

A foundation for mutual understanding and respect:

**Developing an Aboriginal rights-focused curriculum for Public
Administration students**

Judith Zwickel, MADR candidate

School of Public Administration

University of Victoria

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Client: Dr. Marcia Dawson
School of Public Administration, University of Victoria

Supervisor: Dr. Tara Ney
School of Public Administration, University of Victoria

Second Reader: Dr. Kim Speers
School of Public Administration, University of Victoria

Chair: Dr. Catherine Althaus-Kaefer
School of Public Administration, University of Victoria

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EXECUTIVE SUMMARY

INTRODUCTION

In British Columbia, the relationship between Aboriginal peoples and the provincial government has been historically troubled. While progress is being made toward ameliorating this relationship, the fact remains that 150 years of colonial policies have had a significant and lasting effect on Aboriginal people and communities today, contributing to the current economic and social disparity as well as damaging relationships between Aboriginal and non-Aboriginal populations in the province.

Closing the social and economic gap and improving the relationship between Aboriginal and non-Aboriginal populations and institutions is one of the most pressing policy issues facing British Columbians today (First Nations Leadership Council & Province of British Columbia, 2005; First Nations Leadership Council and Province of British Columbia, 2015; Royal Commission on Aboriginal Peoples, 1996). However, narratives that focus on this social and economic disparity often overlook the strength and resilience of Aboriginal people and communities. It is important to recognize the ways in which Indigenous cultures, teachings and practices have sustained Aboriginal people since time immemorial. It follows that as we as British Columbians move forward with addressing this unequitable and unbalanced relationship, we must work toward equalizing the way we value Aboriginal and non-Aboriginal perspectives. This includes supporting Aboriginal people in British Columbia to define the issues that are significant for their communities and engaging with them in the development of policies that will meaningfully address these concerns.

The issue of social, economic and relational development with Aboriginal communities is not only pressing, but also very complex. British Columbia is home to diverse Aboriginal cultures with distinct languages, social organization, legal structures and governance systems. Colonialism forcefully applied a set of pre-existing and often incompatible assumptions and structures stemming from western European belief systems onto existing cultures and landscapes. The colonial encounter in British Columbia affected different communities in different ways and at different times; however, it affected all communities in one way or another. While this often resulted in detrimental outcomes for Aboriginal

people, the resistance to the colonial encounter also demonstrated the strength and resilience of Aboriginal cultures and belief systems. The premise of this project is that in order to meaningfully address the contemporary manifestations of colonial policies, including the disparity between Aboriginal populations and non-Aboriginal Canadians, policy makers and practitioners must first understand the historical and social context in which colonial policies were applied and resisted.

It is critical that future public servants graduating from the University of Victoria's (UVic) School of Public Administration Master's programs have a comprehensive understanding of Aboriginal issues so that they can contribute to designing and implementing effective public policy. This project acknowledges the Truth and Reconciliation Commission of Canada's Call to Action #57, which recommends that all public servants be educated in such areas as Aboriginal rights, history, and Aboriginal-Crown relations (2015). The Truth and Reconciliation Commission (TRC) emphasizes:

“too many Canadians know little or nothing about the deep historical roots of these conflicts [between Aboriginal populations and non-Aboriginal Canadians]. This lack of historical knowledge has serious consequences... In government circles, it makes for poor public policy decisions. In the public realm, it reinforces racist attitudes and fuels civic distrust” (2015, p. 8).

The School of Public Administration at the University of Victoria lacks a course dedicated to teaching Aboriginal issues in the British Columbia context. The curriculum developed in this project helps to fill this gap and meets the TRC's Call to Action #57 by ensuring future public servants educated in the School of Public Administration begin their careers with an adequate foundation of knowledge.

METHOD

The deliverable for this research is a six-module curriculum plan for graduate students in UVic Public Administration programs that can be implemented as either an online or on-campus course. The curriculum was developed in consultation with several members of the University of Victoria campus community, as well as experts working in the field of Aboriginal consultation, and external peer reviewers with experience teaching history and Aboriginal issues.

CURRICULUM

The six modules that make up the curriculum function in an iterative fashion. They provide students with the foundational knowledge necessary to interpret complex Aboriginal issues in contemporary British Columbia. The content of the modules relies on the frameworks set out in dispute resolution theory; however, the assigned readings support SPA students who are not in the Dispute Resolution stream with the specialized dispute resolution knowledge necessary to succeed in this curriculum.

The curriculum begins with the history of the relationship between Aboriginal and non-Aboriginal communities and governments in British Columbia, including theoretical frameworks for (re)examining the colonial encounter. The legal aspects of this relationship are then analyzed in historic and contemporary contexts; students review the evolution of the interpretation and definition of Aboriginal rights through case law. This forms the foundation for further exploring these rights through modules on the BC treaty process and the provincial government's constitutional duty to consult with First Nations on land and resource development decisions. Students finish the course with an in-depth examination of the exercise of power through Aboriginal direct action as a means to effect political change when established avenues are deemed insufficient.

RECOMMENDATIONS

The following recommendations are considerations for the successful implementation of the course:

- 1. Equalization of knowledge:** The School of Public Administration should work with Aboriginal faculty and community members to develop ways to thoughtfully integrate Aboriginal perspectives and issues into course content wherever appropriate.
- 2. Equity for Indigenous knowledge:** The School of Public Administration should consider inviting guest speakers from local Aboriginal communities and organizations to classes to share their experiences, expertise and perspectives.

- 3. Maximize resource and knowledge sharing:** The School of Public Administration should explore ways to connect to the Indigenous Governance program in a non-course-based way. For example, the two programs could perhaps coordinate guest speakers, panels, or student events.
- 4. Build local community connections:** The School of Public Administration should explore building community connections as outlined by FitzMaurice (2011) and Alfred (2012, 2015).
- 5. Support ongoing development:** There may be unforeseen challenges in the implementation of this material. The School of Public Administration will need to support this course and further develop it after it is piloted.

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NOTE ON TERMINOLOGY

Respect for Aboriginal identity requires using language that acknowledges distinct nations and people. When possible, I refer to the most specific term possible for a community or group of people, for example, Kaska Dena, Gitxsan or Lheidli T'enneh.

Terminology in reference to Aboriginal peoples can be politically loaded. It can reflect a paternalistic, colonial history that saw names and classifications imposed upon Aboriginal groups by newcomers and continues to homogenize Aboriginal people. This research uses as guidance the terminology and principles outlined by the University of British Columbia's First Nations Studies Program's online project, *Indigenous Foundations* (2009).

"Aboriginal" refers to people descended from the first inhabitants of Canada: the First Nations, Inuit, and Métis people. I use the terms "Aboriginal" and "First Nations" almost interchangeably in writing, but I always use "Aboriginal" when referring to *sui generis* rights, such as "Aboriginal rights" and "Aboriginal title". This is consistent, for the most part, with legal and government language.

The term "First Nations" refers to Aboriginal people in Canada who are not Métis or Inuit. This term does not have a legal definition, but the singular "First Nation" can be a legal entity when it refers to a specific community or community grouping, such as a band, a community based on a reserve, or a larger tribe.

"Indian" is a legal term used under the *Indian Act*. I use this term only in the legal context and when discussing historical constructions of "the Indian" from the colonial perspective. In Canada, the term is considered outdated and is potentially offensive owing to its colonial implications.

I use the term "Indigenous" in much the same way as "Aboriginal", (e.g. Indigenous law, Indigenous perspectives) but usually when referring to the international or transnational context. "Indigenous" has become more broadly used in this context as a result of greater Indigenous presence within the United Nations. It is a United Nations preferred term for

peoples who have a connection to lands that predates contemporary society. The use of these terms is not intended to homogenize distinct peoples.

When discussing the works of specific authors, I tend to use the terminology they employ in order to remain consistent and to respect their decisions about language. I also choose to capitalize these terms, indicating a specific meaning is signaled by their use.

1.0 INTRODUCTION

1.1 ORGANIZATION OF REPORT

The eight sections of this report provide a rationale for the development of the six-part curriculum that is appended in Appendix B. Following this introduction, the Background section substantiates the need for a course for Masters students in the School of Public Administration that focuses explicitly on Aboriginal issues in the British Columbia context. This section situates British Columbia within the Canadian context, outlining the distinctions that make the BC context unique and complex enough to warrant its own course. BC's varied geography, its cultural and geopolitical diversity, and its particular colonial history, including its failure to implement a consistent Aboriginal land policy, all set the province apart from the rest of Canada. The Background section summarizes these issues and outlines the relational, historical and legal implications for the development of the relationship between Aboriginal people and non-Aboriginal British Columbians.

Having illustrated the complexity of British Columbia's history in relation to Aboriginal issues, I argue that understanding this context is important for all British Columbians and further, is critical for future public servants. In this section, I discuss the growing recognition of the need to include Aboriginal content in academic curricula at all levels. While this has been recently highlighted by the Truth and Reconciliation Commission's ninety-four *Calls to Action* (2015, see Appendix A), Aboriginal people have asserted for decades the need for a change in curriculum to include Aboriginal approaches and perspectives. Finally, I situate the University of Victoria and the School of Public Administration within this call to educate British Columbians, pointing to a gap in the curriculum that would be filled by the development of the modules developed through this project.

The Literature Review section further investigates and substantiates some relevant issues introduced in the Background section. It begins with a discussion of theoretical frameworks of the literature from key scholars writing on the topic of improving societal relationships that have been damaged through oppression by way of educating

populations. While this project focuses on the relationship between Aboriginal people and non-Aboriginal British Columbians, the literature examined also includes discussions on relationships between dominant and oppressed peoples more broadly in relation to race, gender, culture, socioeconomic class, and sexual identity. For many authors, the transformative elements of critical theory provide grounding for research on the possibilities of education as a pathway to reconciliation for these dominant and oppressed populations. Frameworks that describe the current state are also unpacked, including epistemologies of ignorance and “unknowledges” as proposed by Sullivan and Tuana (2007).

The literature reviewed indicates that many scholars and practitioners consider it possible to improve damaged societal relationships by addressing ignorance, and that ignorance can be partially addressed through improved education. This education could in turn contribute to meaningful systemic change and true social equity. However, authors writing on the topic have differing perspectives on how best this education can be realized. Several authors, for example, reference the perception that the public school system and the university are inherently colonial institutions, as they have been historically embedded in the western/European tradition. This may have implications for possible limitations of these institutions in relation to promoting an educational agenda that equalizes Indigenous knowledge and perspectives. The Literature Review section outlines some suggested strategies for overcoming such challenges to transformative education. While the literature on the topic signals that attention needs to be paid to the nuances of implementing educational practices, it also indicates that there is for the most part a shared view that education can lead to improved societal relationships and eventually, better public policy outcomes.

The next section, Methodology and Methods, picks up the discussion of critical theoretical frameworks outlined in the Literature Review section in order to describe the research design of this study. This research begins with the assumption that knowledge and ignorance are socially produced, and applies critical theory to argue that this social (re)production can be impacted through education. The university, as an institution

dedicated to teaching, can play a vital role in the reproduction of knowledge and epistemology, which can eventually improve public policy outcomes as students gain a more comprehensive understanding of foundational issues affecting societal relationships. In British Columbia, schools that educate future public servants, such as the School of Public Administration at the University of Victoria, have a particular responsibility to equip students to deal with the pressing and complex policy issues surrounding the relationship between Aboriginal and non-Aboriginal populations. Having set up the context for this project, the Methods section then describes the steps I took in the development of a six-part curriculum designed to provide a foundation and a starting place for UVic School of Public Administration graduate students to understand Aboriginal issues in British Columbia.

The Curriculum Organization and Key Concepts section describes the six modules that together make up the curriculum developed through this project (see Appendix B for course outlines). This section describes the structure of the course, listing and discussing components shared by each module. The modules work in an iterative fashion, meaning the learning in each section builds on the knowledge gained in previous modules. This section provides a brief summary of each module, outlining the key learnings and the rationale for including the selected topics. Appendix C includes a course “Blueprint” summary document that includes descriptions of the required activities and assignments.

Next, the Discussion section explores some practical considerations for including Aboriginal content in university curricula. It refers to some of the concerns expressed by authors whose research was examined in the Literature Review section, and explores practical solutions for implementing this curriculum. Finally, the Recommendations section summarizes this discussion with a list of key recommendations upon which the School of Public Administration can focus efforts for the successful implementation of this curriculum. It also offers suggestions for building community connections between the university and local Aboriginal communities, and for stimulating constructive dialogue about Aboriginal issues in other courses as well as extra-curricular activities.

This report is organized into the following sections:

- 1.0 Introduction
- 2.0 Background
- 3.0 Literature Review
- 4.0 Methodology and Methods
- 5.0 Curriculum Organization and Key Concepts
 - 5.1 Module 1: Background
 - 5.2 Module 2: History
 - 5.3 Module 3: Legal
 - 5.4 Module 4: Treaty and Non-Treaty Agreements
 - 5.5 Module 5: Consultation
 - 5.6 Module 6: Rights, Power and Interests
- 6.0 Discussion
- 7.0 Recommendations
- 8.0 Conclusion
- References
- Appendices:
 - A. Truth and Reconciliation Commission *Calls to Action*
 - B. Course Outlines
 - C. Course Blueprint

1.2 DEFINING THE PROBLEM

Significant developments in the area of Aboriginal rights and title law are causing a shift in the legal, political, social and economic landscape in the province of British Columbia. In particular, issues around Aboriginal title, consultation and consent, and land and resource decision-making have been brought into sharp focus by the landmark 2014 Supreme Court of Canada decision in *Tsilhqot'in Nation v. British Columbia*. This case marked the first time the courts formally confirmed the existence of Aboriginal title to a specific area of land in British Columbia (Junger, Young, Russell & Ryan, 2014). The ruling will almost certainly affect the way British Columbians collaborate with Aboriginal groups on land and resource decision-making moving forward; however, the extent of the implications of this decision remains unclear at this point.

British Columbia occupies a unique space within Canada because Aboriginal rights were never conclusively set out in treaty, with the exception of the fourteen Douglas Treaties on

Vancouver Island and Treaty 8 in the province's northeast. This fact has significant implications for our resource-based economy. In attempting to reconcile Aboriginal and Crown interests, British Columbia is engaged in what has been described as the most complex set of negotiations anywhere in the world in the BC modern treaty process (British Columbia Treaty Commission [BCTC], 2009). At this juncture, it is critical that future public servants understand the context of these complex Aboriginal policy issues in order to be effective in the way they engage in their day-to-day work, and in the development and implementation of sound policy for the future.

This year, the Truth and Reconciliation Commission of Canada (2015) issued ninety-four Calls to Action to support the process of reconciliation between Aboriginal and non-Aboriginal peoples, communities and institutions. Of those ninety-four recommendations, a significant number focus on education and cultural competency training. This highlights that in order for meaningful reconciliation to occur, there must be a concentrated and collective effort to teach all Canadians our shared history. This shared history is a starting place that provides the contextual basis for understanding current issues and creating solutions for our shared future. Call to Action #57 specifically points to the necessity of educating public servants about Aboriginal people and issues. It states:

“We call upon federal, provincial, territorial, and municipal governments to provide education to public servants on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism” (p. 7).

The University of Victoria has identified Indigenous issues as an area of focus, and has begun to engage with these issues at an institutional level. The University offers a number of Indigenous-focused courses and programs, supports renowned research with an Aboriginal focus, and aims to be the university of choice for Indigenous students (UVic, 2015a). Part of this commitment to Aboriginal education must also be a commitment to addressing and improving the relationship between Aboriginal and non-Aboriginal citizens, communities and government institutions.

As an institution that trains future public servants, the School of Public Administration at the University of Victoria has explicitly acknowledged Call to Action #57. Faculty members agree with the necessity of educating public servants and have suggested that the School of Public Administration is well positioned to play a more proactive role by ensuring students learn about Aboriginal people and issues in university, before entering the public service. This project addresses an existing gap in the School of Public Administration graduate curriculum through the development of a discrete six-module course designed to provide a foundational level of learning about Aboriginal issues in British Columbia in historical, legal and political contexts.

1.3 PROJECT CLIENT

The School of Public Administration (SPA) at the University of Victoria (UVic) is housed within the Faculty of Human and Social Development. SPA offers undergraduate diploma and certificate programs in Public Administration, as well as Master's programs in three streams: Public Administration (PA), Community Development (CD) and Dispute Resolution (DR). A significant number of students who graduate from these programs go on to become public servants at the municipal, provincial or federal level.

The School of Public Administration has an interest in ensuring all students graduate from the program with a comprehensive understanding of the complex history, legal framework, and cultural issues that underlie the relationship between Aboriginal people and the Crown. Faculty acknowledge the significance of Aboriginal policy issues and recognize the importance of adequately preparing students who will help develop and administer these policies in their future roles as public servants and leaders in government. SPA faculty have further explicitly acknowledged Call to Action #57 from the Truth and Reconciliation Commission (2015), which promotes more comprehensive approaches to educating public servants about Aboriginal people and issues.

There is currently a gap in Aboriginal curriculum within graduate programs in the School of Public Administration.¹ While many courses offered in SPA programs integrate Aboriginal content, there is at this time only one course dedicated to Aboriginal issues: Dispute Resolution and Indigenous Peoples. However, this course is an elective rather than a required course, and does not focus in on issues unique to British Columbia but rather surveys the broader Canadian context. As a result, it is feasible that students graduate from SPA Master's programs with only a cursory understanding of Aboriginal issues.

The School of Public Administration educates future leaders in government, dispute resolution and policy making. As outlined in the Call to Action, it is critical that these leaders have a foundational understanding of what is becoming an increasingly high profile and urgent public policy area in British Columbia. While this policy area has recently garnered increased public attention, the need to address Aboriginal social, political and relational issues has been advocated consistently by Aboriginal people and communities for decades.

1.4 PROJECT OBJECTIVES

The objective of this project is to develop a course focused on Aboriginal people and issues for graduate students in the University of Victoria's School of Public Administration so that upon completion of their respective programs, students will have a robust and well-balanced understanding of contemporary issues involving Aboriginal rights in British Columbia, with a particular focus on reconciling interests and resolving disputes between First Nations and the Crown in relation to land and resource decision-making. This curriculum addresses a gap that currently exists in the SPA graduate programs, which do not include a required course specifically focused on Aboriginal issues in the British Columbia context. It also responds to the Truth and Reconciliation Commission's Call to Action #57, which recommends all public servants become educated about Aboriginal people, history and issues and develop cultural competencies.

¹ At the undergraduate level, the School of Public Administration has developed a new Diploma in First Nations Government and Administration program (DFNGA). The predecessor for this program was the Administration of Aboriginal Governments certificate program. Both of these programs were developed with the intention that they be delivered primarily to Aboriginal students.

2.0 BACKGROUND

“As Foucault taught us, power is diffused in our society and understanding how to effect social change requires a sophisticated understanding of social and institutional processes and circumstances. Given the significance of Aboriginal issues to Aboriginal Peoples and to Canadian society, we must learn how to educate young Canadians more effectively” (Godlewska, Moore & Bednasek, 2010, p. 437).

This project is grounded in the assumption that all British Columbians should have an understanding of Aboriginal people and issues in the province, and further, that students graduating from the University of Victoria’s graduate programs in Public Administration should have a more robust knowledge of these topics. Research suggests that many otherwise well-educated Canadians do not have an adequate understanding of Aboriginal people and issues, including the historical and legal issues surrounding the relationship between Aboriginal people and the Crown, and the way these manifest in contemporary social issues (see Literature Review section). This project presumes that learning about this context is important for all British Columbians in order to move toward reconciliation with First Nations. And, this learning is absolutely critical for Public Administration graduates who will go on to work with Aboriginal people and communities to develop and implement new policies to manage these increasingly high-profile and pressing issues. This section will situate the University of Victoria within British Columbia and provide a rationale for the development of a curriculum focused in on the provincial context.

This course focuses in on issues in British Columbia for two reasons, both of which are related to space and location. First, British Columbia occupies a unique space within Canada as the only province in Canada whose land mass is not almost entirely covered by historic treaties. As a result, the relationship between BC First Nations and the governments of British Columbia and Canada has not been largely defined by a treaty relationship. One significant implication of this is that the rights to land and resources have never been conclusively set out in treaty, leading to ongoing conflicts over Aboriginal and Crown rights and jurisdiction on the land.

Second, the University of Victoria is situated within British Columbia and on the unceded territory of the Coast Salish people. Although many students who attend classes at UVic are

not from BC and some will pursue careers outside of BC, it is fundamentally important that students occupying the university space learn about issues relating to public policy understand the local historical and political context – including the parts of the story that concern the First Nations who have lived here since time immemorial.

British Columbia is unique within Canada

British Columbia is unique within Canada in terms of its cultural diversity, geography, and colonial history. There are approximately 203 First Nations bands in BC, making up almost one third of the First Nations bands across Canada (First Peoples' Cultural Council, 2013).² There is great diversity among these communities in terms of languages, cultures, social structures, traditions and histories. Out of the eleven distinct Aboriginal language families in Canada, seven, or 60 percent, are located among BC First Nations. This breaks down further to 34 languages, many with various dialects (Aboriginal Affairs and Northern Development Canada [AANDC], 2010). The diversity in language alone highlights the cultural difference between Aboriginal groups in British Columbia.

The geography of British Columbia is also crucial to understanding its uniqueness within Canada. This geography likely contributed to the diversity of Aboriginal cultures in the province, as different groups adapted and existed in relation to the unique set of challenges posed by their particular landscapes. Geography is a western construct for what is essentially the study of “place”. This study has been, in the western tradition, scientific and detached from intrinsic meaning. In contrast, and in a general way, Aboriginal conceptions of space and land are imbued with intrinsic meaning and complex relationships. The relationship to the land is central to Aboriginal identity, wellbeing, traditional governance systems, and the economic sustainability of the people and the community (Castleden, Garvin & Huu-ay-aht First Nation, 2009; Law Foundation of BC, 2007). At the same time, Western geography in the form of mapping, surveying and delineating boundaries was

² It is important to note that this number refers to the number of discrete Indian bands that were initially created under the Indian Act Band Council / Chief and Council system. As such, they are colonial constructs and do not necessarily reflect Aboriginal ways of understanding communities and community distinctions. The example is provided here as a metric that underscores the diversity of Aboriginal communities in BC.

used as a colonial tool to dispossess Aboriginal people from place (Harris, 2008). It follows that place is not only central within Aboriginal cultures, it is central to the relationship between Aboriginal and settler populations in BC.

BC's colonial history is different in some significant ways from other provinces. These differences have had lasting implications for the relationship, legal and otherwise, between First Nations and the provincial government. Significantly, British Columbia did not pursue a consistent policy of managing Aboriginal rights to the land by signing treaties with First Nations, as elsewhere in Canada. These historic treaties, which cover most of the landscape of Canada's other provinces, defined Aboriginal rights on the land and, in the eyes of the colonial Crown, extinguished Aboriginal title to much of the country.³ In British Columbia, however, only a few historic treaties were signed. These include Treaty 8, which covers the northeast section of the province and extends into Alberta, Saskatchewan, and the Northwest Territories, and fourteen treaties signed by Governor James Douglas between 1860 and 1864 on Vancouver Island (Duff, 1969).

The lack of historic treaties in BC has had significant legal implications in the province. As Canada as a whole has moved toward the legal recognition and definition of Aboriginal rights, these issues have been brought into sharp focus in BC. From the early 1970s, court cases have further contributed to the understanding of Aboriginal rights to the land. In 1982, Aboriginal rights were recognized and affirmed within the Canadian Constitution. Now, these Aboriginal rights and interests must be reconciled with the interests of the Crown and settler populations in British Columbia.

The absence of a comprehensive and cohesive historic policy for dealing with Aboriginal rights to land and resources has caused a great deal of tension and has negatively affected the relationship between Aboriginal and settler governments and populations. The colonial government systematically and forcefully dispossessed Aboriginal people of land, thereby separating them from resources and economic benefits derived from the land.

³ It is the view of the Crown that treaty extinguished Indian title (or land cession) as a condition under the Royal Proclamation of 1763. Many First Nations do not agree that their ancestors consented to the cessation of their land in signing treaties.

Language barriers and profound cultural differences between Aboriginal and settler communities complicated the tensions and relational breakdown that resulted from settler encroachment on Aboriginal land. It is important to note that this dispossession was not passively accepted by Aboriginal people; it was met with fierce and sustained resistance, up to and including wars between Aboriginal groups and settlers.

The basis of the settler economy in the extraction of resources has also had negative implications for the relationship between Aboriginal and non-Aboriginal communities in British Columbia since the time of contact. These resources come from areas where Aboriginal people lived, occupied and had existing rights, up to and including title. Economically, however, First Nations have not historically benefited equally from this development and resource extraction. At the time of contact, First Nations had their own established economies and approaches to resource use based in Aboriginal values; these contradicted Western models based in the extraction and exploitation of resources, which also damaged the territories held and respected by local First Nations. Beginning in the 1960s, Aboriginal plaintiffs began mounting court challenges to assert their rights to resources and land.⁴

The results of these cases began to crystallize the definition of Aboriginal rights in relation to land and resources in British Columbia and, significantly, the right to make decisions on activities occurring on the land. For example, in the 1997 *Delgamuukw* decision, the Supreme Court ruled that Aboriginal rights include rights to the land itself, not simply the right to undertake traditional activities on the land such as hunting or fishing. Now, in order to uphold newly defined laws outlining Crown obligations to Aboriginal people, provincial policy-makers must come up with ways to reconcile Aboriginal and Crown interests while upholding the honour of the Crown. One of the ways this is occurring is through the BC Treaty Commission (BCTC) treaty-making process, also referred to as the modern treaty process.

⁴ The lack of claims between 1927 and 1960 was a function of the *Indian Act* prohibition on Aboriginal groups from retaining a lawyer for the purpose of making a claim against Canada, for fear of imprisonment.

The modern treaty process has been referred to as the most complex set of negotiations occurring anywhere in the world (BCTC, 2009a, para 6). Outside of the treaty process, and on a smaller scale, there are various other types of agreements and policies being developed to reconcile Aboriginal and Crown interests, including social factors such as language revitalization, Aboriginal control of child protection measures, education, access to justice, and so on. While the focus of the coursework is on Aboriginal rights relating to land and resources, it is important contextual knowledge for anyone working on the social side of Aboriginal policy issues in BC as well.

In order to make effective policies, it is critical that the individuals developing and implementing these policies have a comprehensive understanding of the historic, legal and political context. This includes an appreciation of the impacts of colonial policies on Aboriginal populations and the effects these had on relationships between the Crown and First Nations. Further, policy makers must also have an eye to cultural and social contexts. As Aboriginal values connect the people with the land, these cultural and social contexts are in turn inextricably linked to the issue of land, resources and development. Finally, public servants must also grapple with the tensions that arise from developing policies from a western perspective. This includes an awareness that Aboriginal people have had colonial structures forced upon them for generations. The complexity of these issues and relationships compel us as educators, public servants and as British Columbians to develop new ways of interacting that include and encompass Aboriginal worldviews, legal traditions and social protocols.

Expanding Aboriginal curricula in elementary and secondary schools

The integration of Aboriginal perspectives and knowledge in the curriculum serves as an important step to begin to address misunderstanding of Aboriginal cultures. With a more in-depth knowledge of Aboriginal people and their history, all students in British Columbia will have a foundation for developing mutual understanding and respect (BC Ministry of Education, 2013, p. 4).

There has been a growing recognition that British Columbians need to know more about Aboriginal cultures, perspectives and issues in the province, as the above quote from the BC Ministry of Education demonstrates. While Aboriginal communities have advocated for

this recognition for decades, it is more recently being reflected in the development of new curricula in BC public schools from the kindergarten to grade 12 levels (BC Ministry of Education, 2012). This year, the BC Ministry of Education will begin implementing the first stage of a three-year phased plan to introduce a new curriculum for all grade levels that includes an increased focus on Aboriginal perspectives, ways of knowing, and history. This includes the legacy of the residential school system as well as relational issues between Aboriginal people and non-Aboriginal British Columbians, such as oppression, discrimination and the impacts of the colonial encounter (CBC News, 2015; Meissner, 2015). According to Education Minister Peter Fassbender, the new curriculum is a pathway to the advancement of “greater understanding, empathy and respect for Aboriginal history and culture among students and their families” (cited in Meissner, 2015, para. 15).

The development of a new curriculum for all public school students from the elementary to the secondary school level illuminates the growing recognition that all British Columbians should have a base level of understanding about Aboriginal people and issues in the province, and that this base level is more sophisticated, accurate and culturally sensitive than what has been taught in the past.⁵ While Aboriginal-focused curricula have been gradually expanding and improving over the past few decades, the new curriculum signifies a concerted and extensive effort toward educating for social change. Some students entering universities in British Columbia will not have had the benefit of this type of education at the elementary and secondary school levels, either by virtue of aging out of the system before more inclusive Aboriginal curriculum was developed, or because they come from other areas of the country or the world. There may be a gap that needs to be filled in education about Aboriginal culture, history and perspectives at the university level. This gap would be particularly problematic for students in Public Administration programs, as many go on to become public servants. Public servants need to understand Aboriginal issues within the unique context of British Columbia in order to create more informed public policy.

⁵ Aboriginal groups also advocate for strengths-based teaching, which highlights the resilience and strength that has sustained Aboriginal people and communities since time immemorial.

Situating the University of Victoria and the School of Public Administration

The University of Victoria

The University of Victoria is located on unceded Coast Salish territory, in what is now the capital city of the province of British Columbia. Victoria is the home of the provincial legislature; in addition, most provincial ministries and agencies are headquartered in Victoria. Fully one quarter of public administration jobs in the province are located in BC's Vancouver Island/Coast region, most within Victoria (Province of BC, 2015). It follows that the largest and most distinguished university in Victoria should reflect this local focus on politics and government administration.

In British Columbia, almost every government agency will engage with Aboriginal issues in some way. While this curriculum focuses on land and resource issues, there are also serious social issues that will require the development of innovative policies. In addition, First Nations are developing complex self-governance structures through the BC treaty process and self-governance agreements (BCTC, 2009b). Public servants throughout all levels of government will need to understand how these governments interact with provincial and local structures and develop tools for effective engagement. This course is designed to provide a base level of understanding that will serve all future public servants well in their comprehension of contemporary Aboriginal issues.

The University of Victoria has developed and is cultivating an increasing institutional focus on Aboriginal issues. The UVic website (2015a) states that the university is “recognized for its commitment to and expertise in innovative programs and initiatives that support Indigenous students and communities” (para. 1). Acknowledging the “special role the university can play in relation to Canada’s Indigenous peoples”, UVic offers a range of programs and courses reflecting Aboriginal content and perspectives (*ibid*, para 2).

School of Public Administration

The School of Public Administration (SPA) at the University of Victoria trains future public servants who will be charged with the development and implementation of policies to promote the reconciliation of government and Aboriginal interests, as well as front line work such as negotiating agreements and conducting consultation processes. This, in turn, may contribute to the larger project of reconciliation between Aboriginal and non-Aboriginal communities and individuals. The concept of education as a pathway to reconciliation is further explored in the Literature Review section.

The School of Public Administration is housed within the Faculty of Human and Social Development. SPA offers the following Master's degree programs: Master of Public Administration (MPA, online and on campus), Master of Arts in Dispute Resolution (MADR, on campus), and Master of Arts in Community Development (MACD, online with summer residency). In addition, SPA offers an online Graduate Certificate and Graduate Diploma in Evaluation and a PhD program in Public Administration. SPA also houses undergraduate programs including a Minor in Public Administration, undergraduate diplomas and professional specialization certificates. In the spring of 2016, SPA will be offering for the first time a Diploma in First Nations Government and Administration (University of Victoria, 2015c). The Diploma in First Nations Government and Administration is designed to prepare students for careers in First Nations governments and Aboriginal organizations.

At the Master's level, the MPA and MADR programs have recently been brought closer together. This reflects the School's acknowledgement that it is likely Public Administration professionals "will be working across boundaries when working on initiatives in current jobs and, over the course of a career, moving across those boundaries to take up new opportunities" (UVic, 2015 d, para. 5). One of the changes is the development of new joint courses which MPA and MADR students take together as part of their respective programs. The following chart outlines required courses in the MPA and MADR programs, indicating which courses are shared (these are referred to as "PADR" courses).

Table 2.1: Required courses in UVic MPA and MADR programs

| MADR | PADR | MPA |
|---|---|---|
| DR 502 Conflict, Culture and Diversity | PADR 501 Collaboration and Engagement | ADMN 502B Data Analysis and Interpretation |
| DR 503 Public Policy, Law and Dispute Resolution | PADR 502A Analysis for the Public and Non-Profit Sectors | ADMN 504 Government and Governance |
| DR 506 Mediation Processes and Skills | PADR 503 Professional Integrity in the Public and Non-Profit Sectors | ADMN 509 Microeconomics for Policy Analysis |
| DR 509 Dispute Resolution Systems Design and Public Interest Disputes | PADR 504 Public Leadership and Management | ADMN 512 Public Financial Management and Accountability |
| DR 598/599 Master's Project/Thesis | PADR 505 Policy-making and Policy Communities | ADMN 598/599 Master's Project/Thesis |
| | PADR 589 Co-op Seminar: Introduction to Professional Practice | |

As demonstrated by the preceding chart, there is a gap in the curriculum in the School of Public Administration MPA and MADR courses, whereby there is no dedicated, required course that teaches Aboriginal issues in the British Columbia context. Some MADR and MPA courses explicitly integrate and address Aboriginal perspectives and issues, while others do not. Students in both programs have the opportunity to focus much of their course work in on policy areas and issues that interest them, including their capstone project or thesis. This provides an avenue for students who wish to focus in on Aboriginal issues to do so. Despite this, the level of focus on Aboriginal issues in the SPA courses does not adequately reflect the complexity or significance of these policy issues in the province today and conceivably in the future. There is one DR course entitled Dispute Resolution and Indigenous Peoples that focuses on the “theory and practice of negotiation and

mediation within the context of public issues and disputes involving indigenous peoples” (UVic, 2015e, para 1). However, this course is an elective, and its scope is the broader Canadian and even international context. It is feasible with the current course structure that students could complete either the MADR or MPA program and have had little to no exposure to the complex and multifaceted arena of Aboriginal policy issues.⁶

This is problematic for three interrelated reasons: First, because the university is missing an opportunity to make good on its commitment to Aboriginal-focused content in an arena where it could have significant benefits to society. A second and related point is that regardless of its espoused institutional focus, future public servants should leave the UVic Public Administration and Dispute Resolution programs with a comprehensive understanding of contemporary issues in society so that they can contribute to the development and implementation of proactive, responsive and effective policies moving forward. The arena of Aboriginal rights in British Columbia has emerged as a major policy issue in our time and is an area that will require a great deal of innovative policy work moving forward. Finally, as highlighted by the Truth and Reconciliation Commission’s recent publication of ninety-four Calls to Action, the advancement of reconciliation between Aboriginal people and non-Aboriginal Canadians begins with educating ourselves about the Aboriginal history and contemporary realities.

The Truth and Reconciliation Commission Call to Action #57

The Truth and Reconciliation Commission of Canada (TRC) was mandated by the Indian Residential Schools Settlement Agreement (2006) to acknowledge and witness the experiences of Indian residential school survivors and to promote public education about the impacts and consequences of the residential school system. In doing so, the TRC intended to promote truth, healing and reconciliation between Aboriginal people and non-Aboriginal Canadians and move toward the development of new relationships. The TRC acknowledged that in order to move to reconciliation, truth is a necessary first step (TRC,

⁶ The Faculty of Human and Social Development also houses the Indigenous Governance (IGov) program, which currently offers a Master’s degree and a PhD by special arrangement program (UVic IGov Program, 2015). IGov courses are not readily accessible as electives to SPA students.

2015). The TRC released its final report in 2015. Part of this report was the publication of ninety-four Calls to Action that will help advance the process of reconciliation in Canada.

In keeping with the assumption that knowledge is critical to the process of reconciliation, several of the TRC's Calls to Action focused on educating Canadians about Aboriginal issues, including history, Aboriginal rights, and Aboriginal law. These educational recommendations begin at the elementary school level and include high schools, post-secondary institutions, Aboriginal schools, law schools, journalism programs and media schools. The TRC also emphasized the importance of "skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism". Call to Action #57 reads:

We call upon federal, provincial and municipal governments to provide education to public servants on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

(Truth and Reconciliation Commission, 2015, p. 7)

The Truth and Reconciliation Commission's Call to Action #57 substantiates the importance of educating public servants about the historical foundations for contemporary Aboriginal issues in Canadian society, toward the goal of creating better public policy outcomes. I argue that while this is a positive step, the University of Victoria must also implement Aboriginal curriculum into its Public Administration programs so that public servants are entering the workplace already equipped with this knowledge.

The next section, the Literature Review, begins with the assumption that increased education can improve relations and lead to better public policy. It outlines the theoretical foundations developed and utilized by academics grappling with the question of how best to incorporate knowledge about marginalized peoples into mainstream education. The literature review then focuses in on the Canadian context, discussing the gap in knowledge at the university level on Aboriginal issues and outlining possible tools for filling this gap.

3.0 LITERATURE REVIEW

In this review I will describe and analyze the literature relevant to the topic of using education as a tool to increase awareness and improve policy and relational outcomes for Aboriginal and non-Aboriginal populations in British Columbia. Although there is a deficiency of research directly related to the British Columbia context, much has been written about educating to improve previously oppressive societal relationships in broader contexts, including in relation to race, culture, gender, socioeconomic class, and sexual identity. However, this literature review explicitly recognizes the importance of acknowledging the unique implications that colonialism has had for relationships between Aboriginal and non-Aboriginal communities that is absent in other oppressive relationships.

The literature review begins with a discussion of theoretical constructs that underpin much of the research on the topic, particularly focusing on critical social theory as a common grounding. In this literature, authors utilize critical theory when recognizing the problem of ignorance as a factor that contributes to and perpetuates detrimental relationships between Aboriginal and non-Aboriginal populations, and posits that societies can transform this ignorance by changing the way knowledge is produced and reproduced – through education. This emphasis on the transformative element of critical theory informs and provides the basis for my project of developing curriculum for Public Administration students.

The literature review also provides some foundational principles and best practices for the development of this curriculum. Critically, many of the authors have promoted the incorporation of Aboriginal content in curricula at all levels of education; however, many have cautioned against the indiscriminate addition of material. Concerns about authenticity, tokenism, and accuracy have been raised by some scholars, several of whom have provided recommendations for ensuring the education process is carried out effectively and responsibly, without causing further damage to relationships (FitzMaurice, 2011; Kumashiro, 2000; Lambe, 2003; McLaughlin & Whatman, 2011). The concerns outlined in this literature review have been taken into account in the development of this

project's deliverable, the six-module curriculum. These are also delineated in the Recommendations section of this report, which discusses considerations for the successful implementation of this curriculum.

Although there are some precautions that must be taken, the literature reviewed indicates that many scholars and practitioners consider it possible to improve damaged societal relationships by addressing ignorance, and further, that this ignorance can be addressed through education (Ghosh & Abdi, 2004; Godlewska, Moore & Bednasek, 2010; Godlewska, Massey, Adjei & Moore, 2013; Regan, 2010; Truth and Reconciliation Commission, 2015). This is particularly important for future public servants, who will directly impact the development and implementation of public policy in the province. Understanding the foundation of policy issues will in turn lead to better public policy outcomes. Through this review of the literature, I deduce that while the project of educating British Columbians must be implemented with care, it cannot be overlooked, as it is critical to improving social and relational outcomes and moving toward reconciliation between Aboriginal populations and non-Aboriginal British Columbians.

Education and reconciliation

There has been increasing attention on the topic of educating Canadians about Aboriginal issues as a result of the 2015 publication of the Truth and Reconciliation Commission's Calls to Action. These ninety-four recommendations together represent a pathway to reconciliation between Aboriginal people and non-Aboriginal Canadians, specifically in relation to the harms visited upon Aboriginal individuals, families and communities as a result of the colonial encounter. Many of these recommendations center on educating Canadians of all walks about Aboriginal rights, laws and history, as well as our shared colonial history (Truth and Reconciliation Commission, 2015).

The Truth and Reconciliation Commission Final Report (2015) directly correlates education and reconciliation. The executive summary scrutinizes the lack of knowledge among the general Canadian population about the "deep historical roots" of contemporary conflicts between Aboriginal and settler populations and governments. The Commission

asserts, “This lack of historical knowledge has serious consequences for First Nations, Inuit and Métis people, and for Canada as a whole. In government circles, it makes for poor public policy decisions. In the public realm, it reinforces racist attitudes and fuels civic distrust between Aboriginal peoples and other Canadians” (2015, p. 8). If policy-makers and educators operate on the assumption that knowing more can lead to better outcomes for all Canadians, then the question becomes: How do policy-makers best do this work? How do schools and universities educate Canadians about Aboriginal issues in order to create a level of understanding that promotes reconciliation and leads to improved public policy?

This literature review begins with an examination of theoretical frameworks for understanding knowledge and ignorance as social and political phenomena, focusing in on the relationship between ignorance, social power and racism. Having correlated ignorance with the ongoing oppression of marginalized groups, I then look more closely at the literature specifically relating to education as a means to remedy ignorance and address marginalization. I outline the arguments for two methods of introducing Aboriginal content into mainstream post-secondary education: by developing discrete courses focused on Aboriginal issues, and by integrating Aboriginal content into all curricula.

While much of the research is written from the American perspective, focusing on racial minorities and other oppressed groups living within American society, the concepts have parallels to the Canadian context, in which Aboriginal populations have been a historically marginalized group within settler society. One limitation to this is that the American perspective tends to focus on the relationship between black and white Americans, and therefore does not address the discussion of colonialism that is so central to the Canadian context. Another limitation in this literature review is the relative paucity of Aboriginal voices in the research on teaching Aboriginal issues at the university level to non-Aboriginal students, particularly future public servants.

Theoretical foundations

The Truth and Reconciliation Commission has directed national attention to the longstanding, multi-generational harms caused to Aboriginal communities in Canada as a result of the colonial encounter, most specifically through the residential school system. This builds on the work of the Royal Commission on Aboriginal Peoples (1996), which sought also to address damages caused by colonialism. Karina Czyzewski (2011) problematizes the goals put forward by the Truth and Reconciliation Commission. She questions whether the mandate of the TRC, which is to promote awareness and public education about past injustices toward the advancement of reconciliation, is achievable in Canadian society. She further questions “how does public education and its desired transformations translate to social change?” (p. 1). And, significantly, Czyzewski wonders whether the TRC and the publicity it garners toward the history of residential schools distracts from what she sees as more pressing contemporary issues for Aboriginal people, such as Aboriginal rights, land claims, and cultural resurgence.

Czyzewski raises an important and contentious point about the TRC, namely the concern that its focus on residential schools and its model of reconciliation through truth-telling and empathy generation is at best insufficient and at worst, distracting and detracting from the real work of social transformation. The TRC has been criticized elsewhere for focusing squarely on the residential school issue while ignoring other possibly more insidious forms of colonization (James, 2012). However, I argue that Czyzewski in her argument improperly ascribes the TRC with the entire project of reconciliation for Canadian society, when in fact the TRC must be viewed as undertaking an important step toward reconciliation or even more simply, creating a space for reconciliation. Czyzewski also overlooks the critical importance of the TRC’s process, which included bearing witness as residential school survivors told their stories. This process of truth-telling and bearing witness was foundational to the TRC’s project, as it created a space to challenge the myth of a benevolent Canada that has for so long undermined the contrary experience of Aboriginal people within the country’s borders.

Paulette Regan (2010), former Director of Research for the TRC, challenges Czyzewski's conception of the TRC as a high-profile distraction from more pressing Aboriginal issues. She describes the TRC as a means to create "decolonizing, potentially transformative space in truth-telling and reconciliation dialogues" capable of challenging accepted historical narratives (p. 41). Regan argues that failing to challenge these narratives in a public way allows them to continue in the public mind and, in doing so, reinforces the violence of colonialism. The high-profile, public nature of the TRC would have been therefore necessary to ensure that all Canadians became aware of this unsettling of the master narrative – what Regan refers to as the "myth of benevolence" (p. 79). In addition, the publicity garnered by the TRC ensured that Canadians can no longer rely on the excuse of ignorance of the residential school experience and its critical implications for Aboriginal communities. As Regan explains, "claiming ignorance is a colonial strategy – a way of proclaiming our innocence because 'we did not know'" (p. 41). The assertion that ignorance is colonial has significant implications for this project. It provides an imperative to build on the gains made by the TRC's public discussion of the residential school system and, importantly, its lasting impacts.

Czyzewski's research was published in 2011, four years before the TRC released its final report, including its ninety-four Calls to Action. The TRC recommendations published in 2015 go beyond discussions of the residential school system and call for measures that might well be transformative, including cultural competency training, lessons on history, Aboriginal rights and treaties, and so on. This most recent publication of the TRC may indeed satisfy Czyzewski's earlier critique, as the Calls to Action include an explicit recommendation for the development of a much more comprehensive educational agenda. Regardless, Czyzewski's argument crystallizes two key points: that there are many Aboriginal issues that require attention, not only the residential school system, and second, the methodologies employed must be truly transformative in order to effect significant and lasting change. However, her critique of the TRC fails to acknowledge the important work that the TRC has done in drawing attention to and creating space for unsettling colonial narratives.

Despite its failings, Czyzewski's critique draws attention to the need for transformative social change – a wholesale rethinking of the way Canadians understand relationships between Aboriginal and non-Aboriginal populations. This reflects a trend among academics who promote education as a means to stimulate social change and improve public policy outcomes (Box, 2005; Box, 2008; Ghosh & Abdi, 2004; Regan, 2010). Advocates for education for social change often draw upon critical social theories to ground their arguments. Critical theory assumes that social science and philosophy are inextricable. This is in contrast to positivist models of social inquiry, which begin with the assumption that sciences are inherently neutral. Critical theory rejects this notion, allowing for the application of ethical and moral elements to all human social endeavours (Bohman, 2015; Smith, 1999). For example, critical theorists in the western world might interpret “medicine” as a potentially value-loaded proposal, relating it to cultural constructions and questioning its application in specific contexts. In contrast, positivist thinkers in the western tradition would consider “medicine” as a strictly scientific and therefore value-neutral endeavor.

Critical theory also has an essential transformative element. As outlined by philosopher Max Horkheimer (1993), a theory is considered to be a critical theory if it meets the following criteria: if it is at the same time explanatory, practical and normative. That is, “it must explain what is wrong with current social reality, identify the actors to change it, and provide both clear norms for criticism and achievable practical goals for social transformation” (Bohman, 2015, para. 3). Critical social theories acknowledge that knowledge and epistemology (the way one comes to know) are socially produced. In other words, the knowledge contained in educational curricula have been created and reproduced in a specific cultural and historical context and likely reflect the views and values of the dominant society, potentially to the detriment of less powerful populations. These critical theories call for a transformation of the epistemological reproduction of social stratification and oppression by focusing on the way citizens are educated.

Many of the writers surveyed in this research begin with the assumption that knowledge and ignorance are not neutral, value-free or incidental; rather, knowledge and ignorance

exist in relation to privilege (Godlewska, Moore & Bednasek, 2010; Ghosh & Abdi, 2004; Godlewska, Massey, Adjei & Moore, 2013; Mills, 2007; Spelman, 2007; Sullivan & Tuana, 2007). This is manifested in two ways: those who are privileged tend to be more educated and know more, and also control the production of knowledge – that is, what is taught. Many scholars take this further with the assertion that often, what is taught serves to reinforce structures that maintain the status quo and thus protect the privileged (Godlewska, Massey, Adjei & Moore, 2013; Mills, 2007; Sullivan & Tuana, 2007). In this way, institutions such as schools and universities reproduce knowledge in a self-serving way that reinforces oppression. The obverse of this is that what is *not taught* also serves to support the retention of privilege.

Epistemologies of ignorance

It follows that if knowledge is socially produced, so too is ignorance. Sullivan and Tuana (2007) propose an “epistemology of ignorance” as a framework for understanding issues of racism and white privilege. This framework converges epistemology (“the study of how one knows”) and ignorance (“a condition of not knowing”) to further investigate how ignorance is produced and sustained and how it relates to issues of race and white privilege (p. 1). The epistemology of ignorance holds that there are distinct typologies of “not knowing”: while ignorance can be simply a gap in knowledge that can be filled once it is noticed, it can also be a less benign type of ignorance that is actively produced, socially and politically, by dominant groups in order to exploit and dominate marginalized groups and maintain the balance of power. Sullivan and Tuana refer to these constructs of ignorance as “unknowledges”, which they suggest can be produced either consciously or unconsciously (p. 1).

Northwestern University professor of moral and intellectual philosophy, Charles Mills (2007) has further contributed to the construct of epistemologies of ignorance by specifically illuminating the linkage between ignorance and racism. Mills coined the term “White Ignorance” to describe the phenomenon by which privileged groups in society are able to use ignorance about minorities as a tool to maintain the status quo. Mills clarifies that this term is not confined to white people only, but is so named in reference to the

power relationship and hegemonic control that in western society tends to favour white people.

The epistemology of ignorance has been explored from several angles to explain how the ignorance of the privileged serves to oppress not only racial minorities but other groups of marginalized people, including women (Alcoff, 2007; Hoagland, 2007) and gay people (Kumashiro, 2000). Much of the research on epistemologies of ignorance focuses on the American context, most often in relation to white American attitudes toward African-Americans and other racial minority groups and often those living within America (Bailey, 2007; Mills, 2007). However, relevant to this project, the framework functions in the Canadian context to describe the historical and contemporary dynamic by which settler populations have used “unknowledges” about First Nations and assumptions of their own cultural superiority to justify and maintain the status quo. The concept of an epistemology of ignorance can be used to justify a requirement for adequate education about First Nations communities, cultures and historic relationships with settler governments and populations. In this case, adequate education can be expected to override conceptions of white superiority and racist stereotypes, myths and attitudes.

As posited by historian Robin Fisher, “attitudes are powerful determinants of action” (2011, p. xxix). At the most overt level, racist stereotypes, myths and attitudes borne of ignorance justify racist policies. This has been evidenced in Canada throughout history in manifestations such as the *Indian Act*, which persists to this day despite changes to the most offensive provisions. However, in contemporary Canada, I argue that policies relating to Aboriginal peoples are less blatantly racist as they are ineffective. If policy makers (and the larger population) do not really understand the problem, they are ill-equipped to make policies that provide adequate solutions. According to this logic, “unknowledges” in Canadian society about Aboriginal people and issues need to be addressed, most obviously through the deliberate and comprehensive inclusion of such issues in public education curricula. It follows that as future public servants and policy-makers, public administration students in particular should have further specialized knowledge in order to work toward more effective solutions in policy making.

Overcoming epistemologies of ignorance through education

Having made the case above that ignorance about Aboriginal issues is detrimental to British Columbian society, it follows that education can lead to better social, relational and policy outcomes for British Columbia. In order to propose curricula that will address this ignorance, it is important to first investigate the extent and level of the problem – that is, where these “unknowledges” exist. This is problematic because there is a relative lack of research focused specifically on quantifying the level of understanding that Canadian students have about contemporary Aboriginal issues in Canadian society. However, the few studies that have been conducted recently indicate that students’ knowledge is deficient. In 2010, a report from Queen’s University geographers Anne Godlewska and C. Drew Bednasek, along with Jackie Moore from the Queen’s Aboriginal Teacher Education Program, decried the state of education about Aboriginal issues in Ontario. While this research focused on Ontario’s secondary school curriculum as an example, the authors acknowledge “the gaps identified... in the high school curriculum reflect gaps and silences in the universities across the disciplines” (p. 418-419). In other words, the “unknowledges” demonstrated at the high school level likely reflect those at the university level.

Godlewska, Moore and Bednasek (2010) explicitly refer to Sullivan and Tuana’s conception of the epistemology of ignorance to point out that gaps in mainstream curriculum surrounding Aboriginal issues are not merely an oversight but are reflective of an intentional and sustained societal ignorance. These silences in education promote a widespread ignorance that “is not neutral or incidental” but rather “a profoundly purposive and willful ignorance” (p. 419). By not including meaningful discussion about how Canadian history has negatively impacted Aboriginal peoples, the authors assert that schools “are complicit in perpetuating this self-serving ignorance and maintaining the injustices of Canadian history as a living reality for Aboriginal people today” (p. 419). In this way, schools (including universities) that also maintain these silences are contributing to the myth of the benevolent Canadian society, maintaining the ethical status quo, and perpetuating the harms of the colonial encounter.

Godlewska and Moore further explore the subject of awareness of Aboriginal issues among mainstream Canadian students in their next paper, for which they partner with Queen's University geographers Jennifer Massey and Jones K. Adjei (2013). Positing that "Canadian unawareness of Aboriginal cultures, ways of thinking, and issues makes it impossible to address the conditions of life for Aboriginal people in Canada in a sustained or coherent way", the authors designed and carried out a survey of over 3,000 first year Queen's University students that tested their understanding of Aboriginal issues (p. 65). They found that many students performed very poorly, reflecting a failing in the mainstream curriculum to teach such issues. The study also found that students attending Queen's who had completed high school in Alberta and British Columbia performed on average better on the test, suggesting a more well-rounded curriculum in these provinces; however, the authors acknowledged that the sample sizes were too small to be conclusive on this point. Further studies are forthcoming from this project; the authors intend to expand the scope to include all the provinces and territories of Canada, and to repeat the surveys every four to five years to assess outcomes over time.

While the Queen's University project is still in its infancy, the preliminary results indicate that further education relating to Aboriginal issues is required in the Canadian mainstream education system. As discussed in the Background section of this report, British Columbia is already beginning a three-year phased implementation of improved curriculum from the K-12 level (BC Ministry of Education, 2012; BC Ministry of Education, 2013). While it is important that this education begin at the elementary school level, it should be carried throughout secondary school as well as at the university level. Of these levels of education, universities have the most latitude to implement curricula. It follows that universities should capitalize on this latitude and champion the ability to implement curricula that allow students to engage with the issues through particular lenses according to different university programs.

Public Administration programs in particular should consider developing and implementing progressive Aboriginal curricula because their graduates are likely to be employed in the public service and will therefore have the power to exert influence in society through the creation of public policy. Richard Box, Distinguished Fellow of Public

Affairs at Park University, contends that public administration students at the graduate level lack adequate knowledge and insight about ways in which government structures and processes reflect and reproduce inequities in power, privilege and class and racial divisions. As a result, public servants graduating from these programs are less capable of creating real change (Box, 2005; Box, 2008). While he writes from an American perspective, Box's observations have implications for the work of scholars advocating that education is a channel to effect positive change in the Canadian context: teaching more about Aboriginal perspectives as well as the historical and current relationship between Aboriginal people and non-Aboriginal Canadians can create more positive policy outcomes moving forward (Czyzewski, 2011; Godlewska, Moore & Bednasek, 2010; Ghosh & Abdi, 2004; Godlewska, Massey, Adjei & Moore, 2013; Truth and Reconciliation Commission, 2015). Such opportunities to influence the development of progressive and positive public policy are unfolding at present. For example, legal and policy experts within the provincial government are currently developing policy to manage new provincial legal obligations to title-holding First Nations in response to the 2014 *Tsilhqot'in* decision, in which the Supreme Court for the first time declared Aboriginal title to a specific parcel of land (Junger, Young, Russell & Ryan, 2014; Province of BC & *Tsilhqot'in* Nation, 2015).

Some scholars further argue that universities that do not explicitly teach students about marginalized peoples in fact reinforce oppression in society by allowing insidious hegemonic ideas about the Other to persist unchallenged (Kumashiro, 2000; Sullivan & Tuana, 2007). At the core of this argument are two assumptions: first, schools are social spaces where stereotypes and myths are informally transmitted between and among students and teachers. This can occur both in and out of the classroom, and can include messages about the Other as well as about the self; for example, the transmission of what Paulette Regan (2010) refers to as the settler "myth of benevolence" referenced above, which is commonly disseminated through texts and discussions of Canadian history. Second, there is a danger that curricula and instructors can exclude, silence or distort knowledge about marginalized groups, sometimes by omission or negligence, but sometimes by design (Godlewska, Moore & Bednasek, 2010; Ghosh & Abdi, 2004; Godlewska, Massey, Adjei & Moore, 2013; Kumashiro, 2000). This relates back to Sullivan

and Tuana's (2007) observations that "unknowledges" can be constructed consciously or subconsciously.

Kevin Kumashiro (2000), Dean of Education at the University of San Francisco, proposes a theory of anti-oppressive education that brings about change by explicitly teaching about the Other – "those groups that are traditionally marginalized in society, i.e. that are *other than the norm*" – and in this way explicitly challenging stereotypes and misinformation (p. 26). For Kumashiro, this strategy is two-fold: universities must 1) offer curricula with specific units on the Other, as well as 2) integrate perspectives and discussion about the Other throughout the respective curricula.

Like Richard Box, Kumashiro is writing from the American perspective; while his strategy for challenging "unknowledges" may provide a starting point, it misses a critical element of the Canadian context – the discussion of colonialism. This sets Canada apart from America; as evidenced in this literature review, American discourses on the marginalized tend to focus on the division between black and white Americans. However, in the Canadian context, attention must be paid to western colonial structures, which were imported from Europe and implemented over top of existing Aboriginal structures, and how they perpetuate the colonial encounter in real and symbolic ways. The university as an institution has been problematized in Canada as a potential site of complicity in the perpetuation of colonialism.

The university and colonialism

There are tensions that exist in the discussion of the university as an ideal site for anti-oppressive education owing to its foundation in colonial society and its function as an educator of the privileged – those who have historically benefited from colonial society. Some scholars argue that the university as an institution, and mainstream education itself, is an *inherently* colonial endeavour. This argument holds that the university is embedded in the western/European tradition (Alfred, 2012); it has historically and ideologically contributed to the education of the privileged and the oppression of the marginalized; and its primary goal is the transmission of dominant culture (FitzMaurice, 2011; Friere, 1996; Ghosh & Abdi, 2004; Monture-Angus, 1999). Many writers also point to the ways in which

western academic disciplines such as anthropology and history have functioned to objectify and evaluate Aboriginal peoples for self-serving purposes (FitzMaurice, 2011; Smith, 1999).

According to post-colonial theorist Bill Ashcroft (2001), the discipline of history provided “a prominent, if not *the* prominent, instrument for the control of subject peoples” in that it represented a value-neutral, cognizable and easily ordered view of the past (p. 83). This in essence provided a methodology for colonial powers, as the writers of such history, to imbue all stories with their own cultural myths. As Ashcroft delineates, “the story that decides ‘what happened’ is a story that determines ‘what is’” (p. 92). If the writing of history controls the construction of reality, the writing of anthropology has had similarly problematic outcomes for those on the receiving end. Like the discipline of history, anthropology has similarly functioned to provide a seemingly value-neutral, scientific approach to categorizing the Other according to the perspective and constructions of western society. In colonial contexts, this allowed for the development of binaries and hierarchies in society according to and aligning with pseudo-scientific discourses of progress, civilization and savagery. Because it is important to understand how seemingly benign constructs have functioned in the past to create and perpetuate such hierarchies, these issues are explored in greater depth in the first module of the curriculum developed through this project. It is important that students understand the tensions that arise from the university’s historical status in society as an institution that has perpetuated colonial thought.

Acknowledging the tension resulting from the university’s colonial associations, some writers suggest that the university is not inherently colonial but can function as a colonial tool if what is taught serves to uncritically perpetuate the status quo (Battiste, Bell & Findlay, 2002; Godlewska, Moore & Bednasek, 2010; Kumashiro, 2000). This argument aligns with critical social theoretical perspectives that educators can challenge epistemologies of ignorance that ignore or perpetuate marginalization by implementing anti-oppressive curricula in universities.

As Kumashiro (2000) proposes, educational material about Aboriginal issues can be included in university curricula either by introducing discrete courses, or by integrating discussions about Aboriginal issues into existing courses. However, most academics writing on the subject caution against the indiscriminate addition of Aboriginal material into mainstream educational curricula, advising that this project be undertaken with care to avoid pitfalls such as tokenism, by which references to Aboriginal culture are added but fail to be critically or meaningfully examined (Kumashiro, 2000; Lambe, 2003; McLaughlin & Whatman, 2011). This project addresses this critique by presenting a curriculum designed specifically to provide students the necessary contextual information and critical thinking skills to recognize and challenge such tokenism when it occurs in other courses.

Kevin FitzMaurice (2011) from the Department of Indigenous Studies at the University of Sudbury further argues that the “Indigenization”, or “infusion of Indigenous knowledge and faculty into minority positions within disciplines across the university” is in fact perpetuating harms to Aboriginal communities by “usurping Indigenous knowledge from its basis in Aboriginal communities” (p. 63). Arguing that this results in the appropriation of knowledge, FitzMaurice draws parallels between Indigenization of university curricula and the policies of assimilation that were systematically employed by colonial governments to eradicate Aboriginal cultures.

This perspective presents a challenge for this project: namely, how do academics, educators and students talk about Aboriginal issues and history in an academic setting without relying upon the trappings of the western academic tradition that have been detrimental to Aboriginal peoples through the colonial encounter? In other words, how do Aboriginal people and non-Aboriginal Canadians talk about our shared history in a way that respects the way all populations understand their history? The tools (post-colonial theory) and readings (e.g. Cole Harris’ [1997] chapter describing two tellings of an encounter between colonists and Nlaka’pamux in the Fraser Canyon) presented in this curriculum guide the learner in this direction – is such guidance enough to safeguard against the further colonization of Aboriginal content in academia?

Despite these critiques, FitzMaurice acknowledges the potential benefits of including Aboriginal perspectives in university programs, and proposes a test which amounts to a critical questioning of whether programs improve relationships between Aboriginal and non-Aboriginal institutions and communities. In accordance with FitzMaurice's proposal, this project recommends that as part of the implementation of this curriculum, the School of Public Administration also explore building community connections with local First Nations. Suggestions for relationship-building in the context of this course are outlined below. These proposals recognize the importance of ensuring curriculum is responsive to local contexts and supports improved relationships between First Nations and the learning institution. It also complies with the best practices set out in the report accompanying the new Ministry of Education K-12 Aboriginal curricula, which states "Make it a priority to connect with the local Aboriginal community" (2015, p. 28). Like FitzMaurice, (Gerald) Taiaiake Alfred also problematizes the idea of "Indigenizing" the university. Alfred, a Mohawk scholar, activist, and professor in the Indigenous Governance program at the University of Victoria, asserts that in his experience, it is impossible to Indigenize the university. The reason for this is that the university (what he calls "the academy") is founded in and filtered through the western European tradition, with roots reaching back to Greco-Roman institutions (2012, 1m39s). This deep-rooted connection to western ways of knowing, he says, cannot be undone. However, he proposes alternate pathways to make the university more responsive to and respectful of the realities of Indigenous perspectives and issues.

Like FitzMaurice, Alfred calls for the development of more meaningful relationships between Indigenous curricula and Indigenous communities. He suggests that universities can facilitate this by hiring faculty members who have local knowledge, direct existing relationships and credibility with local First Nations communities and who can bring those connections to the classroom. It is only through these connections, he contends, that non-Indigenous students will be adequately educated and sensitized to the material taught in the curriculum (2012; 2015). Alfred makes an important point about the value of local Aboriginal instructors teaching about local Aboriginal issues. While I agree with his position that universities should strive to employ local Aboriginal faculty members, I argue

that in the meantime, certain Aboriginal content can be taught effectively by non-Aboriginal faculty members, provided it is done with sensitivity.

As discussed above, the School of Public Administration can mitigate concerns about the responsible teaching of Aboriginal curricula by ensuring the curricula are responsive to First Nations concerns. One way this can be achieved is through the development of closer connections to local First Nations. This project recommends that the School of Public Administration explore opportunities to host guest speakers from local Aboriginal organizations and communities who can share their experiences, expertise and perspectives. Another recommendation is that the School of Public Administration should initiate a closer relationship with UVic's Indigenous Governance program in a non-course based way. This could include the coordination of guest speakers, panels, or student events, and could help create a space for students and faculty from the two programs to inform and learn from one another. Further considerations for implementation are outlined in the Discussion and Recommendations section of this report.

The literature reviewed in this section demonstrates that while there are differences in opinion on how to implement changes to curricula, authors overwhelmingly agree that students should be taught about Aboriginal issues. The literature points to existing "unknowledges" and epistemologies of ignorance among Canadians and suggests that these can be overcome through improved education. This enhanced education can lead to not only improved relationships between Aboriginal and non-Aboriginal populations and better public policy outcomes, promoting broader reconciliation in British Columbian society. Most authors also agree that such educational initiatives must be implemented with care and sensitivity. I agree with such critiques; however, I argue that the project of education is critical and that educators must not allow concerns about flawless implementation of new curricula to prevent us from teaching students about Aboriginal issues. For example, if a university does not at present have local Aboriginal faculty members available to teach curricula, it is reasonable that a non-Aboriginal faculty member teach such content.

4.0 METHODOLOGY AND METHODS

4.1 METHODOLOGY

This research is grounded in critical theory. As outlined in the Literature Review section, theorist Max Horkheimer (1993) determined that critical theory must be at the same time explanatory, practical and normative. Critical theories explain problems with current realities, identify solutions that will lead to change, and lay out goals for social transformation that can be expected from the implementation of such changes (Bohman, 2015; Budd, 2008).

Critical theoretical paradigms spotlight how social and cultural circumstances affect individuals' and groups' thoughts and actions. Flowing from a constructionist epistemology, critical theory assumes human subjects make sense of the world and assign meaning through specific cultural lenses, which can be multiple and changeable. Realities are therefore situational and personal, and can be influenced by discourse and ideology. This is a rejection of positivism, which employs scientific principles in the study of social phenomena, and operates on the assumption that everything is knowable through the rational lens (Williams, 2006).

This research begins with the assumption that knowledge and epistemology are socially produced. The university, as an institution dedicated to teaching, can help shape the (re)production of knowledge and epistemology. The problem that this research addresses is that the University of Victoria's School of Public Administration does not at present offer curriculum dedicated to understanding Aboriginal people and issues in British Columbia today. This is a problem because many public administration graduates go on to careers in the public service. In these careers, they are responsible for the development and implementation of policies and programs that deal with social issues. Issues relating to Aboriginal and treaty rights, particularly in relation to land and resource development decision-making, are critically important in British Columbia today. Future public servants will need to have a comprehensive understanding of the historical, legal and political

context for these discussions about rights if they are to effectively develop and implement public policy to ameliorate these issues.⁷

One solution to this problem is to educate Public Administration students in post-secondary education about the foundation of the issues described above, so that they enter the public service with the necessary perspective and knowledge to make and carry out good public policy. This rationale acknowledges that public servants are not neutral in their work; they have agency and often have the opportunity to exercise this agency in their careers. For example, public servants who participate in the development of policy can promote projects, processes and protocols they believe will be beneficial. Similarly, public servants who work directly with First Nations carrying out such policy in the field can choose to comport themselves in specific ways. If this means that provincial employees undertaking consultation on land and resource development issues acknowledge and respect, for example, the validity of an Aboriginal person's rationale for the importance of a specific piece of land, then that positive interaction may help to ease tensions between Aboriginal people and government. Following respectful communication protocols can also improve relations between government representatives and Aboriginal people who may have had negative interactions with various levels of government in the past.

In 2015, the Truth and Reconciliation Commission drew attention to another important rationale for this project: that learning about the relationship between Aboriginal populations and non-Aboriginal Canadians in historical context can help shine a light on the lasting impacts of the colonial encounter, including the gap in socioeconomic indicators that persists today. The TRC relates this understanding to the broader project of reconciliation in Canada. More specifically, Paulette Regan (2010) cautions, "failure to gain insight into the historical roots of contemporary settler attitudes and actions toward Indigenous people and to make visible their continuity over time will make Canada's

⁷ The material developed in this project is largely geared toward non-Aboriginal participants, and to Aboriginal people who may not have a comprehensive understanding of the issues covered in the modules. This project recognizes that there are many Aboriginal people in the public service, and that some Aboriginal people may not have this knowledge and understanding, perhaps due in part to the effects of colonization and assimilative policies such as residential schools and the 60s scoop. These policies resulted in a disconnect between some Aboriginal people and their families, communities and cultures.

apology to Indigenous people [for residential schools] meaningless and reconciliation false” (p. 87).

To this end, I have developed six modules that together make up the basis for a course in Aboriginal issues in British Columbia. This course has been designed for students in the University of Victoria’s School of Public Administration graduate programs, in both the Public Administration and Dispute Resolution streams. These six modules build in an iterative fashion, beginning with lessons in background and history. Law, treaty and non-treaty agreements, and consultation make up modules 3-5. Students engage in practical learning in the Consultation module, developing a consultation process based on guidelines used by the Province of BC. The final module explores issues of power in conflicts over rights, situating Aboriginal protest actions such as blockades as a means of using power to effect political change. The modules build on each other; each relies upon the key concepts explored in the earlier lessons. The next section of this report outlines the organization of the curriculum and the key learnings covered in each module.

4.2 METHODS

An environmental scan was conducted to locate resources and identify relevant pedagogical topics and sequencing. Resources that were retrieved were subject to a document analysis of literature on Aboriginal-focused education, potential course readings, and curricula being employed in other programs. The steps below show the consultations with professionals working either with the School of Public Administration or as consultants with private companies who were able to identify proposed curricula and its relationship to existing courses and potential knowledge gaps. The individuals were selected because of their connection to SPA programs or curriculum design, as well as their knowledge and experience with Aboriginal-focused content. I undertook the following steps in the development of the curriculum:

1. Research and preparation of proposal
2. Conference call with Veda Weselake (UVic School of Public Administration, Executive-in-Residence), and Tara Ney (UVic School of Public Administration, project supervisor), February 2015

3. Preparation of preliminary module topics and 1-page course brief
4. Selection of course readings – ongoing throughout the research phase
5. Development of draft module outlines, including prescribed learning outcomes, tentative readings and ideas for assignments
6. Meeting with Tara Ney and Shauna McRanor (Golder & Associates, subject matter expert) to discuss substantive elements of modules
7. Conference call with Sheldon Tetreault (UVic School of Public Administration) to discuss development of Public Administration certificate courses in Aboriginal Governance
8. Final selection of course readings
9. Narrowing down of prescribed learning outcomes, with continued feedback and support from supervisor
10. Integration of course readings into course outline text: Linking together key concepts in course readings and drawing attention to how they help fulfil learning outcomes
11. Refinement of assignments and engagement exercises
12. Writing of draft report to explain, rationalize and support curriculum
13. Supervisor feedback incorporated into second draft of report
14. Meeting with client, Marcia Dawson (UVic School of Public Administration) to discuss drafts; Feedback incorporated into report and curriculum
15. Draft outlines and report sent for peer and expert review:
 - i. Katie Larson (B.A. – History, M.Ed.) History teacher, Little Flower Academy; has experience developing curriculum
 - ii. Shauna McRanor (B.A. – Archaeology, M.A.S – Archival Studies, Ph.D – Political Science/Law) Senior First Nations Consultation Specialist, Golder & Associates
16. Draft outlines and report sent for second reader review
17. Incorporation of feedback from reviewers; final refinement of report and curriculum

5.0 CURRICULUM ORGANIZATION AND KEY CONCEPTS

This curriculum acknowledges the complexity underlying contemporary Aboriginal issues in British Columbia. It breaks down the issues into six discrete modules, which work in an iterative fashion to build students to a comprehensive understanding. The modules are arranged as follows:

1. Background
2. History
3. Legal
4. Treaty and non-treaty agreements
5. Consultation
6. Rights, power and interests

Each module has the following components:

1. **Purpose:** The purpose section is a concise statement that drills down to the crux of the lesson and focuses the student on the subject matter. It tells the student what they can expect to learn in the module.
2. **Engagement:** This section contains a brief exercise that opens students' minds to the subject matter and compels the student to engage with the material in an interactive way. This might include a video, a media publication or a scenario that brings the subject matter to life for the student. A question is often posed that challenges the student to consider new or alternate perspectives. Learners are encouraged to develop self-reflective practice by uncovering and interrogating their own preconceptions.
3. **Learning objectives:** Each module lists three to six key learning objectives that the student can expect to master through the readings and assignments.
4. **Required readings:** There are a number of assigned readings that students must complete for each module. The readings are varied in terms of format and include academic articles and book chapters, grey literature, news articles, videos and audio

recordings. They offer diverse perspectives on the subject matter and together with the engagement and assignment activities, will help students reach the key learning objectives.

Many of the readings are available online, either through the UVic Library website or include hyperlinks to the internet address. Many of the books included are available online as e-books, which can be accessed from the UVic Library website. Those readings that are not available online can be made accessible by scanning and uploading (with the proper permissions).

5. **Additional readings:** The additional readings section lists resources that will enrich the students' understanding of the module topics. While these readings are not necessary for students to grasp the key learning outcomes, they offer further insights, related information, alternate views, or learning tools.
6. **Outline:** The outline section is a one to two page narrative that walks the student through the course material and describes how each reading contributes to the key learning outcomes.
7. **Assignment:** Each module ends with an assignment that the student can complete. Assignments are varied and range from online forum postings to the design of a consultation process for an imagined natural resource development project. These exercises require the student to demonstrate their comprehension of the material and integrate the learning with tangible scenarios and outcomes. They are tied to the learning outcomes.

Key terms are highlighted throughout. It is assumed that the student will take initiative for defining and understanding the key terms as they progress through the course. Each module is designed to take students a total of nine to fifteen hours to complete, including all reading, forum postings, and assignments. The exception to this timeframe is the Consultation module assignment, which will likely take students longer to complete.

5.1 MODULE 1: BACKGROUND

The purpose of this lesson is to provide the theoretical foundations for a discussion of intercultural relations between Aboriginal populations and non-Aboriginal British Columbians by situating these relationships within the colonial history of the province. Students will explore the ways in which cultural differences, power dynamics, and the impacts of colonialism continue to play out in dispute resolution systems today. They will be introduced to some post-colonial theoretical frameworks which can provide a thought-provoking lens for engaging with the material. For example, students will be challenged to investigate how colonial discourses historically buttressed acts of oppression and justified the dispossession of Aboriginal lands and resources.

This lesson situates contemporary relationships and conflicts between Aboriginal people and non-Aboriginal Canadians (including the Crown) in the historical context of the colonial encounter. It focuses on intercultural conflict resolution, exploring how power has been historically deployed by settler communities and governments and investigates the implications this has for contemporary society.

5.2 MODULE 2: HISTORY

The Background module provides context and theoretical foundations for the History module, which is critical to students' learning in the course. As outlined in the final report of the Truth and Reconciliation Commission, "History plays an important role in reconciliation; to build for the future, Canadians must look to, and learn from, the past" (2015, p. 8). In the history module, students learn how white settler society gradually implemented and enforced policies and processes that served to dispossess Aboriginal people of land and systematically oppress their cultures. Students also explore the ways in which Aboriginal people resisted colonial encroachment. Learning about this history is crucial because it requires us to recognize and critically examine the foundations of contemporary society in fundamentally oppressive and racist colonial policies (Regan, 2010). Understanding how these processes played out illuminates the ways in which their legacies persist to this day, and guides the privileged to acknowledge the ways they have benefited from these systems.

This module requires the student to complete more readings than the other modules; this is because there is a great deal of material to cover, including background on the *Indian Act*, the historic relationship between First Nations and settler populations, the development of reserves, colonial land policy, Aboriginal resistance to colonial encroachment, and background on the modern treaty process. This module builds on the concepts learned in the Background module, and explores in detail the timeline of historical events and their effects on the evolution of the relationship between Aboriginal and non-Aboriginal populations.

The history module also sets out the ways in which British Columbia is unique within Canada in terms of its Aboriginal history, particularly because the BC government did not pursue a cohesive policy of treaty-making with First Nations (with the exception of the fourteen Douglas Treaties on Vancouver Island and Treaty 8 in the province's northeast). This becomes important in the discussion of Aboriginal and treaty rights in relation to land and resources, which is discussed extensively in the next four modules.

5.3 MODULE 3: LEGAL

The legal module focuses on the legal aspects of the relationship between the provincial and federal governments and Aboriginal peoples in British Columbia. Here the evolution of the way Aboriginal rights have been recognized is traced and defined through the court system. This module focuses in on Aboriginal rights case law rather than treaty rights case law; however, references are also made to the latter.

In addition to the seven required readings in this module, most of which are relatively short, students will also review a summary document (the "legal primer") that sets out key elements of significant court cases. This primer is designed to be accessible and practical, so that non-legal scholars can easily engage with this material. The cases presented in the legal primer demonstrate how our understanding of Aboriginal rights has evolved through legal developments in the courts in an iterative manner. In the module assignments, students will critically analyze the suitability of the court system, which is based on the western tradition of rights-based decision making to address, define and interpret Aboriginal claims.

The Legal module also explores relationships between the courts, legislation, and policy decisions, including the development of the modern treaty process in BC. This provides important legal context for the in-depth discussion on the treaty process in the next module.

5.4 MODULE 4: TREATY AND NON-TREATY AGREEMENTS

In Module 4, students will examine the modern treaty process and non-treaty agreements in British Columbia. They will explore the objectives of such agreements, as well as their successes and limitations as tools to achieve reconciliation of Crown and Aboriginal interests. The concept of certainty as a goal of treaty and non-treaty agreements is investigated, as it relates to resource development and the provincial economy.

The readings in this module situate the treaty process within the context of justice, and introduce the concept that treaty-making is understood by some as a pathway not just to reconciliation of Aboriginal and Crown interests on the land, but also to broader societal reconciliation between First Nations and non-Aboriginal Canadians. The engagement activity opening this module requires students to view videos produced by the BC Treaty Commission in which First Nations community members and leaders discuss the significance of treaty to their communities. This engagement is intended to encourage students to consider elements of the treaty relationship and grasp new meanings that they may not otherwise recognize. For example, Melissa Quocksister of the K'omoks First Nation illuminates the significance of self-government and relates self-government to rebuilding community strength and unity (BCTC, 2012a). Kim Baird of the Tsawwassen First Nation refers to the treaty as a “toolbox” to address social and economic issues in the community (BCTC, 2012b).

Students also become familiar with common critiques of the treaty process from several perspectives. They will learn that the treaty process is not suitable or desirable for all First Nations. They will also become familiarized with a suite of non-treaty agreements, which are often bilateral agreements between the provincial government and First Nations; these non-treaty agreements can serve to model how to reconcile certain interests outside of the treaty process.

5.5 MODULE 5: CONSULTATION

The Consultation module is designed to be a skills-building module. Students will build on the learning from the first four modules, and apply their understandings of culture, power, negotiation and facilitation as well as their knowledge of the legal, political and historical context of consultation with First Nations, to develop a consultation process for an imagined natural resource development project. In this project students will be required to consider the legal parameters for consultation as well as relational, political and historical realities.

The case study assignment will be guided by grey literature, including the Province of British Columbia's *Updated Procedures for Meeting Legal Obligations when Consulting First Nations* document, which is used by provincial government employees in the design of consultation processes. Students will follow the steps in this document, but will also be expected to demonstrate their understanding of other perspectives, such as those laid out in the First Nations Leadership Council's document, *Advancing an Indigenous Framework for Consultation and Accommodation*. The provincial government resource *Aboriginal Behavioural Competencies Implementation Guide* provides further guidance on effective intercultural communication in Aboriginal contexts. As in the other modules in the curriculum, this assignment focuses on the provincial government's relationship with Aboriginal peoples; however, the federal guide to Aboriginal consultation is included in the additional readings section. Local governments' relationships with First Nations are not included in this discussion, as local governments are governed by provincial statutes and do not have an independent constitutional duty to consult with First Nations.

5.6 MODULE 6: RIGHTS, POWER AND INTERESTS

This final module focuses on Aboriginal use of direct action tactics as a means to effect political change. Students will learn about the history of blockades and occupations in Canada and will critically reflect on the legality and effectiveness of using power to assert and defend rights, protect interests and draw attention to social justice issues. Through the readings, videos and exercises, learners will interpret the use of direct action as a dispute

resolution framework which utilizes power as a way to push back against the historically greater power and resources of the Crown.

Students will examine case studies of civil disobedience in Aboriginal contexts, including events at Oka, Gustafsen Lake, and Ipperwash. Examining these events in historical and political context, learners will recognize how formal dispute resolution frameworks founded in the western tradition are sometimes insufficient for First Nations who feel their rights are being challenged. Students examine how Aboriginal direct action has drawn the attention of the public (for example, by restricting the movement and activities of non-Aboriginal Canadians) and investigating government and media responses to civil disobedience. Finally, learners will explore some outcomes of Aboriginal direct action, including the relationship between widespread direct action campaigns in the 1980s and the development of the BC treaty process.

The assignment requires students to investigate a contemporary example of Aboriginal direct action: the Unist'ot'en Action Camp, located in Wet'suwet'en traditional territory in central British Columbia. This example is timely, high profile, and complex. As students analyze this case study, they will draw upon key learnings from each of the six modules: the impacts of colonialism; the legal standing of the Unist'ot'en as they claim sovereignty; Unist'ot'en laws; their unextinguished right to the land; the perceived inadequacy of consultation on land and resource development projects; and, finally, issues of rights and justice.

6.0 DISCUSSION

The Literature Review section of this report set out critiques that must be taken into account in the implementation of Aboriginal issues in curricula, and outlined measures that should be taken to mitigate these concerns in relation to the curriculum developed in this project. To summarize, such concerns include: the indiscriminate addition of Aboriginal material to existing curricula, which can result in tokenism; concerns about authenticity and ensuring there is a meaningful connection between course content and local First Nations communities and issues; and, ensuring the university, as an institution with a particular colonial history, acknowledges this implication and is appropriately sensitive to teaching Aboriginal content in this context. Having addressed these substantive critiques, the Discussion section focuses on the operational aspects of implementing this curriculum by outlining tangible next steps and suggestions for the successful implementation of this curriculum.

The successful implementation of this project begins with the piloting stage. One limitation of this project is that there have been challenges in obtaining the desired level of feedback from both experts in the field and members of the Aboriginal community. Therefore, piloting this project must also involve conducting broader consultation for input on the content of the project and its flow. This recommendation also acknowledges that as the developer of the course, I carry with me certain preferences and biases about what I consider to be the critical content. Seeking other perspectives could help ensure a well-balanced final product.

Once this broader consultation is completed, the School of Public Administration may wish to organize a pilot of the curriculum. This could be undertaken as an in-person course, an online course, or a primarily online course with in-person seminars. Feedback on the course should be sought from students and considered in ongoing course development and improvement, both during the piloting stage and throughout the life of the course. Concerns that are raised by students, faculty and community members must be taken seriously and addressed on an on-going basis to ensure that the process and the course material are as responsible and responsive as possible.

In addition to this process of ongoing feedback and improvement, it is important that the course content is revisited and reevaluated on an ongoing basis. The context for Aboriginal issues shifts rapidly in British Columbia, often in response to legal decisions, political developments, and current events. In order to remain relevant, it is critical that the course content is updated according to this shifting context. Course activities may also be adjusted to reflect high profile current events. It is likely that reflecting contemporary issues in course content could also enhance students' interest in and engagement with the material.

Finally, successful implementation of this project will also depend on support from the School of Public Administration, from both the director as well as from faculty. It will be important that the director champion the project by providing the necessary resources to further the consultation, piloting and ongoing improvement of the curriculum. In addition, resources may need to be directed toward training those faculty members who will ultimately teach the material. This attention to professional development of faculty members addresses the concerns of some scholars surrounding the suitability of teaching Aboriginal content and issues within the western university, which is itself an institution with colonial underpinnings (Alfred, 2012, 2015; FitzMaurice 2011). Adequate training for faculty members will ensure that those who teach the material are aware of and will be sensitive to these nuances and complexities. It may also increase faculty ownership of the material (Chhem & Eng, 2001). The next section summarizes recommendations found in the Literature Review and the Discussion section.

7.0 RECOMMENDATIONS

The Literature Review and Discussion sections above explored possible solutions for meeting challenges that may be encountered in the implementation of Aboriginal curricula in the university setting. Paying attention to the context of the School of Public Administration and relevant markets, the following recommendations are considerations for the successful implementation of this course:

- 1. Equalization of knowledge:** The School of Public Administration should work with Aboriginal faculty and community members to develop ways to thoughtfully integrate Aboriginal perspectives and issues into course content wherever appropriate.
- 2. Equity for Indigenous knowledge:** The School of Public Administration should consider inviting guest speakers from local Aboriginal communities and organizations to classes to share their experiences, expertise and perspectives.
- 3. Maximize resource and knowledge sharing:** The School of Public Administration should explore ways to connect to the Indigenous Governance program in a non-course-based way. For example, the two programs could perhaps coordinate guest speakers, panels, or student events.
- 4. Build local community connections:** The School of Public Administration should explore building community connections as outlined by FitzMaurice (2011) and Alfred (2012, 2015).
- 5. Support ongoing development:** There may be unforeseen challenges in the implementation of this material. The School of Public Administration will need to support this course and further develop it after it is piloted.

8.0 CONCLUSION

This project was completed on behalf of the University of Victoria's School of Public Administration based on their acknowledgement of a gap in the curriculum on Aboriginal issues relevant to the practice of Public Administration in British Columbia. This project addresses and attempts to fill that gap through the development of a six-part course focused on Aboriginal legal, political and relational issues in the British Columbia context. The curriculum resulting from this project also responds to the Truth and Reconciliation Commission's ninety-four Calls to Action (2015), particularly item #57, which recommends that public servants be educated in such issues as Aboriginal and treaty rights, history, and Aboriginal-Crown relations as a means to promote the broader project of reconciliation in Canada (2015). This report provided a rationale for the project and situated the University of Victoria as an appropriate location to pilot the curriculum.

This project is premised on the assertion that Aboriginal legal, political and relational issues are of critical importance within British Columbia, both in terms of economic development and the formation of positive and respectful relationships between Aboriginal and non-Aboriginal populations. This project acknowledges that innovative and effective public policy will need to be developed in response to significant ongoing shifts within the legal and political landscape. As many Public Administration students will go on to become public servants, it follows that teaching foundational material related to Aboriginal people and issues is a crucial part of Public Administration education.

The literature reviewed in this study politicizes the constructs of knowledge and ignorance, contending that these are socially constructed and demonstrating the ways these "epistemologies of ignorance" have been used to buttress existing social hierarchies. Challenging the perpetuation of these social constructs, much of the research supports the primary assertion of this project that education is a transformative pathway to overcoming inequity in society and that learning about the roots of oppression can help to undermine its mindless perpetuation. Applying critical theory to this critique, it follows that teaching future public servants about the complex issues surrounding relationships between Aboriginal and non-Aboriginal populations in British Columbia may lead to better public

policy outcomes. The literature also supports the contention that such educational objectives may also support the broader goal of reconciliation between Aboriginal people and non-Aboriginal Canadians for past injustices. However, the literature indicates that the implementation of such curricula must be done with care to avoid replicating and reinforcing colonial constructs that have perpetuated the oppression of Aboriginal people throughout British Columbia's history.

This report critically analyzes principal critiques of Aboriginal content curriculum development and implementation, which included: the indiscriminate addition of Aboriginal material to existing curricula, which can result in tokenism; ensuring a meaningful connection between course content and local First Nations communities and issues; and, ensuring the university, as an institution with a particular colonial history, acknowledges the implications of this colonial history and is appropriately sensitive to teaching Aboriginal content in this context. These critiques informed both the curriculum developed in this project as well as the recommendations for its implementation outlined above.

The curriculum developed in this project acknowledges the complexity underlying contemporary Aboriginal issues in British Columbia and attempts to break down the material in a logical and rational sequence, as follows: Background; History; Legal; Treaty and Non-treaty Agreements; Consultation; and Rights, Power and Interests. The six modules function in an iterative fashion, with learning from each module informing the following sections. Students achieve the prescribed learning outcomes for each module by completing the required course readings, engagement activities and assignments; these are arranged according to pedagogical best practices, including the limitation of three to six learning outcomes for each course section.

The first half of the course focuses on historical and theoretical foundations for contemporary issues; this supports the assertion of this project is that in order to meaningfully address the contemporary manifestations of colonial policies, (i.e. the disparity between Aboriginal people and non-Aboriginal Canadians) it is necessary to first understand the historical and social context in which those policies were applied. The

second half of the project focuses on tangible and operational aspects of Aboriginal legal and policy issues as they play out today. This design provides an opportunity for students to apply new insights about Aboriginal relations as they work through real-world case studies and examples.

Together, these six modules are intended to provide students in the School of Public Administration with the foundational knowledge necessary to interpret complex Aboriginal issues in contemporary British Columbia. The successful implementation of this project may require further consultation and piloting efforts, as well as ongoing feedback, evaluation, and revision throughout the life of the curriculum. Along with this curriculum, the School of Public Administration should consider implementing further measures to build connections and improve relationships between the school and local Aboriginal communities and organizations.

Despite possible challenges in the implementation of this curriculum, the project of educating British Columbians, and particularly future public servants, is crucial to overcoming ignorance, improving public policy outcomes, and promoting reconciliation. The University of Victoria should take a prominent role in implementing curriculum to support these goals.

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APPENDICES

APPENDIX A: TRUTH AND RECONCILIATION COMMISSION *CALLS TO ACTION*

APPENDIX B: COURSE OUTLINES

APPENDIX C: COURSE BLUEPRINT

APPENDIX A: TRUTH AND RECONCILIATION COMMISSION CALLS TO ACTION

Calls to Action

In order to redress the legacy of residential schools and advance the process of Canadian reconciliation, the Truth and Reconciliation Commission makes the following calls to action.

Legacy

CHILD WELFARE

1. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:
 - i. Monitoring and assessing neglect investigations.
 - ii. Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.
 - iii. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the history and impacts of residential schools.
 - iv. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.
 - v. Requiring that all child-welfare decision makers consider the impact of the residential school experience on children and their caregivers.
2. We call upon the federal government, in collaboration with the provinces and territories, to prepare and

publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.

3. We call upon all levels of government to fully implement Jordan's Principle.
4. We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:
 - i. Affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies.
 - ii. Require all child-welfare agencies and courts to take the residential school legacy into account in their decision making.
 - iii. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.
5. We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate parenting programs for Aboriginal families.

EDUCATION

6. We call upon the Government of Canada to repeal Section 43 of the *Criminal Code of Canada*.
7. We call upon the federal government to develop with Aboriginal groups a joint strategy to eliminate

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educational and employment gaps between Aboriginal and non-Aboriginal Canadians.

8. We call upon the federal government to eliminate the discrepancy in federal education funding for First Nations children being educated on reserves and those First Nations children being educated off reserves.
9. We call upon the federal government to prepare and publish annual reports comparing funding for the education of First Nations children on and off reserves, as well as educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people.
10. We call on the federal government to draft new Aboriginal education legislation with the full participation and informed consent of Aboriginal peoples. The new legislation would include a commitment to sufficient funding and would incorporate the following principles:
 - i. Providing sufficient funding to close identified educational achievement gaps within one generation.
 - ii. Improving education attainment levels and success rates.
 - iii. Developing culturally appropriate curricula.
 - iv. Protecting the right to Aboriginal languages, including the teaching of Aboriginal languages as credit courses.
 - v. Enabling parental and community responsibility, control, and accountability, similar to what parents enjoy in public school systems.
 - vi. Enabling parents to fully participate in the education of their children.
 - vii. Respecting and honouring Treaty relationships.
11. We call upon the federal government to provide adequate funding to end the backlog of First Nations students seeking a post-secondary education.
12. We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate early childhood education programs for Aboriginal families.

LANGUAGE AND CULTURE

13. We call upon the federal government to acknowledge that Aboriginal rights include Aboriginal language rights.

14. We call upon the federal government to enact an Aboriginal Languages Act that incorporates the following principles:
 - i. Aboriginal languages are a fundamental and valued element of Canadian culture and society, and there is an urgency to preserve them.
 - ii. Aboriginal language rights are reinforced by the Treaties.
 - iii. The federal government has a responsibility to provide sufficient funds for Aboriginal-language revitalization and preservation.
 - iv. The preservation, revitalization, and strengthening of Aboriginal languages and cultures are best managed by Aboriginal people and communities.
 - v. Funding for Aboriginal language initiatives must reflect the diversity of Aboriginal languages.
15. We call upon the federal government to appoint, in consultation with Aboriginal groups, an Aboriginal Languages Commissioner. The commissioner should help promote Aboriginal languages and report on the adequacy of federal funding of Aboriginal-languages initiatives.
16. We call upon post-secondary institutions to create university and college degree and diploma programs in Aboriginal languages.
17. We call upon all levels of government to enable residential school Survivors and their families to reclaim names changed by the residential school system by waiving administrative costs for a period of five years for the name-change process and the revision of official identity documents, such as birth certificates, passports, driver's licenses, health cards, status cards, and social insurance numbers.

HEALTH

18. We call upon the federal, provincial, territorial, and Aboriginal governments to acknowledge that the current state of Aboriginal health in Canada is a direct result of previous Canadian government policies, including residential schools, and to recognize and implement the health-care rights of Aboriginal people as identified in international law, constitutional law, and under the Treaties.
19. We call upon the federal government, in consultation with Aboriginal peoples, to establish measurable goals to identify and close the gaps in health outcomes

between Aboriginal and non-Aboriginal communities, and to publish annual progress reports and assess long-term trends. Such efforts would focus on indicators such as: infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services.

20. In order to address the jurisdictional disputes concerning Aboriginal people who do not reside on reserves, we call upon the federal government to recognize, respect, and address the distinct health needs of the Métis, Inuit, and off-reserve Aboriginal peoples.
21. We call upon the federal government to provide sustainable funding for existing and new Aboriginal healing centres to address the physical, mental, emotional, and spiritual harms caused by residential schools, and to ensure that the funding of healing centres in Nunavut and the Northwest Territories is a priority.
22. We call upon those who can effect change within the Canadian health-care system to recognize the value of Aboriginal healing practices and use them in the treatment of Aboriginal patients in collaboration with Aboriginal healers and Elders where requested by Aboriginal patients.
23. We call upon all levels of government to:
 - i. Increase the number of Aboriginal professionals working in the health-care field.
 - ii. Ensure the retention of Aboriginal health-care providers in Aboriginal communities.
 - iii. Provide cultural competency training for all health-care professionals.
24. We call upon medical and nursing schools in Canada to require all students to take a course dealing with Aboriginal health issues, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, and Indigenous teachings and practices. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

JUSTICE

25. We call upon the federal government to establish a written policy that reaffirms the independence of the

Royal Canadian Mounted Police to investigate crimes in which the government has its own interest as a potential or real party in civil litigation.

26. We call upon the federal, provincial, and territorial governments to review and amend their respective statutes of limitations to ensure that they conform to the principle that governments and other entities cannot rely on limitation defences to defend legal actions of historical abuse brought by Aboriginal people.
27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.
28. We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.
29. We call upon the parties and, in particular, the federal government, to work collaboratively with plaintiffs not included in the Indian Residential Schools Settlement Agreement to have disputed legal issues determined expeditiously on an agreed set of facts.
30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.
31. We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.
32. We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.

33. We call upon the federal, provincial, and territorial governments to recognize as a high priority the need to address and prevent Fetal Alcohol Spectrum Disorder (FASD), and to develop, in collaboration with Aboriginal people, FASD preventive programs that can be delivered in a culturally appropriate manner.
34. We call upon the governments of Canada, the provinces, and territories to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD), including:
 - i. Providing increased community resources and powers for courts to ensure that FASD is properly diagnosed, and that appropriate community supports are in place for those with FASD.
 - ii. Enacting statutory exemptions from mandatory minimum sentences of imprisonment for offenders affected by FASD.
 - iii. Providing community, correctional, and parole resources to maximize the ability of people with FASD to live in the community.
 - iv. Adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety.
35. We call upon the federal government to eliminate barriers to the creation of additional Aboriginal healing lodges within the federal correctional system.
36. We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.
37. We call upon the federal government to provide more supports for Aboriginal programming in halfway houses and parole services.
38. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade.
39. We call upon the federal government to develop a national plan to collect and publish data on the criminal victimization of Aboriginal people, including data related to homicide and family violence victimization.

40. We call on all levels of government, in collaboration with Aboriginal people, to create adequately funded and accessible Aboriginal-specific victim programs and services with appropriate evaluation mechanisms.
41. We call upon the federal government, in consultation with Aboriginal organizations, to appoint a public inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls. The inquiry's mandate would include:
 - i. Investigation into missing and murdered Aboriginal women and girls.
 - ii. Links to the intergenerational legacy of residential schools.
42. We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples*, endorsed by Canada in November 2012.

Reconciliation

CANADIAN GOVERNMENTS AND THE *UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE*

43. We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.
44. We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the *United Nations Declaration on the Rights of Indigenous Peoples*.

ROYAL PROCLAMATION AND COVENANT OF RECONCILIATION

45. We call upon the Government of Canada, on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown. The proclamation would build on the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, and reaffirm the nation-to-nation relationship between Aboriginal peoples and the Crown. The proclamation would include, but not be limited to, the following commitments:

- i. Repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and *terra nullius*.
 - ii. Adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.
 - iii. Renew or establish Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.
 - iv. Reconcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements.
46. We call upon the parties to the Indian Residential Schools Settlement Agreement to develop and sign a Covenant of Reconciliation that would identify principles for working collaboratively to advance reconciliation in Canadian society, and that would include, but not be limited to:
- i. Reaffirmation of the parties' commitment to reconciliation.
 - ii. Repudiation of concepts used to justify European sovereignty over Indigenous lands and peoples, such as the Doctrine of Discovery and *terra nullius*, and the reformation of laws, governance structures, and policies within their respective institutions that continue to rely on such concepts.
 - iii. Full adoption and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.
 - iv. Support for the renewal or establishment of Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.
 - v. Enabling those excluded from the Settlement Agreement to sign onto the Covenant of Reconciliation.
 - vi. Enabling additional parties to sign onto the Covenant of Reconciliation.

47. We call upon federal, provincial, territorial, and municipal governments to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as the Doctrine of Discovery and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.

SETTLEMENT AGREEMENT PARTIES AND THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

48. We call upon the church parties to the Settlement Agreement, and all other faith groups and interfaith social justice groups in Canada who have not already done so, to formally adopt and comply with the principles, norms, and standards of the *United Nations Declaration on the Rights of Indigenous Peoples* as a framework for reconciliation. This would include, but not be limited to, the following commitments:
- i. Ensuring that their institutions, policies, programs, and practices comply with the *United Nations Declaration on the Rights of Indigenous Peoples*.
 - ii. Respecting Indigenous peoples' right to self-determination in spiritual matters, including the right to practise, develop, and teach their own spiritual and religious traditions, customs, and ceremonies, consistent with Article 12:1 of the *United Nations Declaration on the Rights of Indigenous Peoples*.
 - iii. Engaging in ongoing public dialogue and actions to support the *United Nations Declaration on the Rights of Indigenous Peoples*.
 - iv. Issuing a statement no later than March 31, 2016, from all religious denominations and faith groups, as to how they will implement the *United Nations Declaration on the Rights of Indigenous Peoples*.
49. We call upon all religious denominations and faith groups who have not already done so to repudiate concepts used to justify European sovereignty over Indigenous lands and peoples, such as the Doctrine of Discovery and *terra nullius*.

EQUITY FOR ABORIGINAL PEOPLE IN THE LEGAL SYSTEM

50. In keeping with the *United Nations Declaration on the Rights of Indigenous Peoples*, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and

understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada.

51. We call upon the Government of Canada, as an obligation of its fiduciary responsibility, to develop a policy of transparency by publishing legal opinions it develops and upon which it acts or intends to act, in regard to the scope and extent of Aboriginal and Treaty rights.
52. We call upon the Government of Canada, provincial and territorial governments, and the courts to adopt the following legal principles:
 - i. Aboriginal title claims are accepted once the Aboriginal claimant has established occupation over a particular territory at a particular point in time.
 - ii. Once Aboriginal title has been established, the burden of proving any limitation on any rights arising from the existence of that title shifts to the party asserting such a limitation.

NATIONAL COUNCIL FOR RECONCILIATION

53. We call upon the Parliament of Canada, in consultation and collaboration with Aboriginal peoples, to enact legislation to establish a National Council for Reconciliation. The legislation would establish the council as an independent, national, oversight body with membership jointly appointed by the Government of Canada and national Aboriginal organizations, and consisting of Aboriginal and non-Aboriginal members. Its mandate would include, but not be limited to, the following:
 - i. Monitor, evaluate, and report annually to Parliament and the people of Canada on the Government of Canada's post-apology progress on reconciliation to ensure that government accountability for reconciling the relationship between Aboriginal peoples and the Crown is maintained in the coming years.
 - ii. Monitor, evaluate, and report to Parliament and the people of Canada on reconciliation progress across all levels and sectors of Canadian society, including the implementation of the Truth and Reconciliation Commission of Canada's Calls to Action.
 - iii. Develop and implement a multi-year National Action Plan for Reconciliation, which includes research and policy development, public education programs, and resources.

- iv. Promote public dialogue, public/private partnerships, and public initiatives for reconciliation.

54. We call upon the Government of Canada to provide multi-year funding for the National Council for Reconciliation to ensure that it has the financial, human, and technical resources required to conduct its work, including the endowment of a National Reconciliation Trust to advance the cause of reconciliation.
55. We call upon all levels of government to provide annual reports or any current data requested by the National Council for Reconciliation so that it can report on the progress towards reconciliation. The reports or data would include, but not be limited to:
 - i. The number of Aboriginal children—including Métis and Inuit children—in care, compared with non-Aboriginal children, the reasons for apprehension, and the total spending on preventive and care services by child-welfare agencies.
 - ii. Comparative funding for the education of First Nations children on and off reserves.
 - iii. The educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people.
 - iv. Progress on closing the gaps between Aboriginal and non-Aboriginal communities in a number of health indicators such as: infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services.
 - v. Progress on eliminating the overrepresentation of Aboriginal children in youth custody over the next decade.
 - vi. Progress on reducing the rate of criminal victimization of Aboriginal people, including data related to homicide and family violence victimization and other crimes.
 - vii. Progress on reducing the overrepresentation of Aboriginal people in the justice and correctional systems.
56. We call upon the prime minister of Canada to formally respond to the report of the National Council for Reconciliation by issuing an annual "State of Aboriginal Peoples" report, which would outline the government's plans for advancing the cause of reconciliation.

PROFESSIONAL DEVELOPMENT AND TRAINING FOR PUBLIC SERVANTS

57. We call upon federal, provincial, territorial, and municipal governments to provide education to public servants on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

CHURCH APOLOGIES AND RECONCILIATION

58. We call upon the Pope to issue an apology to Survivors, their families, and communities for the Roman Catholic Church's role in the spiritual, cultural, emotional, physical, and sexual abuse of First Nations, Inuit, and Métis children in Catholic-run residential schools. We call for that apology to be similar to the 2010 apology issued to Irish victims of abuse and to occur within one year of the issuing of this Report and to be delivered by the Pope in Canada.
59. We call upon church parties to the Settlement Agreement to develop ongoing education strategies to ensure that their respective congregations learn about their church's role in colonization, the history and legacy of residential schools, and why apologies to former residential school students, their families, and communities were necessary.
60. We call upon leaders of the church parties to the Settlement Agreement and all other faiths, in collaboration with Indigenous spiritual leaders, Survivors, schools of theology, seminaries, and other religious training centres, to develop and teach curriculum for all student clergy, and all clergy and staff who work in Aboriginal communities, on the need to respect Indigenous spirituality in its own right, the history and legacy of residential schools and the roles of the church parties in that system, the history and legacy of religious conflict in Aboriginal families and communities, and the responsibility that churches have to mitigate such conflicts and prevent spiritual violence.
61. We call upon church parties to the Settlement Agreement, in collaboration with Survivors and representatives of Aboriginal organizations, to establish permanent funding to Aboriginal people for:
- i. Community-controlled healing and reconciliation projects.
 - ii. Community-controlled culture- and language-revitalization projects.
 - iii. Community-controlled education and relationship-building projects.
 - iv. Regional dialogues for Indigenous spiritual leaders and youth to discuss Indigenous spirituality, self-determination, and reconciliation.

EDUCATION FOR RECONCILIATION

62. We call upon the federal, provincial, and territorial governments, in consultation and collaboration with Survivors, Aboriginal peoples, and educators, to:
- i. Make age-appropriate curriculum on residential schools, Treaties, and Aboriginal peoples' historical and contemporary contributions to Canada a mandatory education requirement for Kindergarten to Grade Twelve students.
 - ii. Provide the necessary funding to post-secondary institutions to educate teachers on how to integrate Indigenous knowledge and teaching methods into classrooms.
 - iii. Provide the necessary funding to Aboriginal schools to utilize Indigenous knowledge and teaching methods in classrooms.
 - iv. Establish senior-level positions in government at the assistant deputy minister level or higher dedicated to Aboriginal content in education.
63. We call upon the Council of Ministers of Education, Canada to maintain an annual commitment to Aboriginal education issues, including:
- i. Developing and implementing Kindergarten to Grade Twelve curriculum and learning resources on Aboriginal peoples in Canadian history, and the history and legacy of residential schools.
 - ii. Sharing information and best practices on teaching curriculum related to residential schools and Aboriginal history.
 - iii. Building student capacity for intercultural understanding, empathy, and mutual respect.
 - iv. Identifying teacher-training needs relating to the above.
64. We call upon all levels of government that provide public funds to denominational schools to require such schools to provide an education on comparative religious studies, which must include a segment on

Aboriginal spiritual beliefs and practices developed in collaboration with Aboriginal Elders.

65. We call upon the federal government, through the Social Sciences and Humanities Research Council, and in collaboration with Aboriginal peoples, post-secondary institutions and educators, and the National Centre for Truth and Reconciliation and its partner institutions, to establish a national research program with multi-year funding to advance understanding of reconciliation.

YOUTH PROGRAMS

66. We call upon the federal government to establish multi-year funding for community-based youth organizations to deliver programs on reconciliation, and establish a national network to share information and best practices.

MUSEUMS AND ARCHIVES

67. We call upon the federal government to provide funding to the Canadian Museums Association to undertake, in collaboration with Aboriginal peoples, a national review of museum policies and best practices to determine the level of compliance with the *United Nations Declaration on the Rights of Indigenous Peoples* and to make recommendations.
68. We call upon the federal government, in collaboration with Aboriginal peoples, and the Canadian Museums Association to mark the 150th anniversary of Canadian Confederation in 2017 by establishing a dedicated national funding program for commemoration projects on the theme of reconciliation.
69. We call upon Library and Archives Canada to:
- i. Fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Joint-Orientlicher Principles*, as related to Aboriginal peoples' inalienable right to know the truth about what happened and why, with regard to human rights violations committed against them in the residential schools.
 - ii. Ensure that its record holdings related to residential schools are accessible to the public.
 - iii. Commit more resources to its public education materials and programming on residential schools.
70. We call upon the federal government to provide funding to the Canadian Association of Archivists to undertake, in collaboration with Aboriginal peoples, a national review of archival policies and best practices to:

- i. Determine the level of compliance with the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Joint-Orientlicher Principles*, as related to Aboriginal peoples' inalienable right to know the truth about what happened and why, with regard to human rights violations committed against them in the residential schools.
- ii. Produce a report with recommendations for full implementation of these international mechanisms as a reconciliation framework for Canadian archives.

MISSING CHILDREN AND BURIAL INFORMATION

71. We call upon all chief coroners and provincial vital statistics agencies that have not provided to the Truth and Reconciliation Commission of Canada their records on the deaths of Aboriginal children in the care of residential school authorities to make these documents available to the National Centre for Truth and Reconciliation.
72. We call upon the federal government to allocate sufficient resources to the National Centre for Truth and Reconciliation to allow it to develop and maintain the National Residential School Student Death Register established by the Truth and Reconciliation Commission of Canada.
73. We call upon the federal government to work with churches, Aboriginal communities, and former residential school students to establish and maintain an online registry of residential school cemeteries, including, where possible, plot maps showing the location of deceased residential school children.
74. We call upon the federal government to work with the churches and Aboriginal community leaders to inform the families of children who died at residential schools of the child's burial location, and to respond to families' wishes for appropriate commemoration ceremonies and markers, and reburial in home communities where requested.
75. We call upon the federal government to work with provincial, territorial, and municipal governments, churches, Aboriginal communities, former residential school students, and current landowners to develop and implement strategies and procedures for the ongoing identification, documentation, maintenance, commemoration, and protection of residential school cemeteries or other sites at which residential school children were buried. This is to include the provision of

appropriate memorial ceremonies and commemorative markers to honour the deceased children.

76. We call upon the parties engaged in the work of documenting, maintaining, commemorating, and protecting residential school cemeteries to adopt strategies in accordance with the following principles:
- i. The Aboriginal community most affected shall lead the development of such strategies.
 - ii. Information shall be sought from residential school Survivors and other Knowledge Keepers in the development of such strategies.
 - iii. Aboriginal protocols shall be respected before any potentially invasive technical inspection and investigation of a cemetery site.

NATIONAL CENTRE FOR TRUTH AND RECONCILIATION

77. We call upon provincial, territorial, municipal, and community archives to work collaboratively with the National Centre for Truth and Reconciliation to identify and collect copies of all records relevant to the history and legacy of the residential school system, and to provide these to the National Centre for Truth and Reconciliation.
78. We call upon the Government of Canada to commit to making a funding contribution of \$10 million over seven years to the National Centre for Truth and Reconciliation, plus an additional amount to assist communities to research and produce histories of their own residential school experience and their involvement in truth, healing, and reconciliation.

COMMEMORATION

79. We call upon the federal government, in collaboration with Survivors, Aboriginal organizations, and the arts community, to develop a reconciliation framework for Canadian heritage and commemoration. This would include, but not be limited to:
- i. Amending the Historic Sites and Monuments Act to include First Nations, Inuit, and Métis representation on the Historic Sites and Monuments Board of Canada and its Secretariat.
 - ii. Revising the policies, criteria, and practices of the National Program of Historical Commemoration to integrate Indigenous history, heritage values, and memory practices into Canada's national heritage and history.

- iii. Developing and implementing a national heritage plan and strategy for commemorating residential school sites, the history and legacy of residential schools, and the contributions of Aboriginal peoples to Canada's history.

80. We call upon the federal government, in collaboration with Aboriginal peoples, to establish, as a statutory holiday, a National Day for Truth and Reconciliation to honour Survivors, their families, and communities, and ensure that public commemoration of the history and legacy of residential schools remains a vital component of the reconciliation process.
81. We call upon the federal government, in collaboration with Survivors and their organizations, and other parties to the Settlement Agreement, to commission and install a publicly accessible, highly visible, Residential Schools National Monument in the city of Ottawa to honour Survivors and all the children who were lost to their families and communities.
82. We call upon provincial and territorial governments, in collaboration with Survivors and their organizations, and other parties to the Settlement Agreement, to commission and install a publicly accessible, highly visible, Residential Schools Monument in each capital city to honour Survivors and all the children who were lost to their families and communities.
83. We call upon the Canada Council for the Arts to establish, as a funding priority, a strategy for Indigenous and non-Indigenous artists to undertake collaborative projects and produce works that contribute to the reconciliation process.

MEDIA AND RECONCILIATION

84. We call upon the federal government to restore and increase funding to the CBC/Radio-Canada, to enable Canada's national public broadcaster to support reconciliation, and be properly reflective of the diverse cultures, languages, and perspectives of Aboriginal peoples, including, but not limited to:
- i. Increasing Aboriginal programming, including Aboriginal-language speakers.
 - ii. Increasing equitable access for Aboriginal peoples to jobs, leadership positions, and professional development opportunities within the organization.
 - iii. Continuing to provide dedicated news coverage and online public information resources on issues of concern to Aboriginal peoples and all Canadians,

including the history and legacy of residential schools and the reconciliation process.

85. We call upon the Aboriginal Peoples Television Network, as an independent non-profit broadcaster with programming by, for, and about Aboriginal peoples, to support reconciliation, including but not limited to:
- i. Continuing to provide leadership in programming and organizational culture that reflects the diverse cultures, languages, and perspectives of Aboriginal peoples.
 - ii. Continuing to develop media initiatives that inform and educate the Canadian public, and connect Aboriginal and non-Aboriginal Canadians.
86. We call upon Canadian journalism programs and media schools to require education for all students on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations.

SPORTS AND RECONCILIATION

87. We call upon all levels of government, in collaboration with Aboriginal peoples, sports halls of fame, and other relevant organizations, to provide public education that tells the national story of Aboriginal athletes in history.
88. We call upon all levels of government to take action to ensure long-term Aboriginal athlete development and growth, and continued support for the North American Indigenous Games, including funding to host the games and for provincial and territorial team preparation and travel.
89. We call upon the federal government to amend the Physical Activity and Sport Act to support reconciliation by ensuring that policies to promote physical activity as a fundamental element of health and well-being, reduce barriers to sports participation, increase the pursuit of excellence in sport, and build capacity in the Canadian sport system, are inclusive of Aboriginal peoples.
90. We call upon the federal government to ensure that national sports policies, programs, and initiatives are inclusive of Aboriginal peoples, including, but not limited to, establishing:
- i. In collaboration with provincial and territorial governments, stable funding for, and access to, community sports programs that reflect the diverse

cultures and traditional sporting activities of Aboriginal peoples.

- ii. An elite athlete development program for Aboriginal athletes.
 - iii. Programs for coaches, trainers, and sports officials that are culturally relevant for Aboriginal peoples.
 - iv. Anti-racism awareness and training programs.
91. We call upon the officials and host countries of international sporting events such as the Olympics, Pan Am, and Commonwealth games to ensure that Indigenous peoples' territorial protocols are respected, and local Indigenous communities are engaged in all aspects of planning and participating in such events.

BUSINESS AND RECONCILIATION

92. We call upon the corporate sector in Canada to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:
- i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.
 - ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.
 - iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism.

NEWCOMERS TO CANADA

93. We call upon the federal government, in collaboration with the national Aboriginal organizations, to revise the information kit for newcomers to Canada and its citizenship test to reflect a more inclusive history of the diverse Aboriginal peoples of Canada, including

information about the Treaties and the history of residential schools.

94. We call upon the Government of Canada to replace the Oath of Citizenship with the following:

I swear (or affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Queen of Canada, Her Heirs and Successors, and that I will faithfully observe the laws of Canada including Treaties with Indigenous Peoples, and fulfill my duties as a Canadian citizen.

APPENDIX B: COURSE OUTLINES

MODULE 1: BACKGROUND

PURPOSE

The purpose of this lesson is to provide the theoretical foundations for a discussion of intercultural relations between Aboriginal populations and non-Aboriginal British Columbians by situating these relationships within the colonial history of the province. Students will explore the ways in which cultural differences, power dynamics, and the impacts of colonialism continue to play out in dispute resolution systems today.

ENGAGEMENT

Watch the following video:

Kinew, W. (2012, May 31). *8th fire: Wab Kinew 500 years in 2 minutes*. [Video file]. Retrieved from <https://www.youtube.com/watch?v=xmYu-Wppp3c>

- How have historical power dynamics and the impacts of colonialism affected the relationship between Aboriginal and non-Aboriginal populations and the Crown today?

LEARNING OBJECTIVES

By the end of this unit, you will be able to:

- Recognize the diversity of Aboriginal cultures.
- Compare and contrast examples of Aboriginal and settler worldviews.
- Understand the centrality of culture in conflict and dispute resolution.
- Articulate the ways power dynamics and the colonial encounter have shaped relationships, geographies, legal traditions, and intercultural dispute resolution systems in British Columbia.
- Critique how constructs of progress, justice, and spatial mapping have been and continue to be sites of power and tools of dispossession and oppression.

REQUIRED READINGS

1. Harris, C. (2008). How did colonialism dispossess? Comments from an edge of empire. *Annals of the Association of American Geographers*, 94(1). pp. 165-182. doi:10.1111/j.1467-8306.2004.09401009.x
2. Victor, W. (2007). *Alternative dispute resolution (ADR) in Aboriginal contexts: A critical review*. Ottawa, ON: Canadian Human Rights Commission. Retrieved from http://www.chrc-ccdp.ca/sites/default/files/adrrred_en_1.pdf

3. LeBaron, M. (2004). Learning new dances: Finding effective ways to address intercultural disputes. In C. Bell & D. Kahane, (Eds.), *Intercultural dispute resolution in Aboriginal contexts*. (pp. 11-27). Vancouver, BC: UBC Press.
4. Kahane, D. (2004). What is culture? Generalizing about Aboriginal and newcomer perspectives. In C. Bell & D. Kahane, (Eds.), *Intercultural dispute resolution in Aboriginal contexts*. (pp. 28-56). Vancouver, BC: UBC Press.
5. Ashcroft, B., Griffiths, G. & Tiffin, H. (2000). *Post-colonial studies: The key concepts*. New York, NY: Routledge.

ADDITIONAL READINGS

Brahn, E. & Ouellet, J. (2003). *Designing new dispute resolution systems*. Beyond Intractability. Retrieved from <http://www.beyondintractability.org/essay/designing-dispute-systems>

OUTLINE

The Background module will orient you to the complex relational elements of the Aboriginal-newcomer relationship in British Columbia. In this first module, you will become familiar with theoretical concepts that will be important to keep in mind as you complete this course, such as **colonial discourses** relating to the rhetoric of progress, civilization, and private property. Because Aboriginal-newcomer relations in British Columbia are fundamentally based in and inextricable from the colonial encounter, **post-colonial theory** provides some helpful frameworks for understanding and interpreting the concepts you will come across in these modules. These theoretical underpinnings will enrich your reading in this course and contribute to your critical analysis of the issues as you confront them in your day-to-day life. You will use these theoretical constructs to unpack events, interactions, and stories relating to British Columbia's history. You will further discover that concepts that appear to be value-neutral can be loaded with meaning and can, in fact, function to reinforce the unequal power structures that characterized colonial relationships.

For example, Cole Harris (2008) shines a light on how the seemingly innocuous trappings of western society (including maps, law, and numbers) were employed by colonial powers and settlers as tools that functioned to marginalize Aboriginal perspectives and dispossess Aboriginal peoples of their lands. Harris, a professor emeritus in the department of geography at the University of British Columbia, has contributed much to the discussion of the effects of colonialism in BC by situating geography at the center of the colonial encounter. In this reading, you will be introduced to his key premise: that the principal

momentum, and the mechanism by which colonialism and its inherent power relations have been reinforced, can be traced back to the physical **dispossession** of land.

Harris' article is a practical starting point for this course because it contextualizes the colonial encounter within a history of British Columbia. It also situates this local context within the larger **imperial project**, tracing the tools used by settler governments and individuals to their European roots. As you read through Harris' article, you will use *Post-colonial Studies: The Key Concepts* by Ashcroft, Griffiths and Tiffin (2000) as a resource to unpack concepts such as colonial discourse, **binarism**, **cartography** and mapping, and explore how these concepts became tools of colonial oppression.

Equipped with this overview of (post)colonial theory situated within BC histories and geographies, you will be prepared to engage with the remainder of the readings in this module in a nuanced way. The next readings bring the focus back to dispute resolution – specifically the ways in which cultural differences, power dynamics, and the impacts of colonialism continue to play out in **dispute resolution systems** today. The article by Wenona Victor, a PhD student from the Sto:lo Nation, delineates three distinct modes of dispute resolution processes involving Aboriginal peoples: those stemming from western-based paradigms; those founded in Indigenous teachings; and, finally, an emerging middle practice that combines the two.

As you read Victor's work, pay attention to her point that Aboriginal cultures and experiences are diverse, even though there are key similarities between Indigenous cultures; sometimes generalizations can be helpful in understanding the fundamental differences between Aboriginal and western worldview – including perspectives on conflict resolution. She offers strategies for moving forward. Victor's text deconstructs four important works on **Indigenous conflict management approaches**. One of these, you will notice, is the book *Intercultural Dispute Resolution in Aboriginal Contexts*, edited by Catherine Bell and David Kahane. Victor's summary will orient you to this work, which is the source of the remaining readings in this module.

The next two readings by Michelle LeBaron and David Kahane (2004) explore how issues arising from colonial relationships continue to play out in cross-cultural communication and conflict resolution between Aboriginal and settler populations. Both writers focus on culture as a starting point for understanding conflict and designing effective systems to deal with conflict. As you read Kahane's work, you may begin to notice some patterns emerging throughout all of the readings. For example, western notions of **justice, law and neutrality** were and are perceived to be value-neutral (what Kahane refers to as the "common-sense story of just adjudication"). However, when their meaning is unpacked within the context of the colonial encounter, it becomes apparent that they are in fact embedded within binary notions of civilization, the moralization of "progress", and

complex power dynamics which excluded Aboriginal populations from benefiting from western “justice”. Even in contemporary contexts, these concepts are inextricable from British Columbia’s colonial past. This brings life to Kahane’s assertion that Aboriginal and settler cultures continue to “exist in relation to one another, in contexts always shaped by power” (p. 32).

Consider the notion of **power** as you proceed through Module 2: History. Notice shifts in power, the effects these shifts had on relational dynamics, and the ways in which power was then used to segregate and marginalize Aboriginal people and culture. You may wish to consider how issues of power are relevant today.

ASSIGNMENT

Forum questions

Research a recent conflict (since 1990) that has occurred in British Columbia between Aboriginal and non-Aboriginal communities or the provincial government. This conflict can be large or small in scale. In a forum posting, provide your analysis of the conflict and its resolution (~ one paragraph for each point below). Refer to the readings and the theoretical constructs explored in this module in your answer.

1. Briefly describe the context in which the conflict took place.
2. Situate the power dynamics in the conflict.
3. If applicable, describe the conflict resolution processes that have been proposed or that were followed in the resolution of the conflict. Are these processes based in western or Aboriginal traditions?
4. In your opinion, has the conflict been resolved effectively? Why or why not?

MODULE 2: HISTORY

PURPOSE

In this module, you will trace the way colonial attitudes, intercultural conflict and power dynamics have manifested throughout the history of British Columbia, and assess the ways in which their legacy persists to the present day.

ENGAGEMENT

Read the following news article:

Stuek, W. (2014, Oct 24). BC's apology for hanging Tsilhqot'in war chiefs one step in a long healing process. *The Globe and Mail*. Retrieved from

<http://www.theglobeandmail.com/news/british-columbia/bc-apology-for-hanging-tsilhqotin-war-chiefs-one-step-in-a-long-healing-process/article21307738/>

- Consider how colonialism, dispossession and resistance shaped various areas of the province and influenced relationships on a local level.

LEARNING OBJECTIVES

- Summarize key themes, events and issues in BC history that have affected Aboriginal-settler relationships.
- Discuss the lasting impacts of colonialism, recognizing that colonialism affected First Nations unevenly across the province due to diversity between cultures, varying geography, specific relationships, and the impact of certain events.
- Assess the role that increasing pressures on land and resources have played in the deterioration of relations between First Nations and newcomers.
- Describe various ways Aboriginal peoples in British Columbia have resisted colonial encroachment.
- Analyze the ways in which European concepts of “progress”, private property and law were used as discursive tools to provide moral and legal justification for the disposition of Aboriginal land.
- Recognize the implications of the lack of a consistent Aboriginal land policy in BC, including the relatively few historic treaties negotiated between First Nations and the BC Crown.

REQUIRED READINGS

1. British Columbia Claims Task Force. (1991). *The report of the British Columbia Claims Task Force*. Retrieved from http://www.fns.bc.ca/pdf/BC_Claims_Task_Force_Report_1991.pdf
 - i. Introduction: Historical Background section (pp. 3-7)

2. Hill, G. (2011). An anti-colonial history of British Columbia. *Briar Patch* 40(2), pp. 13-15. Retrieved from <https://briarpatchmagazine.com/articles/view/an-anti-colonial-history>
3. Hanson, E. (2009). *The Indian Act*. Vancouver, BC: First Nations Studies Program, University of British Columbia. Retrieved from <http://indigenousfoundations.arts.ubc.ca/home/government-policy/the-indian-act.html>
4. Fisher, R. (1977). *Contact and conflict: Indian-European relations in British Columbia, 1774-1890*. Vancouver, BC: UBC Press.
 - i. Chapter 4: The Image of the Indian (pp. 73-94)
5. Harris, C. (2002). *Making Native space: Colonialism, resistance and reserves in British Columbia*. Vancouver, BC: UBC Press.
 - i. Introduction (pp. xv – xxxi)
 - ii. Part 1: The Colonial Period (pp. 3-69)
6. Tennant, P. (1990). *Aboriginal people and politics: The Indian land question in British Columbia, 1849-1989*. Vancouver, BC: UBC Press.
 - i. Chapter 3: The Douglas “System”: Reserves, Pre-Emptions, and Assimilation (pp. 25-38)
 - ii. Chapter 4: Segregation and Suppression, 1864-87 (pp. 39-53)
7. Venne, S. (1997). Understanding Treaty 6: An Indigenous perspective. In M. Asch, (Ed.), *Aboriginal and treaty rights in Canada: Essays on law, equity and respect for difference*. pp. 173-192. Vancouver: UBC Press.
8. McKee, C. (1996). *Treaty talks in British Columbia: Negotiating a mutually beneficial future*. Vancouver, BC: UBC Press.
 - i. Chapter 1: Prelude to the treaty-making process (pp. 3-31)

ADDITIONAL READINGS

- Union of British Columbia Indian Chiefs (UBCIC). (2005). *Stolen lands, broken promises: Researching the Indian land question in British Columbia*. Vancouver, BC: UBCIC. Retrieved from <http://www.ubcic.bc.ca/Resources/rilq.htm - axzz3e6i4gA2R>
- i. Chapter 1: Dispossession and Resistance in British Columbia (provides a historical timeline of events)

Harris, C. (1997). The Fraser Canyon encountered. In C. Harris (Ed.), *The resettlement of British Columbia: Essays on colonialism and geographic change* (pp.103-136). Vancouver, BC: UBC Press.

Woolford, A. (2005). *Between justice and certainty: Treaty making in British Columbia*. Vancouver, BC: UBC Press.

- i. Chapter 3: The imposition of colonial visions of justice. pp. 40-66
<http://site.ebrary.com.ezproxy.library.uvic.ca/lib/uvic/reader.action?docID=10108793&ppg=52>

OUTLINE

In the first module, you learned that colonialism employed a set of values and tools stemming from the European tradition that together functioned to marginalize and dispossess Aboriginal peoples of their lands and resources. Issues relating to encroachment and resistance to encroachment have characterized the relationship between the province's First Nations and settler populations. Today, the governments of British Columbia and Canada recognize a set of Aboriginal rights stemming from First Nations' prior occupation of the land, and are negotiating treaties and non-treaty agreements to reconcile Aboriginal interests with Crown interests. In this module, you will build upon your learning about colonial attitudes, intercultural conflict, and power dynamics and trace the way these have manifested throughout the history of British Columbia, and how their legacy persists to the present day.

The History Module explores in greater detail the timeline of historical events and the evolution of the relationship between Aboriginal and settler populations in British Columbia, from the time of contact to the mid-1970s. You will learn that British Columbia is unique within Canada because, with few exceptions, it did not historically pursue treaty agreements with First Nations. As you read, consider the extensive effects this policy has had on relational, legal and political aspects of the relationship between First Nations and provincial and federal governments today.

Just as colonization progressed differently across the diverse regions of Canada, you will learn that the colonial encounter was similarly non-uniform across British Columbia. It affected different groups at different times, and colonial interactions were incredibly varied due to geographical, temporal, and cultural factors. Despite these differences, land and resources were consistent colonial motivators. Also keep in mind the post-colonial theoretical concepts you learned in the Background module. You may find it useful to refer to the Ashcroft, Griffiths and Tiffin (2000) text as you read; this primer on post-colonial key

concepts can help you interweave historical events and colonial thought patterns and will enrich your learning.

The first piece you will read is the short, four-page Historical Background section of the 1991 *Report of the BC Claims Task Force*. The BC Claims Task Force was made up of representatives from the governments of BC and Canada and First Nations leadership. The Task Force was convened in 1990 to develop an approach for moving forward into a new, more equitable relationship between the governments and to resolve outstanding land claims stemming from centuries of conflict and competing interests. This reading will provide you an overview of **key events and themes** defining the historical relationship between the governments and BC's First Nations.

The Hill (2011) reading, which is in the form of a graphic novel, is also a brief overview of BC history. This piece provides an Aboriginal perspective that links the historical **dispossession** of land and erosion of rights to modern **socio-economic disparity**. Hill also draws attention to a key learning in this module: that First Nations have resisted in various ways the onslaught of colonization, in its obvious and more insidious forms, since the time of contact. Equipped with this historical overview, you will move on to explore certain themes in greater depth in the subsequent readings.

Another key theme you will discover in the readings is that the relationship between Aboriginal peoples and newcomers to BC has never been static; attitudes shifted according to political pressures and larger historical events. BC's early history can be understood as encompassing several eras, with more or less distinct temporal boundaries bookended by these historical events or political pressures. You will find as you move through the readings that these time periods are commonly stratified into the fur trade, gold rush and settlement eras, reflecting the nature of newcomers' pressures on the land and resources. The Union of BC Indian Chiefs' chapter, *Dispossession and Resistance in British Columbia*, may be a helpful resource here as it provides a chronological overview of some of these important historical events.

The historian Robin Fisher, in his seminal work *Contact and Conflict*, pinpoints what he sees as a significant ideological shift that occurred among newcomers between the fur trade and the settlement eras of BC history. Pay particular attention to the final paragraph in this chapter, which connects attitudes, intentions and actions and concludes that the increasingly negative perception of Aboriginal peoples in the eyes of newcomers was directly related to increasing pressures on land and resources. This picks up on one of the key learning outcomes in this module: the way in which the concept of "progress" was used as a discursive tool to provide moral and legal justification for the disposition of Aboriginal land.

As you read through the materials, you will notice the pervasiveness of the **rhetoric of “progress”**, which as you learned in the Background module stems from European ideologies transplanted to North American soil. Significantly, emerging western scientific ideas were at the same time being co-opted to support colonial actions. The application of **Darwin’s theories of evolution** to human cultures provided a pseudo-scientific rationale that ranked European cultures as more evolved and inherently further advanced than their Aboriginal counterparts. This corresponded with the European view that property ownership and the “improvement” of the land through **cultivation** (i.e. “permanent” or “fixed” settlement) were the signposts of civilization. The obverse of this (or, its binary opposite – drawing upon post-colonial theoretical constructs) equated the “savage” Aboriginal people with what was seen as the wild, untamed wilderness of British Columbia. Uncultivated land was unimproved; it contradicted colonial notions of progress and civility.

As Harris (2002) explains, the colonial project was defined by land. The problem was that despite providing a rationalization for “civilizing” Aboriginal peoples, the European tradition also came with a set of legal ideas that, from the time of contact, applied international legal obligations onto the land. Later, when pressures increased on land and settlers wished to move Aboriginal people out of the way, this set of legal obligations remained on the land. Colonial powers could not simply ignore these earlier promises or policies. Further, as you will recall from the Hill reading, Aboriginal people employed strategies of active **resistance** to the encroachment of their land. This issue became known as the **Indian land question**.

This module also introduces you to treaty relationships between First Nations and the Crown. Sharon Venne’s (1997) chapter “Understanding Treaty 6: An Indigenous Perspective” discusses the background and legal basis for the Crown and First Nations to enter into nation-to-nation treaty agreements. While Venne focuses on Treaty 6, which covers the central portion of what is now Alberta and Saskatchewan, her chapter includes important context for understanding the significance of treaty relationships in much of Canada. Christopher McKee’s (1996) chapter, “Prelude to the Treaty-Making Process” examines early BC history with a focus on illuminating issues relating to the sources and evolution of Aboriginal land rights in the province today. McKee discusses key concepts relating to Aboriginal rights and treaties, situating these within the historical relationship between First Nations and colonial powers. You will become acquainted with the legal concepts of Aboriginal title and the right to self-government, as well as the role of the provincial and federal governments and the courts in developing policy to deal with Aboriginal legal interests. The chapter ends with an introduction to the landmark *Delgamuukw* case, which sets the stage for your learning in the Legal module (to follow). McKee’s book was published in 1996, one year before the final Supreme Court of Canada

ruling on *Delgamuukw* that rights to the land itself continue to exist – not just rights to, for example, hunt and fish on the land.

You will find as you move through the next modules that your foundational understanding of history will help you contextualize and understand BC's unique place within Canada in terms of Aboriginal rights, and the necessity for a tailor-made approach to reconciling competing interests. This historical background is absolutely necessary for a well-developed understanding of the evolution of the Aboriginal-newcomer relationship, the development of our understanding of Aboriginal rights, and the complexities of Aboriginal issues in BC today.

ASSIGNMENT

Forum posting

Read the following documents:

- Chiefs of the Shuswap, Okanagan and Couteau Tribes of British Columbia. (1910). *Memorial to Sir Wilfred Laurier, Premier of the Dominion of Canada*. [Presented 25 Aug, 1910 at Kamloops, BC]. Retrieved from <http://www.sfu.ca/ipinch/sites/default/files/page/inter-peoples-consent-practices-and-free-prior-informed-consent-fpic-workshop/laurier-memorial.pdf>
- Shuswap Nation Tribal Council. (2010). *The Memorial to Sir Wilfred Laurier: Commemorating the 100th anniversary, 1910-2010*. Kamloops, BC: Shuswap Nation Tribal Council. Retrieved from <http://shuswapnation.org/wordpress/wp-content/uploads/2012/09/137543-ShuswapNation-MemorialBro.pdf>

Compose and post to the forum a short (one-page) response to the Chiefs from either Sir Wilfred Laurier or a representative of the provincial government. Your response should include reference to contemporaneous views on Aboriginal land rights. It should also reflect some common colonial attitudes in relation to such issues as cultivation, mapping, civilization, religion, intercultural relations, European conceptions of superiority, etc.

MODULE 3: LEGAL

PURPOSE

The purpose of this module is to trace the evolution of the recognition and definition of Aboriginal rights and title in British Columbia through the court system. You will situate these legal developments within your new understanding of the historical and political context and analyze their impacts on Aboriginal-Crown relationships, including the interpretation of historic and modern treaties and the development of public policy.

LEARNING OBJECTIVES

By the end of this unit, you will be able to:

- Summarize key legal developments in the province that have impacted the way the Province understands and recognizes Aboriginal rights and title
- Describe the relationship between the courts, legislation, policy decisions, and the development of the BC treaty process
- Critically analyze the suitability of the court system as a western-based dispute resolution system for addressing, defining and interpreting Aboriginal rights
- Understand the connection between the notions of certainty, reconciliation, and the treaty-making process

ENGAGEMENT

Review the following video and article from CBC News:

CBC News. (2014, June 26). Tsilhqot'in First Nation granted B.C. title claim in Supreme Court ruling. [Video file]. *The National*. Retrieved from <https://www.youtube.com/watch?v=z4D85H7lQxE>

Paris, M. (2014, July 8). Treaty vs. title: First Nations' new Tsilhqot'in choice. *CBC News*. Retrieved from <http://www.cbc.ca/news/politics/treaty-vs-title-first-nations-new-tsilhqot-in-choice-1.2699105>

Consider the following questions:

- How does the court system impact public policy? How do legal developments affect the way Aboriginal rights are understood and recognized?
- Read the comments section of the CBC News article. What are some common threads running through the dialogue? Think about how you would respond to some of the comments.

REQUIRED READINGS

1. British Columbia Treaty Commission. (1999). *A layperson's guide to Delgamuukw*. Retrieved from http://www.bctreaty.net/files/pdf_documents/delgamuukw.pdf
2. Union of British Columbia Indian Chiefs, (2014). *Certainty: Canada's struggle to extinguish Aboriginal title*. Retrieved from <http://www.ubcic.bc.ca/Resources/certainty.htm#axzz3SbyUHwTm>
3. BC Treaty Commission. (2008). *Why treaties? A legal perspective*. Retrieved from http://www.bctreaty.net/files/pdf_documents/why_treaties_update_Aug08.pdf
4. Woolford, A. (2005). *Between justice and certainty: First Nations treaty making in British Columbia*. Vancouver, BC: UBC Press.
 - i. Chapter 7: Visions of Certainty (pp. 143-170)
5. Turner, D. (2004). *Perceiving the world differently*. In C. Bell & D. Kahane, (Eds.), *Intercultural dispute resolution in Aboriginal contexts*. (pp. 57-69). Vancouver, BC: UBC Press.
6. First Nations Leadership Council. (2013) *Advancing an Indigenous framework for consultation and accommodation in BC*. Retrieved from http://www.fns.bc.ca/pdf/319_UBCIC_IndigActionBook-Text_loresSpreads.pdf
 - i. The Role of Indigenous Law and Legal Order and Traditions in First Nations/Crown Reconciliation: Engaging to Make Decisions Together. pp. 40-44
7. Beyond Boarding. (2014). *Rights versus responsibilities, featuring Mel Bazil and Toghestiy*. [Video file]. Retrieved from <https://vimeo.com/99574930>

ADDITIONAL RESOURCES

- Sherkin, E. (2014). *Tsilhqot'in Nation v. British Columbia*. Retrieved from <http://www.millerthomson.com/en/blog/mt-litigation-blog/2014-archives/tsilhqotin-nation-v-british-columbia>
- Eisenberg, A. (2005). *The distinctive culture test*. Retrieved from https://www.carnegiecouncil.org/publications/archive/dialogue/2_12/section_3/5149.html#:pf_printable

Pape & Salter. (2007). *A guide to the Supreme Court of Canada decision in Taku River Tlingit First Nation v B.C.* Retrieved from http://riverswithoutborders.org/home/wp-content/uploads/2007/04/plainspeak_post_scc.pdf

Storrow, M., Q.C. (2005, February 1). *Legal history*. [Video file] Linc Kesler, (Producer), First Nations Studies Program, University of British Columbia. Retrieved from http://indigenousfoundations.arts.ubc.ca/fileadmin/user_upload/FNSP/indigenous_foundations/IVT-ISS05/IVT.html

- Must use Google Chrome or similar updated browser.

Olynyk, J. (2005). *The Haida Nation and Taku River Tlingit decisions: Clarifying roles and responsibilities for Aboriginal consultation and accommodation*. Retrieved from www.lawsonlundell.com/media/news/236_Negotiatorarticle.pdf

Rollo, T. (2014). Mandates of the state: Canadian sovereignty, democracy, and Indigenous claims. *Canadian Journal of Law and Jurisprudence*, 37(1), 225-238. Retrieved from <http://www.toboldrollo.com/wp-content/uploads/2014/04/Mandates-of-the-State.pdf>

- Discusses the continuity of perpetuation of colonial thought in western structures dealing with Aboriginal peoples, including the courts and the treaty process

Roth, C. F. (2002). Without Treaty, Without Conquest: Indigenous Sovereignty in Post-Delgamuukw British Columbia. *Wicazo Sa Review*, 17(2), 143-165.
doi:10.1353/wic.2002.0020

OUTLINE

In this lesson, you will focus on the legal aspects of the relationship between the provincial and federal governments and Aboriginal peoples in British Columbia. As you have learned in the first two modules, **Aboriginal and treaty rights** and government interests have historically competed with one another. This section deals with the ways in which the courts, legislation, and public policy have interacted to define, interpret, and implement frameworks and processes for justly dealing with these competing interests.

The readings in this module have been selected to provide diverse perspectives on the legal aspects of Aboriginal issues in the province, including grey literature from the provincial and federal governments and Aboriginal leadership in BC. You will also read a summary document outlining significant Aboriginal legal developments in the courts. This legal primer will demonstrate the iterative nature of the definition and interpretation of Aboriginal and treaty rights from the latter half of the twentieth century and up to the landmark 2014 Supreme Court of Canada decision in *Tsilhqot'in Nation v. British Columbia*.

The rapidity with which some of these definitions are changing is also demonstrated in the BC Treaty Commission document entitled *Why Treaties: A Legal Perspective*. This document was published in 2009, before the Supreme Court of Canada decision in *Tsilhqot'in* declared Aboriginal title to specific lands for the first time; though its discussion on **Aboriginal title** is out of date, it provides focused information on the evolution of the understanding of Aboriginal and treaty rights and Aboriginal title in the courts. It also introduces the concept that modern treaty making can be interpreted as a path to **reconciliation** for past injustices.

Keep the idea of reconciliation for past injustices in mind as you complete the next reading, Andrew Woolford's book chapter entitled *Visions of Certainty*. This reading discusses in detail the notion of **certainty**, which is a critical aspect of Aboriginal issues in the province today. As you will learn, certainty describes what is often held to be the desired end state in which First Nations, the provincial and federal governments understand and agree upon ownership, jurisdiction, rights, and obligations relating to land and resources.

As you learned in the previous two sections, Aboriginal groups across the province are incredibly diverse. Prior to colonization, each had its own system of understanding rights and responsibilities. You will see as you read through the materials that there are significant challenges in applying a one-size-fits-all approach to resolving conflicts with First Nations in the province, especially one based in non-Indigenous legal traditions and ways of knowing. The courts are assumed to be a neutral third party, bridging the concerns of all parties and developing a language capable of defining and protecting Aboriginal and treaty rights. However, as you progress through the readings in this module, recall Michelle LeBaron's assertion that conflict resolution systems reflect the cultural values and cultural assumptions of those who design them.

The reading from the First Nations Leadership Council report further problematizes the concept of applying non-Indigenous legal frameworks to solve intercultural disputes. This short paper argues that policies developed by the provincial government to fulfill the **constitutional duty to consult** fail to acknowledge the legitimacy of existing Aboriginal legal orders and protocols. Further, provincial policy makers fall short of acknowledging **Indigenous sovereignty**. Because of this, the **consultation** procedures that have been developed are insufficient for the achievement of true reconciliation between Aboriginal and Crown interests.

Finally, the video featuring activists Mel Bazil (Wet'suwet'en and Gitksan) and Toghestiy (Wet'suwet'en) presents an Aboriginal perspective on rights and responsibilities that is not always captured in the court system. This is critical because it illuminates the important point that not all First Nations conceive of their rights and responsibilities in terms set out by western political and legal traditions. Some Aboriginal peoples conceptualize their

place in the world as that of sovereign nations who have never ceded jurisdiction of their lands or their responsibilities on the land to federal or provincial powers. You will further explore this vein of thinking in the next section (Treaty and Non-treaty Agreements) as you read (Gerald) Taiaiake Alfred's criticism of the BC treaty process.

ASSIGNMENT

Forum questions

1. Describe your understanding of the concept of the *honour of the Crown*. How is this related to legal traditions such as the Royal Proclamation and, more recently, section 25 and 35 rights under the Constitution Act, 1982?
2. Explore differing perspectives on certainty. Read the following descriptions of certainty and identify the interests of each party based on the ways in which they understand the concept.
 - BC Treaty Commission. (2009). *Aboriginal rights*. Retrieved from http://www.bctreaty.net/files/issues_rights.php
 - Union of British Columbia Indian Chiefs, (2014). *Certainty: Canada's struggle to extinguish Aboriginal title*. Retrieved from <http://www.ubcic.bc.ca/Resources/certainty.htm#axzz3SbyUHwTm>

MODULE 3: LEGAL PRIMER

The previous lesson provided a historical overview of Aboriginal-newcomer relations in British Columbia from the time of contact. Building on this historical context, this lesson focuses on the legal aspects of the relationship. This document provides definitions of key terms and a case law review outlining key legal developments.

KEY TERMS:

Aboriginal rights: Practices, customs and traditions that are integral to the distinctive culture of the Aboriginal group claiming the right, and that existed prior to contact with the Europeans.

Aboriginal title: An Aboriginal right to the exclusive use and occupation of land.

Crown: Refers to government departments, ministries (federal, provincial and/or territorial), and other Crown agencies.

Duty to consult: The duty to consult is an obligation of the Crown. In *Haida, Mikisew*, and *Little Salmon Carmacks* the Supreme Court of Canada held that provincial and federal governments have a legal obligation to consult when the Crown contemplates conduct that may adversely impact asserted or established Aboriginal or treaty rights. In the case of established rights, there is the further distinction of *proven rights* that have been established through a court process and *treaty rights* that have been established through a treaty agreement.

Section 35 rights: Section 35 of the *Constitution Act*, 1982 recognizes and affirms the “existing Aboriginal and treaty rights of the Aboriginal peoples of Canada”. (see <http://indigenousfoundations.arts.ubc.ca/home/government-policy/constitution-act-1982-section-35.html>)

Treaty: A solemn agreement between a government and a First Nation that defines the rights of Aboriginal peoples with respect to lands and resources over a specified area, and may also define the self-government authority of a First Nation. In BC, treaties may be historic agreements dating from the mid-1800s to present-day modern agreements that have been ratified by Canada, BC and the First Nation(s).

Treaty rights: Rights that are defined by the terms of a historic treaty, set out in a modern land claims agreement, or certain aspects of some self-government agreements. In general,

treaties (historic and modern) are characterized by the intention to create obligations, the presence of mutually binding obligations and a measure of solemnity. A treaty right may be an expressed term in a treaty, an implied term, or reasonably incidental to the expressed treaty right. (note: “**Existing**” **Aboriginal and treaty rights** refers to *asserted or established* Aboriginal or treaty rights – see “Duty to Consult” definition above).

Sui Generis: Guerin case – Aboriginal title is sui generis right. This means it is “a unique right that does not correspond to the categories known to English common law or French civil law. Neither can it be understood simply in terms of Aboriginal legal systems. It has to be viewed from both Aboriginal and non-Aboriginal perspectives” (Slatterly, p. 15).

Indian Act: Canadian federal legislation first passed in 1876 and amended several times since. It sets out certain federal government obligations and regulates the management of Indian reserve lands, Indian moneys and other resources.

First Nation: A term that came into common usage in the 1970s to replace the word “Indian”, which some people find offensive. Although the term First Nation is widely used, no legal definition of it exists. Among its uses, the term “First Nations peoples” refers to Aboriginal peoples in Canada, both status and non-status. However, it is typically used to denote a community of status Indians with a land base (e.g. reserves). Some Aboriginal groups have also adopted the term “First Nation” to replace the word “band” in the name of their community.

“**Indian**” retains a legal meaning and continues to be used by the Government of Canada in some circumstances because it is the terminology used in the *Indian Act*. According to Aboriginal Affairs and Northern Development Canada (AANDC), “Indian people are one of three cultural groups, along with Inuit and Métis, recognized as Aboriginal people under section 35 of the *Constitution Act*”. AANDC recognizes three categories of Indians in Canada: status Indians, non-status Indians, and treaty Indians. The *Daniels* decision in 2013 expanded the term “Indian” to include Métis and non-status Indians under federal jurisdiction for programs and services.

Status Indians: Refers to people who are entitled to have their names included on the Indian Register, an official list maintained by the federal government. Certain criteria determine who can be registered as a status Indian. Only status Indians are recognized as Indians under the *Indian Act*, and are entitled to certain rights and benefits under the law.

Non-status Indians: Refers to people who consider themselves Indians or members of a First Nation, but whom the federal government does not recognize as Indians

under the *Indian Act*. This could be because they are either unable to prove their status or, historically, could have referred to someone who had lost their status rights through certain policies (e.g. enfranchisement).

Treaty Indian: Refers to a status Indian who belongs to a First Nation with a signed treaty with the Crown.

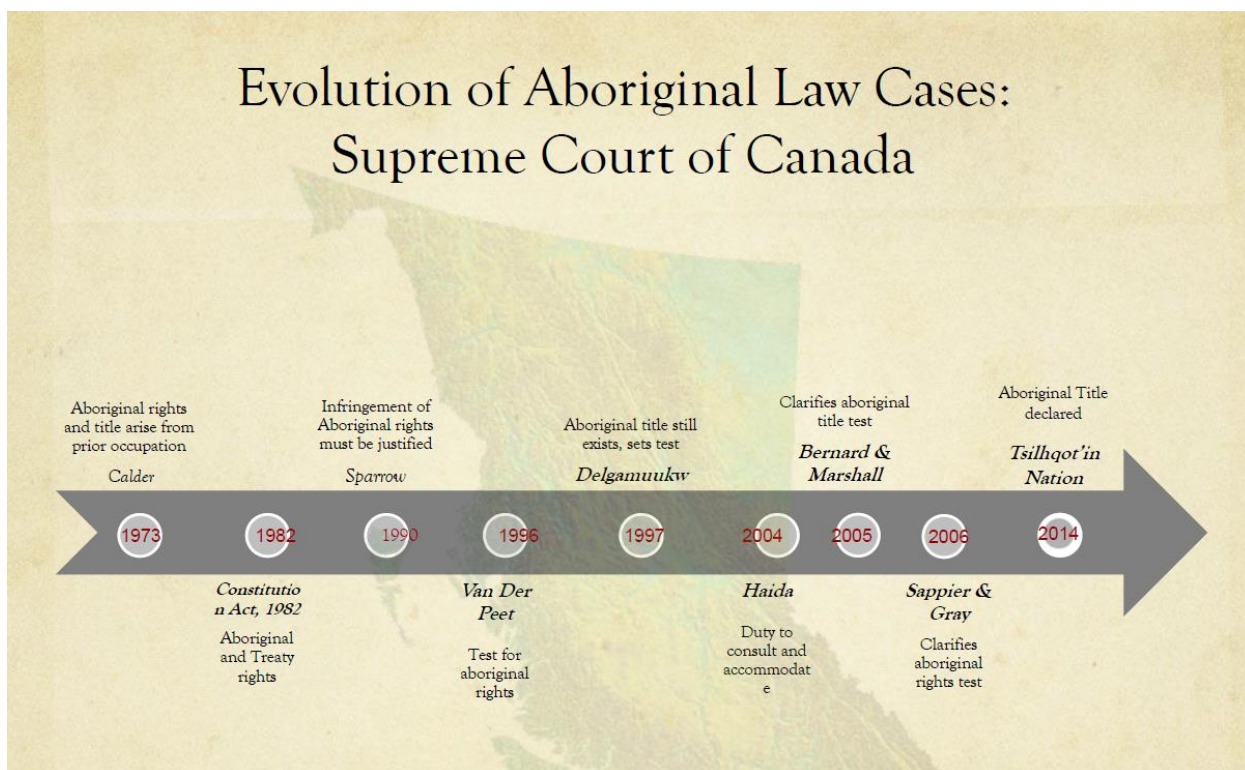
Note: the above are adapted from: Aboriginal Affairs and Northern Development Canada's (2015) *Terminology* webpage and the Province of British Columbia's (2010) *Updated procedures for meeting legal obligations with consulting First Nations: Interim*. See References section for links.

Background:

Over the last several decades, First Nations across the province have mounted a series of legal challenges to the provincial governments' treatment of Aboriginal rights, including title and treaty rights. The outcomes of these court rulings have set new precedents, clarified the meaning and expression of Aboriginal rights, and have significantly changed the ways in which the Crown is required to deal with Aboriginal and treaty rights. In particular, the Crown has had to intensify procedures for consulting with and accommodating First Nations on decisions that could potentially impact the exercise of Aboriginal and treaty rights on their traditional territories. This has affected the ways in which the Crown "does business", particularly in terms of land and resource decision-making.

The British Columbia economy continues to be driven by natural resource industries, and many projects take place on territories where First Nations have asserted (rather than established) Aboriginal rights and title. The Crown has continually adapted its approach to consulting with First Nations in response to changes to the legal landscape. While not an exhaustive list, the following legal cases have had significant implications for the provincial government's approach to recognizing Aboriginal and treaty rights in the province. The timeline works in an iterative fashion, with each case building on the precedents set by previous rulings.

Evolution of Aboriginal Law Cases: Supreme Court of Canada



Source: British Columbia Ministry of Justice and Attorney General, 2015

LEGAL TIMELINE

1763: Royal Proclamation

- Recognized the existence of Aboriginal title to the land in North America
- Promised that all land belonged to Aboriginal title holders until it was formally ceded to the Crown by way of a nation-to-nation treaty
- Land could only be purchased by the Crown – settlers were forbidden to claim, purchase or otherwise alienate land from First Nations

The Royal Proclamation of 1763 was issued by King George III at the close of the Seven Years War between Britain and France. The Proclamation claimed ownership of territories on behalf of King George and set out the legal foundation for the European settlement of Aboriginal lands. Significantly, the Proclamation explicitly recognized the existence of Indian (Aboriginal) title, and promised that all land belonged to the Indians (as Aboriginal title holders) until it was formally ceded by treaty. The process set out by the Proclamation for land purchase stated that only the Crown could purchase land from Aboriginal groups, and that settlers could then purchase the land from the Crown. Settlers were expressly forbidden to claim, purchase or otherwise alienate land from Aboriginal people (Aboriginal

Affairs and Northern Development Canada [AANDC], 2011; University of British Columbia [UBC] First Nations Studies Program, 2009a).

The Royal Proclamation set an important precedent across Canada and formed the basis for treaty-making across much of the country. It provided the legal imperative for the Crown to make formal nation-to-nation deals with Aboriginal groups across the land. It is legally enshrined in section 25 of the *Constitution Act*, 1982 (UBC First Nations Studies Program, 2009a).

For more information on the Royal Proclamation, including discussion of the debate as to the validity of the Proclamation in British Columbia, see the University of British Columbia's First Nations Studies Program website, *Indigenous Foundations*: <http://indigenousfoundations.arts.ubc.ca/home/government-policy/royal-proclamation-1763.html>

1850-1854: The Douglas Treaties

- Fourteen treaties negotiated between Governor James and First Nations on Vancouver Island
- Represent unambiguous recognition of Aboriginal title at the time of signing
- Included hunting rights over unoccupied land and the continuation of Aboriginal fisheries

Sir James Douglas, Governor of the Colony of Vancouver Island, negotiated fourteen agreements with First Nations on Vancouver Island between 1850 and 1854. In accordance with the Royal Proclamation, these agreements indicated that Douglas recognized Aboriginal title to the land. However, the British Columbia government would later argue that the agreements negotiated by Douglas were merely contracts for the purchase of lands, and did not include the continuation of rights on the land for the First Nations. In 1965, the Supreme Court of Canada decided in *R. v White and Bob* that these agreements were in fact treaties in Canadian law (Tennant, 1990).

1871: Article 13 of the Terms of Union

- The Terms of Union were negotiated between British Columbia and Canada in 1871, when BC joined Confederation
- Article 13 transferred jurisdiction and responsibility for Indians and Indian lands from the BC colonial government to the federal government
- BC's *de facto* land policies continued (establishment of reserves smaller than the traditional territory of First Nations, refusal to honour Douglas treaties, reluctance to enter into new treaties, disavowal of Aboriginal title)

BC entered Confederation in 1871. The Terms of Union negotiated between British Columbia and Canada included article 13, which transferred “The charge of the Indians and the trusteeship and management of the lands reserved for their use and benefit” from the BC colonial government to the federal government. Despite having jurisdiction over Indians, the federal governments’ main concerns at Confederation revolved around finances and the establishment of a transcontinental railway (Tennant, 1990). This left the provincial government with latitude to pursue policies relatively independently. The *de facto* provincial land policies, including the establishment of reserves, the refusal to honour the Douglas treaties, the refusal to enter into new treaties (with the exception of Treaty 8 in the northeast), and the large-scale disavowal of Aboriginal title in British Columbia thus continued after Confederation (AANDC, 2011).

Indian Act, 1876

- Combined existing legislation to create Canada-wide approach to administering Aboriginal policy, including Indian lands
- Has undergone several amendments but remains in force today
- Directives of note include imposition of the Band Council system of governance and the regulation of Indian status

The federal *Indian Act* remains one of the most significant pieces of legislation affecting Aboriginal peoples in Canada to the present day. First established in 1876, the *Indian Act* combined existing laws affecting Aboriginal peoples across Canada and established a coordinated, Canada-wide approach to administering Aboriginal policy, including the control of Indian lands. Since 1876, the *Indian Act* has undergone several amendments. At different times, the *Indian Act*:

- Defined Indian reserves as federal Crown land held in trust for the Indians
- Prohibited taxation of reserve land or property on it
- Allowed only registered Indians to live or be buried on reserves
- Created Indian Agents to administer regulations on reserves (1881)
- Forbade Indians from leaving reserves without permission from the Indian Agent
- Set up the federal Department of Indian Affairs to administer Indian policy
- Imposed the Band Council, or “Indian Act Band” system of governance, which required bands to elect a Chief and Council modeled after the Canadian municipal mayor and council system. This ignored traditional governance structures and created artificial divisions and power imbalances in many communities.
- Forbade Indians from forming political organizations

- Prohibited retaining a lawyer for the purpose of making a claim against Canada or the soliciting of funds for pursuing Indian land claims, on punishment of imprisonment (1927 to 1951)
- Banned the potlatch, the central political institution of many BC First Nations (1884 to 1951)
- Prohibited the sale of alcohol and ammunition to Indians
- Forbade Indians from entering pool halls (1930 to 1951)
- Established regulations surrounding Indian status, including the loss of status for women marrying out of the community, and the enfranchisement of men serving in the military (1876 to 1985)

(sources: Hanson, 2009b; Moss & O'Toole, 1991).

For more information, see [Aboriginal People: History of Discriminatory Laws](http://publications.gc.ca/Collection-R/LoPBdP/BP/bp175-e.htm) (<http://publications.gc.ca/Collection-R/LoPBdP/BP/bp175-e.htm>)

1899: Treaty 8

- The only historic “numbered treaty” signed with First Nations in British Columbia, in the northeast of the province
- Set out an ongoing treaty relationship between Canada and the First Nations signatories and defined treaty rights within the Treaty 8 territory

The historic “numbered treaties”, which were signed between 1871 and 1921, cover much of the land base of Canada. Treaty 8 was the only numbered treaty signed with First Nations in British Columbia. Signed in 1899 between seven Indian bands in northeast BC, treaty 8 covers a large landmass spanning parts of Alberta, BC, Saskatchewan, and the Northwest Territories. An eighth First Nation adhered to the treaty in 2000 (Province of BC, 2015).

1965: *R v. White and Bob*

- Recognizes the Douglas treaties as lawful treaties under the *Indian Act*, rather than simply agreements to purchase land (as argued by BC)
- Treaty rights can supersede provincial law under section 88 of the *Indian Act*

Two Aboriginal men from the Nanaimo area were arrested in 1963 for being in possession of six deer carcasses that were harvested out of season, contrary to the provincial *Game Act*. The accused, Clifford White and David Bob, argued successfully that they had a treaty right to hunt under the 1854 *Snuneymuxw Treaty* that was protected under the *Indian Act*. The BC Court of Appeal ruled that the fourteen agreements, including the *Snuneymuxw Treaty* signed by Vancouver Island First Nations and then-governor James Douglas from 1850 to 1854 were in fact treaties under the *Indian Act*, rather than simply being land-

purchase agreements as argued by the Crown. This decision established the supremacy of treaties over provincial law, and set a precedent for a more liberal interpretation of treaty in relation to Aboriginal rights and title. The 1973 *Calder* decision relied on arguments set out in *R. v. White and Bob* in its recognition that Aboriginal title exists in law in areas where it has not been extinguished (Song, 2012).

1973: *Calder v. Attorney General of British Columbia*

- Aboriginal title exists in law and continues to exist where it has not been extinguished (usually by treaty)
- Aboriginal title to the land is an inherent and unique right of Aboriginal people, stemming from their historic “occupation, possession and use” of their traditional territories (McKee, 2009)
- 1846, the date of the Oregon Treaty, marks the assertion of Crown sovereignty in British Columbia

The 1973 *Calder* case has been consistently referred to as one of the most important cases affecting Aboriginal title in British Columbia. In the case, Frank Calder, a hereditary chief of the Nisga’a and a member of the provincial Legislative Assembly, asserted that the Nisga’a held Aboriginal title to lands in the Nass Valley. Calder argued that this title predated the assertion of British sovereignty in the area and had never been extinguished in a lawful manner. The Supreme Court justices were split evenly on whether Aboriginal title had been extinguished in the province or whether it continued to exist (McKee, 2009; Salomons, 2009). Although the case was ultimately dismissed by the court on a technicality, the justices’ split demonstrated that “Aboriginal title did exist in law and that where it was not extinguished it must continue in force” (Persky, 1998, p. 7).

The case also moved toward defining Aboriginal title for the first time. As Justice Judson stated, “The fact is when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Indian title means” (as cited in Persky, 1998, p. 7). Significantly, the case established that Aboriginal title to the land is an inherent and unique right of Aboriginal peoples stemming from their historic “occupation, possession and use” of their traditional territories (McKee, 2009).

Calder established 1846 as the date interpreted by the Supreme Court as signifying the assertion of Crown sovereignty in British Columbia. This date is significant because it is the date of the Oregon Treaty, which established the 49th parallel as the legal boundary between British Columbia and the United States. The Court reasoned that in signing a treaty with another nation to end a boundary dispute, the Crown could be definitively seen as exercising sovereignty, as well as establishing international recognition of its

sovereignty over the territory (*Calder et al. v. Attorney-General of British Columbia*, 1973; *Tsilhqot'in Nation v. British Columbia*, 2007; Valverde, 2012).

1982: Constitution Act, 1982

- Constitutionally recognizes and affirms the continuing existence of inherent Aboriginal and treaty rights

In 1982, Canada became the first country in the world to entrench Aboriginal rights in its constitution (Penikett, 2006). Sections 25 and 35 of the Constitution outline the rights of Aboriginal peoples in Canada. Section 25 formally entrenches the Aboriginal rights outlined in the Royal Proclamation of 1763 and asserts that nothing can terminate or diminish those rights (UBC First Nations Studies Program, 2009b).

Section 35 affirms the legal existence of Aboriginal and treaty rights. However, these “section 35 rights” were not defined in the Constitution in nature or scope. As former Deputy Minister of Negotiations for the BC government Tony Penikett (2006) observes, “this recognition seemed to assure continuity of First Nations cultures, customs and traditions. However, government retained the right to ‘infringe’ ... rights for ‘justifiable’ reasons” (p. 92). Because these terms were not defined, the application of section 35 rights and government’s ability to infringe upon them or extinguish them has been continually contested in the courts. This has caused a lack of certainty for the Crown in relation to the legality of continued development of land and resources that may fall under Aboriginal title.

For more information, see the UBC First Nations Studies Program’s page at <http://indigenousfoundations.arts.ubc.ca/home/government-policy/constitution-act-1982-section-35.html>

1984: *R. v. Guerin*

- The Canadian government has a **fiduciary duty** to First Nations (a legal obligation to act in the best interests of Aboriginal people)
- This relates to both the Crown’s unique relationship to Aboriginal peoples, and the relationship of Aboriginal peoples to the land

This ground-breaking case established that the Canadian government owes a fiduciary duty to First Nations. Fiduciary duty can be described as a relationship based in trust, in which one party has a solemn obligation to act in the best interest of another party. The concept of fiduciary duty is tied to the notion of the Honour of the Crown. This complex legal term refers to the notion that the Crown and its representatives must act honourably and with integrity in all dealings with Aboriginal people. The Honour of the Crown would be further

fleshed out in Chief Justice McLaughlin's ruling on the Haida Nation case in 2004 (*Haida Nation v. British Columbia*, 2004).

R. v. Guerin was brought before the court by Delbert Guerin, then-chief of the Musqueam First Nation, in 1975. In 1956, Musqueam consented to a deal between the federal Department of Indian Affairs (DIA) and the Shaughnessy Golf and Country Club whereby DIA would lease the golf club 162 acres of the 400-acre Musqueam reserve in south Vancouver. Musqueam's consent was based on DIA's assurance that the band would receive revenue from the lease, which would be adjusted every decade to reflect fair market rates. However, DIA representatives secretly renegotiated the agreement with Shaughnessy, allowing the club to pay only 10% of fair market rent. When Musqueam discovered that they were being denied fair compensation, which didn't occur for twelve years after the agreement was made, the band decided to file a case against DIA. However, it took another five years before Musqueam was able to secure legal counsel for the case (Salomons & Hanson, 2009).

The Guerin case went through three levels of the court system before being upheld in the Supreme Court of Canada (SCC) in 1984. The SCC ruling acknowledged for the first time that the Crown has a fiduciary duty to First Nations; in other words, the Crown has a legal obligation to act in the best interest of First Nations. The basis of this fiduciary duty is two-fold and relates both to the Crown's unique relationship to Aboriginal peoples, and the relationship of Aboriginal peoples to the land (Salomons & Hanson, 2009).

1990: *R. v. Sparrow*

- Section 35 rights cannot be extinguished unilaterally
- Any infringement on Aboriginal rights must be constitutionally justifiable
- Set out a two-part test for determining whether a right has been infringed upon, and if so, whether the infringement is justifiable

R. v. Sparrow was the first Supreme Court of Canada decision that interpreted and applied s. 35 of the Constitution Act – the section of the Act that recognizes existing Aboriginal and treaty rights. As such, it was the first of many rulings that sought to define the nature of Aboriginal rights as laid out in the Constitution, as well as the evolving relationship between Aboriginal people and the Crown. The case concluded that Section 35 rights “cannot be unilaterally extinguished and that any infringement of Aboriginal rights must be justified” (Hudson, 2005, p. 3).

Like *R. v. Guerin* in 1984, *R. v. Sparrow* was also brought by a member of the Musqueam First Nation, when Ron Sparrow appealed his conviction for the charge of fishing with a drift net that was longer than that allowed under the Musqueam fishing licence. The Court

found that the Constitution provides Aboriginal people with a “strong measure of protection” for their Aboriginal rights, pointing to the phrase in section 35 stating “existing Aboriginal and treaty rights are hereby recognized and affirmed” (*Constitution Act, 1982, s 35*). Interpreting this statement, the Court found that Musqueam’s Aboriginal right to fish was an “existing” right because it had not been extinguished prior to the 1982 Constitution. Further, the court stated that any government-imposed regulations that limit the exercise of “recognized and affirmed” Aboriginal rights must be constitutionally justifiable. This upheld and built upon the notion of fiduciary duty as established by *Guerin* (Salomons & Hanson, 2009b).

While the courts touched on the idea of consultation and compensation for infringement of rights, the courts did not outline what this would look like in practice. Consultation and accommodation for infringements on Aboriginal rights would be explored further in the *Haida* and *Taku River Tlingit* cases in 2004. Significantly, *Sparrow* indicated that government, with justification, could potentially infringe upon Aboriginal rights.

The Sparrow case set out a two-part test for determining whether or not a right has been infringed upon and, if it has, the circumstances under which a government’s infringement upon that right can be justified.

An activity that could constitute an infringement of a right:

1. Imposes undue hardship on the FN
2. Is considered by the court to be unreasonable
3. Prevents the right-holder from exercising the right (Salomons & Hanson, 2009b)

Under the Sparrow test, an infringement of an Aboriginal right must meet the following criteria to be considered justifiable:

1. Any legislative infringement of an Aboriginal right must serve a “valid legislative objective such as natural resource conservation” (Hurley, 1990, para 2)
2. Any infringement must be in keeping with the honour of the Crown and the Crown’s fiduciary duty to Aboriginal peoples

1996: *R. v. Van der Peet*

- Aboriginal rights are further defined as referring to practices, customs and traditions that are *integral to a distinctive culture*
- Established a two-part test for determining whether practices are integral (the “distinctive culture” test):
 1. The practice must be integral (not incidental or occasional) to an Aboriginal culture prior to contact with Europeans

2. The practice is consistent or reconcilable with Canadian law

The 1996 Van der Peet decision further defined section 35 Aboriginal rights by stating that Aboriginal rights exist and must be protected by the Crown if they refer to practices that are *integral to a distinctive culture*. Van der Peet laid out a test for determining whether such rights are integral to the culture of the claimant (Hanson & Salomons, 2009).

Dorothy Van der Peet of the Sto:lo Nation brought her case to the BC provincial court when she was prosecuted for selling salmon she had caught under a “food fish” license. The food fish license only permitted fishing for food, social and ceremonial purposes, and did not allow for the sale of fish to non-Aboriginal people. Van der Peet argued that she had an Aboriginal right to sell fish under section 35 of the *Constitution Act, 1982*. Van der Peet’s case hinged on two arguments: that the Sto:lo Nation’s cultural identity was intimately tied to salmon fishing; and that the Sto:lo people traditionally engaged in complex trading relationships with other nations (Hanson & Salomons, 2009; Eisenberg, 2005). While Van der Peet was not ultimately successful in her claim, the Supreme Court decision was an important step in the evolving definition of Aboriginal rights in Canada.

According to the Court’s decision, an Aboriginal right is found to exist and therefore receive constitutional protection if it passes a two-part “distinctive culture test”. The distinctive culture test can be summarized as follows:

1. The practice is integral (not merely “incidental or occasional”) to an Aboriginal culture prior to contact with Europeans. This is not a fixed date, as the time of contact varies depending where a First Nation was located.
2. The practice is “cognizable” (i.e. consistent and balanced; reconcilable) within the Canadian common-law system (Barsh & Henderson, 1997, p. 997; Eisenberg, 2005, p. 26).

1997: *Delgamuukw v. British Columbia*

- Aboriginal title existed before contact and continues to exist in British Columbia – Aboriginal title was not extinguished by colonial law
- Aboriginal title is a right to the land itself, not just a right to undertake traditional activities on the land (e.g. hunting, fishing)
- The test for Aboriginal title requires a First Nation to demonstrate exclusive occupation of the land prior to Crown assertion of sovereignty (1846)
- The Crown must consult with and may have to accommodate First Nations on land use decisions where Aboriginal title to the land can be proven

The 1997 *Delgamuukw* decision affirmed the continuity of Aboriginal title in British Columbia. The Supreme Court of Canada for the first time defined Aboriginal title as a proprietary right, that is, a right to the land itself rather than previous interpretations of Aboriginal rights as the right to undertake traditional activities on the land. *Delgamuukw* also determined that Aboriginal groups held title to the land prior to colonization, and that Aboriginal land rights had never been in fact extinguished by colonial law (Penikett, 2006).

The *Delgamuukw* case was launched in 1984, when the Gitksan and the Wet'suwet'en Nations brought a suit against the Province of British Columbia, laying claim to ownership and jurisdiction of 58,000 square kilometres of land in northwest BC. The First Nations argued that Aboriginal rights entail a right to the land itself, not merely the right to undertake traditional activities on that land (BC Treaty Commission, 1999; McKee, 2009; Persky, 1998).

The lower courts crushed *Delgamuukw*. The BC Supreme Court recognized that the Crown's *de facto* occupation of Gitksan and Wet'suwet'en territory does not result in the extinguishment of pre-existing legal and political systems. Therefore, the Crown's assertion of jurisdiction in these territories is not legally justifiable. In his 1991 ruling, BC Supreme Court Justice Allan McEachern circumvented this legal eventuality by asserting that, in fact, the Gitksan and Wet'suwet'en did not have any pre-existing legal or political systems. McEachern couched his decision in Eurocentric thought, denying that Indigenous nations had adequate levels of sophistication or organization to be deemed comparable to western systems (Borrows, 2010; Persky, 1998). He interpreted the still-undefined section 35 rights in his statement: "it is the law that Aboriginal rights exist at the 'pleasure of the Crown' and they may be extinguished whenever the intention of the Crown to do so is plain and clear" (cited in Persky, 1998, p. 8).

However, the Supreme Court of Canada overturned this ruling and in doing so, set several important precedents. Justice La Forest relied on the foundation of Aboriginal title that was described by Justice Judson in the 1973 *Calder* case – that of prior occupation. The ruling distinguished between Aboriginal rights and Aboriginal title, where Aboriginal title stems from a unique relationship to the land, and implies jurisdiction over the land. The provincial government cannot extinguish this title arbitrarily. The *Delgamuukw* decision also established that the government must consult with and may have to compensate First Nations people when they can prove they hold title to the land (BC Treaty Commission, 1999). In terms of presenting proof, the case also affirmed the legitimacy of Aboriginal oral history as a key factor in evidence (BC Treaty Commission, 1999; Borrows, 2010; Valverde, 2012).

2004: *Haida & Taku River Tlingit*

- The provincial Crown has a **duty to consult** and potentially accommodate First Nations on all “conduct” (e.g. decisions or actions) that may adversely impact asserted (not just proven) Aboriginal rights. (This is referred to as the “trigger” for the duty to consult and should not be confused with “scope”, which is the next bullet)
- The duty to consult is proportionate in scope in relation to 1) the strength of claim that the Aboriginal group in question has to Aboriginal rights and title in the area and 2) the degree of potential impact that the conduct could have on the exercise of these Aboriginal rights

The Haida Nation and the Taku River Tlingit First Nation filed separate suits against the province in the early 1990s. In the first case, the Haida Nation disputed the Province’s decision to approve the transfer of a tree farm license between two private companies on Haida traditional territory. In the second case, the Taku River Tlingit First Nation challenged the province’s right to grant an Environmental Assessment project approval certificate to a private company. The company, Redfern Resources, intended to build an industrial access road that would allow for the reopening of the Tulsequah Chief mine on Tlingit territory (Pape & Salter, 2007). The First Nations in both cases asserted they held Aboriginal rights and title to the land in question, and that the province must consult with them on decisions that may affect those rights and title. The Province argued that it did not have a duty to consult with First Nations unless those nations had proven those rights and title either by prior litigation or through treaties with government. The BC Court of Appeal upheld the First Nations’ arguments in both cases, and judged that the Province should have consulted with the nations on these decisions (*Haida Nation v. British Columbia*, 2004; *Taku River Tlingit First Nation v. British Columbia*, 2004).

In the *Haida* decision, the court also held that the private company holding the tree farm licence, Weyerhaeuser, also shared the Province’s duty to consult (Olynyk, 2005). This aspect of the decision was highly controversial. However, it was repealed by the Supreme Court’s decision in 2004, which stated that the duty to consult rests solely with the Crown, although the Crown can delegate some “procedural aspects” of consultation to industry, private companies, and other third party interests (*Haida Nation v. British Columbia*, para 53, cited in Olynyk, 2005, p. 3). Generally, procedural aspects involve information sharing, discussing of plans with First Nations early in the planning process, and developing modifications to plans to accommodate Aboriginal interests (Province of BC, 2014).

The 2004 *Haida* and *Taku River Tlingit* (“*Taku*”) decisions elaborated on and further defined the rulings made in *Guerin* and *Delgamuukw*. In *Guerin*, the courts determined that the Canadian federal government has a duty to consult with Aboriginal peoples, based on

its long-standing “trustee-like” relationship with Aboriginal peoples. *Haida* and *Taku* extended this duty to the provincial government (*R v. Guerin*, 1984; *Haida Nation v. British Columbia*, 2004; *Taku River Tlingit First Nation v. British Columbia*, 2004).

Delgamuukw held that Aboriginal rights continued despite Crown occupation of Aboriginal territory. *Haida* and *Taku* demonstrated that the government must consult with First Nations who have asserted rights in a territory, if government decisions may impact these rights. In other words, the provincial government has a **duty to consult** with Aboriginal groups and potentially accommodate their concerns in relation to any actions the government may take that could potentially infringe upon Aboriginal rights.

The duty to consult is proportionate in scope, meaning the Crown’s consultation requirements intensify in accordance with 1) the strength of claim that the Aboriginal group in question has to Aboriginal rights and title in the area, and 2) the potential impact the decision could have on these Aboriginal rights. The Supreme Court in *Haida* ruled “the scope of the duty is proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of the potentially adverse effect upon the right or title” (*Haida Nation v. British Columbia*, para 39, cited in Olynyk, 2005, p. 2). A “consultation spectrum” has been designed, although the Courts stated that consultation must be dealt with on a case-by-case basis. Consultation will be covered in greater depth in the Consultation section.

Significantly, *Haida* and *Taku River Tlingit* specifically related the notion of reconciliation to the Crown’s exercise of the duty to consult on decisions that could affect Aboriginal rights (Hudson, 2005). These cases set into motion a series of events that resulted in the development of the New Relationship vision statement, an agreement entered into by the Province of BC and First Nations leadership. This vision statement outlined both parties’ commitment to establish processes and institutions for shared decision-making in relation to land and resources (BC Treaty Commission, 2005; First Nations Leadership Council, 2013).

2005: *Mikisew Cree First Nation v. Canada*

- Extends the principles of the duty to consult and potentially accommodate Aboriginal rights to historic treaty rights

In 2005, the Mikisew Cree First Nation in Alberta brought a case against the federal government for failing to consult on the construction of a road through traditional Mikisew lands, which are within the territory of Treaty 8. The Supreme Court unanimously agreed that the relationship between the Crown and First Nations continues after the signing of a treaty, and that the aim of this relationship should continue to be reconciliation (BC Treaty Commission, 2008).

2006: *R v. Sappier; R v. Gray*

- Further develops “distinctive culture” test set out in *Van der Peet* (Aboriginal rights are integral if the removal of those rights would fundamentally alter the distinctive pre-contact culture of the Aboriginal group)
- Aboriginal rights and the practice of those rights must be able to evolve over time, so that Aboriginal people are able to use modern technology to undertake Aboriginal rights such as hunting (e.g. use of vehicles, snowmobiles, and guns, which would not have existed at the time of contact)

Sappier, Pochies (Maliseet) and Gray (Mi'kmaq) were charged under New Brunswick and Nova Scotia law for unlawful harvesting of Crown timber from Crown lands. The Supreme Court heard the cases together due to similarities, and issued a joint decision that dismissed the earlier appeals and acquitted the three respondents of the charges. The respondents successfully upheld that they had an Aboriginal and treaty right to harvest timber for personal use (*R. v. Sappier, R v. Gray, 2006*).

This decision was significant because it further developed the “integral” test for Aboriginal rights set out in *Van der Peet*, which held that rights would be seen to be integral if the removal of the practice would fundamentally alter the distinctive culture of the Aboriginal group. The court clarified that “culture” means the pre-contact way of life, and “distinctive” refers to Aboriginal specificity. However, the decision found that Aboriginal rights must be able to evolve over time, so that the notion of Aboriginality also evolves and is not reduced to racialized stereotypes which relegate Aboriginal people to the past. The decision states, “the nature of the right cannot be frozen in its pre-contact form but rather must be determined in light of present-day circumstances” (*R. v. Sappier, R. v. Gray, 2006, para 6*). Another example of this might be found in the Aboriginal right to hunt using modern technology, such as vehicles, snowmobiles and guns, which would not have been used in the pre-contact world.

2010: *Beckman v. Little Salmon Carmacks*

- First Supreme Court of Canada decision that addresses the duty to consult within the context of modern treaties
- Treaties are a step toward reconciliation, not the final step. The duty to consult applies even in the context of a modern treaty

In 2004, the Little Salmon/Carmacks First Nation applied for judicial review of a decision by the Yukon territorial government to approve a grant of land to a third party that borders the Little Salmon/Carmacks treaty settlement lands. The First Nation opposed this grant, arguing that it would significantly affect the ability of a Little Salmon/Carmacks trapper to undertake traditional trapping activity. This activity was guaranteed as a treaty right

under the 1997 Little Salmon/Carmacks First Nation Final Agreement, a modern treaty with the Yukon territorial government. The Yukon government argued that the Crown was not expressly required to consult with the First Nation because such consultation was not set out in the treaty agreement. The Yukon Court of Appeal upheld the trial decision that the treaty did not preclude the duty to consult, as set out in the 2004 *Haida* decision. In essence, this important case extended so-called *Haida* duties to modern treaties (Adkins & Isaac, 2010).

2014: *Tsilhqot'in Nation v. British Columbia*

- Declares Aboriginal title to specific lands for first time
- Clarifies test for Aboriginal title (originally set out in *Delgamuukw*): collective right; based on sufficient, continuous and exclusive occupation
- Aboriginal title is not confined to specific settlement sites (“postage-stamp” approach) – it can include broader territorial areas used regularly by the First Nation
- Crown decisions on Aboriginal title land require the consent of the Aboriginal title holder
- Sets out test for justification of infringement of Aboriginal rights on title land

The landmark *Tsilhqot'in Nation v. British Columbia* Supreme Court of Canada decision (also known as the William decision) in June 2014 granted Aboriginal title to a 1,750 square kilometre tract of land in the central interior of BC to the Tsilhqot'in Nation. Significantly, this marked the first time the Supreme Court declared Aboriginal title to specific lands. It also established a test to determine whether a First Nation can prove title to lands. The new approach signaled by the William decision recognizes regular use of large tracts of land for traditional activities, such as hunting or trapping, as criteria for grounding a claim to aboriginal title. This replaces the Province's prior “postage stamp” or “dots-on-a-map” approach to title, which might have only conceded the existence of title to reserves (i.e. small areas that had been used intensively and regularly, for example, village sites or specific fishing sites).

The implications of the *Tsilhqot'in* decision are not yet clear. New policy directions may need to be developed by the Crown in response. At the time of writing, these new policy directions have not yet been publicized. This situation has created additional uncertainty for First Nations in the treaty process as well as the provincial government and natural resource project proponents; however, the New Relationship and corresponding new types of agreements may provide a way to move forward despite this uncertainty (McIvor, 2014; *Tsilhqot'in Nation v British Columbia*, 2014).

For a concise summary of the implications of the Tsilhqot'in decision, see Woodward and Company: *Commentary on the Tsilhqot'in Aboriginal Title Win* (<http://www.woodwardandcompany.com/tsilhqot-in-nation-vs-british-columbia-2014-scc-44.html>)

In outlining significant legal cases that have defined how Aboriginal rights are interpreted and applied in the province, this section has provided context on the legal foundation that informs the relationship between the Crown and First Nations in the province. The centrality of land and resource-related issues in the above cases is a reflection of the fundamental importance of such issues to both First Nations and to the Crown.

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MODULE 4: MODERN TREATY AND NON-TREATY AGREEMENTS

PURPOSE

The purpose of this module is to examine the modern treaty process and non-treaty agreements in British Columbia, including their objectives, successes and limitations as tools to achieve reconciliation of Crown and Aboriginal interests.

ENGAGEMENT

British Columbia Treaty Commission. (2012, Oct 10). BC treaty 20 years. [Video file]. Retrieved from https://www.youtube.com/watch?v=rmlwTFMS_jk

In this interview produced by the BC Treaty Commission, Melissa Quocksister of the K'omoks First Nation describes what treaty means to her and her community. There are several other BCTC interviews with First Nations individuals across the province, sharing diverse views on the treaty process. You will find links to these by searching "BC Treaty 20 years" on the YouTube website. Watch some of these videos and identify some of the interests underlying the perspectives shared. What are some similarities and differences between interviewees? What strikes you most about these videos?

LEARNING OBJECTIVES

By the end of this unit, you will be able to:

- Understand the significance of certainty as a goal of the BC treaty process, as it relates to resource development and the provincial economy
- Describe the structure, mechanics and procedures of the BC treaty process
- Discuss the goals of the BC treaty process and critically analyze its successes and challenges
- Outline critiques of the BC treaty process from various perspectives and evaluate suggested alternatives
- Understand that the BC treaty process is not suitable or desirable for all BC First Nations and summarize key elements of non-treaty agreements that may serve to reconcile certain interests

REQUIRED READINGS

1. McKee, C. (2009). *Treaty talks in British Columbia: Building a new relationship* (3rd ed). Vancouver, BC: UBC Press.
 - i. Chronology of Events Contributing to the Treaty-Making Process in British Columbia, pp. 141-148

2. Woolford, A. (2005). *Between justice and certainty: First Nations treaty making in British Columbia*. Vancouver, BC: UBC Press.
 - i. Introduction (pp. 1-14)
 - ii. Chapter 5: The British Columbia Treaty Process (pp. 90-120)

3. British Columbia Treaty Commission. (2000). *What's the deal with treaties?* [Video file]. Retrieved from <http://www.bctreaty.net/files/videos.php#prettyPhoto/1/>

4. Alfred, T. (2001). Deconstructing the British Columbia Treaty Process. *Balayi: Culture, Law and Colonialism*, 3. pp. 37-65. Retrieved from <http://search.informit.com.au.ezproxy.library.uvic.ca/fullText;res=AGISPT;dn=20030456>

5. Eyford, D. R. (2015). *A new direction: Advancing Aboriginal and treaty rights* (Report No. QS-635-000-EE-A1). Retrieved from http://www.aadnc-aandc.gc.ca/eng/1426169199009/1426169236218 - sec5_b
 - i. Executive Summary (pp. 2-6)
 - ii. BC Treaty Process (pp. 57-60)
 - iii. Appendix C: Consolidated List of Recommendations (pp. 86-88)

6. Province of British Columbia. (2015). *Reconciliation and other agreements*. Retrieved from <http://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/reconciliation-other-agreements>
 - i. This website has information on a variety of tools and non-treaty agreements that are being developed to reconcile First Nations, government and third-party interests in relation to socio-economic and environmental issues, consultation and natural resource development. Review the links in the side bar on the left.

ADDITIONAL RESOURCES

Woolford, A. (2004). Negotiating affirmative repair: Symbolic violence in the British Columbia Treaty Process. *The Canadian Journal of Sociology*, 29(1), p. 111-114. Retrieved from <http://www.jstor.org.ezproxy.library.uvic.ca/>

Hudson, M. (2005). Reconciling Aboriginal and non-Aboriginal perspectives through modern treaty agreements. *Presentation to "First Nations, Second Thoughts" Conference, May 6-7, 2005*, Edinburgh, Scotland. Retrieved from http://www.cst.ed.ac.uk/2005conference/papers/Hudson_paper.pdf

Penikett, T. (2006). *Reconciliation: First Nations treaty making in British Columbia*. Vancouver, BC: Douglas & McIntyre.

- i. Chapter 7: Crossroads (pp. 83-97)

Jay, D. O. (2013). *Know your rights: A treaty primer for non-Natives*. Retrieved from <http://www.mediacoop.ca/blog/dru/15600>

Rossiter, D., & Wood, P.K. (2005). Fantastic topographies: Neo-liberal responses to Aboriginal land claims in British Columbia. *Canadian Geographer*, 49(4), p. 352-366. Retrieved from <http://search.proquest.com.ezproxy.library.uvic.ca/>

Standing Senate Committee on Aboriginal Peoples. (2012). *A commitment worth preserving: Reviving the British Columbia treaty process*. (Committee Business – Senate – 41st Parliament, 1st Session). Retrieved from http://www.fns.bc.ca/pdf/SSCAP_Report_reTreatyNegotiationsinBC_June2012.pdf

British Columbia Treaty Commission. (2007). *What's the deal with treaties? A lay person's guide to treaty making in British Columbia*. Retrieved from http://www.bctreaty.net/files/pdf_documents/Whats-the-Deal-v5.pdf

McKee, C. (1996). *Treaty talks in British Columbia: Negotiating a mutually beneficial future*. Vancouver, BC: UBC Press.

- i. Chapter 2: The Process of Treaty-Making (pp. 32-42)

BC Treaty Commission. (2011). *Living with Crown and Aboriginal title*. Retrieved from http://www.bctreaty.net/files/pdf_documents/One-Territory-Two-Titles.pdf

OUTLINE

The first three modules of this course provided you with the foundational historical and legal knowledge for understanding the relationship between Aboriginal and non-Aboriginal people in British Columbia today. This module will focus on the **BC treaty process**, which you will learn was developed as part of a response to the legal victories of First Nations people in the courts, the evolving interpretation of Aboriginal rights, and the expansion of a related social movement that increasingly drew attention to the infringement of these rights by governments and natural resource development proponents. As this social movement erupted into direct action and blockades in the 1980s and early 1990s, disrupting BC's resource-driven economy, government and First Nations leadership collaborated to develop the framework for the treaty process, which was intended to create enduring agreements and a new relationship between the parties moving forward.

You will begin this module by reviewing a timeline of key events relating to the development of the BC treaty process. The timeline provides an overview of the complex historical and legal relationship between the BC government, the federal government and First Nations, isolating crucial issues and events and summarizing their impact on the treaty process. You will watch a video produced by the BC Treaty Commission in 2000 as a tool for teaching the fundamentals about treaty. While the video is dated, it succeeds in describing the rationale for treaty, its historical importance, and responds to common questions and criticisms of the process. There is an accompanying *Treaty Handbook* that provides further information, which you will find in the Additional Resources section.

Equipped with this overview, you will next read two chapters from University of Manitoba Sociology professor Andrew Woolford's book, *Between Justice and Certainty: Treaty Making in British Columbia*. As the title indicates, Woolford frames his discussion of treaty making in the context of justice. In the Introduction section, he explores the discourses of **certainty and justice** as they emerge in relation to the BC treaty process. He posits that the treaty process itself is often imagined as a space in which justice and certainty will converge, in turn leading to wider **reconciliation** of historic injustices. In problematizing this notion, Woolford unpacks the constructs of justice and certainty and draws attention to the complex moral and legal tensions underpinning the treaty-making process. Woolford continues these themes in the next reading (Chapter 5) in which he describes the background, structure and mechanics of the BC treaty process. This will orient you to the practicalities of the process and will give you an idea of the complexity and legalistic nature of the process. This is important context for the next readings, which critique the inability of the treaty process to produce results.

The short selections from Ministerial Special Representative Douglas Eyford's (2015) report on renewing the federal Comprehensive Land Claims policy introduce you to some main critiques of the treaty process. The executive summary outlines difficulties faced by the federal treaty process, and includes figures from across Canada. The next section of the report focuses on British Columbia, where arguably less progress on treaties has been made. **Capacity challenges**, accountability concerns, and extensive **territorial overlaps** among First Nations are among the top issues in British Columbia, contributing to the sluggish pace of negotiations and, critically, increasing debt load for First Nations entrenched in the process. Finally, Eyford makes several recommendations for moving forward with reconciliation between First Nations, the province and the federal government. One of these recommendations is the further exploration and promotion of **non-treaty reconciliation measures**, which will be discussed further in the next section.

The last reading in this section provides an Indigenous perspective on the failings of the BC treaty process from Mohawk scholar (Gerald) Taiaiake Alfred. Alfred, a prolific author and professor of Indigenous Governance at the University of Victoria argues that the BC treaty

process is structurally flawed and fundamentally “morally bankrupt”, serving only as a tool of oppression and **assimilation**. Alfred’s article is an important reminder of the diversity of Aboriginal interests in BC and in Canada; while some First Nations at the individual and community level remain convinced that the treaty process is the road to reconciliation, others have become disenchanted with the process, and still others have never been convinced of its value.

NON-TREATY AGREEMENTS

The Treaty section focused specifically on treaty agreements between the federal and provincial governments and First Nations under the BC treaty process. However, you also learned that treaty agreements are not necessarily desirable or fitting for all First Nations in BC. Other types of agreements and tools outside of the treaty process have been developed to offer negotiated solutions for the reconciliation of interests between First Nations and the provincial government, as well as between First Nations and natural resource development project proponents. These are sometimes referred to as **Government-to-Government (G2G) agreements**.

Some of these agreements, such as Economic and Community Development Agreements (ECDAs) set out revenue-sharing processes so that First Nations can benefit from the development of mining projects on their traditional territory. Consultation process agreements, for example Oil and Gas Consultation Agreements (OGCAs), set out agreed-upon processes for consultation and engagement between First Nations, the Province and third parties in relation to oil and gas projects. Strategic Engagement Agreements (SEAs) and Reconciliation Agreements (RAs) deal with a variety of issues that can relate to socio-economic conditions, consultation on natural resource development projects, wildlife management and environmental stewardship, and so on. The Province of BC website on First Nations Negotiations explores these various types of agreements in some detail and can be found at <http://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/reconciliation-other-agreements>.

ASSIGNMENT

Forum posting

CBC News. (2015, Mar 25). George Abbott ousting from BC Treaty Commission shocks chief commissioner [Audio file]. *CBC News*. Retrieved from <http://www.cbc.ca/news/canada/british-columbia/george-abbott-ousting-from-b-c-treaty-commission-shocks-chief-commissioner-1.3008735>

Read the above article and listen to the excerpt from the interview with Sophie Pierre, former chief commissioner of the BC Treaty Commission (found on the left side of the page, below the photo).

1. Knowing what you now know about history and the treaty process, what does her assertion that “that looks just like the same mistake that was made 150 years ago” say about the relationship between First Nations and the provincial government in BC?
2. How might these developments impact levels of trust between the parties?

MODULE 5: CONSULTATION

PURPOSE

In this module, you will have the opportunity to integrate and put into practice the learning from previous modules in this course. You will apply your understanding of culture, power, negotiation and facilitation to your knowledge of the legal, political and historical context of consultation with First Nations as you design and develop a consultation protocol for a natural resource development project in British Columbia.

ENGAGEMENT

Read *The New Relationship, Vision and Principles* document and peruse the BC government New Relationship webpage (links below). Keep in mind the vision and principles outlined in the New Relationship document as you read the two newspaper articles on consultation and as you complete the module, including the assignment. How is the New Relationship related to consultation? How is consultation related to the BC economy?

Province of British Columbia. (2015). *New Relationship*. Retrieved from <http://www2.gov.bc.ca/gov/content/governments/aboriginal-people/new-relationship>

First Nations Summit, BC Assembly of First Nations, Union of British Columbia Indian Chiefs, & Province of British Columbia. (2005). *The New Relationship: Vision and principles*. . http://www2.gov.bc.ca/assets/gov/business/natural-resource-industries/consulting-with-first-nations/agreements/other-docs/new_relationship_accord.pdf

Donaldson, D. (2014, Jan 30). Libs' failure to consult First Nations threatens BC industries. *The Tyee*. Retrieved from <http://thetyee.ca/Opinion/2014/01/30/libs-fail-to-consult-FNs/>

Burgmann, T. (2015, Sept 8). Northern BC aboriginal leaders call for 'fair' consultation on development. *CTV News*. Retrieved from <http://www.ctvnews.ca/canada/northern-b-c-aboriginal-leaders-call-for-fair-consultation-on-development-1.2553782>

LEARNING OBJECTIVES

By the end of this unit, you will be able to:

- Understand the legal obligations of the Crown in relation to consultation and accommodation for projects with varying degrees of potential impact
- Critically analyze the differing perspectives, expectations and goals of the Crown, First Nations and natural resource development project proponents in relation to consultation
- Apply the knowledge, skills and competencies you have gained in this course and throughout your program to the development of a consultation case study that takes

into account legal parameters for consultation as well as relational, political and historical realities

REQUIRED READINGS

1. Province of British Columbia. (2010). *Updated procedures for meeting legal obligations with consulting First Nations: Interim*. Retrieved from http://www2.gov.bc.ca/assets/gov/business/natural-resource-industries/consulting-with-first-nations/first-nations/legal_obligations_when_consulting_with_first_nations.pdf
2. First Nations Leadership Council. (2013). *Advancing an Indigenous framework for consultation and accommodation in BC*. Retrieved from http://www.fns.bc.ca/pdf/319_UBCIC_IndigActionBook-Text_loresSpreads.pdf
 - i. Background & Key Findings, pp. 11-20
 - ii. Common Law Consultation, pp. 21-39
 - iii. Review of British Columbia Policies on Consultation and Accommodation, pp. 89-101
3. Meyers Norris Penny LLP. (2009). *Best practices for consultation and accommodation*. Retrieved from <http://www.newrelationshiptrust.ca/downloads/consultation-and-accomodation-report.pdf>
4. Province of British Columbia. (2012). *Aboriginal relations behavioural competencies: Implementation guide*. Retrieved from http://www2.gov.bc.ca/local/myhr/documents/jobs_hiring/aboriginal_relations_behavioural_competencies_implementation_guide.pdf
5. Province of British Columbia. (2015) *Consultative Areas Database*. Retrieved from <http://maps.gov.bc.ca/ess/sv/cadb>
 - a. Under “Report” menu, click “CAD Report” and follow instructions. Note: land selections must be relatively small to be processed. Pop-up blockers must be turned off.
 - b. The Spatial Overlay Engine (SOE) report will open in a new window. It will provide contact information for First Nations who should be consulted in relation to the selected area.

ADDITIONAL READINGS

Province of British Columbia. (n.d.) *Building relationships with First Nations: Respecting rights and doing good business*. Retrieved from

http://www2.gov.bc.ca/assets/gov/business/natural-resource-industries/consulting-with-first-nations/first-nations/building_relationships_with_first_nations_english.pdf

BC Ministry of Aboriginal Relations and Reconciliation. (2015). *First Nations Consultative Areas Database (CAD) public map service: User guidance technical instructions for using CAD report tools*. Retrieved from

http://maps.gov.bc.ca/ess/rest/sites/cadb/viewers/cadb/virtualdirectory/Resources/docs/CAD_Public_Map_Service-User_Guidance-Technical_Instructions.pdf

First Nations Leadership Council. (2013). *Advancing an Indigenous framework for consultation and accommodation in BC*. Retrieved from

http://www.fns.bc.ca/pdf/319_UBCIC_IndigActionBook-Text_loresSpreads.pdf

- i. Review of Federal Policy on Fulfilling its Duty of Consultation and Accommodation, pp. 103-125

Aboriginal Affairs and Northern Development Canada. (2011). *Aboriginal consultation and accommodation: Updated guidelines for federal officials to fulfill the duty to consult*.

Retrieved from Aboriginal Affairs and Northern Development Canada website at

http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/intgui_1100100014665_eng.pdf

BC Environmental Assessment Office. (2013). *Guide to involving proponents when consulting First Nations in the Environmental Assessment process*. Retrieved from

http://www.eao.gov.bc.ca/pdf/EAO_Proponent_Guide_Dec2013.pdf

OUTLINE

In the first four modules of this course, you learned about the historical, legal and political context surrounding the relationship between the provincial and federal governments and First Nations in British Columbia. You gained the critical context necessary for a comprehensive understanding of the Crown's **constitutional duty to consult** with and potentially accommodate First Nations on decisions that may impact Aboriginal rights. In this module, you will have the opportunity to integrate this knowledge with other learning from the Dispute Resolution program and apply it to a practical scenario. Using the readings as a guide and drawing upon your developing dispute resolution and policy toolkit, you will design a **consultation process** for engagement with First Nations. In this scenario, you will assume you are a representative of the Crown who has been tasked with

carrying out the Crown's constitutional duty to consult with those First Nations who may be impacted by a proposed natural resource development project.

The readings in this module focus on the policies and processes that have been developed by various parties as a framework to guide consultation and accommodation procedures. The *Updated Procedures for Meeting Legal Obligations when Consulting First Nations* outlines the provincial government's approach to consultation and accommodation, which it explicitly links to the principles of the **New Relationship**. It will provide you with a step-by-step guide to completing each phase of the consultation process. You will use this handbook to complete your assignment.

As a dispute resolution practitioner and someone who is well versed in the complex historical and relational dynamic between First Nations and the province, you will want to design the best possible process – one that will strengthen instead of undermine relationships between the parties, that will meet the interests of all, and that will reflect the tenets laid out in the New Relationship vision statement document. As you design your consultation process, you will also consider the perspectives outlined in the next reading from the First Nations Leadership Council report entitled *Advancing an Indigenous Framework for Consultation and Accommodation in BC*. The readings from the First Nations Leadership Council report outline some of the criticisms put forward by First Nations of the Crown's approach to consultation, including the recurrent sentiment that First Nations are not involved in the design of these dispute resolution systems, and that they do not adequately reflect First Nations perspectives, laws, and values. You will address these concerns explicitly in your process design.

The *Best Practices for Consultation and Accommodation* document was developed to help First Nations understand Crown obligations and interests, and protect their own interests as they participate in consultation processes. While the First Nations Leadership Council report discussed theoretical and philosophical inconsistencies between Crown and First Nation positions (e.g. sovereignty, reconciliation etc.), this document clearly articulates the *practical* concerns of First Nations participating in consultation processes. Your goal is to develop a process that considers these practical concerns as well, and allows for meaningful participation of First Nations. The last document, the *Aboriginal Behavioural Competencies Implementation Guide*, will also help you to tailor your process to address the relational and interpersonal elements of the consultation process.

ASSIGNMENT

You are a BC government employee who has been tasked with developing and carrying out a consultation process for a proposed natural resource development project that will potentially impact the Aboriginal rights of local First Nations. While the type of project and the location is up to you, you will design a process based on the following assumptions:

- The level of consultation required is higher than the “notification” level, meaning you will need to follow the directions for consulting with First Nations at a normal or deep level, as laid out in the Province’s [*Updated procedures for meeting legal obligations with consulting First Nations*](#).
- Environmental Assessments (EAs) for proposed projects are managed by the provincial government Environmental Assessment Office (EAO). EAs include consulting with First Nations for the purposes of identifying and avoiding, reducing or otherwise managing potential project-related impacts to Aboriginal or treaty rights. For the purposes of this project, you do not need to include information or processes related to EAs. For further information on EAs, see the Environmental Assessment Office’s [*Guide to Involving Proponents when Consulting First Nations in the Environmental Assessment Process*](#) (http://www.eao.gov.bc.ca/pdf/EAO_Proponent_Guide_Dec2013.pdf)

For this assignment, keep the subject of your consultation simple. For example, whether your project is a mine, a run-of-river hydro project, or a timber cutting permit, consult simply on the location of the project. Make a reasonable but general assessment about the depth of consultation required based on the scope and location of your project, as well as the likely level of impact it will have on local Aboriginal rights. Do not get bogged down in specifics. The purpose of this assignment is to provide an opportunity for you to understand and move through the steps that are taken in consultation processes in BC, as well as demonstrate your awareness of the relational considerations involved in such processes. Be creative, and have fun.

Complete the following:

1. **Describe your project. What type of project is it, and where is located?** Keep in mind very large projects have potentially greater impacts and require more extensive consultation. Review the resources at the Province of BC [*Consulting with First Nations*](#) web page at <http://www2.gov.bc.ca/gov/topic.page?id=8CF98F756A984198AFD80AEA0E472F05>. You will use these resources to design and carry out an appropriate consultation process for a project of your choosing.
2. **Which First Nation(s) will you need to engage?** You will use the [*Consultation Areas Database*](#) to determine this. Instructions for the database can be found [here](#): (http://maps.gov.bc.ca/ess/rest/sites/cadb/viewers/cadb/virtualdirectory/Resources/docs/CAD_Public_Map_Service-User_Guidance-Technical_Instructions.pdf)
 - Under “Report” menu, click “CAD Report” and follow instructions. Note: land selections must be relatively small to be processed. Pop-up blockers must be turned off.

- The SOE (Spatial Overlay Engine) report will open in a new window. It will provide contact information for First Nations that should be consulted in relation to the selected area.
 - You will be most successful if you use the pinpoint tool (single dot) to select a location. Using the other tools can result in the selection of an area that is too large, which will either fail to calculate or will include a large number of First Nations – this will complicate your assignment unnecessarily. You should aim to include two First Nations.
3. **Identify existing process agreements or treaties that may contain negotiated and established consultation procedures. What processes are already in place?** The consultation processes you design must be consistent with these documents if they exist.
 4. You will **complete a consultation and accommodation record for your consultation process.** This can be modeled after the [Proponent: First Nations Engagement Communication Log](#), although you will need to adjust the columns to reflect your process. The consultation record must include a letter to the affected First Nation(s) outlining details of the project/activity and your initial assessment of how this may impact their asserted or proven Aboriginal rights. Include proper contact information. Be specific in your letter. You may need to do some research, including any related litigation. Have the courts made a declaration or comment on Aboriginal interests in this location?
 5. **Who is conducting the consultation?** It is up to you if you choose to delegate procedural duties to the project proponent. The [Guide to Involving Project Proponents when Consulting First Nations](#) can help guide your decision. However, it is the responsibility of the provincial decision maker to ensure the consultation and accommodation record is complete and that it is appropriate for the circumstances. If you delegate aspects of consultation, ensure the consultation record accounts for this.
 6. In your process design, take into account established best practices, as well as the Aboriginal Behavioural Competencies. **Outline how your process meets these relational interests.**

MODULE 6: RIGHTS, POWER AND INTERESTS

PURPOSE

In this module, you will explore the legal and ethical complexities of Aboriginal groups employing direct action tactics, including blockades and occupations, to disrupt political and economic activities that are seen as encroaching upon Aboriginal and treaty rights. You will situate direct action in historical and political context, and interpret such actions through the interrelationship of interests, rights and power underlying dispute resolution systems design.

ENGAGEMENT

Watch the following video. How would you respond to Michelle Tittler? What does this video tell you about the perceptions of some Canadians in relation to Aboriginal direct action campaigns such as Idle no More? In what ways does her rhetoric reflect or incite the colonial discourse you learned about in earlier modules?

Tittler, M. (2013, May 29). *Michelle Tittler asking politicians about Aboriginal land claims in British Columbia*. [Video file]. Retrieved from

https://www.youtube.com/watch?v=PShjn_jm4Wo

LEARNING OBJECTIVES

By the end of this unit, you will be able to:

- Situate Aboriginal direct action tactics, including blockades, occupations and protests throughout Canada in historical, legal and relational context and consider whether such actions are effective interventions
- Critically reflect on the use of civil disobedience as a strategy to effect political change
- Discuss the legal and ethical complexities involved in exerting power to draw attention to social justice issues and the suppression of rights

REQUIRED READINGS & MEDIA

1. Borrows, J. (2005). *Crown and Aboriginal occupations of land: A history and comparison*. Research papers from the Ipperwash Inquiry. Retrieved from http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/pdf/History_of_Occupations_Borrows.pdf
 - i. Executive Summary & Introduction, pp. 1-4

2. Blomley, N. (1996). "Shut the province down": First Nations blockades in British Columbia, 1984-1995. *BC Studies*, 111, 5- 35. Retrieved from <http://ojs.library.ubc.ca.ezproxy.library.uvic.ca/index.php/bcstudies>
3. Alfred, T. & Corntassel, J. (2005). Being Indigenous: Resurgences against contemporary colonialism. *Government and Opposition*, 40(4). pp. 597-614. Retrieved from <http://journals.cambridge.org.ezproxy.library.uvic.ca/action/displayJournal?jid=GOV>
4. Kelly, A. (2012, June 28). Gallery: A history of First Nations protests in Canada. *Global News*. Retrieved from <http://globalnews.ca/news/56194/gallery-a-history-of-first-nations-protests-in-canada/>
5. MacNamee, B. (Host). (1995, Sept 14). Should Aboriginal people use violent protest? [Radio broadcast episode]. In *The World at Six*. Canadian Broadcasting Corporation. Retrieved from <http://www.cbc.ca/archives/entry/aboriginal-rights-condoning-violent-protest>
6. Gartner, H. (Host). (1995, Sept 11). How do we resolve Aboriginal land claims? [Television broadcast]. In *The National Magazine*. Canadian Broadcasting Corporation. Retrieved from <http://www.cbc.ca/archives/entry/aboriginal-rights-how-do-we-resolve-land-claims>
7. Wilson, N. (Host). (1995, Aug 25). RCMP and Native people stand off at Gustafsen Lake. [Television broadcast]. In *Prime Time News*. Canadian Broadcasting Corporation. Retrieved from <http://www.cbc.ca/archives/entry/rcmp-and-native-people-stand-off-at-gustafsen-lake>
8. Submedia TV. (2015). Gustafsen Lake standoff in five minutes, narrated by Gord Hill. [Video file]. Retrieved from <http://www.submedia.tv/stimulator/2015/09/12/gustafsen-lake-standoff/>
9. Trumpener, B. (2015, Aug 28). RCMP planning mass arrests at pipeline protest camp, northern BC chiefs fear. *CBC News*. Retrieved from <http://www.cbc.ca/news/canada/british-columbia/rcmp-planning-mass-arrests-at-pipeline-protest-camp-northern-b-c-chiefs-fear-1.3207717>

10. Cuthand, D. (2015, May 6). Bill C-51 has potential to scoop up Aboriginal rights activists. CBC News. Retrieved from <http://www.cbc.ca/news/aboriginal/bill-c-51-has-potential-to-scoop-up-aboriginal-rights-activists-1.3009664>

ADDITIONAL READINGS (ANNOTATED)

Dennis, D. (Narrator). (2010, July 17). Darrell Dennis on Oka: 20 years later [Radio broadcast episode]. In Doug Holmes (Producer), *ReVision Quest*. Canadian Broadcasting Corporation. Retrieved from <http://www.cbc.ca/revisionquest/2010/2010/07/14/july-14-july-17-oka-20-years-later-what-have-we-learned/>

Canada Wild Productions, in co-production with the Canadian Broadcasting Corporation. (1993). *Blockade*. [Video]. Montreal, QC: National Film Board of Canada. Available from the University of Victoria library on VHS.

Clairmont, D. & Potts, J. (2006). *For the Nonce: Policing and Aboriginal occupations and protests – A background paper prepared for the Ipperwash Inquiry*. Retrieved from https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/pdf/Policing_and_Aboriginal_Occupations_May_2006.pdf

- i. p. 12-18, Salient Developments in Aboriginal Society provides a summary of the major lines of thought regarding Aboriginal protests

Stewart, M.R. (2002). Dispute escalates: Sun Peaks Ski Resort land claimed by Neskonlith Band of British Columbia. *Windspeaker*, 19(9), pp. 1-2.

Stoddart, M. C. J. (2012). *Making meaning out of mountains: The political ecology of skiing*. Vancouver, BC: UBC Press.

- i. Chapter 5: Skiing and social power. This chapter unpacks the media portrayal of First Nations protest at a ski resort near Kamloops, BC

Anderson, M.C., & Robertson, C.L. (2011). *Seeing red: A history of Natives in Canadian newspapers*. Winnipeg, MB: University of Manitoba Press.

Belanger, Y. (2002). Journalistic opinion as free speech or promoting racial unrest? The case of Ric Dolphin and Calgary Herald's editorial presentation of Native culture. *American Indian Quarterly*, (26)3, pp.393-417. Retrieved from http://muse.jhu.edu.ezproxy.library.uvic.ca/journals/american_indian_quarterly/v026/26.3belanger.pdf

OUTLINE

In this final module, you will examine Aboriginal groups' use of direct action as a means to effect political change. While there have been great strides made in the discussion of Aboriginal rights since the early to mid-20th century, when Aboriginal peoples were banned from hiring a lawyer or raising funds to pursue land claims under the threat of imprisonment, the fact remains that Aboriginal and treaty rights challenges have often been staged in the arena of the western legal tradition. Aboriginal groups in BC and across Canada have proven successful in the courtroom and at the negotiation table; however, for some groups and in certain circumstances, these formal methods of resolving disputes are insufficient to address concerns or lead to unsatisfactory outcomes. Challenging the narrowly defined rules of engagement set out in treaty negotiations, court action, or consultation and accommodation processes, Aboriginal groups have sometimes moved to direct action interventions to assert their rights, protect their interests, and draw attention to social justice issues.

As you complete this module, you will draw upon your dispute resolution and public administration training and skills to unpack the use of **power** exercised through direct action as a means to bring about change. As you examine a cross-section of such disputes, consider the interrelationship of **power, rights and interests** within dispute resolution systems design. Given the responses from government, the public, and the media, are direct action engagements effective interventions?

The first reading by University of Victoria Anishnabe/Ojibway legal scholar John Borrows (2005) introduces the issue of Aboriginal direct action in the context of ongoing struggles for the recognition of Aboriginal rights and conflicts over land and resource use. The Executive Summary and Introduction provide a concise overview of Borrows' interpretation of direct action as a form of physical and spatial resistance to ongoing Crown suppression of Aboriginal and treaty rights, jurisdiction and perspectives.

The next reading by Simon Fraser University geographer Nicholas Blomley (1996) explores British Columbia Aboriginal groups' use of the blockade in particular as a powerful tool to disrupt political and economic systems. Focusing on the politically tumultuous decade from 1984-1995, Blomley situates blockades within the context of land claims and the BC treaty process, arguing that some First Nations employed blockades as a response to frustrations with the glacial pace of land claims negotiations, coupled with continued resource extraction from traditional territories or encroachment of development onto contested land. Blockades have also been employed in solidarity with other First Nations, as Aboriginal allies draw attention to social justice issues in other parts of the province or country.

Together, the readings by Borrows and Blomley illuminate the motivations behind and the efficacy of direct action in the form of blockades, occupations and protests as a strategic political tactic for Aboriginal groups. There is a general consensus among academics that such direct action has succeeded in bringing about change in various ways. Recall the readings in the History module, which often referred to the development of the BC treaty process as a response to increasing direct action in the province throughout the 1980s and early 1990s, culminating in the widespread protests throughout Canada in the summer of 1990 in solidarity with the Mohawk at Oka, Quebec. Even the Report of the BC Claims Task Force (1991), the body responsible for developing the mechanisms for the treaty process, refers to protest and direct action as a causal factor in the governments' entry into land claims discussions.

The first two readings in this module interpret direct action as an active, collective form of **resistance** to continued encroachment on land and rights from non-Indigenous interests – in essence, resistance to contemporary expressions of colonialism. The next reading, by University of Victoria Indigenous Governance professors (Gerald) Taiaiake Alfred (Mohawk) and Jeff Corntassel (Cherokee) problematizes the tendency to interpret Indigenous peoples and lives through the **lens of colonialism** as a default framework. The authors offer strategies toward “Indigenous pathways of action and freedom” that begin at the individual level, as an alternative to institutional approaches to effecting change that often involve non-Indigenous structures and systems (p. 612). As you read through their “mantras of a resurgent Indigenous movement” on page 613, consider these in the context of those participating in the Unist’ot’en Action Camp.

The remaining assigned resources are in the form of media coverage of Aboriginal protest actions. As you peruse these news articles and broadcasts, pay attention to the treatment of legality and ethics. How did the Crown legally acquire jurisdiction to enforce its law on the people who were already here when it arrived? If by treaty, what were the circumstances at the time of the treaty? If not by treaty, by what instrument was the jurisdiction acquired? Either way (by treaty or not by treaty), what are the objectives of the Aboriginal group (or a subset of that Aboriginal group) for taking direct action? What is the goal? Is there an alternative way of achieving that goal? How would you approach the problem or apparent disconnect between the parties? Whose interpretations of rights, law and values are being applied?

As the Blomley article outlines, the media coverage of such protests tends to sensationalize events and often fails to adequately describe underlying historical and political motivations. As a result, media reports can act as a lightning rod for the type of public outrage that arises when Canadian liberal values are seen to be threatened by the actions of others (e.g. when the individual right to freedom of movement is halted by a blockade). Keep in mind that Blomley was writing in 1996, before the advent of social media and the

internet as a tool to share information and disseminate messaging. Consider too how social media has impacted our discussion of direct action interventions, including the Idle No More movement.

ASSIGNMENT

“It is important to identify all of the old and new faces of colonialism that continue to distort and dehumanize Indigenous peoples – often pitting us against each other in battles over authentic histories” (Alfred & Corntassel, 2005, p. 601).

In this exercise, you will watch two videos, peruse two websites, and read the newspaper article listed below. Consider the quote from Alfred and Corntassel in the context of the Unist’ot’en and the larger Wet’suwet’en community as you watch the videos. You will then complete a forum posting answering the questions below.

1. AJ+. (2014, Nov 5). How to stop an oil and gas pipeline: The Unisto’ot’en Camp resistance [Video file]. Retrieved from <https://www.youtube.com/watch?v=aiVxyLb1hJA>
2. Unist’ot’en Camp website. Retrieved from <http://unistotencamp.com/>
3. Unist’ot’en Camp Facebook page. Retrieved from <https://www.facebook.com/unistoten?fref=ts>
4. Goldberg, D. (2015, Apr 29). Resist: The Unist’ot’ten’s call to the land. [Video file]. Retrieved from <https://www.youtube.com/watch?v=ynR7MlcVGeI>
5. Lupick, T. (2015, Aug 31). Wet’suwet’en chiefs distance First Nation from Unist’ot’en camp, urge cooperation with pipeline companies. *The Georgia Straight*. Retrieved from <http://fnbc.info/news/wetsuweten-chiefs-distance-first-nation-unistoten-camp-urge-cooperation-pipeline-companies>
6. Pablo, C. (2014, Apr 7). Wet’suwet’en people disagree about Pacific Trail Pipeline project. *The Georgia Straight*. Retrieved from <http://www.straight.com/news/621226/wetsuweten-people-disagree-about-pacific-trail-pipelines-project>

Forum posting

The Wet’suwet’en have a complex traditional governance structure with many clans, each clan having hereditary chiefs who each have a set of responsibilities. The imposition of the Indian Act band council system disrupted this traditional system and caused tensions and

rifts in the communities. The provincial and federal governments continue to treat the band councils as the legitimate leaders of the community. Think of the complexities that arise when a band council supports a major project, such as an oil and gas pipeline, while the hereditary chiefs whose inherited land is directly affected are not consulted.

1. How might this complicate the discourse surrounding government consultation and accommodation processes as a tool to fulfill the duty of the Crown and ensure Aboriginal rights are protected when carrying out natural resource development projects?
2. Critically assess the effectiveness of direct action, considering the following questions: In this context, is direct action in the form of an occupation and/or blockade an effective intervention? Does it get parties to the table? Is there real traction gained in the protection of rights? Is there an empowering function to the symbolic action of standing up to industry and government?
3. What are potential downsides to direct action for Aboriginal communities? What role is played by the media and social media?

APPENDIX C: COURSE BLUEPRINT

COURSE BLUEPRINT

Module 1: Background

Purpose:

The purpose of this lesson is to provide the theoretical foundations for a discussion of intercultural relations between Aboriginal populations and non-Aboriginal British Columbians by situating these relationships within the colonial history of the province. Students will explore the ways in which cultural differences, power dynamics, and the impacts of colonialism continue to play out in dispute resolution systems today.

Learning outcomes:

- Recognize the diversity of Aboriginal cultures.
- Compare and contrast Aboriginal and settler worldviews.
- Understand the centrality of culture in conflict and dispute resolution.
- Articulate the ways power dynamics and the colonial encounter have shaped relationships, geographies, legal traditions, and intercultural dispute resolution systems in British Columbia.
- Critique how constructs of progress, justice, and spatial mapping have been and continue to be sites of power and tools of dispossession and oppression.

Assignment:

Forum questions: Research and analyze a specific conflict that has occurred in British Columbia between Aboriginal and non-Aboriginal communities or government. Referring to the readings and course content, describe the context, power dynamics, cultural basis for conflict resolution processes (if applicable) and effectiveness of resolution.

Module 2: History

Purpose:

Students will trace the way colonial attitudes, intercultural conflict and power dynamics have manifested throughout the history of British Columbia, and assess the ways in which their legacy persists to the present day.

Learning outcomes:

- Summarize key themes, events and issues in BC history that have affected Aboriginal-settler relationships

- Discuss the lasting impacts of colonialism, recognizing that colonialism affected First Nations unevenly across the province due to diversity between cultures, varying geography, specific relationships, and the impact of certain events.
- Assess the role that increasing pressures on land have played in the deterioration of relations between First Nations and newcomers.
- Describe various ways Aboriginal peoples in British Columbia have resisted colonial encroachment.
- Analyze the ways in which European concepts of “progress”, private property and law were used as discursive tools to provide moral and legal justification for the disposition of Aboriginal land.
- Recognize the implications of the lack of a consistent Aboriginal land policy in BC, including the lack of historic treaties.

Assignment:

Forum posting: Read a primary document (letter to Sir Wilfred Laurier from the Chiefs of the Shuswap, Okanagan and Couteau tribes, 1910) and compose a short response to the Chiefs from either Laurier or a representative of the provincial government. This response must include reference to contemporaneous views on Aboriginal land rights as well as reflecting common colonial attitudes.

Module 3: Legal

Purpose:

The purpose of this module is to trace the evolution of the recognition and definition of Aboriginal rights and title in British Columbia through the court system. Students will situate these legal developments within your new understanding of the historical and political context and analyze their impacts on Aboriginal-Crown relationships and public policy.

Learning outcomes:

- Summarize key legal developments in the province that have impacted the way Aboriginal rights and title are recognized and understood
- Describe the relationship between the courts, legislation, policy decisions, and the development of the BC treaty process
- Critically analyze the suitability of the court system as a western-based dispute resolution system for addressing, defining and interpreting Aboriginal rights
- Understand the connection between the notions of certainty, reconciliation, and the treaty-making process

Assignment:

Forum questions: Conceptual analysis: Analyze the concept of the *honour of the Crown* and relate it to legal traditions such as the Royal Proclamation and the *Constitution Act, 1982*. Explore differing perspectives on certainty, identifying the interests of various parties based on the way in which they understand and present the concept.

Module 4: Treaty and Non-treaty Agreements

Purpose:

The purpose of this module is to examine the modern treaty process and non-treaty agreements in British Columbia, including their objectives, successes and limitations as tools to achieve reconciliation of Crown and Aboriginal interests.

Learning outcomes:

- Understand the significance of certainty as a goal of the BC treaty process, as it relates to resource development and the provincial economy
- Describe the structure, mechanics and procedures of the BC treaty process
- Discuss the goals of the BC treaty process and critically analyze its successes and challenges
- Outline critiques of the BC treaty process from various perspectives and evaluate suggested alternatives
- Understand that the BC treaty process is not suitable or desirable for all BC First Nations and summarize key elements of non-treaty agreements that may serve to reconcile certain interests

Assignment:

Forum posting: Respond to a news article and interview excerpt relating to the provincial government's veto of the BC Treaty Commission's incoming chief commissioner. Critically examine the implications of this in the context of the parties' past relationship, and consider possible impacts this development might have on levels of trust between the parties moving forward.

Module 5: Consultation

Purpose:

In this module, students will have the opportunity to integrate and put into practice the learning from previous modules in this course and from other Dispute Resolution and Public Administration courses. They will apply their understanding of culture, power, negotiation and facilitation to their knowledge of the legal, political and historical context of consultation with First Nations as they design and develop a consultation protocol for a natural resource development project in British Columbia.

Learning outcomes:

- Understand the legal obligations of the Crown in relation to consultation and accommodation for projects with varying degrees of potential impact
- Critically analyze the differing perspectives, expectations and goals of the Crown, First Nations and natural resource development project proponents in relation to consultation
- Apply the knowledge, skills and competencies gained in this course to the development of a consultation case study that takes into account legal parameters for consultation as well as relational, political and historical realities

Assignment:

Students will develop and carry out a consultation process for a proposed natural resource development project that will potentially impact the Aboriginal rights of local First Nations. They will make use of some of the same resources and follow the same steps as provincial government employees who carry out such consultations, including the development of a consultation record and process design. They will take into account established best practices as well as relational guidelines in the completion of this assignment.

Module 6: Rights, Power and Interests**Purpose:**

In this module, students will explore the legal and ethical complexities of Aboriginal groups employing direct action tactics, including blockades and occupations, to disrupt political and economic activities that are seen as encroaching upon Aboriginal and treaty rights. They will situate direct action in historical and political context, and interpret such actions through the interrelationship of interests, rights and power underlying dispute resolution systems design.

Learning outcomes:

- Situate Aboriginal direct action tactics, including blockades and occupations throughout Canada in historical, legal and relational context and consider whether such actions are effective interventions
- Critically reflect on the use of civil disobedience as a strategy to effect political change
- Discuss the legal complexities involved in exerting power to draw attention to social justice issues and the suppression of rights

Assignment:

Forum posting: Students explore a case study of an Aboriginal direct action initiative that has attracted a great deal of recent media attention. They will refer to media articles, videos and social media to analyze the conflict, and will post their deliberations on questions relating to the legality, justification and effectiveness of such direct action. This posting challenges students to consider specific contexts, address the complexity of such disputes, and reflect on the historical tensions surrounding resource development projects and Aboriginal and treaty rights in the province.