigo Tales and Journeys</i> (San Francisco: North Point Press, 1982) at 52. Louis Bird, <i>The Spirit Lives in the Mind: Omushkego Stories, Lives and Dreams</i> (Ontario: Broadview Press, 2005) at 59-111. Val Napoleon and Hadley Friedland, "An Inside Job: Engaging With Indigenous Legal Traditions Through Stories" (2016) 61 McGill Law Journal 725. |
| Oct 25 | Methods: Reflection/Application: Case-briefing Cree Stories Analytical Framework (Issue: Human harms and conflicts) | <ul style="list-style-type: none"> Hadley Friedland and Val Napoleon, "Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions." (2015) 1(1) Lakehead Law Journal 33. John Borrows, "Heroes, Tricksters, Monsters and Caregivers: Indigenous Laws and Legal Education" (2016) 61 McGill Law Journal |

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| | | <ul style="list-style-type: none"> • Select Cree stories (to be provided) |
| Nov 1 | Cree Legal Tradition: Harms and Conflict Responses and Resolutions | <ul style="list-style-type: none"> • <i>The AJR Project Cree Legal Traditions Report</i> (May 2014), prepared for the Accessing Justice and Reconciliation Project, on file with the University of Victoria Indigenous Law Research Unit, the Indigenous Bar Association, the Truth and Reconciliation Commission of Canada, the Ontario Law Foundation, and the <i>Aseniwuche Winewak</i>. • John Borrows, <i>Canada's Indigenous Constitution</i>, "Chapter 3: Indigenous Law Examples" at 84-86. • <i>TRC Final Report</i>, Vol. 6, Chapter 2, at 58-59. |
| Nov 8 | Cree Legal Tradition: | <ul style="list-style-type: none"> • Harold Cardinal, "Nation-Building: Reflections of a Niyhiyow (Cree)"(2007). • "Chapter 4: Wah-ko-to-win: Laws for a Society of Relationships" from: Hadley Friedland, <i>Reclaiming the Language of Law: The Contemporary Articulation and Application of Cree Legal Principles in Canada</i> (PhD Dissertation, University of Alberta, 2016) (unpublished). • "Chapter 5: Creating a Cree Justice Process using Cree Legal Principles" from: Hadley Friedland, <i>Reclaiming the Language of Law: The Contemporary Articulation and Application of Cree Legal Principles in Canada</i> (PhD Dissertation, University of Alberta, 2016) (unpublished). • Please review your analytical framework and readings prior to class. |
| Nov 15 | Critical Issues: Gender & Vulnerability Violence v. Conflict | <ul style="list-style-type: none"> • Snyder, Napoleon and Borrows, "Gender and Violence: Drawing on Indigenous Legal Resources" 48 <i>UBC L Rev</i> 593 • Angela Cameron, "Stopping the Violence: Canadian Feminist Debates on Restorative Justice and Intimate Violence" (2006) 10(1) <i>Theoretical Criminology</i> 49 • Royal Canadian Mounted Police, "Missing and Murdered Aboriginal Women: A National Operational Overview" (2014), online: http://www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.pdf |
| Nov 22 | Moots | <ul style="list-style-type: none"> • No readings required |

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| Nov 29 | Closing Circle | • No readings required |
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