

**University of Victoria**  
**Faculty of Law**  
**The Legal Landscape Facing First Nations**  
**Law 343**

**Professor Judith Sayers**

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Course website: <http://moodle.uvic.ca> (not yet operational)

Time/location: Room 142 Fraser Building  
Wed. 6:30-9:30 p.m.

Last Class: November 30, 2011

### **I. Course Description**

This course will cover the laws and issues that affect First Nations on a routine basis. The course focuses on familiarizing students with laws that affect First Nations and how they are applied. Practical use of the laws will be illustrated through use of examples, models and existing agreements.

### **II. Course Objectives**

By taking this course, students will:

- i) develop their knowledge and understanding of the core pieces of legislation that are applicable to First Nations, their Chiefs and Councils, their members and their rights and resources
- ii) Learn how to interpret current laws affecting First Nations in light of case law and policy
- iii) become knowledgeable about the practicalities of working with First Nations resolve core issues in the community
- iv) understand the complexity of laws and issues facing First Nations and critically evaluate existing solutions and be flexible and creative in finding new ones in the protection of rights and fair accommodations if rights are affected.

### **III. Course Materials**

Course materials will consist of the existing Statutes and leading cases dealing with the laws. It will also include articles, negotiated agreements and models as provided to the students by e mail or on the moodle site.

### **IV. Course Methodology**

A variety of teaching methods will be employed during the course including lectures, class discussion and problem analysis. Students are expected to have read and be ready to discuss the assigned readings.

## V. Course Evaluation

1. Student prepared questions and answers	10%
2. Mini model or agreement	15%
3. Watch Dancing around Table and write up	15%
4. Research Paper based on laws and models	<u>60%</u>
	100

### A. Comments

1. Students will come prepared to come to the class one occasion to propose a question on the subject to be discussed that day, based on readings, and provide an answer. Student will then have the opportunity at the end of the lecture add to, or comment on their earlier answer based on class lecture and discussion. Would they do anything differently?
2. Mini Model or agreement: Students will draft a 2-3 page mini model or agreement to provide to a First Nation for a model framework for a consultation protocol or a s. 4 agreement under the Heritage Conservation Act, an accommodation/compensation agreement on what rights are affected and proposed methods of valuing those rights. Or a model of students choice based on class discussions and materials. Students will share mini models with class
3. Students will make a 10 to 20 minutes presentation based on fact patterns given to them and illustrate how laws, policies or an innovative method can resolve the issue for the First Nation. Students will have a choice of working on their own, or with 2 to 3 students.
4. The final paper will be a scenario with many issues facing a First nation. The student will explore all the laws that may be applicable and how they will affect the first Nation and provide direction on how the situation could be handled. Paper shall be between 4000 to 6000 words. Papers under or over the maximum will be penalized 5 marks and the part of the paper over the maximum will not be marked.

### B. Grading

Presentations will be based on:

1. Clear statement of the issue
2. Communication of ideas and concepts
3. Analysis: flow, logic, depth and critical analysis
4. Originality/creativity: insight, novelty, thinking out of the box

**Paper will be based on:**

1. Thesis: Clear statement of the issues/problems
2. Thoroughness: were all applicable laws looked at
3. Applicability: was laws applied in an accepted manner
4. Substantiation: was advice to First Nation able to be substantiated by law or policy or as a viable solution

### C. Due Date and submission Requirements

1. student questions can be of notification to instruction up to 2 days before class
2. Mini Models and presentations will take place: October 12, 2011
3. Dancing Around the Table: A good Mechanism short paper due November 2<sup>nd</sup>, 2011
4. Final Papers will be due by midnight on December 7th, 2011. Failure to submit the paper by the deadline will result in a loss of three marks per day on the paper's final mark out of 100 unless the instructor of Associate Dean has granted an extension.

#### **D. Grading System for Comments, paper and tests**

Passing Grades	Grade Point Value	Percentage Value	Description	Comments
A+	9	90-100%	Exceptional	These grades indicate a student who is self initiating, exceeds expectation and has an insightful grasp of subject matter.
A	8	85-89%	Outstanding	
A-	7	80-84%	Excellent	
B+	6	75-79%	Very good	These grades indicate a good grasp of subject matter or excellent grasp of subject matter in one area balance with satisfactory grasp in other areas
B	5	70-74%	Good	
B-	4	65-69%	Solid	
C+	3	60-64%	Satisfactory	These grades indicate a satisfactory performance and knowledge of the subject matter.
C	2	55-59%	Minimally Satisfactory	
D	1	50-54%	Marginal	A student receiving this grade demonstrates a superficial grasp of the subject matter
F	0	49% and below	Unsatisfactory	

## **VI. UNIVERSITY REGULATIONS, EXPECTATIONS AND ACCOMMODATION**

### **1. Regulations**

Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2009-2010, both generally and specifically for the Faculty of Law.

### **2. Classroom Climate**

An inclusive, respectful, and diverse classroom environment is crucial to our work in this course. To ensure that all class members feel welcomed and equally able to contribute to class discussions, both I as instructor and you as students must endeavor to be respectful in our language, our examples, and the manner in which we conduct our discussions and group work. We have both an ethical and legal obligation to support this kind of environment.

For your reference, you may wish to consult the University's Policy on Human Rights, Equity and Fairness (<http://www.uvic.ca/universitysecretary/policies/>) and Policy on Discrimination and

Harassment Policy ( <http://www.uvic.ca/universitysecretary/policies/>). In particular, Section 5.1 of the Policy on Human Rights, Equity and Fairness provides that “All members of the university community are responsible for promoting a supportive and inclusive learning and working environment and for dealing respectfully and fairly with each other.”

In addition, as lawyers in training, I expect you to conduct yourself in accordance with professional standards and rules of conduct. In particular, the Law Society of British Columbia’s Professional Conduct Handbook provides in Chapter 1, Rule 4 that: “A lawyer’s conduct toward other lawyers should be characterized by courtesy and good faith.”

I expect all aspects of this class to be conducted with this commitment firmly in mind. If you have any concerns about the climate of the class, please feel free to contact me or the Associate Dean.

### **3. Academic Integrity**

As part of the academic community of both the Faculty of Law and the University as a whole, academic integrity is centrally important in the work of faculty and students. All student work in this course must adhere to the University’s Policy on Academic Integrity.

In particular, please note that the policy on plagiarism is as follows:

“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.”

### **4. Students with a Disability**

If you have any type of disability, there are support systems, resources, and accommodation actions available to you. If you wish to access any of these supports, resources or accommodations, I encourage you to contact the Associate Dean or the Resource Centre for Students with a Disability (<http://rcsd.uvic.ca/home.ihtml>) and I would be more than happy to work with you to ensure your success in this course.

### **5. Accommodation of Religious Observances**

The University of Victoria and the Faculty of Law have policies guaranteeing accommodation for those students who are unable to participate in a class or an aspect of the course owing to a religious holiday (see <http://www.uvic.ca/universitysecretary/policies/>). If you will be missing a class, know that you will be unable to complete an assignment or exam, or otherwise require

accommodation on account of a religious holiday, please speak with me (or the Associate Dean) and I will be pleased to work out some satisfactory form of accommodation.

## **VII. DOUBLE-SIDED PRINTING ENCOURAGED**

In recognition that members of the university community have a personal responsibility for the way their conduct impacts the local and global environment, students are encouraged that all reports and other documents, whenever possible, be printed on both sides of the paper (University of Victoria Operational Policy 6485, Waste Management, section 2.8.1)

## **VIII. COURSE OUTLINE**

### **Note on schedule of topics and readings**

The tentative schedule of topics and readings is set out below. Please note that this schedule and the assigned readings are subject to change as the course progresses.

### **September 7<sup>th</sup>, 2011**

1. Introduction. Historical Back Ground and current Indian Act  
<http://laws.justice.gc.ca/PDF/Statute/I/I-5.pdf>

### **September 21, 2011**

2. First Nations Land Management Act  
<http://laws.justice.gc.ca/PDF/Statute/F/F-11.8.pdf>

Study Models of Land Codes: <http://www.fafnlm.com/land-codes.html>

Comparison of Indian vs. FNLMA

3. Species At Risk Act: How does it apply to Reserve Lands?  
<http://laws.justice.gc.ca/PDF/Statute/S/S-15.3.pdf>

### **September 28, 2011**

4. Constitution Act, 1985 ss. 35  
[http://laws.justice.gc.ca/eng/charter/CHART\\_E.pdf](http://laws.justice.gc.ca/eng/charter/CHART_E.pdf)

Consultation and accommodation

Assigned Readings

- Haida case and articles:  
<http://scc.lexum.umontreal.ca/en/2004/2004scc73/2004scc73.html>
- <http://www.newrelationshiptrust.ca/downloads/consultation-and-accomodation-report.pdf>

Students should choose one of the following to be familiar with or if you are aware of another consultation protocol you may use that.

- Ktuxana Strategic Agreement  
[http://www.newrelationship.gov.bc.ca/shared/downloads/ktunaxa\\_nation\\_agreement\\_final\\_oct22\\_2010.pdf](http://www.newrelationship.gov.bc.ca/shared/downloads/ktunaxa_nation_agreement_final_oct22_2010.pdf)
- Tseil Waututh Consultation Protocol  
<http://www.burrardband.com/en/About%20TWN/~~/media/Files/Stewardship%20January%202009.ashx>
- Hulquminum Consultation: <http://www.hulquminum.bc.ca/pubs/ConsultationCover.pdf>

### **September 30, 2011 (MAKE UP CLASS: 2 hours only)**

#### Assigned Readings

5. What role does LUP play in Consultation and Accommodation?

Blueberry strategic LUP

[http://www.gov.bc.ca/arr/treaty/key/down/strategic\\_land\\_use\\_planning.pdf](http://www.gov.bc.ca/arr/treaty/key/down/strategic_land_use_planning.pdf)

Sechelt Land Use Plan: [http://www.secheltnation.ca/departments/lands/LUP\\_040408.pdf](http://www.secheltnation.ca/departments/lands/LUP_040408.pdf)

Agreement with Taku on LUP:

[http://www.newrelationship.gov.bc.ca/shared/downloads/Unsigned\\_SEA\\_TRTFN-BC\\_LRMSDM\\_Agreement.pdf](http://www.newrelationship.gov.bc.ca/shared/downloads/Unsigned_SEA_TRTFN-BC_LRMSDM_Agreement.pdf)

### **October 5, 2011**

#### Assigned Readings

6. HERITAGE CONSERVATION ACT  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96187\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96187_01)
  - S. 4 agreements
  - Confidentiality: how to preserve it

#### Models:

- Haida Gwaii Reconciliation Act  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_10017\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_10017_01)
- Hill 60:

- GAR orders: Chehalis First Nation  
<http://www.for.gov.bc.ca/ftp/hfp/external!/publish/frep/values/CH-KKH-Final-Report.pdf>
- Treaty 8 MOU on Heritage Conservation  
[http://www.tti.gov.bc.ca/archaeology/docs/Heritage\\_Consevation\\_MOU\\_Treaty\\_8\\_First\\_Nations.pdf](http://www.tti.gov.bc.ca/archaeology/docs/Heritage_Consevation_MOU_Treaty_8_First_Nations.pdf)
- Hulquminum Protocol:  
[http://www.hulquminum.bc.ca/pubs/HTG-ArchBranchMOU\\_FINAL\\_2007.pdf](http://www.hulquminum.bc.ca/pubs/HTG-ArchBranchMOU_FINAL_2007.pdf)

## October 12, 2011

### Class Presentations of Mini models or agreement Frameworks

#### Assigned Readings

Negotiating agreements  
How much is enough?  
Valuing loss of an aboriginal right, sacred site, way of life

Review:

Kwadacha Agreement:

[http://www.gov.bc.ca/arr/treaty/key/down/Kwadacha\\_Final\\_Agreement\\_osb.pdf](http://www.gov.bc.ca/arr/treaty/key/down/Kwadacha_Final_Agreement_osb.pdf)

Musqueam Settlement

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_08006\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_08006_01)

Tla-o-qui-aht Incremental Treaty Agreement

[http://www.gov.bc.ca/arr/treaty/down/tla\\_o\\_qui\\_aht\\_ita\\_final\\_for\\_signing\\_premier\\_nov0608.pdf](http://www.gov.bc.ca/arr/treaty/down/tla_o_qui_aht_ita_final_for_signing_premier_nov0608.pdf)

St'át'imc agreement with BC Hydro: provided when made public

Klahoose Incremental Treaty Agreements

[http://www.gov.bc.ca/arr/treaty/down/klahoose\\_ita\\_final.pdf](http://www.gov.bc.ca/arr/treaty/down/klahoose_ita_final.pdf)

## October 19<sup>th</sup>

### 5(a) Environmental Assessment Acts

- Canadian and Provincial laws <http://laws.justice.gc.ca/PDF/Statute/C/C-15.2.pdf>  
and  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_02043\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02043_01)
- Taku River Tlingit case: SCC.
- CSTC v. BC Hydro SCC.

Case Study: Tulsequah Chief Mine Project

**November 2, 2011: Dancing Around Table paper due**

Natural Resource Laws

A. Forest Act

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_02069\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02069_01)

B. Water Act: Is the aboriginal right to water covered in Water Act?

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96483\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96483_01)

C. Mines Act

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96293\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96293_01)

Upper Similkameen Agreement on Mining

<http://www.em.gov.bc.ca/subwebs/AboriginalAffairs/USIBMEMPRMiningProtocolAgreementFinalJuly272006.pdf>

Taku River Tlingit Mining Policy

<http://trtfn.yikesite.com/departments/lands-resources/mining-projects>

D. Revenue and benefit sharing: Huu-ay-aht case

Blueberry First Nations Economic Agreement

[http://www.gov.bc.ca/arr/treaty/key/down/blueberry\\_eba.pdf](http://www.gov.bc.ca/arr/treaty/key/down/blueberry_eba.pdf)

Treaty 8 Oil and Gas revenue Sharing

[http://www.gov.bc.ca/arr/treaty/key/down/treaty\\_8\\_long\\_term\\_oil\\_gas\\_agreement.pdf](http://www.gov.bc.ca/arr/treaty/key/down/treaty_8_long_term_oil_gas_agreement.pdf)

Coastal First Nation Reconciliation Protocol

[http://www.newrelationship.gov.bc.ca/shared/downloads/coastal\\_first\\_nations\\_ammended\\_agreement\\_dec\\_10\\_2010.pdf](http://www.newrelationship.gov.bc.ca/shared/downloads/coastal_first_nations_ammended_agreement_dec_10_2010.pdf)

Kamloops and Skeetchestn First Nations Economic Agreement

[http://www.newrelationship.gov.bc.ca/shared/downloads/secwepemc\\_ecda.pdf](http://www.newrelationship.gov.bc.ca/shared/downloads/secwepemc_ecda.pdf)

McLeod Lake Indian Band and Mt. Milligan Revenue Sharing:

[http://www.newrelationship.gov.bc.ca/shared/downloads/mcLeod\\_lake\\_ecda.pdf](http://www.newrelationship.gov.bc.ca/shared/downloads/mcLeod_lake_ecda.pdf)

**November 9, 2011**

International Law

A. Declaration on Indigenous Rights

B. International Labour Organization Convention 169

C. Complaint Mechanisms under Convention on Civil and Political Rights, Convention on the Elimination of all Forms of Racism and the Convention on Economic, Social and Cultural

- D. Self Determination in international law and within Declaration on Indigenous Rights
- E. Intellectual Property

**November 16, 2011**

Developmental laws:

- A. Shared Decision Making: The New Relationship: how to introduce it into current work
  - i. Haida Reconciliation Act
  - ii. Clayoquot Sound interim Measures Agreement  
[http://www.gov.bc.ca/arr/treaty/key/down/clayoquot\\_imea\\_03312009.pdf](http://www.gov.bc.ca/arr/treaty/key/down/clayoquot_imea_03312009.pdf)
  - iii. Other models as they are negotiated
  
- B. Clean Energy Act:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_10022\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_10022_01)

**November 23, 2011:**

- a. Fisheries Act
- b. Statistical and financial Management Act
- c. First Nations constitutions
- d. Other innovative agreements or models not previously covered.

**November 30: 2011**

Overview of class and review of Framework of Laws, review any laws, agreements not covered in previous class, interactive discussions on current issues.

Final Paper Due: **December 7<sup>th</sup>**, 2011, midnight deadline.