

Current Legal Problems Law 3980:
Métis Peoples and Canadian Law
Fall 2013
Course Syllabus - **DRAFT**

Class Times: Mondays 9am-12pm

Instructor: Professor Brenda L. Gunn

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Office Hours: Monday 2-4pm
Tuesday 3-4:30pm

Required Course Materials:

- Reading package, available from the Bookstore
 - Supplemental Materials available on D2L (including legislative supplement)
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Course Description

Given the location of Robson Hall in Winnipeg, the homeland of the Métis peoples, Robson Hall is well situated to offer a course specifically focusing on Métis peoples and Canadian law. The goal of this course is to consider the distinctions in the rights and protections of Métis people in Canada, including the legal and regulatory distinctions between Métis and First Nations. The course begins with a historic overview and introduction to the ethnogenesis of the Métis peoples. The course then considers how section 35(1) of the *Constitution Act*, 1982 protects the Métis peoples' rights including in the areas of harvesting, land, government and culture/language. The course concludes by looking at traditional Métis laws and how these laws and understandings of their rights align with the protections under s. 35(1).

Evaluation

Positive Class Contribution (15%): Seminar courses are ideal forums for discussion and present students with the ability to be actively involved in the learning process. Having read the assigned readings, students should come to class prepared to grapple with the subject matter and the issues arising therein. Students will be graded on their active engagement in and positive contributions to class discussions. Attendance without participating in class will lead to a reduction in student's grade on this component. Similarly, disengagement from class discussion through emailing, chatting, surfing the internet, etc. will also lead to a reduction in the student's grade on this component. Through participation in class discussion, students demonstrate their preparedness for class and understanding of the materials.

Seminar Leadership (15%): During the semester, students will be assigned one week during Part II of the course (weeks 4-9) to lead the seminar. Students will facilitate class discussion on the substantive materials for that week. Students should raise any important developments or current/contentious issues in the area. The student leader should demonstrate his/her understanding and critical engagement with the materials and should engage the class in discussion on the topic. Students are encouraged to use multimedia in their presentations such as film, photos, songs, news clips, interviews, etc. Leaders will be

graded on their substantive knowledge and understanding of the topic area, as well as their facilitation skills (clarity, coherence, organization, engagement with the class, respect for time).

Written Work (70%): Research paper (max. 7500 words) on any topic that relates to the themes and issues discussed throughout the course. A research paper is due by 9am on Monday December 9, 2013. Late work will not be accepted without permission of the Assoc Dean. The research essay should demonstrate a reasonably sophisticated understanding of the topic area. It should be analytical rather than entirely descriptive. It should show that the researcher drew on a number of different sources as well as demonstrate facility with some of the materials covered during class-time. I encourage students to discuss their paper topic with me well in advance of the deadline.

Written work must be typed-written, one and a half-spaced in 12 point font, 1 inch margins. You must include a **word count** on the cover page. All footnotes must comply with the Canadian Guide to Uniform Legal Citation, 7th ed. Marks will be deducted for failure to comply with each of the formal requirements.

To receive comments on drafts, research works must be submitted no later than November 18.

Plagiarism and other academic offences will not be tolerated.

Please familiarize yourself with the University Regulations concerning these matters, found in the University Undergraduate Calendar:

7.1 Plagiarism and Cheating

Plagiarism or any other form of cheating in examinations, term tests or academic work is subject to serious academic penalty (e.g. suspension or expulsion from the faculty or university). ...

To plagiarize is to take ideas or words of another person and pass them off as one's own. In short, it is stealing something intangible rather than an object. Plagiarism applies to any written work, in traditional or electronic format, as well as orally or verbally presented work. Obviously it is not necessary to state the source of well known or easily verifiable facts, but students are expected to appropriately acknowledge the sources of ideas and expressions they use in their written work, whether quoted directly or paraphrased. This applies to diagrams, statistical tables and the like, as well as to written material, and materials or information from Internet sources.

To provide adequate and correct documentation is not only an indication of academic honesty but is also a courtesy which enables the reader to consult these sources with ease. Failure to provide appropriate citations constitutes plagiarism. It will also be considered plagiarism and/or cheating if a student submits a term paper written in whole or in part by someone other than him/herself, or copies the answer or answers of another student in any test, examination, or take-home assignment.

Working with other students on assignments, laboratory work, take-home tests, or on-line tests, when this is not permitted by the instructor, can constitute Inappropriate Collaboration and may be subject to penalty under the Student Discipline By-Law.

An assignment which is prepared and submitted for one course should not be used for a different course. This is called "duplicate submission" and represents a form of cheating because course requirements are expected to be fulfilled through original work for each course.

If you have a question about what constitutes plagiarism, please come and speak with me at any point.

Course Outline

Part I: Who are the Métis and how have they interacted with the Canadian State (both voluntarily and been regulated by State)

- Who are the Métis that are referred to in section 35(2)?
- What are the regional differences in the definition of Métis (Red River Valley, Alberta, Labrador)?
- What are the differences between Canadian legal definitions and self-definition?
- What are the difference between state regulation of Indians and Métis (how the regulation of the definition of Indian impacted Métis identity)?

Week 1 (Sept 9): History of Métis of the Northwest

Readings:

- John Giokas and Paul L.A.H Chartrand, “Who are the Métis? A Review of Law and Policy” in Paul L.A.H. Chartrand ed, *Who Are Canada’s Aboriginal Peoples? Recognition, Definition and Jurisdiction* (Saskatoon: Purich Publishing, 2002) at 83-125.
- Canada, *Report of the Royal Commission on Aboriginal People, Vol 4, ch 5: Metis Perspectives*, (Ottawa: Supply and Services, 1996).

Week 2 (Sept 16): Métis or Indian, But Not Both

Readings:

- *Alberta v Cunningham*, [2011] SCC 37.
- *McIvor v Canada (Registrar of Indian and Northern Affairs)*, [2009] BCCA 153.
- *Papaschase Indian Band (Descendants of) v Canada (Attorney General)*, 2004 ABQB 655.
- *Daniels v Canada (2013) FC 6*.
- *Bill C-3: Gender Equity in Indian Registration Act*, 3rd Sess, 40th Parl, 2010.
- *Bill C-31, An Act to Amend the Indian Act*, 1st Sess, 33rd Parl, 1984-85.

Week 3 (Sept 23): Alberta Métis Settlements / Métis Nation of Alberta & Labrador Métis

Readings

- *Metis Settlements Accord Implementation Act*, RSA 2000, c M-15.
- *Metis Settlements Land Protections Act*, RSA 2000, c M-16.
- *Metis Settlements Act*, RSA 2000, c M-14.
- *Bill C-19, Metis Settlements Amendment Act*, 2013.
- Catherine Bell, “Métis Self-Government: the Alberta Settlement Model” in *Aboriginal Self-Government in Canada: Current Trends and Issues*, John H. Hylton, ed, (1999, Saskatoon, Purich Publishing Ltd.)329-350.
- *Newfoundland & Labrador v Labrador Métis Nation*, 2007 NLCA 75.

Week 4 (Sept 30): Creating a Legal Definition Métis

- *R. v. Powley*, 2003 SCC 43.
- *R. v. Blais*, 2003 SCC 44.
- Proof of Ancestral connection: *R v Willison*, [2006] BCSC 985.
- Membership in aboriginal organization not sufficient for Métis identity: *R. v. Beaudry* [2006] O.J. No. 790.

NO CLASS October 4th – Indigenous Bar Association meeting

NO CLASS October 14th - Thanksgiving

Part II: What are the Métis Rights Protected Under Section 35(1)?

- What is the scope of protection of Métis rights under s. 35(1)?
- How do Métis prove these rights?
- How are they distinct from Indian/Inuit rights?
- What are the government's responsibilities *vis a vis* Métis peoples?
- How does the *Van der Peet* test apply to protect Métis cultural rights: what might be the scope of cultural rights protected?
- Why were language rights included in *Manitoba Act*? How do they apply to Métis languages?
- Implementation of rights: negotiations with Provinces & Federal Government

Week 5 (Oct 21): Harvesting Rights

Readings:

- *R v Sparrow*, [1990] 1 SCR 1075.
- *R. v. Van der Peet*, [1996] 2 S.C.R. 507.
- Review *R v Powley*, [2003] SCC 43.
- *R. v. Goodon*, 2008 MBPC 59.

Week 6 (Oct 28): Land Rights/ Aboriginal Title

Readings:

- *Manitoba Métis Federation v Canada (Attorney General)*, [2013] SCC 14.
- *Morin v Canada*, [2006] SKQB 235.
- Larry N. Chartrand, "Métis Aboriginal Title in Canada: Achieving Equality in Aboriginal Rights Doctrine" in Kerry Wilkins ed, *Advancing Aboriginal Claims: Visions, Strategies, Directions* (Saskatoon: Purich Publishing Ltd, 2004) 151-188.
- Scrip: *Sutherland v Schultz* (1883) 1 ManR13 (MBQB).
- *L'Hirondelle (Antoine) v The King* (1916) 16 ExCR 193.

Week 7 (Nov 4): Obligations of the Crown: Fiduciary Duty & Duty of Consultation

Readings:

- *Manitoba Métis Federation v Canada (Attorney General)*, [2013] SCC 14.
- *Haida Nation v British Columbia (Minister of Forests)*, [2004] 3 SCR 511.
- *Newfoundland and Labrador v. Labrador Métis Nation*, 2007 NLCA 75.
- *Labrador Métis Nation v. Canada (Attorney General)*, 2006 FCA 393.
- Jean Teillet, “Federal and Provincial Crown Obligations to the Métis” in *Métis-Crown Relations: Rights, Identity, Jurisdiction and Governance*, Frederica Wilson and Melanie Mallet, eds. (Toronto: Irwin Law, 2008) at 71-93.

Week 7b (Make up class 12-2): November 7th: Distinguished Visitor: Thomas Berger

NO CLASS Nov 11 – Remembrance Day

Week 8 (Nov 18): Self-Government

Readings:

- *Northwest Territory Métis Nation Political Accord*
- *Métis National Council Framework Agreement (2005)*
- *Métis Settlements Appeals Tribunal Act*
- Larry Chartrand, “We Rise Again: Métis Traditional Governance and the Claim to Métis Self-Government” in Yale D. Belanger ed, *Aboriginal Self-Government in Canada: Current Trends and Issues*, 3d ed (Saskatoon: Purich Publishing, 2008) at 145-157.
- Jason Madden, “The Métis Nation’s Self-Government Agenda: Issues and Options for the Future,” in Frederica Wilson & Melanie Mallet eds, *Métis-Crown Relations: Rights, Identity, Jurisdiction and Governance* (Toronto: Irwin Law, 2008) at 323-389.

Week 9 (Nov 25): Culture & Language Rights

Readings:

- Review *R v Powley*, [2003] SCC 43.
- *Reference re Manitoba Language Rights*, [1985] 1 SCR 721, 19 DLR (4th) 1 (*Manitoba Language Reference*).
- Sharon Blady, “Beadwork as an Expression of Métis Cultural Identity” in Jill Oakes & Rick Riewe eds, *Issues in the North*, vol 1 (Calgary: Canadian Circumpolar Institute, 1996) at 133-144.
- John C. Crawford, “What is Mischief?: Language in the Métis Tradition,” in Jacqueline Peterson & Jennifer S.H. Brown eds, *The New Peoples: Being and Becoming Métis in North America* (Winnipeg: University of Manitoba Press, 1985) at 231-241.
- Larry N. Chartrand, Tricia E Logan, Judy D Daniels, “Metis History and Experience and Residential Schools in Canada” prepared for the Aboriginal Healing Foundation, 2006 at 11-23.

Part III: Métis Traditional Laws

Week 10 (Dec 2):

- What did traditional Métis governance look like?
- How has this evolved today?
- How do they operate today?

Readings:

- *Manitoba Act, 1870*, (33 Vict), c 30.
- John Burrows, “Métis Legal Traditions” in *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 86-91.
- Fred J. Shore, “Customary Law of the Métis Nation” in *Past Reflects the Present: The Métis Elders’ Conference* (Winnipeg: Kromar Printing Ltd, 1997) at 213-236.

Part IV: Conclusions

- Looking forward: what directions do we think Canadian law needs to take to properly recognize and accommodate the rights of Métis people?