

**Public Policy, Law and Dispute Resolution**  
**DR 503/LAW 372 (S01)**  
**September – December 2009**  
**Friday 9:00 am - 12:00 pm**  
**Fraser Building, Room 152**

Instructor: Maureen Maloney  
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Office: Rm. 213, Fraser Building

**Required Texts:**

- Grzybowski, Alex and Stephen Owen. 2001. *Conflict Management and Governance*. Victoria, BC: UVic Institute for Dispute Resolution, available at the Faculty of Law, Room 125.
- DR 503/Law 372 Coursepack – available at the UVic Bookstore

**Course Description**

The course examines a range of contemporary issues of governance. It focuses on the interaction of legislative, judicial, and administrative institutions and processes as they respond to such pressures as the demand for enhanced representation; public participation and direct democracy; access to justice and alternative dispute resolution; aboriginal self government; fiscal restraint; public accountability; and ethics.

**Methodology**

Seminar-style discussions and lectures, student participation and role plays with student presentations. Expert guests may also be invited.

**APPENDIX A:**

Objectives, Expectations & Evaluation Criteria for Research Paper  
Criteria for Class Presentations  
Criteria for Class Participation  
Academic Integrity

# COURSE READINGS, ASSIGNMENTS AND SCHEDULE

## WEEK ONE: SEPTEMBER 11

### A. Course Overview

*Introductions*

*Discussion of Research Topics and Evaluation Criteria*

*Political, Administrative and Judicial interactions with public policy and the public*

### New Reading(s)

#### **Required Reading**

- Gryzbowski, Alex and Stephen Owen, 2001. *Good Governance and Conflict Management*, 1–6. Victoria, BC: UVic Institute for Dispute Resolution.

#### **Optional Reading**

- Pirie, Andrew. 2000. *Alternative Dispute Resolution: Skills, Science, and the Law* Toronto: Irwin Law. (Readings: The Meaning of Alternative Dispute Resolution pp 1-33 & Key Concepts in Alternative Dispute Resolution pp 34-52)  
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/docDetail.action?docID=10225595&p00=alternative%20dispute%20resolution> (e-book)

### B. The Rule of Law

### New Reading(s)

#### **Required Reading**

- Taylor, Martin, The Honourable. 1996. Making and Changing Common Law: The Essential Democratic Function of the Courts. (unpublished) (**COURSEPACK**)

#### **Optional Reading**

- Carothers, Thomas. 1998. The Rule of Law Revival. *Foreign Affairs* 77: 95-106.  
<http://heinonline.org/HOL/Page?handle=hein.journals/fora77&id=1&size=2&collection=journals&index=journals/fora>

### C. Constitutional Issues

#### **Required Reading**

- Manfredi, Christopher. 2005. Déjà Vu All Over Again: *Chaoulli* and the Limits of Judicial Policymaking. In *Access to Care, Access to Justice: The Legal Debate Over Private Health Insurance in Canada*, edited by Colleen M. Flood, Kent Roach, and Lorne Sossin, 139-157. Toronto: University of Toronto Press. (**COURSEPACK**)
- Manfredi, Christopher. Strategic Litigation and Policy Reform: Costs and Benefits. *Fraser Forum*. December 2005/January 2006. 2 pages. Available at: [http://www.fraserinstitute.org/Commerce.Web/product\\_files/Dec05ffManfredi.pdf](http://www.fraserinstitute.org/Commerce.Web/product_files/Dec05ffManfredi.pdf)

- Abella, Rosalie. The Case for a Strong Court, *Globe and Mail*, 13 April 2000, A17. (COURSEPACK)
- Crawley, Philip. Judges and the Public Interest, *Globe and Mail*, April 14, 2000, A16. (COURSEPACK)
- Hein, Gregory. 2000. Interest Group Litigation and Canadian Democracy. In *Choices* (Institute for Research in Public Policy) Available at: <http://www.irpp.org/choices/archive/vol6no2.pdf>

### ***Optional Reading***

- Reference re *Secession of Quebec*, [1998] 2 S.C.R. 217, 1-5. (Reserve Binder)
- Brodie, Ian. Interest Group Litigation and the Embedded State: Canada's Court Challenges Program, *Canadian Journal of Political Science*, June 2001: 357-376. Available at: <http://journals.cambridge.org/action/login>. (Search by author and access pdf.)
- Andreas Dür And Dirk De Bièvre. The Question of Interest Group Influence. *Journal of Public Policy*, Volume 27, Issue 01, May 2007, pp 1-12. Available at: <http://journals.cambridge.org/action/displayFulltext?type=6&fid=979452&jid=&volumeId=&issueId=&aid=979444>

***Assignment: Prepare one page outline of proposed research paper topic due, 12 noon, October 2, 2009.***

## **WEEK TWO: SEPTEMBER 18**

### **A. Reforming Representative Government**

#### ***Required Reading***

- Thomson, Patrick and James Maunder. Electoral Reform in BC: So Near and Yet So Far. *Options Politiques*. October 2005. 72 – 76. Available at: <http://www.irpp.org/po/archive/oct05/thomson.pdf>
- Pilon Dennis. 2009. BC Referendum May Be Last Chance for Electoral Reform. 15:10 *CCPA Monitor* April. <http://web.ebscohost.com.ezproxy.library.uvic.ca/ehost/pdf?vid=2&hid=8&sid=c5741951-17fd-4204-8221-38b9dc3b6515%40SRCSM2>
- Hunt, Wayne. Bridging the Democratic Divide – Creating a Sense of Civic Engagement. *Policy Options*. October 2004. 43 – 47. Available at: <http://www.irpp.org/po/archive/oct04/hunt.pdf>
- Ontario Citizens Assembly on Electoral Reform. One Ballot Two Votes: A New Way to Vote in Ontario. May 15, 2007. 32 pages. Available at: <http://www.citizensassembly.gov.on.ca/assets/One%20Ballot,%20Two%20Votes.pdf>
- *Voter Participation in Canada: Is Canadian Democracy in Crisis?* Center for Research and Information on Canada. Paper #3, October 1, 2006 . 47 pages. Available at: <http://www.fireweeddemocracyproject.ca/media/content/Voter%20Participation%20in%20Canada%20Is%20Canadian%20Democracy%20in%20Crisis.pdf>

### Optional Reading

- Sharp, Mathew. 2009. "Shared Destiny: A Common Sense Approach to Strengthening Canada Through Proportional Representation". In *Student Essay Contest 2008 Best Essays: Should Canadians switch to a system of proportional representation?* by Baker, Brian, Luke Freeman, Matthew Sharp, and Michael Kulicki. 5-7 Calgary: Canada West Foundation.  
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/docDetail.action?docID=10298827&p00=shred%20destiny%3A%20%20common%20sense%20approch%20%20strengthening%20cnd%20through%20proportionl%20representtion> (ebook)
- Kulicki, Michael. 2009. "Canada and Proportional Representation: The Rhetoric of Voting Reform versus the Reality of Representative Democracy". In *Student Essay Contest 2008 Best Essays: Should Canadians switch to a system of proportional representation?* Baker, Brian, Luke Freeman, Matthew Sharp, and Michael Kulicki. 8-10. Calgary: Canada West Foundation.  
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/docDetail.action?docID=10298827&p00=shred%20destiny%3A%20%20common%20sense%20approch%20%20strengthening%20cnd%20through%20proportionl%20representtion> (ebook)
- Milner, Henry. First Past the Post? Progress Report on Electoral Reform Initiatives in Canadian Provinces. *Policy Matters* 5(9) (IRRP: 2004) Available at: <http://www.irpp.org/pm/archive/pmvol5no9.pdf>
- Pilon, Dennis. March 2002. Renewing Canadian Democracy: Citizen Engagement in Voting System Reform. *Law Commission of Canada /Fair Vote Canada Joint Research Project*. Available at: <http://www.urban-renaissance.org/urbanren/publications/RenewingCanadianDemocracy.pdf>
- Michael Pal and Sujit Choudhry. *Is Every Ballot Equal? Visible-Minority Vote Dilution in Canada*. IRPP Choices, Vol. 13, no. 1, January 2007. 32 pages. Link available at: <http://www.fireweeddemocracyproject.ca/index.php/en/publications/subject/electoral-reform>
- Milner, Henry. Are Young Canadians Becoming Political Dropouts? *IRRP Choices*. Vol. 11, no.3. March 2005. 28 pages.  
[http://72.14.253.104/search?q=cache:Qwuu6h5HHO8J:www.irpp.org/choices/archive/vol11no3.pdf+Milner,+Henry+\(200%EF%9B%9C\).+Civic+Literacy+in+Comparative+Context:+Why&hl=en&ct=clnk&cd=1&gl=ca&client=firefox-a](http://72.14.253.104/search?q=cache:Qwuu6h5HHO8J:www.irpp.org/choices/archive/vol11no3.pdf+Milner,+Henry+(200%EF%9B%9C).+Civic+Literacy+in+Comparative+Context:+Why&hl=en&ct=clnk&cd=1&gl=ca&client=firefox-a)
- Harris, Mike and Manning, Preston. Rebalanced and Revitalized. Montreal: *The Fraser Institute*. 2006. Suggested pages 23-40 and 43-62. Available at: [http://www.fraserinstitute.ca/files/PDFs/research\\_publications/CSF\\_Rebalanced\\_Revitalized\\_III.pdf](http://www.fraserinstitute.ca/files/PDFs/research_publications/CSF_Rebalanced_Revitalized_III.pdf)
- Reid, Scott. 2005. The Road to Electoral Reform. *Canadian Parliamentary Review* 28, 3 (Autumn): 5 pages. Available at: [http://www.parl.gc.ca/infoparl/28/3/28n3\\_05e\\_SReid.pdf](http://www.parl.gc.ca/infoparl/28/3/28n3_05e_SReid.pdf)
- Report of Citizens Assembly on Voting Reform in B.C. Available at: [http://www.citizensassembly.bc.ca/resources/final\\_report.pdf](http://www.citizensassembly.bc.ca/resources/final_report.pdf)

## **B. Direct Democracy**

*Initiatives, Referenda and Recall*

*Interest Group Advocacy*

### **Required Reading**

- Mendelsohn, Matthew and Andrew Parkin. Introducing Direct Democracy in Canada. In *Choices*, (Institute for Research in Public Policy) June 2001. Available at:  
<http://www.iandrinstitute.org/New%20IRI%20Website%20Info/I&R%20Research%20and%20History/I&R%20Studies/Mendelsohn%20and%20Parkin%20-%20DD%20in%20Canada%20IRI.pdf>

### **Optional Reading**

- Johnston, W. A. Harvey Krahn, Trevor Harrison. 2006. Democracy, Political Institutions, and Trust: The Limits of Current Electoral Reform Proposals. *The Canadian Journal of Sociology* 31 no. 2: 165-182  
<http://www.jstor.org.ezproxy.library.uvic.ca/stable/20058695>
- Leib, Ethan J. 2002. Towards A Practice of Deliberative Democracy: A Proposal for a Popular Branch. *Rutgers Law Journal* 33: 359. Available at:  
<http://www.heinonline.org.ezproxy.library.uvic.ca/HOL/PDF?handle=hein.journals/rutlj33&id=369&print=section&section=17&ext=.pdf>
- Phillips, Susan. The Intersection of Governance and Citizenship in Canada: Not Quite the Third Way. Vol.7, no.4. *IRPP Policy Matters*. August 2006. 36 pages. Available at: <http://www.irpp.org/pm/archive/pmvol7no4.pdf>
- Gordon, Larry. Fair Vote Canada. Citizen Engagement in Voting System Reform: A plan for 21st century democratic renewal in Canada, July 2, 2006. 27 pages. Available at:  
<http://www.fireweeddemocracyproject.ca/media/content/Citizen%20Engagement%20in%20Voting%20System%20Reform.pdf>
- Ontario Citizens Assembly site:  
<http://www.citizensassembly.gov.on.ca/en/default.asp>
- BC Citizens Assembly site: <http://www.citizensassembly.bc.ca/public>

## **WEEK THREE: SEPTEMBER 25**

### **Making and Implementing Public Policy**

#### **Additional Readings**

#### **Required Reading**

- Policy Process Making in the Canadian Government. *A Profile of the Public Service of Canada*. Section 5.00 Available at [http://www.tbs-sct.gc.ca/iro-bri/profile/policy\\_e.asp](http://www.tbs-sct.gc.ca/iro-bri/profile/policy_e.asp).
- Wharf, Brian and Brad McKenzie. 2004 In *Connecting Policy to Practice in the Human Services*. 1-51, 52-80 (Chapters 1-3 & 4) Don Mills 2004. **(Reserve Binder)**

- Riskin, Leonard L. 2002. The contemplative lawyer: On the potential contributions of mindfulness meditation to law students, lawyers, and their clients. *Harvard Negotiation Law Review*, 7(1):1-66. Available at: <http://heinonline.org.ezproxy.library.uvic.ca/HOL/PDF?handle=hein.journals/haneg7&id=5&print=section&section=4&ext=.pdf>.

### **Optional Reading**

- Bezanson, Kate and Carter Ellen. 2006. Public Policy and Social Reproduction: Gendering Social Capital. Brock University: The Status of Women Canada's Policy. Suggested pages 1-27. Available from: [http://dsp-psd.pwgsc.gc.ca/collection\\_2007/swc-cfc/SW21-151-2006](http://dsp-psd.pwgsc.gc.ca/collection_2007/swc-cfc/SW21-151-2006)
- Hill, Michael, and Peter Hupe. 2009. *Implementing Public Policy: An Introduction to the Study of Operational Governance*. SAGE: Los Angeles. 2<sup>nd</sup> edition. (hard copy found at the McPherson library) read Chapter 3 - Implementation Theory: The Top-down/Bottom-up Debate. Pages 41-56 NB. An online copy of the 1<sup>st</sup> edition (2002) can be found on this electronic page: [http://www.uvic.ebllib.com/EBLWeb/patron/?target=patron&extendedid=P\\_254738\\_0&](http://www.uvic.ebllib.com/EBLWeb/patron/?target=patron&extendedid=P_254738_0&) . (eBook)
- Cran, Gregory J. 2006. *Negotiating Buck Naked: Doukhobor, Public Policy, and Conflict Resolution*. Vancouver: UBC Press. (Read chapter 1 and 2 - Introduction and Deconstructing the Discourse of Conflict and Culture) <http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/docDetail.action?docID=10203107&p00=implementing%20policy> (eBook)
- Prince, Michael J. 2001. Canadian Federalism and Disability Policy Making, *Canadian Journal of Political Science*, December 2001, 791 Available at: [http://journals.cambridge.org.ezproxy.library.uvic.ca/download.php?file=%2FCJP%2FCJP34\\_04%2FS0008423901778092a.pdf&code=4f98ae975ab7fb52454f2789ffa4ab4d](http://journals.cambridge.org.ezproxy.library.uvic.ca/download.php?file=%2FCJP%2FCJP34_04%2FS0008423901778092a.pdf&code=4f98ae975ab7fb52454f2789ffa4ab4d) (Log-in required, <http://journals.cambridge.org/action/login>)
- Making Public Policy Work, The Brookings Institute 2007 at <http://www.brookings.edu/comm/events/20070301.pdf>
- Schon, Donald and Martin Rein. 1994. Introduction, Ch.1-2. In *Frame Reflection: Toward the Resolution of Intractable Policy Controversies*. N.Y.: Basic Books. **(Reserve Binder)**
- Smith, Ralph. Lessons from the National Homelessness Initiative. Government of Canada, Public Service School. Available at: [http://www.myschool-monecole.gc.ca/Research/publications/pdfs/p125\\_e.pdf](http://www.myschool-monecole.gc.ca/Research/publications/pdfs/p125_e.pdf)
- Gaudet, Stephanie. 2007. Social Participation through the Life-Course. Theoretical and Empirical Tool for Social Policy Development. University of Ottawa. In Government of Canada, Horizons, vol. 9, no. 3. (February). Pages 3-8. Available at: [http://policyresearch.gc.ca/doclib/Horizons\\_V9N3\\_e.pdf](http://policyresearch.gc.ca/doclib/Horizons_V9N3_e.pdf)
- Hahn, Robert W., Tetlock, Paul C. Using Information Markets to Improve Public Decision Making. 29 *Harvard Journal of Law. & Pub. Pol'y* 215 (2005-2006). Available at: <http://www.heinonline.org.ezproxy.library.uvic.ca/HOL/Page?handle=hein.journals/hjlpp29&id=1&size=2&collection=journals&index=journals/hjlpp>

## **WEEK FOUR: OCTOBER 2**

### **Designing Dispute Resolution Systems**

#### ***Required Reading***

- Macfarlane, Julie. Designing and Evaluating Dispute Resolution Systems and Processes. In *Dispute Resolution: Readings and Case Studies*, edited by Julie Macfarlane, pp 709 – 738, 747-772, 785-788, 791-799, 808-811. (2<sup>nd</sup>, Edition, 2003) Toronto: Emond Montgomery Publications Ltd. (COURSEPACK).

#### ***Optional Readings***

- Alberstein, Michal. Forms of Mediation and Law: Cultures of Dispute Resolution. *Dispute Resolution*, 322-375. (2006-2007). Available at: <http://www.heinonline.org/HOL/Page?handle=hein.journals/ohjdpr22&id=1&size=2&collection=journals&index=journals/ohjdpr>
- Bingham, Lisa Blomgren. 2008. Designing Justice: Legal Institutions and Other Systems for Managing Conflict. *Ohio State Journal on Dispute Resolution* 24 no. 1: 1-51
- Hamilton, Michael and Dominic Bryan. 2006. Deepening Democracy? Dispute System Design and the Mediation of Contested Parades in Northern Ireland. *Ohio State Journal on Dispute Resolution* 22 no. 1: 133-87.
- Wenona Victor. 2007. *Alternative Dispute Resolution (ADR) in Aboriginal Contexts: A Critical Review*. Ottawa: Canadian Human Rights Commission. 1 – 41.  
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/docDetail.action?docID=10197947> (eBook)

## **WEEK FIVE: OCTOBER 9**

### **Issues in Public Policy Decision-Making**

#### **A. Public Sector Ethics**

*Codes of Ethics*

*Conflicts of Interest*

#### ***Required Reading***

- Federal Codes of Conduct. *Values and Ethics Codes for the Public Service*. [http://www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/TB\\_851/vec-cve\\_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp)
- Gomery Inquiry Summary. (especially 5-9, 15-32). Available at: [http://www.gomery.ca/en/phase1report/summary/es\\_full\\_vol1.pdf](http://www.gomery.ca/en/phase1report/summary/es_full_vol1.pdf)
- Saner, Marc & Cornelius von Baeyer. 2005. *Public Service Ethics in the New Millennium: The Evolving Canadian System Policy Brief No.2*. Ottawa: Institute on Governance. (Read pp 1-6)  
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/docDetail.action?docID=10091648&p00=Public+Sector+Ethics> (eBook)
- Zussman, David. The Quest for Error-Free Government. *Ottawa Citizen*. November 7, 2005. p. A15. (COURSEPACK)

- Zussman, David. How to Restore Ethics to Government. *Ottawa Citizen*, June 3, 2002. p. A15. Available at: <http://ws161574.websoon.com/common/assets/publications/en/how%20to%20restore%20ethics%20to%20government.pdf>
- Office of the Conflict of Interest and Ethics Commission. Conflict of Interest Act. 2006. Available at: [http://www.parl.gc.ca/ciec-ccie/en/public\\_office\\_holders/conflict\\_of\\_interest/docs/ci\\_act.pdf](http://www.parl.gc.ca/ciec-ccie/en/public_office_holders/conflict_of_interest/docs/ci_act.pdf)

### ***Optional Reading***

- Young, Margaret. 2006. *Conflict of Interest Codes for Parliamentarians: A Long Road*. Ottawa: Library of Parliament. Parliamentary Research Service. (Read pp 1-8)  
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/docDetail.action?docID=10168251&p00=conflict%20%20interest%20codes%20%20parliamentarians%20%20long%20rod> (eBook)

## **B. Privacy and Information**

### ***Required Reading***

- Segal, Hugh. The Critical Role of Information in a Democracy: Toward a New Approach to Public Disclosure. Speech given on May 2002. Available at: <http://www.irpp.org/miscpubs/archive/020510e.pdf>.
- Flaherty, David. 1999. Some Reflections on Privacy and Technology. *Manitoba Law Journal* (2). (**COURSEPACK**)
- Dyer, Gwynne. Ubiquitous Cameras Provide Unsettling Security, *Times Colonist*, May 7, 1999. (**COURSEPACK**)

### ***Optional Reading***

- Lester, Toby. The Reinvention of Privacy, *The Atlantic Monthly*, March 2001. (**Reserve Binder**)
- Nancy Holmes. 2008. *Canada's Federal Privacy Laws*. Ottawa: Parliamentary Information and Research Service. (Read pp 1-12).  
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/docDetail.action?docID=10248571&p00=canada%20%20federal%20privacy%20laws> (eBook)
- Hamelink, Cees. 2002. "Human Rights in the Information Society: Civic Participation in Shaping the Future". In *Citizenship and Participation in the Information Age*, edited by Manjunath Pendakur and Roma Harris. 287-299. Aurora: Garamond Press.  
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/edf.action?p00=citizenship%20%20participation%20%20%20formation%20age&docID=10175785&page=288> (eBook)
- The End of Privacy, *Economist*, May 1, 1999. 15-16, 21-23. (**COURSEPACK**)
- Thorson, Bruce. Big Brother is Alive, Well and Living in Britain, *The Vancouver Sun*, September 15, 1999. (**COURSEPACK**)

- Weeks, Carly. Government balks, opens up talks on Internet privacy. The Ottawa Citizen. Thursday, September 13, 2007. Available from: <http://www.canada.com/ottawacitizen/news/story.html?id=a464026a-8d5d-4344-be8c-f078e86654c1>
- Government of Canada. 1985. Privacy Act. Available at: <http://laws.justice.gc.ca/en/P-21/index.html>
- Litman, Jessica. 2000. Information Privacy/ Information Property, Stanford Law Review 52. Available at: <http://www-personal.umich.edu/%7Ejdlitman/papers/infoprivacy.pdf>
- Mendel, Toby. Freedom of Information as an Internationally Protected Human Right, Article 19. Available at: <http://www.article19.org/pdfs/publications/foi-as-an-international-right.pdf>
- Brock, Kathy L. Sustaining a Relationship: Insights From Canada on Linking the Government and Third Sector, presented at the Fourth International Conference on the International Society for Third Sector Research, Dublin, July 5-8, 2000. (Reserve Binder).
- Holmes, Nancy. The Right to Privacy and Parliament. Parliamentary Information and Research Service. February 22, 2006. 4 pages. Available at: <http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/EB-e/prb0585-e.pdf>

### C. Officers of the Legislature

#### **WEEK SIX: OCTOBER 16**

##### **Suggested:**

##### **Collaborative Decision-Making**

*Public Participation Continuum*

*Interest Based Negotiations*

*Shared Decision Making*

##### **Required Reading**

- Kaul, Inge, Isabelle Grunberg, and Marc A. Stern. 1999. The Prisoner's Dilemma. In *Defining Global Public Goods*, 7-8. New York: Oxford University Press. (COURSEPACK)
- Department of Justice: Policy Statement and Guidelines for Public Participation. Available at: [http://canada.justice.gc.ca/en/cons/pc\\_policy.html](http://canada.justice.gc.ca/en/cons/pc_policy.html)
- Gryzbowski, Alex and Stephen Owen, 2001. *Good Governance and Conflict Management*, 7-41. Victoria, BC: UVic Institute for Dispute Resolution
- Theatre of the Oppressed. Available at <http://www.toplab.org/forumtxt.htm>; <http://www.toplab.org/boalint.htm>; <http://www.news.harvard.edu/gazette/2003/12.11/15-boal.html>

##### **Optional Readings**

- Abelson, Julia and Francois-Pierre Gauvin, in collaboration with Mary Pat MacKinnon, and Judy Watling. 2006. *Primer on Public Involvement*. Toronto:

Health Council of Canada. (Read pp 7-18 and 28 -33)

<http://www.cprn.org/doc.cfm?doc=1519&l=en>

- Phillips, Susan and Michael Orsini. 2002. *Mapping the Links: Citizen Involvement in Policy Processes*. Ottawa: Canadian Policy Research Networks Inc.(Read pp 1-23 Mapping the Links: Citizen Involvement in Policy Processes)  
<http://www.cprn.org/doc.cfm?doc=169&l=en>

## **Specific Illustrations of Collaborative Decision-Making**

### **A. Land Use Planning**

#### ***Required Reading***

- Gunton, Thomas I., J. C. Day, and Peter W. Williams. 2003. Evaluating Collaborative Planning: The British Columbia Experience. In *Environments* 31(3):1-11. **(COURSEPACK)**
- Environmental News Service. Conflict to Consensus: British Columbia Protects Great Bear Rainforest. Vancouver:February 8, 2006. Available at:  
<http://www.ens-newswire.com/ens/feb2006/2006-02-08-08.asp>
- Smith, Merran and Sterritt, Art. From Conflict to Collaboration:The Story of the Great Bear Rainforest. *Forest Ethics*. Date? Available at:  
<http://www.forestethics.org/downloads/WWFpaper.pdf>
- Commission on Resources and Environment. *Report on a land use strategy for British Columbia*. August, 1992. pp. 25 – 30.Victoria, BC. **(COURSEPACK)**
- Danby, Dawn. Canada Changing. The Great Bear Rainforest. July 21, 2006. Available at: <http://www.worldchanging.com/archives/004716.html>

### **B. Health Planning**

#### ***New Reading(s)***

- Abelson, Julia & Gauvin, Francois-Pierre in collaboration with MacKinnon, Mary Pat and Watling Judy. *Primer on Public Involvement* (Toronto: Health Council of Canada 2006) (Read pp 19-27) <http://www.cprn.org/doc.cfm?doc=1519&l=en>

#### ***Optional Reading***

- Abelson, Julia and Gauvin, Francois-Pierre. 2004. Engaging Citizens: One Route to Health Care Accountability. Canadian Policy Research Networks. April 2004. Available at: [http://www.cprn.com/documents/28104\\_en.pdf](http://www.cprn.com/documents/28104_en.pdf)
- Schon, Donald and Martin Rein.1994. Ch. 3. In *Frame Reflection: Toward the Resolution of Intractable Policy Controversies*. N.Y.: Basic Books. **(COURSEPACK)**

***Assignment: Hand in one page outline of proposed research topic.***

## **WEEK SEVEN – OCTOBER 23**

### **Participatory Justice in Civil Cases**

*Illustration*

## Family Law

- Ver Steegh, Nancy. 2008. Family Court Reform and ADR: Shifting Values and Expectations Transform the Divorce Process Preview. *Family Law Quarterly* 42 no. 3: 659-671.  
<http://web.ebscohost.com.ezproxy.library.uvic.ca/ehost/detail?vid=6&hid=3&sid=b76edd73-b77b-426e-a193-fc34b88b8456%40sessionmgr2&bdata=JmxvZ2lucGFnZT1Mb2dpbi5hc3Amc2l0ZT1laG9zdC1saXZlJnNjb3BIPXNpdGU%3d#db=a9h&AN=36614445>
- Beck, Connie J. A and Bruce D. Sales. 2000. A critical reappraisal of divorce mediation research and policy. *Psychology, Public Policy, and Law*. 6 no. 4: 989-1056.
- Focus Consultants. 2008. *Dispute Longitudinal: Study Phase 3 Final Report*. Victoria B.C.: Ministry of Attorney-General, Civil and Family Law Policy Office. (Read pp 3-8 - Description of Dispute Resolution and the Family Justice Services Division Model).  
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/edf.action?p00=dispute%20resolution&docID=10238032> (eBook)

### Required Reading

- BC Justice Review Task Force. Effective and Affordable Civil Justice (November 2006) at  
[http://www.bcjusticereview.org/working\\_groups/civil\\_justice/cjrwg\\_report\\_11\\_06.pdf](http://www.bcjusticereview.org/working_groups/civil_justice/cjrwg_report_11_06.pdf)
- Law Commission of Canada. 2003. Transforming Relationships Through Participatory Justice. Read: Executive Summary xiv-xxii; Introduction 1-13; and Chapter 3 and 4: 88-134. **(Reserve)**
- McHale, Jerry. 2002. The role of government policy in shaping DR futures in BC. Presented at The First Annual BC Symposium on Conflict Resolution-Investing in DR Futures: Shaping Directions in Policy, Research, and Pedagogy, April 2002, Vancouver, BC. Available at:  
<http://www.ag.gov.bc.ca/dro/publications/papers/GovPolicy-DR.pdf>

## Specific Issues

### A. Child Apprehensions

#### Required Reading

- Blackstock, Cindy. 2008. "Reconciliation Means Not Saying Sorry Twice: Lessons from Child Welfare in Canada". In *From Truth to Reconciliation: Transforming the Legacy of Residential Schools*, edited by Marlene Brant Castellano, Linda Archibald and Mike DeGagné, 163-177. Ottawa: Aboriginal Healing Foundation.  
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/edf.action?p00=truth%20%20reconciliation%20commissions%20canada&docID=10227612&page=179>  
(eBook)

### ***Optional Reading***

- MacDonald, Nancy, Joan Glode and Fred Wien. (2005) "Respecting Aboriginal Families: Pathways to Resilience in Custom Adoption and Family Group Conferencing." Chapter in Ungar, Michael, ed. *Handbook for Working with Children and Youth: Pathways to Resilience across Cultures and Contexts*. Thousand Oaks, California: Sage Publications. p. 357-370.

### **B. Sharia Law**

- Lithwick, Dahlia. "How Do You Solve the Problem of Sharia?" *Slate*, September 10, 2004. Available at: <http://slate.com/id/2106547/>
- Bakht, Natasha. 2004. Family Arbitration Using Sharia Law: Examining Ontario's Arbitration Act and its Impact on Women. *Muslim World Journal of Human Rights* 1(1): Article 7. Available at: <http://www.bepress.com.ezproxy.library.uvic.ca/cgi/viewcontent.cgi?article=1022&context=mwjhr>
- Boyd, Marion. 2004. Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion. Report on Review of Arbitration Process, Ministry of Attorney General (Ontario), December 20, 2004. Toronto: Ontario. Available at: <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd/executivesummary.pdf>

## **WEEK EIGHT: OCTOBER 30**

### **A. Residential Schools in Canada**

#### ***Required Reading***

- Law Commission of Canada: Minister of Public Works and Government Services. Restoring Dignity: Responding to Child Abuse in Canadian Institutions - Executive Summary. March 2000. (**Reserve**)
- Llewellyn, Jennifer. 2002. Dealing with the Legacy of Native Residential School Abuse in Canada: Litigation, ADR, and Restorative Justice. *University of Toronto Law Journal* 52 (3):253-300. Available at: <http://www.heinonline.org.ezproxy.library.uvic.ca/HOL/PDF?handle=hein.journals/utlj52&id=409&print=section&section=22&ext=.pdf>
- Atkinson, Judy. 2002. Voices in the Wilderness: Restoring Justice to Traumatized Peoples. *University of New South Wales Law Journal* 25(1):233-241. Available at: <http://www.heinonline.org.ezproxy.library.uvic.ca/HOL/PDF?handle=hein.journals/swales25&id=247&print=section&section=21&ext=.pdf>
- Assembly of First Nations. Report on Canada's Dispute Resolution
- Plan to Compensate for Abuses in Indian Residential Schools. Year? Pp 9-17. Available at: <http://www.afn.ca/cmslib/general/Indian-Residential-Schools-Report.pdf>
- Indian Residential Schools Canada. 2006. Settlement Agreement. Available at: [http://www.irsr.gc.ca/english/news\\_10\\_05\\_06\\_AIP.html](http://www.irsr.gc.ca/english/news_10_05_06_AIP.html)

### **Optional Reading**

- News Release: Government of Canada Announces Landmark Agreement Toward A Lasting Resolution of the Legacy of Indian Residential Schools and Appoints Representative to Lead Discussions. Available at: [http://www.irsr-rqpi.gc.ca/english/news\\_30\\_05\\_05.html](http://www.irsr-rqpi.gc.ca/english/news_30_05_05.html). See Indian Residential Schools Resolution Canada at <http://www.irsr.gc.ca/english/questions.html#tc1> For more information regarding the Dispute Resolution for Indian Residential School Claims [http://www.irsr.gc.ca/english/dispute\\_resolution\\_adr\\_policy\\_paper.html](http://www.irsr.gc.ca/english/dispute_resolution_adr_policy_paper.html)
- Anna Snyder. 2006. State-Defined Alternative Dispute Resolution: More Diverse Options or More of the Same Choices? Paper presented at the Annual International Studies Association Meeting.
- Barnsley, Paul. 2003. ADR process launched. 21 no. 9 Windspeaker : 11-16 <http://web.ebscohost.com.ezproxy.library.uvic.ca/ehost/detail?vid=2&hid=6&sid=28ea456a-4380-48be-9663-0e2df2b24f4d%40sessionmgr8&bdata=JmxvZ2lucGFnZT1Mb2dpbi5hc3Amc2l0ZT1laG9zdC1saXZlJnNjb3BIPXNpdGU%3d#db=rch&AN=11781680>
- Jennifer Llewellyn. 2008. "Bridging the Gap between Truth and Reconciliation: Restorative Justice and the Indian Residential Schools Truth and Reconciliation Commission". In *From Truth to Reconciliation: Transforming the Legacy of Residential Schools*, edited by Marlene Brant Castellano, Linda Archibald and Mike DeGagné, 183 - 201. Ottawa: Aboriginal Healing Foundation. <http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/edf.action?p00=truth%20%20reconciliation%20commissions%20canada&docID=10227612&page=199> (eBook)

## **B. Truth and Reconciliation Commissions**

### **Required Reading**

- Hayner, Priscilla B. 1994. Fifteen Truth Commissions - 1974 to 1994: A Comparative Study. *Human Rights Quarterly* 16(4):597-655. Available at: <http://www.jstor.org.ezproxy.library.uvic.ca/cgi-bin/jstor/printpage/02750392/ap030058/03a00020/0.pdf?backcontext=table-of-contents&dowhat=Acrobat&config=jstor&userID=8e6824cb@uvic.ca/01cce4406000501b03cc6&0.pdf> (log-in required or enter "Fifteen Truth Commissions" under "Search")
- Assembly of First Nations. Mandate for the Truth and Reconciliation Commission. 2002. pp 12. Available at: [http://www.residentialschoolsettlement.ca/SCHEDULE\\_N.pdf](http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf)
- Llewellyn, Jennifer. 2002. Dealing with the Legacy of Native Residential School Abuse in Canada: Litigation, ADR, and Restorative Justice. *University of Toronto Law Journal* 52 (3):253-300. Available at: <http://www.heinonline.org.ezproxy.library.uvic.ca/HOL/PDF?handle=hein.journals/utlj52&id=409&print=section&section=22&ext=.pdf>

### **Optional Reading**

- Steiner, Henry and Philip Alston, *Massive Tragedies: Prosecutions and Truth Commissions*. In *International Human Rights in Context - Law, Politics, Morals*, 1226-1246. Oxford: 2000 Oxford University Press. **(Reserve Binder)**
- Chapman, Audrey. Truth Commissions as Instruments of Forgiveness and Reconciliation. In *Forgiveness and Reconciliation*. Edited by Raymon G. Helmick, S. J. and Rodney L. Petersen, 257-277.
- Tricia Logan. 2008. "A Metis Perspective on Truth and Reconciliation". In *From Truth to Reconciliation: Transforming the Legacy of Residential Schools*, edited by Marlene Brandt Castellano, Linda Archibald and Mike DeGagné, 69-88. Ottawa: Aboriginal Healing Foundation.  
[http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/edf.action?p00=truth%20%20reconciliation%20commissions%20canada&docID=10227612&page=85\(eBook\)](http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/edf.action?p00=truth%20%20reconciliation%20commissions%20canada&docID=10227612&page=85(eBook))
- Stan McKay. 2008. "Expanding the Dialogue on Truth and Reconciliation - In a good way". In *From Truth to Reconciliation: Transforming the Legacy of Residential Schools*, edited by Marlene Brant Castellano, Linda Archibald and Mike DeGagné, 101-115. Ottawa: Aboriginal Healing Foundation.  
[http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/edf.action?p00=truth%20%20reconciliation%20commissions%20canada&docID=10227612&page=117\(eBook\)](http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/edf.action?p00=truth%20%20reconciliation%20commissions%20canada&docID=10227612&page=117(eBook))
- Geula, Marianne. 2000. South Africa's Truth and Reconciliation Commission as an Alternate Means of Addressing Transitional Government Conflicts in a Divided Society. *Boston University International Law Journal*, 18 no. 1:57 -84  
<http://www.heinonline.org.ezproxy.library.uvic.ca/HOL/Page?handle=hein.journals/builj18&id=1&size=2&collection=journals&index=journals/builj>

## **WEEK NINE: NOVEMBER 6**

### **Restorative Justice in Criminal Matters**

#### ***Required Reading***

- McCold, Paul & Ted Wachtel. 2003. In Pursuit of a Paradigm: A Theory of Restorative Justice. International Institute for Restorative Practices. Available at: <http://www.realjustice.org/library/paradigm.html>
- Schmidt, Rosemarie and Jenifer Newcombe. 2002. Engaging Citizen Participation in Restorative Justice, *Interaction* 16(1):12-13. **(COURSEPACK)**
- Braithwaite, John. 1999. A Future Where Punishment is Marginalized: Realistic or Utopian? *UCLA Law Review* 46:1727-1750. Available at: <http://heinonline.org.ezproxy.library.uvic.ca/HOL/PDF?handle=hein.journals/uclalr46&id=1741&print=section&section=41&ext=.pdf>

#### ***Optional Reading***

- Cormier, Robert B. Restorative Justice: Directions and Principles - Developments in Canada. A paper sponsored by the International Centre for Criminal Law

- Reform and Criminal Justice Policy. Available at: [http://ww2.psepc-sppcc.gc.ca/publications/corrections/200202\\_e.asp](http://ww2.psepc-sppcc.gc.ca/publications/corrections/200202_e.asp)
- Centre for Restorative Justice & Mediation: School of Social Work, University of Minnesota. Restorative Justice: For Victims, Communities and Offenders, 1-27. **(Reserve Binder)**
  - BC Ministry of the Attorney General. 1999. Community Accountability Programs: An Option for Your Community, 2-14. **(Reserve Binder)**
  - Gabbay, Zvi D. 2007. Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices. 2007 Originally published in the *Journal of Dispute Resolution*, a publication of the Center for Dispute Resolution of the University of Missouri School of Law, 49 pp. <http://www.realjustice.org/library/justifyingrj.html>
  - United Nations Office of Drugs and Crime's Criminal Justice Reform Unit. 2006. Handbook on Restorative Justice Programmes. New York: United Nations. pp13-29 and 59-70. Available at: <http://www.realjustice.org/library/unhandbook.html>
  - Katz, Joanne; Bonham, Gene Jr. 2006. Restorative Justice in Canada and the United States: A Comparative Analysis. 6 *Journal of the Institute of Justice and International Studies*.187 Available at: <http://www.heinonline.org.ezproxy.library.uvic.ca/HOL/Page?handle=hein.journals/jjjs6&id=1&size=2&collection=journals&index=journals/jjjs>
  - Walgrave, Lode. Integrating Criminal Justice and Restorative Justice. In *Handbook of Restorative Justice*, 559-579. Edited by Gerry Johnstone and Daniel W. Wan Ness. Oregon: Willan Publishing. (On reserve in the McPherson Library.)
  - Roach, Kent. 2006. The Institutionalization of restorative justice in Canada; effective reform or limited and limiting add-on? In *Institutionalizing Restorative Justice*. Edited by Ivo Aertsen, Tom Daems and Luc Robert, 167-193. Oregon: Willan Publishing.
  - Nowrojee, Binaifer. 2005. Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone's Rape Victims. *Harvard Human Rights Journal*. 18: 85-105.

## **WEEK TEN: NOVEMBER 13**

### **Culture and Gender Considerations in Restorative Justice**

#### ***Required Reading***

- Ross, Rupert. 1994. Duelling paradigms? Western Criminal Justice vs. Aboriginal Community Healing. In *Continuing Poundmaker and Riel's Quest*. Edited by R. Grosse, J. Henderson, and J. Youngblood, 241-268. Saskatoon: Purich Publishing. **(COURSEPACK)**
- LaRocque, Emma. 1997. Re-examining Culturally Appropriate Models in Criminal Justice Applications. In *Aboriginal and Treaty Rights in Canada*, edited by Michael Asch, 75-96. Vancouver: UBC Press. **(COURSEPACK)**
- Mirsky, Laura. 2003. The Wet'suwet'en Unlocking Aboriginal Justice Program: Restorative Practices in British Columbia, Canada (International Institute for

- Restorative Practices) Available at:  
<http://fp.enter.net/restorativepractices/wuaj.pdf>
- Pope, Al. 2004. B.C. Court Ignores Aboriginal Women's Plea. *Canadian Dimension* (May-June 2004). (**Reserve Binder**)
  - Hudson, Barbara. 1998. Restorative Justice: The Challenge of Sexual and Racial Violence *Journal of Law and Society* 25(2): 237-256. Available at:  
<http://www.jstor.org.ezproxy.library.uvic.ca/cgi-bin/jstor/printpage/0263323x/ap050059/05a00050/0.pdf?backcontext=page&download=Acrobat&config=jstor&userID=8e6824cb@uvic.ca/01cce4406000501b03cc6&0.pdf> (log-in required).
  - Healing Circle and R. v. O'Connor. 1998. News Release and Backgrounder, Ministry of Attorney General, June 1998. (**COURSEPACK**)

### ***Optional Reading***

- Savarese, Josephine. 2005. Gladue was a woman: the importance of gender in restorative-based sentencing. In *New Directions in Restorative Justice*. Edited by Elizabeth Elliot, and Robert M. Gordon. Oregon, 134-149. Willan Publishing. (On reserve in McPherson Library.)
- Daly, K. and Stubbs, J. Feminist theory, feminist and anti-racist politics, and restorative justice. In *Handbook of Restorative Justice*, 149-169. Edited by Gerry Johnstone and Daniel W. Wan Ness. Oregon: Willan Publishing. (On reserve in McPherson Library.)
- Jacobs, Beverley and Andrea Williams. "Legacy of Residential Schools: Missing and Murdered Aboriginal Women". In *From Truth to Reconciliation: Transforming the Legacy of Residential Schools*, edited by Marlene Brant Castellano, Linda Archibald and Mike DeGagné, 119 – 140. Ottawa: Aboriginal Healing Foundation.  
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/edf.action?p00=truth%20%20reconciliation%20commissions%20canada&docID=10227612&page=135>  
 (eBook)
- Stewart, Wendy, Audrey Huntley, & Faye Blaney. 2001. The Implications of Restorative Justice for Aboriginal Women and Children Survivors of Violence: A Comparative Overview of Five Communities in British Columbia. Available at:  
<http://www.lcc.gc.ca/pdf/Awan.pdf>
- Daly, Kathleen. 2001. Sexual Assault and Restorative Justice, 4th revision, December 2001. Paper presented to the Restorative Justice and Family Violence Conference, Australian National University, Canberra, July 2000. in *Restorative Justice and Family Violence*, edited by Heather Strang & John Braithwaite, (N.p: Cambridge University Press, 2002). (On reserve in Law Library.)

### **Is an Apology Always an Apology? Suggested**

#### ***New Reading(s)***

#### ***Required Reading***

- Office of the Ombudsman British Columbia. 2006. The Power of an Apology: Removing the Legal Barriers. To the Legislative Assembly of BC. Special Report No. 27, 24 pp. (February). Available at: [http://www.ombudsman.bc.ca/reports/Special\\_Reports/Special%20Report%20No%20-%202027.pdf](http://www.ombudsman.bc.ca/reports/Special_Reports/Special%20Report%20No%20-%202027.pdf)
- Isaacs, William. 1999. Part III. In *Dialogue and the Art of Thinking Together*. 177-232. N.Y.: Random House. (**Reserve Binder**)
- Apology Act, R.S.B.C. 2006 <http://www.leg.bc.ca/38th2nd/amend/gov16-2.htm>

### ***Optional Reading***

- Petrucci, Carrie J. 2002. Apology in the criminal justice setting: Evidence for including apology as an additional component in the legal system. *Behavioral Sciences and the Law* 20:337-362. Online link: <http://www3.interscience.wiley.com.ezproxy.library.uvic.ca/cgi-bin/fulltext/96516679/PDFSTART>
- Foong, Deanna. 2007. A Discussion of Apology and Its Use in Alternative Dispute Resolution (Australia). *Australasian Dispute Resolution Journal* 18 no. 2: 73-83.
- Pavlick, Donna L. 2003. Apology and mediation: The horse and carriage of the twenty-first-century. *Ohio State Journal on Dispute Resolution*, 18(3):829-866. Available at: <http://heinonline.org.ezproxy.library.uvic.ca/HOL/PDF?handle=hein.journals/ohjdpr18&id=839&print=section&section=31&ext=.pdf>
- Ashley, A. Davenport. 2006. Forgive and Forget: Recognition of Error and Use of Apology as Preemptive Steps to ADR or Litigation in Medical Malpractice Cases. In *Pepperdine Dispute Resolution Law Journal*. Vol. 6:1. pp 81-108. Available at: <http://www.heinonline.org.ezproxy.library.uvic.ca/HOL/Page?handle=hein.journals/pepds6&id=1&size=2&collection=journals&index=journals/pepds>

## **WEEK ELEVEN: NOVEMBER 20**

### **Aboriginal – Settler Relationships**

*Treaty Negotiations*

*Self Government Models, Litigation*

**Reconsidering the BC Treaty Process**

### **New Reading(s)**

#### ***Required Reading***

- BC Treaty Commission. 2002. Changing Landscape: BC Treaty Commission Annual Reports. Available at: [http://72.14.253.104/search?q=cache:nzn\\_mi8WVqIJ:www.bctreaty.net/files/pdf/documents/2002\\_annual.pdf+%E2%80%A2+BC+Treaty+Commission.+2002.+Changing+Landscape:+BC+Treaty+Commission+Annual+Reports&hl=en&ct=clnk&cd=2&gl=ca](http://72.14.253.104/search?q=cache:nzn_mi8WVqIJ:www.bctreaty.net/files/pdf/documents/2002_annual.pdf+%E2%80%A2+BC+Treaty+Commission.+2002.+Changing+Landscape:+BC+Treaty+Commission+Annual+Reports&hl=en&ct=clnk&cd=2&gl=ca)
- BC Treaty Commission. 2006. Six Perspectives on Treaty Making: BC Treaty Commission Annual Report. Available at:

[http://www.bctreaty.net/files\\_3/pdf\\_documents/BCTC06AR-FINAL.pdf](http://www.bctreaty.net/files_3/pdf_documents/BCTC06AR-FINAL.pdf)

**(RESERVE)**

- Molloy, Tom. 2004. A Testament to Good Faith: The Process and Structure of the Nisga'a Negotiations: A Federal Negotiator's Perspective. *International Journal on Minority and Group Rights*. II:251-258. **(COURSEPACK)**
- Chief Joe Gosnell, Speech to Making Peace and Sharing Power Conference, Victoria, April 1996. **(COURSEPACK)**
- Tully, James. 2000. Reconsidering the BC Treaty Process. In *Speaking Truth to Power*. Law Commission of Canada and BC Treaty Commission Forum, March 2000. Available at: [http://www.lcc.gc.ca/partnership/treaty\\_1-en.asp](http://www.lcc.gc.ca/partnership/treaty_1-en.asp)
- BC Treaty Commission. 2007. General Overview of Tsawassen First Nations Final Agreement with Government of Canada. 6 pages. Available at: <http://www.gov.bc.ca/arr/firstnation/tsawwassen/down/factsheet/overview.pdf>
- Woolford, Andrew. 2005. *Between Justice and Certainty: Treaty Making in British Columbia*. Vancouver: UBC Press. (Read pp 15-39 - Between the Procedure and Substance of Justice)  
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/edf.action?p00=public%20participation%20and%20reform%20british%20columbia&docID=10108793&page=27> (eBook)
- BC Treaty Commission. 2006. Lheidli T'enneh Final Agreement. 6 pages. Available at:  
[http://www.gov.bc.ca/arr/firstnation/lheidli/down/overview\\_newest.pdf](http://www.gov.bc.ca/arr/firstnation/lheidli/down/overview_newest.pdf)

### ***Optional Reading***

- Berger, Thomas. 1991. Ch. 11: Native Claims and the Rule of Law. In *A Long and Terrible Shadow: White Values, Native Rights in the Americas, 1492-1992*, 140-156. Vancouver: Douglas & McIntyre. **(Reserve Binder)**
- Schuurman, Hedda, 2001. The Concept of Community and the Challenge of Self-Government. In *Aboriginal Autonomy and Development*, edited by Colin Scott, 379-397. Vancouver: UBC Press. **(Reserve Binder)**
- Law Commission of Canada. 2003. Ch. 2 and 5. In *Transforming Relationships Through Participatory Justice*, 15-87, 135-154. **(Reserve Binder)**
- Boldt, M. 1993. Policy. In *Surviving as Indians - The Challenge of Self-Government*, 65-116. Toronto: University of Toronto Press **(Reserve Binder)**
- Schon, Donald and Martin Rein. 1994. Ch. 5, 7. In *Frame Reflection: Toward the Resolution of Intractable Policy Controversies*, 91-128, 165-187. N.Y.: Basic Books. **(Reserve Binder)**
- Isaac, Thomas. 1992. Individual Versus Collective Rights: Aboriginal People and the Significance of Thomas v. Norris. *Manitoba Law Journal* 21(3):618-630. **(Reserve Binder)**
- Foster, Hamar. Delgamuukw Case Study, Faculty of Law, University of Victoria. **(Reserve Binder)**
- Boyanowski, Ehor. 1999. Entrenching Ethnic Conflict in BC, *National Post*, May 5, 1999. **(Reserve Binder)**
- Transcript of Presentation by Associate Chief Judge Murray Sinclair, Elders-Policy Makers-Academics Constituency Group Meeting, Aylmer, Quebec, April 16-18, 1997. **(Reserve Binder)**

- Tanner, Adrian. 2001. The Double Bind of Aboriginal Self-Government. In *Aboriginal Autonomy and Development*, edited by Colin Scott. Vancouver: UBC Press. **(Reserve Binder)**
- Ministry of Aboriginal Relations and Reconciliation. 2006. A New Relationship with First Nations and Aboriginal People. 18 pages. Available at: [http://www.gov.bc.ca/arr/newrelationship/down/2006\\_newrelationship\\_web.pdf](http://www.gov.bc.ca/arr/newrelationship/down/2006_newrelationship_web.pdf)
- Foster, Hamar. Litigation and the BC Treaty Process: Some Recent Cases in a Historical Perspective. BC Treaty Commission. In *Speaking Truth to Power*. March 14-15, 2002. 10 pages. Available at: [http://www.bctreaty.net/files/pdf\\_documents/hamar\\_foster\\_speech.pdf](http://www.bctreaty.net/files/pdf_documents/hamar_foster_speech.pdf)
- Alcantara, Christopher. Explaining Aboriginal Treaty Negotiation
- Outcomes in Canada: The Cases of the Inuit and the Innu in Labrador. *Canadian Journal of Political Science/Revue canadienne de science politique*, Volume 40, Issue 01, March 2007, pp 185-207. Available at: <http://journals.cambridge.org> (Search by author)
- Marlene Brant Castellano. 2008. “A Holistic Approach to Reconciliation: Insights from Research of the Aboriginal Healing Foundation”. In *From Truth to Reconciliation: Transforming the Legacy of Residential Schools*, edited by Marlene Brant Castellano, Linda Archibald and Mike DeGagné, 383 – 400. Ottawa: Aboriginal Healing Foundation. <http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/edf.action?p00=truth%20%20reconciliation%20commissions%20canada&docID=10227612&page=399> (eBook)

## **WEEK TWELVE: NOVEMBER 27**

### *Class Review*

## APPENDIX A -

### PUBLIC POLICY, LAW AND DISPUTE RESOLUTION DR 503 & LAW 372

#### OBJECTIVES, EXPECTATIONS AND EVALUATION CRITERIA FOR RESEARCH PAPER

(Worth 70 marks)

The following is an outline of the objectives and expectations and therefore evaluation criteria that I have for research papers. Please read what follows carefully and if you have any questions about anything in this memo or related matters, please do not hesitate to ask them

- TOPIC:** To be mutually agreed by the instructor, Professor Maureen Maloney and the Student.
- VALUE:** 70 percent of the final mark in the course
- LENGTH:** The paper must be:  
Graduate Students: 4,500 - 5,500 words in length (**exclusive of footnotes and bibliography**).  
Law Students: 3,500 - 4,500 words in length (**exclusive of footnotes and bibliography**).  
Papers must include word count. Words in excess of these limits will not be graded.
- DUE DATE:** Research paper is due \_\_\_\_\_ **no later than 3 p.m., at the Institute for Dispute Resolution, Room 123, Fraser Building.** Grade reduced by two percentage points for each two days (or part thereof) that paper is late. Days include Saturday, Sunday and holidays. Fax or email transmittal is not permitted. If circumstances warrant, I can grant you an extension. However, extensions must be based on circumstances that would warrant a special examination (e.g. illness or family emergency).
- WORK:** You are expected to work diligently on the paper **throughout most of the term**. It is very important **not** to postpone work on the paper until late in the term. A research paper requires a great deal of work and a time commitment.

**EVALUATION:** Your paper will be graded on the basis of my overall assessment of the following four factors:

**(1) Content:** The paper should involve a significant amount of research on the topic you have chosen and it should demonstrate your ability to conduct research using both primary (e.g. in the case of law, case law or legislation) and secondary (e.g. articles and books) materials. Your research should be up to date. Your paper must be well-documented by footnotes and it must include a bibliography of all the cases, reports and other materials that you read in preparing the paper.

**(a) "New" Work Requirement:** The work that you do for the paper must be “new” work. “Multiple submissions” of your own work (i.e. the submission of the same paper in more than one academic course) is a serious academic offence unless you have obtained the prior permission of the instructors concerned. (See the section on plagiarism and academic dishonesty at the end of this memo for further information in this regard.) Similarly, it would also be academically dishonest to submit as your research paper all or part of a memo, report, or other work product that you undertook or completed outside the academic context such as for employment purposes. Accordingly, if you wish to make use in your paper of research or writing that you have already completed, whether within an academic context or not, you **must** discuss this with me before doing so. We can then jointly determine the extent to which it would be appropriate for you to rely on, and build upon, such work.

**(b) Knowledge and Thought:** The paper should demonstrate that you have thought about your topic in depth and that you have acquired a thorough grasp of the subject area that you have chosen to write about. It should also demonstrate your ability to think critically about your topic, for example, by identifying problems or uncertainties in your chosen area, analysing their impact, and making suggestions for change, or by relating your topic to larger theoretical principles. (In other words, for example, you must strive to do more than merely describe the applicable policy or status quo in a particular area.)

**(2) Style, Format and Presentation:** The paper should be well-organized, well-written and well-presented.

**(a) Organization:** The paper should be logically organized around a central thesis or theme. It should have an introduction and a conclusion and the sections in between should unfold in a logical fashion. In the introduction you should tell the reader what the paper is about, what your thesis is, and how the paper will unfold. (Try to capture the reader’s interest and make him/her want to keep reading.) The “middle” sections of the paper should “tell the story you want to tell” and provide the reader with the background he/she will need to understand that story. Headings, sub-headings, and “bridging text” between sections should be used to improve the clarity of your message and the “readability” of the paper. The conclusion section should draw the themes of your paper together and make your “final statement” about your topic.

**(b) Writing:** The paper should be well-written in terms of word usage, sentence structure, grammar, and spelling. Please read all your work **(including any drafts of your paper)** with a critical eye, **before** submitting it to me. Try to detach yourself from what you have written and put yourself in the shoes of a reader. Ask yourself if each sentence is a complete sentence. Does it make sense? Is it too wordy? Is it clear? Do the sentences, paragraphs and sections flow logically from one idea or topic to the next? Is there sufficient bridging text between sections to improve "readability"? Should terms in the paper be better defined?

**(c) Format and Presentation:** You must use proper style for case citations and other footnotes. (For law students, Follow the *Canadian Guide to Uniform Legal Citation*, for graduate faculty follow the appropriate citation in your home faculty or thesis subject area.) Your final product should also be well-presented in terms of its overall appearance. Lines should be 1.5 spaced or double-spaced and I suggest you use 1.25 inch margins and a 12 point font. Please run the spell and grammar check functions on the entire paper before submitting it.

**(3) Manner of Work:** In assigning your final grade, I may also give some consideration to the manner in which you worked on the paper. (Did you work diligently throughout the term? Did you meet scheduled dates to submit outlines? Did you complete the paper in a timely fashion?) Although this component of evaluation will not be given much weight, it can come into play when I am trying to decide a "close case" between grade categories. For example, if I am trying to decide whether your final grade for the paper should be a B+ or A-, an excellent work pattern could help tip the balance in favour of an A-.

## **CRITERIA FOR CLASS PRESENTATIONS**

(Worth 25 marks)

### **1. Introduction**

- Clearly set out what intend to do

### **2. Clarity of Presentation**

- Articulate
- Ability to clear up confusion
- Ability to stay within time limits

### **3. Content (Quality over quantity)**

- Substantive
- Critique or analysis of the content discussed
- Interesting
- Good illustrations (ie. Use of examples)
- Good use of materials either in the assigned readings or from appropriate and relevant external sources
- Building on class discussions where appropriate
- Placing the issue or theme in the broader context

## **CRITERIA FOR CLASS PARTICIPATION**

**(Worth 5 marks)**

### **1. Attendance**

- Attendance at classes is expected. If you are unable to attend, please let the instructor know in advance.

### **2. Clarity of Participation**

- Articulate
- Clear
- Ability to clear up confusion

### **3. Content (Quality over quantity)**

- Substantive
- Critique or analysis of the content discussed
- Interesting
- Good illustrations (ie. Use of examples)
- Good use of materials
- Demonstrating that you have read the materials
- Bringing in different perspectives from work experience
- Bringing in different perspectives from different academic disciplines

### **4. Participation n Role-playing**

- Constructive
- Articulate
- Demonstrating that you have read the material

## ACADEMIC INTEGRITY

**Academic integrity is expected of all participants in the University Community. It is a serious academic offence to engage in plagiarism or other forms of academic dishonesty or to assist others in doing so.** Students should familiarize themselves with the Academic Regulations of the University of Victoria Regarding Academic Integrity that are set out in the University Calendar <http://web.uvic.ca/calendar2007/FACS/UnIn/UARe/PoAcI.html> (*Undergraduate calendar*); <http://web.uvic.ca/calendar2007/GRAD/FARe/AcIn.html> (*Graduate Calendar*) The rules regarding proper use and citation of primary and secondary sources and what constitutes improper use of sources, are not always well-known by students. **If you have any doubts in this regard, please discuss them with the instructor.**

Note that “**multiple submissions**” of your own work is an academic offence unless you have obtained the express prior permission of the instructor. This means that you are not allowed to submit the same work for academic credit in more than one course, regardless of whether or not the other course is at this university or at another (previous) academic institution. Note that similar issues arise regarding the use of research and writing that has been undertaken or completed in an employment or other non-academic context. Students should consult their instructor for permission in such cases.

Plagiarism and other forms of academic dishonesty may lead to disciplinary proceedings and, depending on the circumstances, may result in the imposition of academic penalties ranging from a reprimand, loss of credit for a course, an “F” grade, or temporary or permanent suspension from the Faculty or the University.

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**The following are the Academic Regulations of the University of Victoria regarding Academic Integrity: (Source: University of Victoria 2007-2008 Undergraduate Calendar, <http://web.uvic.ca/calendar2007/FACS/UnIn/UARe/PoAcI.html>; Graduate Calendar <http://web.uvic.ca/calendar2007/GRAD/FARe/AcIn.html>.)**

### **POLICY ON ACADEMIC INTEGRITY**

Academic integrity requires commitment to the values of honesty, trust, fairness, respect, and responsibility. It is expected that students, faculty members and staff at the University of Victoria, as members of an intellectual community, will adhere to these ethical values in all activities related to learning, teaching, research and service. Any action that contravenes this standard, including misrepresentation, falsification or deception, undermines the intention and worth of scholarly work and violates the fundamental academic rights of members of our community. The following policies and procedures are designed to ensure that the University’s standards are upheld in a fair and transparent fashion.

In this regulation, “work” is defined as including the following: written material, laboratory and computer work, musical or art works, oral reports, audiovisual or taped

presentations, lesson plans and material in any medium submitted to an instructor for grading purposes.

Violations of academic integrity covered by this policy can take a number of forms, including the following:

### **Plagiarism**

A student commits plagiarism when he or she:

- \* submits the work of another person as original work
- \* gives inadequate attribution to an author or creator whose work is incorporated into the student's work, including failing to indicate clearly (through accepted practices within the discipline, such as footnotes, internal references and the crediting of all verbatim passages through indentations of longer passages or the use of quotation marks) the inclusion of another individual's work
- \* paraphrases material from a source without sufficient acknowledgement as described above

Students who are in doubt as to what constitutes plagiarism in a particular instance should consult their course instructor.

The University reserves the right to use plagiarism detection software programs to detect plagiarism in essays, term papers and other assignments.

### **Multiple Submission**

Multiple submission is the resubmission of work by a student that has been used in identical or similar form to fulfill any academic requirement at UVic or another institution. Students who do so without prior permission from their instructor are subject to penalty.

### **Falsifying Materials Subject to Academic Evaluation**

Falsifying materials subject to academic evaluation includes, but is not limited to:

- \* fraudulently manipulating laboratory processes, electronic data or research data in order to achieve desired results
- \* using work prepared by someone else (e.g., commercially prepared essays) and submitting it as one's own
- \* citing a source from which material was not obtained
- \* using a quoted reference from a non-original source while implying reference to the original source
- \* submitting false records, information or data, in writing or orally

### **Cheating on Assignments, Tests and Examinations**

Cheating includes, but is not limited to:

- \* copying the answers or other work of another person
- \* sharing information or answers when doing take-home assignments, tests and examinations except where the instructor has authorized collaborative work
- \* having in an examination or test any materials or equipment other than those authorized by the examiners
- \* impersonating a candidate on an examination or test, or being assigned the results of such impersonation

Candidates found communicating with one another in any way or having unauthorized books, papers, or communication devices such as cell phones and PDA's in their possession, will be considered to be in violation of the University Policy on Academic Integrity.

### **Aiding Others to Cheat**

It is an offence to help others or attempt to help others to engage in any of the conduct described above.

## **PROCEDURES FOR DEALING WITH VIOLATIONS OF ACADEMIC INTEGRITY**

Procedures for determining the nature of alleged violations involve primarily the course instructor and the Chair or Director of the unit concerned (or, in the case of undepartmentalized faculties, the Dean). Procedures for determining an appropriate penalty also involve Deans and, in the most serious cases, the President. The Chair, Director or Dean (in the case of undepartmentalized faculties) may designate an experienced faculty member (e.g., the course coordinator in multiple-section courses) to fulfill his or her responsibilities in relation to this policy.

### **Allegations**

Alleged offences must be documented by the instructor, who must inform the Chair. The Chair shall then inform the student in writing of the nature of the allegation and give the student a reasonable opportunity to respond to the allegation. Normally, this shall involve a meeting between the instructor, the Chair, the student and, if the student requests in advance, another party chosen by the student to act as the student's adviser.

### **Determining the Nature of the Violation**

The Chair shall make a determination as to whether convincing evidence exists to support the allegation.

### **Determining Appropriate Penalties**

If there is convincing evidence, the Chair shall inform the Dean of the faculty in which the course is offered (or the Dean of Graduate Studies, in the case of graduate students), who shall then inform the Chair whether the student's record contains any other

confirmed instances of plagiarism or cheating. If there is no record of prior offences, the Chair shall make a determination with respect to the appropriate penalty, using the guidelines provided below.

### **Referral to the Dean**

Where there has been a prior offence, the Chair shall forward the case to the Dean (or the Dean's designate) of the student's faculty, after having first determined that convincing evidence exists to support the allegation. The Chair may submit a recommendation to the Dean with respect to a proposed sanction. In the case of a first-time offence that is particularly unusual or serious, the Chair may refer the case to the Dean, with a recommendation for a penalty more severe than those outlined below.

### **Letters of Reprimand**

Any penalty will be accompanied by a letter of reprimand which shall be written by the authority (Chair, Dean, President) responsible for imposing the penalty. The letter of reprimand shall be sent to the student and copied to Undergraduate or Graduate Records, where it shall be kept until four (4) years after graduation.

### **Rights of Appeal**

Students must be given the right to be heard at each stage, and have the right to appeal decisions in accordance with University policy. A student may:

- \* appeal a decision made by an instructor to the Chair of the department in which the student is registered
- \* appeal a decision made by the department Chair to the Dean of the faculty in which the student is registered
- \* appeal a decision made by the Dean or by the President under the provisions of section 61 of the University Act to the Senate Committee on Appeals

In the case of a successful appeal, any penalty will be rescinded and the letter of reprimand shall be withdrawn from Undergraduate or Graduate Records.

### **GUIDELINES FOR PENALTIES**

These guidelines distinguish between minor and serious violations of university policy, and between first and subsequent offences.

#### **Violations Relating to Undergraduate or Graduate Course Work**

The following guidelines apply to undergraduate and graduate students.

#### **Plagiarism**

Multiple instances of inadequate attribution of sources should result in a grade of zero for the assignment. A largely or fully plagiarized assignment should result in a grade of F for the course.

### **Multiple Submission Without Prior Permission**

If a substantial part of an assignment submitted for one course is essentially the same as part or all of an assignment submitted for another course, this should result in a grade of zero for the assignment in one of the courses. If the same assignment is submitted for two courses, this should result in a grade of F for one of the courses. The penalty normally will be imposed in the second (i.e., later) course in which the assignment was submitted.

#### **Falsifying Materials**

If a substantial part of an assignment is based on false materials, this should result in a grade of zero for the assignment. If an entire assignment is based on false materials (e.g., submitting a commercially prepared essay as one's own work), this should result in a grade of F for the course.

### **Cheating on Exams**

Any instance of impersonation of a candidate during an exam should result in a grade of F for the course for the student being impersonated, and disciplinary probation for the impersonator (if he or she is a student). Isolated instances of copying the work of another student during an exam should result in a grade of zero for the exam. Systematic copying of the work of another student (or any other person with access to the exam questions) should result in a grade of F for the course. Any instance of bringing unauthorized material (e.g., crib sheets, written notes on body or clothing) into an exam should result in a grade of F for the course. Sharing information or answers for take-home assignments and tests when this is clearly prohibited in written instructions should result in a grade of zero for the assignment when such sharing covers a minor part of the work, and a grade of F for the course when such sharing covers the bulk of the work.

### **Collaborative Work**

In cases in which an instructor has provided clear written instructions prohibiting certain kinds of collaboration on group projects (e.g., students may share research but must write up the results individually), instances of prohibited collaboration on a substantial part of the assignment should result in a grade of zero for the assignment, while instances of prohibited collaboration on the bulk of the assignment should result in a grade of F for the course.

### **Repeat Violations**

Any instance of any of the violations described above committed by a student who has already committed one offence, especially if either of the offences merited the assignment of a grade of F for the course, should result in the student's being placed on disciplinary probation. This decision can only be taken by the Dean of the student's

faculty. Disciplinary probation will be recorded on the student's transcript. If a student on disciplinary probation commits another offence, this should result in the student's permanent suspension. This decision can only be taken by the President, on the recommendation of a Dean.

### **Violations Relating to Graduate Student Theses**

\* a) Instances of substantial plagiarism or falsification of materials that affect a minor part of the student's thesis should result in a student being placed on disciplinary probation and required to rewrite the affected sections of the thesis. While the determination of the nature of the offence would be made by the Chair, this penalty could only be imposed by the Dean of Graduate Studies. If there were no further offences, the notation "disciplinary probation" would be removed from the student's transcript after graduation.

\* b) Instances of plagiarism or falsification of materials that affect a major part of the student's thesis should result in the student being placed on disciplinary probation and the rejection of the thesis. While the determination of the nature of the offence would be made by the Chair, this penalty could only be imposed by the Dean of Graduate Studies.

\* c) If a student on disciplinary probation commits a second offence, the student should be subject to permanent suspension. This decision can only be taken by the President, on the recommendation of the Dean of Graduate Studies.

### **Keeping Records**

Violations of academic integrity are most serious when repeated. Records of violations of university policy are kept to ensure that repeat offenders can be identified and appropriately sanctioned. Access to these records is restricted to protect students' right to privacy.

a) Chairs, Directors and Deans (whichever is responsible for imposing the penalty) will report instances of plagiarism and cheating to Undergraduate or Graduate Records. The student's file will be marked to indicate that a violation has occurred and the faculty in which the violation occurred, and to note the penalty imposed (i.e., zero for the assignment, F for the course).

b) Only Deans (or their designates) will have access to information on individual students, and only to check for repeat offences. This information will not be available to instructors, Chairs, or other staff. Administration officers may have access to aggregate information on numbers of offences for purposes of analysis, but in this case the information is to be provided without revealing the names of students.

c) Disciplinary probation will be recorded on the transcripts of students who have committed two or more offences. (Academic probation is a separate status; for details, see Minimum Sessional Grade Point Average and Academic Standing.)

d) Files detailing the nature of the offence are to be retained in either the Dean's office or the Chair's office until four years after the student's graduation.

e) Ordinarily, information on cases of plagiarism and cheating is to be available only to the Dean and only for the purpose of checking for repeat offences. However, in some special circumstances, there may be reasons why faculty members need to have access to this information (e.g., character attestation for purposes of professional accreditation). If a faculty intends to use the files kept by the Dean or Chair for any such purpose, that purpose must be publicly identified by the faculty.

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