



— Haida Gwaii —
HIGHER EDUCATION SOCIETY

First Nations Governance & Natural Resources Management

HGSE 352

**** THIS IS A SAMPLE SYLLABUS, GUESTS, FIELD TRIPS AND OTHER COURSE DETAILS MAY VARY FROM YEAR TO YEAR. Contact HGHE for more details.**

Instructor:	Satsan (Herb George)
Credits:	3

Course Description:

The political, economic and legal environment for Aboriginal-Canadian relations has changed profoundly as the result of the recent Supreme Court of Canada decision Tsilhqot'in Nation v. British Columbia delivered on June 26, 2014. This decision marks the first-ever judicial declaration of Aboriginal title in Canada. This case significantly alters the political, economic, and legal landscape in Canada relating to land and resource use and governance.

In the 2004 Haida and Taku River decisions, the Supreme Court of Canada held that prior to the establishment of Aboriginal Title, the Crown is required to consult in good faith and where appropriate accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or treaty rights. Further, in Tsilhqot'in decision, the Supreme Court of Canada recommends obtaining consent.

Meaningful consultation and accommodation of Aboriginal and Treaty rights requires a new approach, which begins with a good understanding of the historic relationship between First Nations and the Crown, the emerging case law, which focuses on the development of a new relationship between First Nations and the provincial and federal governments. The frame of reference for this approach is found in such cases as Delgamuukw-Gisdayway, Haida, and Tsilhqot'in.

Specifically, it is recommended that consultation and accommodation negotiation with First Nations ought to be guided by a commitment towards reconciling outstanding claims, balancing competing interests and negotiating in good faith. This new relationship is government-to-government, nation-to-nation, and it has radical implications on land and natural resource use and management.

We will examine this relationship over four eras:

- | | |
|---------------------------|---|
| I. Prior to contact | III. From Confederation to the Constitution Act of 1982 |
| II. Settlement/Indian Act | IV. The new era: 1982-Present |

Course Objectives:

By the end of this course, students will be able to:

- Understand and describe the pre-contact history of First Nations



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- Understand and be able to outline in writing the historic relationship between First Nations and the Crown, from Confederation to 1982
- Understand the legal framework, describe the main cases and the legal principles that are set out to guide negotiations between First Nations and the Crown towards a new government-to-government relationship
- Be able to explain the eight enforceable principles of law and their legal sources; identify and outline how this impacts and changes natural resource use and management, with a focus on forestry
- Using the legal framework outlined by the Supreme Court of Canada in Tsilhqot'in Nation v. British Columbia, describe and outline options of what a new relationship might look like and how it could work

Course Organization:

The course centers on a discussion guide, supported by assigned readings and demonstrated by guest speakers who will share their first hand experience. The course instructor will provide the background necessary for understanding the discussion guide and assigned readings. The majority of the class time will be spent on dialogue/debate to develop clearer understanding. Guest speakers and field trips will provide an opportunity for experience-based enquiry. Students are expected to actively participate in all aspects of the course and to complete assignments on time.

Course Evaluations:

- Participation 30%
- Reflection/Response Paper 15%
- Group Presentation 30%
- Individual Paper 25%

Participation

Students are expected to actively participate in dialogue/debate on course readings and guest presentations and will individually share their knowledge of First Nations from their home area. Students will be called upon on a daily basis to ensure full participation.

Reflection/Response Papers (1-2 pages)

Students will write a paper based on their response to the Cree Hunters of the Mistassini film, watched in class.

Group Presentation

The new relationship between First Nations and the Crown, as outlined by the Supreme Court of Canada, is a radical change to the status quo. In discussion with students, we will identify and prioritize the major challenges and issues. The class will be organized into four groups to present how these issues and challenges might be addressed.



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Individual Papers (5-7 pages)

Students will demonstrate their understanding and learning of what a new relationship between First Nations and the Crown means in the context of reconciliation, with a focus on resource management issues and practices. This paper will rely on course material and guest speakers.

Assigned Readings:

Week One

- Tsilhqot'in Nation v. British Columbia, 2014 SCC 44 (case summary)
- A Brief History of Our Right to Self-Governance, NCFNG 2007
- Crown Consultation Policies and Practices Across Canada, NCFNG 2009
- The Wet'suwet'en Vision of Treaty with the Crown, Satsan

Week Two

- The Structure of the Indian Act: Accountability in Governance, Shin Imai 2007
- Like an Ill-Fitting Boot, Frances Abele 2007
- Seven Generations, Seven Teachings: Ending the Indian Act, John Borrows 2008
- To Dignity Through the Backdoor: Tsilhqot'in and the Aboriginal Title Test, Andrée Boiselle 2015
- The Metamorphosis of Aboriginal Title, Brian Slattery, 2006
- Towards Sound Government to Government Relationships with First Nations: A Proposed Analytical Tool, John Graham & Jake Wilson 2004
- Louie v. Louie 2015 BCCA (case summary)
- Forging Partnerships Building Relationships, Douglas R. Eyford 2013
- The Governance and Fiscal Environment of First Nations' Fiscal Relations in Comparative Perspectives, Emmanuel Brunet-Jailly 2008
- Has Constitutional Recognition of Aboriginal Rights Adversely Affected Their Definition, Kent McNeil and David Yarrow 2007
- Framework for an Aboriginal Title and Inherent Right Strategy, NCFNG 2007 (*focus on the 8 enforceable principles*)

Week Three

- The Jurisdiction of Inherent Right Aboriginal Government, Kent McNeil 2007 (*focus on the 8 principles*)

Additional Resources

- Indian Act
- Calder v. BC 1997 SCC
- Delgamuukw-Gisdayway v. BC 1997 SCC
- Campbell v. BC 2000 SCC
- Haida Nation v. BC 2004 SCC
- Mikesew Cree First Nation v. Canada 2005 SCC
- Tsilhqot'in Nation v. British Columbia, 2014 SCC



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Course Schedule:

Please remember that our schedule is fluid and subject to change.

Day	9-12	1-4
Monday	<p>Lecture: Course introduction</p> <p>Overview of pre-contact era; settlement/Indian Act era; from Confederation to Constitution Act;</p> <p>Guest: Haida creation stories and places of origin</p>	<p>Lecture: Continuation of overview from 1982-Present, the New Era; <u>Tsilhqot'in 2014 SCC</u></p>
Tuesday	<p>Lecture: First Nations on the land</p> <p>A brief history of our right to self-governance</p> <p>Film: Cree hunters of Mistassini</p>	<p>Guest: The history of Haida Gwaii through oral histories, art and song</p>
Wednesday	<p>Lecture: Round-table discussion</p> <p>First Nations from your area history/knowledge/experience?</p>	<p>Field trip: Skidegate Haida Immersion Program (SHIP)</p>
Thursday	<p>Lecture: Introduction to settlement and the Indian Act era</p> <p>From Confederation to the 1927 amendment, to the Indian Act, to the 1969 White Paper, to the Constitution Act of 1982</p>	<p>Guest: Aboriginal Law</p>
Friday	<p>Lecture: HGSE 350 Seminar</p>	Independent Study
Monday	<p>Lecture: How the Indian Act works</p> <p>Origin and content</p>	<p>Lecture: Bill C-31 discussion with special guests</p>
Tuesday	<p>Lecture: More on the Indian Act</p>	<p>Field trip: Skidegate Band Council</p>



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		Office
Wednesday	Film: Dancing around the Table	Lecture: Introduction to Section 35 and Aboriginal Rights
Thursday	Lecture: Introduction to the 'New Era' A legal overview of the <u>Calder Case 1973 SCC, Delgamuukw-Gisdayway 1977 SCC, Campbell 2000 BC Supreme Court, Haida Nation 2004 SCC, Mikesew Cree 2005 SCC, Tsilhqot'in 2014 SCC</u>	Lecture: The constitutional and legal obligations to guide negotiations toward reconciliation; 8 enforceable principles
Friday	Lecture: HGSE 350 Seminar	Independent Study
Monday	Family Day – No Class	
Tuesday	Lecture: Narrow down the major themes and issues as a class	Lecture: Overview of <u>Tsilhqot'in v. British Columbia 2014</u> , Supreme Court of Canada decision
Wednesday	Lecture: A New Relationship: What should it look like? Implementation of the law	Lecture: A New Government-to-Government Relationship: What does this look like in terms of jurisdiction?
Thursday	Course wrap-up & group presentations	
Friday	Lecture: HGSE 350 Seminar	Independent Study