

PUBLIC POLICY, LAW AND DISPUTE RESOLUTION

DR 503 / LAW 372 (S01)

September – December 2011

Monday and Wednesday 8:30 – 9:50 am

Fraser Building, Room 152

Instructor: M. Jerry McHale
E-mail: mjmchale@uvic.ca
Office: Fraser Building, Room 220
Phone: 250 721 7647

Required Texts

- DR 503/Law 372 Coursepack – available at the UVic Bookstore
- Grzybowski, Alex and Stephen Owen. 2001. *Conflict Management and Governance*. Victoria, BC: UVic Institute for Dispute Resolution. (Note: this publication is available online or a hard copy can be purchased at the UVic Bookstore.)

Course description:

This course focuses on the interaction of our legislative, judicial and administrative institutions around two major themes: how public policy is developed and how conflict is managed. Lectures will provide a theoretical foundation that will be illustrated by analysis of current social policy problems and conflict management processes.

Conflict is not only ubiquitous and potentially destructive, it is also essential to social cohesion and interaction (Coser, 1956). Because conflict is inherent, to some degree, in every dynamic relationship, it is essential that society have viable systems for containing conflict. Theory and practice about how social conflict is best managed have evolved considerably over the last couple of decades. The growing field of conflict resolution has given us new ways to conceive of and to respond to conflict.

This course is about understanding and managing conflict, with recurring reference to conflict arising in the context of the creation and implementation of public policy. Because public policy is so fundamental to social ordering and its scope so very broad (one simple definition of policy is: “whatever governments choose to do or not to do” (Dye, 1972)), there will always be a very large supply of public policy issues generating conflict. This course will examine two aspects of the relationship between conflict and public policy:

- how the diverse and typically conflicting positions of different stakeholders respecting the content or implementation of a given public policy can be framed and managed – i.e. how the *policy development process* is a conflict management exercise; and

- devising policy about how to manage specific conflicts within society – i.e. where the actual *policy product* is a system to resolve disputes.

The course looks at public policy and conflict resolution as issues of governance – “governance” being the organization and exercise of power and the use of institutional resources to maintain social order, solve social problems and manage social affairs. Public policy, as an aspect of governance, is constrained and shaped by a range of forces, including the existing legal framework, the political influence of citizens and stakeholders, the decision-making power of the judiciary, and the constitutional and legislative powers of government. The role, influence and interaction of these various forces will be explored through the study of specific areas of conflict and specific public policy issues.

All of this translates into some very practical realities on the ground. Historically, ministries, government boards and agencies, tribunals and the courts have relied almost exclusively on power-based and rights-based models to make decisions and manage the conflicts within their jurisdiction. The use of the adversarial litigation model in courts and tribunals is the classic example. This course will look at the shift that is occurring within our public institutions from rights-based models of conflict resolution toward collaborative values and consensus models. We will also look at the forces driving the shift and consider how they will continue to reshape government and the justice system. Collaborative processes are being widely adopted across government and across the justice system to manage an increasingly varied range of disputes, including public policy disputes. We will look at the use of collaborative dispute resolution models in areas as diverse as child protection, residential school claims, multi-party resource use disputes and criminal law. We will also look at the strategies employed in designing dispute resolution systems and at a number of specific issues relating to designing policy and resolving conflicts.

Learning objectives:

Upon completion of this course, you will:

- understand the range of conceptual models of dispute resolution that exist, how they work and how they can be applied in government, in the justice system and across society;
- be able to explain the roles of government, of citizens and of the judiciary in making policy and in managing conflicts;
- be able to identify the current social, cultural, fiscal, technological and political forces that are shaping public policy, law and dispute resolution processes;
- have a basic understanding of how to analyze a given conflict and identify options to manage it.

Methodology

The course content will be presented through lectures with class discussion. Students will have the opportunity to participate and critically reflect on the material in class. There will be some practical exercises and guest speakers from time to time. Required readings will be focused, and more extensive optional reading material will be identified for those who want it. Lesson plans will be posted on Moodle prior to each class.

Evaluation criteria

- no final examination

- a research paper (65% of the final grade)
 - 15- 20 pages long: graduate students: 4,500-5,500 words; law students: 3,500-4,500 words.
 - papers must include a word count on the title page.
 - detailed instructions and possible topic areas for the paper will be posted on Moodle
 - students can choose topics in consultation with the instructor
 - one page outline of proposed research paper topic plus working bibliography due 4:00 pm October 3rd electronically **or** in hard copy.
 - research papers due 4:00 pm December 2, 2011 electronically **and** in hardcopy.
- reflective journal (25% of the final grade) consisting of three short papers, each 500 - 600 words, and from a different course topic area. There are four course topic areas (see detail below):
 - conceptual models and institutional context;
 - conflict and policy: specific illustrations;
 - designing dispute resolution systems;
 - specific issues.

Due dates set out at schedule A.

- class attendance, engagement and participation (10% of the final grade)

See Appendix A for further details respecting:

- Evaluation Criteria and Grading
- Expectations and Academic Integrity

COURSE SCHEDULE, READINGS AND ASSIGNMENTS
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The tentative schedule of topics and readings is set out below. Please note that this schedule and the assigned readings may be subject to some change as the course progresses.

1. September 7: INTRODUCTION and OVERVIEW

- Course overview, themes, objectives, readings and methodology
- Basic definitions
- Fundamental approaches to resolving disputes

Required Reading:

- Pirie, Andrew. *Alternative Dispute Resolution: Skills, Science, and the Law*. Toronto: Irwin Law, 2000. 34-52. Available at:
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/docDetail.action?docID=10225595> . .

General Reference Materials:

- Peacemakers Trust Bibliography and Resources. <http://www.peacemakers.ca/>
- Canadian Forum on Civil Justice. <http://cfcj-fcjc.org/>
- BC Ministry of Attorney General, Justice Services Branch, Dispute Resolution Office homepage:
<http://www.ag.gov.bc.ca/dro/index.htm>

- William Ury, Jeanne Brett and Stephen Goldberg, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict*, Jossey-Bass, 1988. (**ON RESERVE** for Law 372/ DR 503, Priestly Law Library)
- *Working Together: Designing Shared Decision-Making Processes*, by Darling, Craig R and Continuing Legal Education Society of British Columbia, 1998, ISBN 0772636451, 1 v. (**ON RESERVE** for Law 372/ DR 503, Priestly Law Library)
- *Thinking Strategically: Developing Systems to Resolve Conflict*, by Darling, Craig R and Continuing Legal Education Society of British Columbia, 1998, ISBN 077263646X, 1 v. (**ON RESERVE** for Law 372/ DR 503, Priestly Law Library)
- *Reaching Agreement: Negotiating in the Public Interest* by Darling, Craig R and Continuing Legal Education Society of British Columbia, 1998, ISBN 9780772636447, 107 p. (**ON RESERVE** for Law 372/ DR 503, Priestly Law Library)

Course Topic Area 1: CONCEPTUAL MODELS AND INSTITUTIONAL CONTEXT

2. September 12: CONFLICT PARADIGMS

- The shift from competitive to collaborative (consensus-based) models: what it looks like, why it is happening, where it is going and what it means for law and policy.

Required Reading

- Executive Summary from *Transforming Relationships Through Participatory Justice* Law Commission of Canada (2003). Available at: <http://dsp-psd.pwgsc.gc.ca/Collection/JL2-22-2003E.pdf>
- Pirie, Andrew. *Alternative Dispute Resolution: Skills, Science, and the Law*. Toronto: Irwin Law, 2000. 52 - 63. Available at: <http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/docDetail.action?docID=10225595> . .

Optional and Reference Reading

- Making the Most of Collaboration: An International Survey of Public Service Co-design. Demos. <http://www.demos.co.uk/publications/makingthemostofcollaboration>
- *The Collaborative State*, Simon Parker and Niamh Gallagher, editors. Demos. <http://www.demos.co.uk/publications/collaborativestatecollection>
- Collaborative Divorce Handbook, Forrest S. Mosten, Jossey-Bass (2009). Free download of Chapter 1: *A Paradigm Change from an Adversarial to a Collaborative Perspective*. <http://www.mostenmediation.com/books/index.html>
- Wenona, Victor. *Alternative Dispute Resolution (ADR) in Aboriginal Contexts: A Critical Review*. Ottawa: Canadian Human Rights Commission, 2007. 1- 41. Available at: <http://site.ebrary.com/lib/uvic/docDetail.action?docID=10197947&p00=wenona%20victor%20%2B2007>
- 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**)

3. September 14: The PLACE of DISPUTE RESOLUTION in PUBLIC INSTITUTIONS

- How public institutions are using dispute resolution
- The variety and scope of DR alternatives in the justice system

- The problem-solving approach: utilizing DR models in practice.

Required Reading

- M. Jerry McHale. *The Role of Government Policy in Shaping DR Futures in BC*. (2002). <http://www.ag.gov.bc.ca/dro/publications/papers/GovPolicy-DR.pdf>
- BC Ministry of Attorney General, Guiding Principles for Consensus Processes. <http://www.ag.gov.bc.ca/dro/publications/bulletins/consensus-processes.htm>
- BC Ministry of Attorney General, *Dispute Resolution Policy Statement*. <http://www.ag.gov.bc.ca/dro/policy-design/statement.htm>

Optional and Reference Reading

- Cohen, “Negotiation, meet new governance: Interests, skills, and selves,” *Law & Social Inquiry* 33, no. 2 (2008): 501–562. Available at: <http://blogs.law.harvard.edu/hnmcp/files/2008/03/cohen-final3.pdf>
- Canadian Bar Association, Systems of Civil Justice Task Force Report (1996). Available at: http://www.cba.org/cba/pubs/pdf/systemscivil_tfreport.pdf
- Ansell, Chris & Alison Gash, *Collaborative Governance in Theory & Practice*. JPART University of California, Berkley. Vol.18: 543-571. Available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.115.3444&rep=rep1&type=pdf>

4. September 19: POLICY and CONFLICT - the LEGAL FRAMEWORK

- Public vs. private ordering. What is the justice system for? The rule of law, the structure of the courts, the role of an independent judiciary, judicial policymaking and the role of the private bar. How effective is the justice system?

Required Reading

- Ross Cranston, Chapter 4 - “Courts”, in *How the Law Works*, Oxford University Press, 2006. **(COURSEPACK)**
- 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)**

Optional and Reference Reading

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

- Hunt, Wayne. *Bridging the Democratic Divide – Creating a Sense of Civic Engagement*, in *Policy Options*. October 2004. 43 – 47. Available at: <http://www.irpp.org/po/archive/oct04/hunt.pdf>
- Reference re *Secession of Quebec*, [1998] 2 S.C.R. 217, 1-5. **Reserve Binder OTH 08202**
- Brodie, Ian. *Interest Group Litigation and the Embedded State: Canada's Court Challenges Program*, in *Canadian Journal of Political Science*, June 2001: 357-376. Available at: <http://journals.cambridge.org/action/login>. (Search by author and access 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>
- 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)**

5. **September 21: POLICY and CONFLICT - the GOVERNMENT FRAMEWORK**

- The structure of government, including: distribution of power between jurisdictions and across government, the role of the government, the role of the AG, the policy-making process and the law-making process.

Required Reading

- *How a Bill becomes law in BC*. Link from <http://www.courthouselibrary.ca/research/SubjectGuides/BCLegGuide.aspx>

Optional and Reference Reading

- Parliamentary Government in Canada: *Basic Organization and Practices*. Available at: <http://www.mapleleafweb.com/features/parliamentary-government-canada-basic-organization-and-practices>
- Parliament of Canada, Legal and Legislative Affairs Division: *The Legislative Process: From Policy to Proclamation* (2009). <http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0864-e.htm>
- Compendium of House of Commons Procedure. http://www.parl.gc.ca/About/House/compendium/web-content/c_a_index-e.htm
- List of BC Government Ministries, Central Agencies and Crown Corporations. http://www2.gov.bc.ca/en/themes/government/ministries_organizations/index.page?WT.svl=Footer

6. **September 26: MAKING AND IMPLEMENTING PUBLIC POLICY**

- The policy process and the participants, citizen engagement, how citizens and stakeholders influence government; the place of the bureaucracy, and politics vs. policy.
- Policy development as a dispute resolution process.

Required Reading

- Health Canada: *Public Policy and Public Participation: Engaging Citizens and Community in the Development of Public Policy* (September 2003) pages 1 - 44. Available at: http://www.phac-aspc.gc.ca/canada/regions/atlantic/pdf/pub_policy_partic_e.pdf
- BC Office of Legislative Counsel, *A guide to legislation and legislative process in British Columbia* <http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/408512/index.htm>

Optional and Reference Reading

- Janet Guildford, *Making the Case for Social and Economic Inclusion*, Health Canada (2000) Available at http://www.phac-aspc.gc.ca/canada/regions/atlantic/Publications/Making_case/making_case_2000_e.pdf
- Julie Devon Dodd and Michelle Hébert Boyd *Capacity Building: Linking Community Experience to Public Policy*. Health Canada 2000. Available at: http://www.phac-aspc.gc.ca/canada/regions/atlantic/pdf/capacity_building_e.pdf
- Phillips, Susan and Michael Orsini. *Mapping the Links: Citizen Involvement in Policy Processes*. Ottawa: Canadian Policy Research Networks, 2002. Available at: <http://www.cprn.org/doc.cfm?doc=169&l=en>
- Canada, Department of Justice: *Policy Statement and Guidelines for Public Participation* (2009). <http://www.justice.gc.ca/eng/cons/pol.html>
- *Policy Making Process 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.
- 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 at McPherson Lib.)**
- 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
- B. Guy Peters, *The Policy Capacity of Government*, Canadian Center for Management Development, June 1996. http://www.cspc-efpc.gc.ca/pbp/pub/pdfs/P62_e.pdf
- BC Ministry of Attorney General: *A Guide for the Consideration of a Process for Review of Administrative Decision-making*. (August 2005) http://www.ag.gov.bc.ca/dro/publications/guides/guide_to_designing_a_review_process.pdf
- BC Ministry of Attorney General: *Legislation and Policy Page*. <http://www.ag.gov.bc.ca/legislation/index.htm>
- 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://web.uvic.ca/polisci/people/faculty/Pilon/Pilon%20Renew%20Can%20Dem%202000.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=&volumeld=&isued=&aid=979444>
- 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>

7. **September 28: CHILD PROTECTION MEDIATION (“CPM”)**

- Studying the creation of a province-wide CPM system as an illustration of policy development, dispute resolution system design and implementation strategies.

Required Reading

- *Building a Child Protection Mediation Program in British Columbia*, M. Jerry McHale, Irene Robertson, Andrea Clarke, in *Family Court Review*, Volume 47 Number 1, January 2009 pp 86 – 97 – **(COURSEPACK)**
- *Child Protection Mediation in British Columbia: BC Ministry of Attorney General, Justice Services Branch, Dispute Resolution Office, April 2007* **(COURSEPACK)**

Optional and Reference Reading

- *BC Ministry of Attorney General: Child Protection Mediation Program:*
<http://www.ag.gov.bc.ca/child-protection-mediation/index.htm>
- *BC Ministry of Attorney General: What Is Child Protection Mediation?*
http://www.mcf.gov.bc.ca/child_protection/pdf/WhatIsChildProtectionMediation_WebFactsheet.pdf

Reminder: 1-page outline of final paper due (with working bibliography) **4:00 pm** on **October 3rd**

8. **October 3: COLLABORATIVE PLANNING and DECISION MAKING PROCESSES in CHILD WELFARE**

- Beyond mediation: the ongoing evolution of collaborative values, policy and processes in child welfare.

Required Reading

- BC Ministry of Children and Family Development, *Presumption in Favour of Collaborative Planning and Decision Making Policy and Procedures Guide*. (January 2008) **(COURSEPACK)**
- *Options for Parents and Families: Collaborative Planning and Decision-making in Child Welfare.*
http://www.mcf.gov.bc.ca/child_protection/pdf/OptionsForParentsAndFamilies_factsheet.pdf
- *Creating a Culturally Based Traditional Decision-Making & Dispute Resolution Services Model.*
<http://www.iicrd.org/node/510>

Optional and Reference Reading

- *Report of Collaborative Child Welfare Decision-Making Models*, Law Foundation of BC (2009)
<http://www.lawfoundationbc.org/files/Report%20of%20Collaborative%20Decision-Making%20Models.pdf>
- Fisher, Roger and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*. Toronto: Penguin, 1991. 1-14; 40-55.

9. **October 5: COLLABORATIVE PLANNING and DECISION MAKING PROCESSES in CHILD WELFARE**

- Continuation of last two lectures

Note: no class **Monday October 10th** – Thanksgiving Statutory Holiday

10. October 12: RESTORATIVE JUSTICE PROCESSES

- Dispute resolution policy issues in the criminal context. Importing collaborative values to criminal law.

Required Reading

- BC Ministry of Public Safety and Solicitor General: *Restorative Justice*.
<http://www.pssg.gov.bc.ca/crimeprevention/publications/docs/crime-prev-series3-restorative-justice.pdf>
- 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)**

Optional and Reference Reading

- *Participatory Justice in Criminal Law: Restorative Justice in Transforming Relationships Through Participatory Justice* Law Commission of Canada (2003). 15 – 71 Available at: <http://dsp-psd.pwgsc.gc.ca/Collection/JL2-22-2003E.pdf>
- BC Ministry of Public Safety and Solicitor General: *Community Accountability Programs Information Package (2004)*
<http://www.pssg.gov.bc.ca/crimeprevention/justice/docs/CAPInformationPackage.pdf>
- Braithwaite, John. "A Future Where Punishment is Marginalized: Realistic or Utopian?" *UCLA Law Review* 46, no.1 (1999): 1727-1750. Available at:
https://www.anu.edu.au/fellows/jbraithwaite/documents/Articles/Future_Punishment_1999.pdf
- 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>
- 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. **(Reserve Binder)**
- 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**) XPR 08405
- Hudson, Barbara. 1998. *Restorative Justice: The Challenge of Sexual and Racial Violence in 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&dowhat=Acrobat&config=jstor&userID=8e6824cb@uvic.ca/01cce4406000501b03cc6&0.pdf> (log-in required).
- Ministry of Attorney General, *Healing Circle and R. v. O'Connor*. 1998. *News Release and Background*, June 1998. (**COURSEPACK**)
- 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. (**Reserve Binder**)
- 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. (**Reserve Binder**)
- 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). (**Reserve**)

11.October 17: THE BC TREATY PROCESS

Required Reading

- Molloy, Tom. 2004. *A Testament to Good Faith: the Process and Structure of the Nisga'a Negotiations: a Federal Negotiator's Perspective*. In *International Journal on Minority and Group Rights*. II:251-258. (**COURSEPACK**)

Optional and Reference Reading

- BC Treaty Commission: <http://www.bctreaty.net/index.php>
- BC Treaty Commission Annual Reports. Available at: <http://www.bctreaty.net/files/annuals.php>
- 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 (**Reserve**) XPR 08407
- Chief Joe Gosnell, *Speech to Making Peace and Sharing Power Conference*, Victoria, April 1996. (**COURSEPACK**)
- BC Treaty Commission. 2007. *General Overview of Tsawwassen First Nations Final Agreement with Government of Canada*. 6 pages. Available at: <http://www.gov.bc.ca/arr/firstnation/tsawwassen/down/factsheet/overview.pdf>
- 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

- 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)** KE430 A72 L38 2003
- 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)**
- 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
- 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)

12. October 19: TRUTH AND RECONCILIATION

Required Reading

- Assembly of First Nations. *Mandate for the Truth and Reconciliation Commission*. 2002. pp 12. Available at: http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf
- 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)**

Optional and Reference Reading

- 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.
- 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")

- Waziyatawin. "You Can't Un-Ring a Bell: Demonstrating Contrition through Action." In *Response, Responsibility, and Renewal: Canada's Truth and Reconciliation Journey*, edited by Gregory Younging, Jonathan Dewar, and Mike DeGagne, 193-199. Ottawa: Aboriginal Healing Foundation, 2009. Available at: <http://www.ahf.ca/downloads/trc2.pdf>.
- Hizkias, Assefa. "The Meaning of Reconciliation." In *People Building Peace*. 37-45. Utrecht, Netherlands. 1999. Available at: http://www.gppac.net/documents/pbp/part1/2_reconc.htm
- "Apology and Reconciliation: A Timeline of Events." In *Response, Responsibility, and Renewal: Canada's Truth and Reconciliation Journey*, edited by Gregory Younging, Jonathan Dewar, and Mike DeGagne, 176-177. Ottawa: Aboriginal Healing Foundation, 2009. Available at: <http://www.ahf.ca/downloads/trc2.pdf>.

13.October 24: RESIDENTIAL SCHOOLS CLAIMS

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. <http://dalspace.library.dal.ca/handle/10222/10277>
- 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§ion=22&ext=.pdf>

Optional and Reference Reading

- 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§ion=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
- 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. 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

- Chrisjohn, Roland D. *et al.* "Genocide and Indian Residential Schooling: The Past is Present." In *Canada and International Humanitarian Law: Peacekeeping and War Crimes in the Modern Era*, edited by Ann Griffiths and Richard D. Wiggers, 229-266. Halifax: Dalhousie University Press, 2002. Available at: http://www.nativestudies.org/native_pdf/pastispresent.pdf.
- Napoleon, Val. "Who Gets to Say What Happened? Reconciliation Issues for the Gitksan." In *Intercultural Dispute Resolution in Aboriginal Contexts*, edited by Catherine Bell and David Kahane, 176-195. Vancouver, British Columbia, Canada: UBC Press, 2004.
- INAC. "Indian Residential Schools Settlement Agreement." Government of Canada. Available at: <http://www.ainc-inac.gc.ca/ai/rqpi/sa/index-eng.asp>.
- Llewellyn, Jennifer. "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, 2008. Available at: <http://www.ahf.ca/downloads/truth-to-reconciliation.pdf>.
- McKay, Stan. 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, 2008. Available at: <http://www.ahf.ca/downloads/truth-to-reconciliation.pdf>.

14. October 26: PROPOSED BC FAMILY LAW ACT

- This proposed family legislation would replace a statute that is 33 years old in an area that has seen many far-reaching social changes. The policy / legislative process has taken 6 years so far. It provides many examples of successful management of complex and contentious policy and legal questions, as well as examples of creative dispute resolution options to be incorporated into the new statute.

Required Reading

- Government of British Columbia News Release: *Modernizing British Columbia's Family Law* (July 19, 2010). Available at: http://www2.news.gov.bc.ca/news_releases_2009-2013/2010AG0014-000836.htm
- *B.C. Poised for a Massive Family Law Overhaul*, The Lawyers Weekly, September 10 2010. Available at: <http://www.lawyersweekly.ca/index.php?section=article&articleid=1243>

Optional and Reference Reading

- Ministry of Attorney General, Justice Services Branch, Civil Policy and Legislation Office, *White Paper on Family Relations Act Reform: Proposals for a new Family Law Act* (July 2010). <http://www.ag.gov.bc.ca/legislation/pdf/Family-Law-White-Paper.pdf>
- Family Law Consultation Papers and consultation responses, at BC Ministry of Attorney General: *Legislation and Policy Archive*. <http://www.ag.gov.bc.ca/legislation/archive.htm#fra>

15. October 31: APOLOGY

- The role of apology in dispute resolution.

Required Reading

- BC Ministry of Attorney General: *Discussion Paper on Apology Legislation*: http://www.ag.gov.bc.ca/dro/publications/other/Discussion_Apology_Legislation.pdf
- Apology Act, R.S.B.C. 2006 <http://www.leg.bc.ca/38th2nd/amend/gov16-2.htm>

Optional and Reference 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-%2027.pdf
- 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>
- 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>
- Coicaud, Jean-Marc and Jibecke Jonsson. "Elements of a Roadmap for a Politics of Apology." In *The Age of Apology: Facing up to the Past*, edited by Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud, and Niklaus Steiner, 77-91. Philadelphia: Penn Press, 2007. [Available here](#)
- Dresser, Rebecca. "The Limits of Apology Laws." *Hastings Center Report* 38 , no.3 (2008): 6-7. Available at: http://www.thehastingscenter.org/pdf/publications/hcr_2008_may_jun_at_law.pdf
- James, Matt. "Wrestling with the Past: Apologies, Quasi-Apologies, and Non-Apologies in Canada." In *The Age of Apology: Facing up to the Past*, edited by Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud, and Niklaus Steiner, 137-153. Philadelphia: Penn Press, 2007. [Available here](#)
- McDonnell, William M. and Elisabeth Guenther. "[Do State Laws Make It Easier to Say 'I'm Sorry?'"](#) *Annals of Internal Medicine* 149, no. 11 (2008): 811. Available [here](#).
- Office of the Ombudsman British Columbia. "The Power of an Apology: Removing the Legal Barriers." *Special Report No.27* (2006): 1-24. Available at: http://www.ombudsman.bc.ca/images/resources/reports/Special_Reports/Special%20Report%20No%20-%2027.pdf.
- Thompson, Janna. "The Apology Paradox." *The Philosophical Quarterly* 50, no.201 (2002): 470-475. Available at <http://onlinelibrary.wiley.com.ezproxy.library.uvic.ca/doi/10.1111/1467-9213.00200/pdf>
- Waite, Michael. "[To Tell the Truth: The Ethical and Legal Implications of Disclosure of Medical Error.](#)" *Health Law Journal* 13 (2005): 1-33 .

16. November 2: DESIGNING DR SYSTEMS

- Guiding principles and basic strategies in designing and implementing DR processes for recurring disputes.

Required Reading

- *Reaching Resolution: A Guide to designing Public Sector Dispute Resolution Systems.* <http://www.ag.gov.bc.ca/dro/publications/guides/design.pdf>
- *Innovation and Conflict Resolution in the Civil Justice System*, Attorney General Geoff Plant <http://www.ag.gov.bc.ca/dro/publications/papers/Innovation-Resolution.pdf>

Optional and Reference Reading

- Cathy Costantino, *Designing Conflict Management Systems: A Guide to Creating Productive and Healthy Organizations*, Jossey-Bass Publishers, 1996
- BC Ministry of Attorney General: *BC Tribunal Dispute Resolution Needs Assessment Project*, Craig Darling. http://www.ag.gov.bc.ca/aio/down/report_incl_app.pdf
- BC Ministry of Attorney General: *The Jericho Individual Compensation Program: A Unique Response to Institutional Sexual Abuse (Jane Morley September 2001).* <http://www.aq.gov.bc.ca/dro/publications/reports/jericho-compensation.pdf>

17. November 7: THE NISGA'A TREATY DISPUTE RESOLUTION CHAPTER

Required Reading

- The Nisga'a Final Agreement, Chapter 19, Dispute Resolution. <http://www.ainc-inac.gc.ca/al/lcd/ccl/fagr/nsga/nis/nis-eng.asp#chp19>

Optional and Reference Reading

- Dianne Elizabeth Craag, *Resource Conflict in the First Nations Post-Treaty Environment*, 1980. <http://www.collectionscanada.gc.ca/obj/s4/f2/dsk3/ftp04/MQ62011.pdf>
- Catherine Bell and David Kahane (Editors), *Intercultural Dispute Resolution In Aboriginal Contexts*, UBC Press 2005. See: http://books.google.ca/books?id=zImSlPevSEOC&pg=PA2&lpg=PA2&dq=intercultural+dispute+resolution+in+Aboriginal+contexts&source=bl&ots=x1Olw7V3-J&sig=a9EbqaPI9xzucywyO6pBC2OKsU&hl=en&ei=1TNETrWWJZHxiALj9IHhAQ&sa=X&oi=book_result&ct=result&resnum=2&ved=0CCQQ6AEwAQ#v=onepage&q&f=false

November 9: Reading Break SPA.

Makeup class will be held on November 18 from 2:30 – 3:50 in Fraser Building Room 157.

18. November 14: PUBLIC INTEREST NEGOTIATION

Guest presenter: Craig Darling, Accord Canada

Required Reading

- J.C. Day & Thomas I. Gunton & Tanis M. Frame, *Toward Environmental Sustainability in British Columbia: The Role of Collaborative Planning*.
<http://www.entrepreneur.com/tradejournals/article/111855597.html>
- Commission on Resources and Environment. *Report on a land use strategy for British Columbia*. August, 1992. pp. 25 – 30. Victoria, BC. **(COURSEPACK)**

Optional and Reference Reading

- Smith, Merran and Sterritt, Art. *From Conflict to Collaboration: The Story of the Great Bear Rainforest*. Forest Ethics. Available at:
<http://www.forestethics.org/downloads/WWFpaper.pdf>
- Anthony H. J. Dorsey, *Sustainability Governance: Surfing the Waves of Transformation* (2004)
<http://tonydorsey.ca/Governance/thirdwave.html>
- 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>
- Danby, Dawn. *Canada Changing. The Great Bear Rainforest*. July 21, 2006. Available at:
<http://www.worldchanging.com/archives/004716.html>

19. November 16: PUBLIC INTEREST NEGOTIATION (continued)

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)**

20. November 18: MAKE UP CLASS

Note: Class will be held at 2:30 – 3:50 in room 157 Fraser Building.

- **Tentative Speaker:** “The Ins and Outs of Making Policy and Legislation” by Nancy Carter, Executive Director, Civil Policy Law Office, Ministry of Attorney General.

Course Topic Area 4: SPECIFIC ISSUES

21. November 21: ACCOUNTABILITY and EVALUATION: MEASURING EFFECTIVENESS

- The growing importance of, and the challenges associated with evaluation and performance measurement in the public service and in the justice system.
- Information-based decision-making.
- The relationship of performance to public understanding of, and public confidence in, public institutions.

Required Reading

- *Development of Performance Standards in Civil Justice*, Dr. Elaine Todres, December 2006.
<http://cfcj-fcjc.org/docs/2006/acca-en.pdf>

- *Federal Department of Justice: Analysis of Program activities by Strategic Outcome.*
<http://www.tbs-sct.gc.ca/rpp/2010-2011/inst/jus/jus02-eng.asp>

Optional and Reference Reading

- Craig Darling, *Program Evaluation Toolkit: A Blueprint for Admin Tribunal Dispute Resolution Programs*, Ministry of Attorney General (2005).
- Treasury Board of Canada Secretariat: *Decision Making in Government: The Role of Evaluation.*
<http://www.tbs-sct.gc.ca/cee/tools-outils/aucoin-eng.asp>
- Law and Justice Institutions: *Performance Measures Topic Brief.*
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:20756997~menuPK:1990189~pagePK:210058~piPK:210062~theSitePK:1974062~isCURL:Y,00.html>
- *Confidence in the Justice System in British Columbia*, Professor Neil Boyd, Canadian Bar Association, January 2010. http://www.cba.org/bc/initiatives/pdf/boyd_report.pdf
- *BC Ministry of Attorney General: Child Protection Mediation Evaluation Framework.*
<http://www.ag.gov.bc.ca/dro/publications/manuals/evaluation-framework.pdf>
- *BC Ministry of Attorney General: Evaluation of the Surrey Court Project: Facilitated Planning Meeting Final Report (November 2003)*
<http://www.ag.gov.bc.ca/dro/publications/reports/surrey-court-FINAL.pdf>
- *BC Ministry of Attorney General: Evaluation of the Surrey Court Project: Facilitated Planning Meeting Interim Report (June 2002)* <http://www.ag.gov.bc.ca/dro/publications/reports/surrey-court.pdf>
- *BC Ministry of Attorney General: An Evaluation of the Notice to Mediate Regulation under the Insurance (Motor Vehicle) Act (June 1999)*
<http://www.aq.gov.bc.ca/dro/publications/reports/motor-vehicles.pdf>

22. November 23: FORCES SHAPING POLICY, LAW and DISPUTE RESOLUTION

- This class will explore the range of forces driving change in public institutions today. Forces as diverse as information technology, the globalization of the economy, the need for horizontal policy and program integration, multidisciplinary practice and fiscal restraint are exerting a growing influence on the shape of government policy and law – particularly with respect to dispute resolution.

Required Reading

- To be announced

Optional and Reference Reading

- Richard Susskind, *The End of Lawyers?* Oxford Press

23. November 28: CULTURE

- We will look at the many manifestations of culture and its relation to and impact upon conflict and policy development.

Required Reading

- Michelle Le Baron: *Culture-Based Negotiation Styles*. Available at: <http://www.gmu.edu/programs/icar/pcs/lebaron.htm>
- *Changes in Legal Culture: Barriers and New Opportunities*. Barbara M. Young. http://www.bcjusticereview.org/working_groups/civil_justice/young_paper_02_06.pdf
- BC Trial Lawyers Association community newspaper ads. Available at: https://www.tlabc.org/temp/ts_DEDD72AD-BDB9-505C-163DAD54EEBF4520EDDD72BD-BDB9-505C-19E56227354377E7/FEB4FLYER.pdf and https://www.tlabc.org/temp/ts_DEDE95E0-BDB9-505C-1ECE1FAB821109B1DEDE95F0-BDB9-505C-1323B1FA61F5D1E2/Ad-Feb12-2009-FreeSpeech-Day-in-Court.pdf

Optional and Reference Reading

- Michelle Le Baron: *Mediation and Multicultural Reality*. Available at: http://www.gevim.co.il/image/users/89301/ftp/my_files/Culture-Based%20Negotiation%20Styles.pdf
- Michelle LeBaron: *Transforming Cultural Conflict in an Age of Complexity*, (Berghof Handbook for Conflict Transformation) 2001. Available at: http://www.berghof-handbook.net/documents/publications/lebaron_hb.pdf
- Pirie, Andrew. *Alternative Dispute Resolution: Skills, Science, and the Law*. Toronto: Irwin Law, 2000. Chapter 7. Available at: <http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/docDetail.action?docID=10225595>
- BC Ministry of Attorney General: *Legal Culture*. Download from *Clicklaw* at <http://www.clicklaw.bc.ca/organization/reformresearch/1003>

24. November 30:

- **CONCERNS ABOUT INSTITUTIONALIZING COLLABORATIVE PROCESSES, and**
- **WRAP UP**

Required Reading

- *To be announced*

Optional and Reference Reading

- Claire Baylis and Robyn Carroll, *Power Issues in Mediation*, ADR Bulletin: Vol. 7: No. 8, Article 1, The Berkeley Electronic Press (2005) <http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1310&context=adr&sei-redir=1#search=%22power%20issues%20mediation%22>
- Tina Grillo. *The Mediation Alternative: Process Dangers for Women*, in the Yale Law Journal, Vol. 100 number 6 (April 1991). Available at: <http://www.jstor.org/stable/796781>
- Joshua D. Rosenberg. In Defense of Mediation. Arizona Law Review, Vol. 33 (1991) (in response to Trillo). Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1108380
- Mark Seidenfeld. *Empowering Stakeholders - Limits on Collaboration as the Basis for Flexible Regulation*. Available at: http://heinonline.org/HOL/Page?handle=hein.journals/wmlr41&div=21&g_sent=1&collection=journals

Reminder: final paper due 4:00 pm on December 2nd

APPENDIX A

PUBLIC POLICY, LAW AND DISPUTE RESOLUTION

DR 503 & LAW 372

EVALUATION CRITERIA and DUE DATES

	WEIGHTING	DUE DATE
Major research paper	65%	• 1-page outline due (with working bibliography) 4:00 pm on October 3rd • final paper due 4:00 pm on December 2nd
Reflective Journal	25%	• 3 entries from October 3rd to December 2nd . (see page 21 below for details)
Attendance & participation	10%	

Criteria For Research Paper

(Worth 65%)

The following is an outline of the objectives and expectations and therefore evaluation criteria 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 and the Student.

Value: 65 percent of the final mark in the course

Length: The paper must be:

Graduate Students: 4,500 to 5,500 words in length (exclusive of footnotes and bibliography).

Law Students: 3,500 to 4,500 words in length (exclusive of footnotes and bibliography).

Lines should be 1.5 spaced and papers must include a word count on the front page. Words in excess of these limits will not be graded.

Due Date: Research paper is due by **4:00 pm** on **December 2, 2011** electronically to the moodle site *and* in hardcopy **at either the Master of Arts in Dispute Resolution (MADR) office, A316, HSD Bldg or the General Office at the Faculty of Law in**

the Fraser Building. In extenuating circumstances (e.g. illness or family emergency) extensions may be possible in consultation with the instructor, but they will only be granted in advance of the deadline. You may be required to provide documentation (such as a doctor's certificate if you are ill). Late assignments will be penalized by one letter grade category (e.g. a B becomes a B-) for each day late unless an extension has been granted prior to the deadline.

Students are asked to note the word count for the paper on the title page of the paper.

Work: It is recommended that you work on the paper throughout most of the term, and not postpone work on the paper until late in the term.

Evaluation: Your paper will be graded on the basis of the Instructor's overall assessment of the following factors:

- Thesis: clear articulation of argument. The work should demonstrate that you have acquired a thorough grasp of the subject area that you have chosen.
- Research: breadth and depth of research demonstrating an ability to conduct research using both primary and secondary sources. Your paper must be well-documented by footnotes and it must include a bibliography of all the cases, reports and other materials that you have relied upon.
- Analysis: logic, balance, depth, context, critical analysis. The paper should demonstrate your ability to think critically about your topic and to relate it to the course themes.
- Organization: the paper should be logically organized around a central thesis or theme.
- Originality/creativity: novelty, insight. The work that you do for the paper must be "new" work. Papers should identify problems or uncertainties in your chosen area, analyze their impact, make suggestions for change, and/or relate your topic to larger theoretical principles.
- Style: good writing, correct footnotes and citations, flow and grammar. For law students, Follow the *Canadian Guide to Uniform Legal Citation*, ("McGill Guide"). For graduate students follow the APA Style Guide (see: <http://library.uvic.ca/instruction/cite/styleguides.html>).

Papers can be discussed with the instructor while they are being developed but draft papers will not be read.

In recognition that members of the university community have an impact on 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).

Criteria and Due Dates for Reflective Journal

(Worth 25%)

You are asked to submit three "Reflective Journal" entries, each consisting of a critical response to the readings and to the material discussed in class. The objective is for you to demonstrate your

engagement with, understanding of and facility with the fundamental ideas and issues under consideration. Three separate papers are required and each must draw from a different topic area of the course – that is, you do three papers from four areas but no two papers can be from the same topic area. The topic areas, as detailed above, are:

- Conceptual Models and Institutional Context due: anytime **before October 3rd at 4:00 pm.**
- Conflict and Policy: Specific Illustrations due: anytime **before Nov. 7th at 4:00 pm.**
- Designing Dispute Resolution Systems due: anytime **before Nov. 23rd at 4:00 pm.**
- Specific Issues due: anytime **before December 2nd at 4:00 pm.**

These entries are to be submitted electronically to the Moodle site; there will be a separate drop-box for each topic area.

Each reflective journal paper must be 500-600 words. Students are asked to note the word count for the paper on the title page of the paper.

A reflective journal topic may not be on the same topic as your final research paper.

These are not summaries, reviews, or opinion pieces – your work should critically evaluate or build on the points being made in the materials and in class. Do not simply describe what we have covered in class. You may, for example, want to mount an argument for or against a particular position or theory, discuss a specific application of the ideas, or discuss related issues or questions that were not covered in class. I am interested in your own ideas and reactions to the material and in your own thoughts and arguments.

The reflective journal papers will be graded on the basis of their conceptual soundness, level of analysis, quality of insight, creativity and style.

Guidelines For Formatting & Submitting Written Work

All written work submitted for this course must utilize the Chicago ‘note’ style of referencing (the footnoting citation style, not parenthetical referencing). Lines should be 1.5 spaced, with 1-inch margins all around, and the font used must be 11-point Times New Roman. Pages must be numbered. A bibliography must be included at the end of your paper, on a separate page. Do not include material in your bibliography that you did not cite in the body of your work.

Penalties for Late Submissions

Late assignments will be penalized by one letter grade category (e.g. a B becomes a B-) for each day late unless an extension has been granted by the instructor prior to the deadline on the basis of a reasonable excuse.

Criteria For Class Participation

(Worth 10%)

1. Attendance

- Attendance at classes is expected. If you are unable to attend, please let the instructor know in advance
- It is helpful if you can demonstrate that you have read the material, and that you can discuss it critically by identifying points of interest, thoughts on how the readings may relate to or be considered in light of other course materials and ideas about the theoretical or practical relevance of the work.

2. Participation

- The point here is to show active engagement with the ideas and the readings as well as a willingness to comment and be part of the discussion.

Grading System

UVic Faculty of Graduate Studies - Grading Scale			
Grade	Grade Point Value	Description	Achievement of Assignment Objectives
A+	9	Exceptional work	Technically flawless and original work demonstrating insight, understanding and independent application or extension of course expectations; often publishable
A	8	Outstanding work	Demonstrates a very high level of integration of material demonstrating insight, understanding and independent application or extension of course expectations
A-	7	Excellent work	Represents a high level of integration, comprehensiveness and complexity, as well as mastery of relevant techniques/concepts
B+	6	Very good work	Represents a satisfactory level of integration, comprehensiveness, and complexity; demonstrates a sound level of analysis with no major weaknesses
B	5	Acceptable work that fulfills the expectations of the course	Represents a satisfactory level of integration of key concepts/procedures. However, comprehensiveness or technical skills may be lacking
B-	4	Unacceptable work revealing some deficiencies in knowledge, understanding or techniques	Represents an unacceptable level of integration, comprehensiveness and complexity. Mastery of some relevant techniques or concepts lacking. Every grade of 4.0 (B-) or lower in a course taken for credit in the Faculty of Graduate Studies must be reviewed by the supervisory committee of the student and a recommendation made to the Dean of Graduate Studies. Such students will not be allowed to register in the next session until approved to do so by the Dean.
C+	3		
C	2		
D	1		
F	0	Failing grade.	Unsatisfactory performance. Wrote final examination and completed course requirements.
Students in the Faculty of Graduate Studies must achieve a grade point average of at least 5.0 (B) for every session in which they are registered. Individual departments or schools may set higher standards. Students with a sessional or cumulative average below 5.0 will not be allowed to register in the next session until their academic performance has been reviewed by their supervisory committee and continuation in the Faculty of Graduate Studies is approved by the Dean. Some academic units may employ a percentage system for evaluating student's work.			
Other Failing or Temporary Grades			
N	0	Did not write examination or otherwise complete course requirements by the end of term or session. This grade is intended to be final.	
COM	N/A	Used only for 0 unit courses and other graduate courses designated by the Senate. Such courses are identified in the course listings	
INC		Incomplete (requires "Request for Extension of Grade" form). Used for those graduate credit courses	

		designated by the Senate and identified in the course listings; also used, with Dean's permission, for those graduate credit courses with regular grading (A to F, including N) which are not complete by the end of the term or session due to exceptional circumstances beyond the control of the instructor or student. INC must be replaced by a final grade not later than the end of the next term.
INP	N/A	In Progress. Used only for work terms; dissertations; theses; projects; comprehensive examinations and seminars offered on the same basis as dissertations or theses and designated by Senate (identified in the course listings). In the case of work terms, a final grade must replace INP within two months of the end of term. For dissertations, theses, designated seminars, projects and comprehensives, a final grade must replace INP by the end of the program. If the student does not complete the degree requirements within the time limit for the degree, the final grades will be N.
CIC	N/A	Co-op Interrupted Course. Temporary grade. See Co-op Regulations.
CTN	N/A	The CTN designation will appear on student transcripts at mid-point through the course or at the end of the first academic term (Sept-Dec). On completion of the course, the CTN designation will remain on the transcript for the first term and a final grade will be noted for the second academic term (Jan-April).

UVic Undergraduate Grading – Faculty of Law students		
Passing Grades	GPA Value	Description
A+	9	Exceptional, outstanding and excellent performance. Normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation and has an insightful grasp of the subject matter.
A	8	
A-	7	
B+	6	Very good, good and solid performance. Normally achieved by the largest number of students. These grades indicate a good grasp of the subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	
B-	4	
C+	3	Satisfactory, or minimally satisfactory. These grades indicate a satisfactory performance and knowledge of the subject matter.
C	2	
D	1	Marginal Performance. A student receiving this grade demonstrated a superficial grasp of the subject matter.
COM	Excluded Grade	Complete (pass). Used only for 0-unit courses and those credit courses designated by the Senate. Such courses are identified in the course listings.
Failing Grades	GPA Value	Description
E	0	Conditional supplemental.
F	0	Unsatisfactory performance. Wrote final examination and completed course requirements; no supplemental.
N	0	Did not write examination or complete course requirements by the end of term or session; no supplemental.
N/X	Excluded Grade	Did not complete course requirements by the end of the term; no supplemental. Used only for co-op work terms and for courses designated by Senate. Such courses are identified in the course listings. The grade is EXCLUDED from the calculation of all grade point averages.
F/X	Excluded Grade	Unsatisfactory performance. Completed course requirements; no supplemental. Used only for co-op work terms and for courses designated by Senate. Such courses are identified in the course listings. The grade is EXCLUDED from the calculation of all grade point averages.
Temporary Grades	GPA Value	Description
INC	N/A	Incomplete. Used only for those credit courses designated by the Senate, to be replaced with a final grade by June 1. Such courses are identified in the course listings.

DEF	N/A	Deferred status granted. Used only when deferred status has been granted because of illness, an accident or family affliction. See Deferred Status .
UNK	N/A	Unknown . Used when grade is unknown.
INP	N/A	In Progress . Used only for courses designated by Senate, to be replaced with a final grade by the end of the next Winter Session or, in the case of TIED courses, by the end of the subsequent term. If the student fails to complete the second course of a TIED course sequence, then the final grade will be N. TIED courses are identified in the calendar.
CIC	N/A	Co-op Interrupted Course . See Co-op Regulations (14).
CTN	N/A	The CTN designation will appear on student transcripts at mid-point through the course or at the end of the first academic term (Sept-Dec). On completion of the course, the designation will be replaced with a final grade.
Grade		Note
AEG	N/A	Aegrotat . Transcript notation accompanying a letter grade, assigned where documented illness or similar affliction affected the student's performance or prevented completion of all course work.

For details, see: <http://web.uvic.ca/calendar2010/FACS/UnIn/UARe/Grad.html>

EXPECTATIONS and 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 Graduate calendar, at <http://web.uvic.ca/calendar2010/GRAD/FARe/AcIn.html>. Law students can also see http://law.uvic.ca/current/academic_regs.php.

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.