



Please Note: This *Class Syllabus* is an important step in updating the format of our distance classes. If for any reason the *Class Syllabus* does not match the online class information, the *Class Syllabus* shall be taken as correct.

CLASS SYLLABUS (NON CREDIT)

COURSE TITLE:	Introduction to the Duty to Consult	TERM:	Winter 2018
COURSE CODE:	ASKI 203	DELIVERY:	Online
COURSE CREDITS:	1	START DATE:	January 3, 2018
COURSE SECTION:	W02-W99	END DATE:	February 14, 2018

Course Description

The official course description and prerequisites are in the U of S Course and Program Catalogue available at <http://www.usask.ca/calendar/coursecat/>

Course Learning Outcomes

By the end of this class, students should be able to:

1. Explore the Crown's constitutional duty to consult and accommodate Aboriginal peoples in both theory and application.
2. Interpret key court decisions that have shaped current guidelines and policy regarding the Crown's duty to consult.
3. Contrast the roles and responsibilities of federal, provincial and territorial departments and agencies, Aboriginal groups and third parties in the fulfillment of the Crown's duty to consult.
4. Determine situations where the duty to consult would be triggered, as well as the level of consultation and accommodation required in each situation.
5. Relate the effects that the Crown's duty to consult has on land management in Indigenous communities.

Class Overview

A study of how Canadian courts have developed the Crown's duty to consult from the constitutional protection of Aboriginal and treaty rights. This course is designed to introduce students to the meaning and implications of key Canadian cases that have explained the scope and meaning of the Crown's duty to consult. Students will review how Canadian courts view Aboriginal and treaty rights and why these rights impose a duty to consult and accommodate on the Crown. Students will explore how the Crown's duty to consult continues to evolve in Canadian law and its implications for Crown-Indigenous relations and natural resource development in Canada.

The course will begin by tracing the development of the Crown's duty to consult from its origins in the constitutional protection of Aboriginal and treaty rights to its evolution into a self-standing obligation to consult and accommodate unproven claims to rights. The course will conclude with a discussion of what the Crown's duty to consult requires in practice and how alternatives to consultation are being negotiated outside the court system.

Each module will be followed by an assessment to ensure students are mastering the course materials before proceeding to the next module. This will culminate in an assignment and final exam, both of which are mandatory in order to pass the course.

Your Instructor

Contact Information

To the extent possible, please communicate your questions through the University of Saskatchewan's Blackboard system, which includes an email and discussion board function. Questions of general interest to all students in the class can be communicated through the discussion board of your own initiative, if you are comfortable doing so. If you wish to communicate questions without identifying yourself or your questions are of a personal and/or confidential nature, these can be directed to the instructor through the Blackboard email function. If you are unable to contact me through Blackboard, I can be reached at the following email address: benjamin.ralston@usask.ca. I will endeavor to respond to all emails within one business day. Please ensure that you regularly check your email account that is set up with Blackboard during the course period.

Office Hours

If you wish to connect with me over the phone or via Skype during the course period, please first contact me via email so we can find a mutually agreeable time for this.

Profile

Benjamin Ralston completed a BA in Linguistics and a JD (Law) at the University of British Columbia, as well as an LLM (Master of Laws) with distinction at the University of Otago in New Zealand. Benjamin was called to the bar in British Columbia in 2011 and in Saskatchewan in 2015. As a lawyer he has worked for Indigenous governments on issues that range from the day-to-day matters of employment and contract law to representing First Nations in environmental assessment processes and negotiations with the Crown with respect to management of species at risk on reserve. His LLM thesis was directed at Indigenous involvement in natural resource planning processes and he continues to conduct academic and professional work that focuses on the intersection between the rights of Indigenous peoples and natural resource management.

Benjamin is currently an assistant professor at the University of Saskatchewan College of Law teaching in Iqaluit, Nunavut as part of the Nunavut Law Program.

Required Resources

Readings/Textbooks

No textbook is required for this course.

Electronic Resources

The readings in this course will be available electronically. The links and PDFs will be provided for you in your online course.

Downloads

Some downloads may require Adobe Reader. To install this software, click this link and follow the download and installation instructions: <http://get.adobe.com/reader>.

Mobile Access

Blackboard Mobile Learn™ is an app that is available on many devices including iOS® and Android™ for those occasional times when you may want mobile access. It is still recommended that you use a laptop or desktop computer for the majority of your online studies.

Supplementary Resources

Newman, Dwight, *The Duty to Consult: New Relationships with Aboriginal Peoples* (Saskatoon: Purich, 2009).

Newman, Dwight, *Revisiting the Duty to Consult Aboriginal Peoples* (Saskatoon: Purich, 2014).

Olthuis, Kleer, Townshend (OKT) and Shin Imai, *Aboriginal Law Handbook*, 3rd ed (Toronto: Carswell, 2008).

Woodward, Jack, *Native Law* (Toronto: Carswell, 1994-).

Class Schedule

Week	Module	Readings	Evaluation Due Date
Jan 3	1 Aboriginal Rights, Treaty Rights, and the Source of the Duty to Consult	<i>R v Sparrow</i> , [1990] 1 SCR 1075 [excerpts] [PDF in Blackboard] <i>R v Badger</i> , [1996] 1 SCR 771 [excerpts] [PDF in Blackboard]	Module 1 Quiz 10% on January 13, 2018
Jan 15	2 Haida Nation & the Crown's Proactive Duty to Consult	<i>Haida Nation v British Columbia (Minister of Forests)</i> , [2004] 3 SCR 511 [excerpts] [PDF in Blackboard] Sonia Lawrence and Patrick Macklem, "From Consultation to Reconciliation: Aboriginal Rights and the Crown's Duty to Consult" (2000) 79 Canadian Bar Review 252 [PDF in Blackboard]	Module 2 Quiz 10% on January 20, 2018
Jan 22	3 Mikisew and the duty to consult upon taking up treaty land	<i>Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)</i> , [2005] 3 SCR 388 [excerpts] [PDF in Blackboard] Bryan P. Schwartz & Darla L. Rettie, "The Long and Winding Road: Case Comment on Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)" (2006) <i>The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference</i> 34 [PDF in Blackboard]	Module 3 Quiz 10% on January 27, 2018
Jan 29	4 Who consults whom?	<i>Clyde River (Hamlet) v Petroleum Geo-Services Inc.</i> , 2017 SCC 40 [excerpts] [PDF in Blackboard] Ian Peach, "Who speaks for whom? Implementing the Crown's duty to consult in the case of divided Aboriginal political structures" (2016) 59:1 <i>Canadian Public Administration</i> 95 [PDF in Blackboard]	Module 4 Quiz 10% on February 3, 2018
Feb 5	5 Fulfilling the duty	<i>Kwakiutl First Nation v British Columbia (Forests, Lands and Natural Resource Operations)</i> , [2015] 4 CNLR 225 (BCCA) [excerpts] [PDF in Blackboard] Kaitlin Ritchie, "Issues associated with the implementation of the duty to consult and accommodate aboriginal peoples: threatening the goals of reconciliation and	Module 5 Assignment 20% due February 10, 2018

Week	Module	Readings	Evaluation Due Date
		meaningful consultation” (2013) University of British Columbia Law Review, 46:2 397 [See Blackboard]	

Note: If for any reason the Class Syllabus Reading List does not match the Module Reading List, the Class Syllabus shall be taken as correct.

Evaluation Components

As a non-credit student you are encouraged to complete the quizzes and the assignment, however you will not be able to write the final exam, nor will you be graded or receive a final mark in the class.

Module 1: Quiz

Date: See Class Schedule

Length: 30 minutes

Purpose: Each quiz will test students' knowledge of materials from the most recent module, but with reference to foundational concepts from previous modules. These quizzes ensure students understand the materials and how to apply them so that they are well prepared for their assignment and final exam.

Description: This will be a non-invigilated, online (administered through Blackboard) open book quiz made up of multiple choice questions, which you are to work through independently, without any outside consultation. It will test your knowledge of key details from their readings and the course materials, focusing on the practical application of this knowledge.

Module 2: Quiz

Date: See Class Schedule

Length: 30 minutes

Purpose: Each quiz will test students' knowledge of materials from the most recent module, but with reference to foundational concepts from previous modules. These quizzes ensure students understand the materials and how to apply them so that they are well prepared for their assignment and final exam.

Description: This will be a non-invigilated, online (administered through Blackboard) open book quiz made up of multiple choice questions, which you are to work through independently, without any outside consultation. It will test your knowledge of key details from their readings and the course materials, focusing on the practical application of this knowledge.

Module 3: Quiz

Date: See Class Schedule

Length: 30 minutes

Purpose: Each quiz will test students' knowledge of materials from the most recent module, but with reference to foundational concepts from previous modules. These quizzes ensure students understand the materials and how to apply them so that they are well prepared for their assignment and final exam.

Description: This will be a non-invigilated, online (administered through Blackboard) open book quiz made up of multiple choice questions, which you are to work through independently, without any outside consultation. It will test your knowledge of key details from their readings and the course materials, focusing on the practical application of this knowledge.

Module 4: Quiz

Date: See Class Schedule

Length: 30 minutes

Purpose: Each quiz will test students' knowledge of materials from the most recent module, but with reference to foundational concepts from previous modules. These quizzes ensure students understand the materials and how to apply them so that they are well prepared for their assignment and final exam.

Description: This will be a non-invigilated, online (administered through Blackboard) open book quiz made up of multiple choice questions, which you are to work through independently, without any outside consultation. It will test your knowledge of key details from their readings and the course materials, focusing on the practical application of this knowledge.

Module 5: Assignment

Due Date: See Class Schedule

Purpose: The assignment will address topics covered in the course materials and corresponding readings. Completion of the assignment is a mandatory requirement for this course.

Description: This will be a 4 to 6 page paper in which you will be asked to reflect on how the course materials relate to a current controversy over natural resource development or land use in which the Crown's duty to consult is engaged. This will require a detailed application of the concepts addressed in this course to facts that you are aware of either through your own work or the media. Detailed instructions and a grading rubric will be posted on Blackboard.

Submitting Assignments

Electronically to your instructor by e-mail or the Blackboard Learn system. Assignments must be submitted as either Word or PDF documents.

You should keep a personal copy of all assignments submitted.

Copyright

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Acknowledgements

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Instructional Design and Class Development

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