

TRC Implementation Committee – Interim Report, Academic year 2018-19

This year, our mandate letter asked us to:

1. Continue its work, including monitoring the Faculty's progress on the implementation of past recommendations.
2. Consider possible options for programming on cultural competency, including possibly a mandatory course.
3. Work towards going live with the database of Indigenous-related curricular offerings.

Some progress was made on all fronts.

Monitoring Progress

In its earliest years, the TRC Implementation Committee determined that now was not the time for a mandatory course in Aboriginal law. Our thinking then, and largely still now, is that our incoming 1L students generally lack the necessary historical background to put contemporary Indigenous claims into their proper contexts. The Committee felt that without a suitable knowledge of the actual historical events that shaped this continent, discussions of Aboriginal law (that is the law of the state with respect to Indigenous people) would be empty. We used the analogy that studying refugee law does not make one sympathetic to refugee claims – that sympathy could be developed through exposure to the realities of the immigration system, and the real stories of challenges immigrants face both in trying to enter the country, to stay, and to follow on a path to citizenship. Relatedly, the Committee took the view that hiving off discussion of Aboriginal law to a single mandatory course allowed the general structure of the law school classes to turn away from Aboriginal law content because our commitment to a mandatory course could easily lessen enthusiasm for individual professors working to include Indigenous/Aboriginal content in our broader course offerings. Reconciliation, we believe, is best championed by each professor, and each course, working to make materials on Aboriginal peoples a basic part of the learning experience in our diverse course offerings.

That said, there is the question of to what extent individual faculty members are managing to integrate a range of materials related to Indigenous people in our various course offerings. Last year we attempted to gather up from faculty the actual materials used in each class. The results of this effort were disappointing at best. This year, we tried again, writing individually to each faculty member, and explaining that we were conducting a 'mapping exercise' of our course content regarding the inclusion of Aboriginal/Indigenous law. The email included a standardized template and we asked what kinds of material were used, what cases were looked at, and any other comments that faculty believed we would find helpful in compiling this data.

About 40 individual full time faculty members (and a few adjuncts) wrote back to us, often including information on more than one course. The wealth of data caught us off guard, especially given the extremely poor participation rate the previous year. We then had each of the email responses transferred to individual word documents and divided our data into two sets: upper year and 1L.

We intend to work with a summer student to bring order to the data that we have in several different ways:

- 1) Regarding the upper year courses, our intention is to pair likes with likes: all the admin law courses in one pile; all the tax courses in another pile; etc. This will allow us to determine to what extent each subject area has faculty members who have more and which have less Aboriginal/Indigenous content in each class area. With this data in hand, we can then work to provide materials from those who do more, to those who do less, in an effort to encourage increasing content regarding Aboriginal/Indigenous law in each subject area. We may try to encourage meetings between professors who have overlapping subject matters to meet and discuss issues, challenges and successes of working Indigenous/Aboriginal law into the particular subject matter.
- 2) With respect to the 1L courses, we intend to do a similar pairing of likes with likes, but to a different end. By assembling the course offerings of all of our property and constitutional law classes we can compare Indigenous/Aboriginal law offerings in our first-year program. With that, we can imagine a best and a worst case scenario: potentially, some student could end up with a series of 1L professors that exposed her to many hours of Aboriginal/Indigenous legal content in 1L; and we can imagine a set of professors who, between them, offer the least number of hours of instruction in Aboriginal/Indigenous law. This will allow us to compare possible outcomes, and this is especially important when it comes to the next issue to be discussed, namely, a minimum number of credit hours of instruction in the 1L program.

A minimum number of credit hours of instruction in the 1L program.

Our idea is simple: if we are not going to offer a mandatory course in Aboriginal/Indigenous law in the 1L, could we ensure that each 1L student receives a minimum of 25 hours of instruction during their first year, the rough equivalent of a two-credit seminar. At present, we could include in these credit hours: The Blanket Exercise (2hrs); Instruction in Legal Methods by Professor Sanderson (4hrs); a legal ethics session on issues in Aboriginal/Indigenous legal issues (2hrs); and the remaining 17 hours to be spread across constitutional and property law in the regular 1L program. This would require each constitutional law and property law professor to spend at least 8.5 hours of time on Aboriginal/Indigenous law in first year. Fortunately, many constitutional law professors spend roughly 8 hours on Aboriginal and Indigenous law, and so providing materials to those who spend less than 8 hours should be easy to do. Where we can ensure adequate coverage of constitutional and property law in the 1L program, we generate the equivalent of a mandatory course in terms of credit hours spent in the 1L program.

And, we should note, this is not to rule out forever, the possibility of a mandatory course in Aboriginal law at some point in the future, should the Committee determine that such a course will in fact be more useful than the spread out and embedded nature of the instruction that the Committee is currently advocating.

A course in Aboriginal/Indigenous law as a graduation requirement.

The faculty currently requires all graduating students to have completed one course in International, Comparative, Transnational Law and another course meeting the Critical Perspectives requirements. The Committee this year considered the feasibility of requesting that the faculty add an additional requirement to graduation, namely a substantive course in Aboriginal law or Indigenous Legal Traditions. Assistant Dean Faherty compiled for us a list of eligible courses, and cautioned that in order to provide enough courses with enough seats in each course for every upper year student to take at least one of those courses, we would require some 200 class seats per year, spread between whatever number of classes we offered. At present, we do not have sufficient teaching capacity to provide a sufficient number of courses. Appendix 1 lists the courses that are, or have been, taught at the faculty in the past few years. Not all classes are offered every year. If the Dean were to place a priority on pursuing a mandatory course requirement in Aboriginal/Indigenous law, serious consideration of the ability to provide such courses should play a role in future hiring decisions.

A mandatory course in Indigenous Cultural Competency.

Last year, and into this academic year, the Committee began to consider the possibility of a mandatory course, but not in Aboriginal law *per se*. Instead, and in keeping with the Committee's general view that at present our focus should be on contextualizing Indigenous claims rather than black letter law, we considered the possibility of a mandatory course in Indigenous Cultural Competency. We envisioned such a course providing law students with information about Indigenous spiritual and cultural practices, world views, and histories. We left aside the question of how to deliver a one credit mandatory course (intersession, O-Week, etc.) until we determined if there were local resources capable of delivering such materials in a consistent and reliable way.

Rochelle Allen, Acting Manager of the Indigenous Initiatives Office, was tasked with investigating and evaluating two existing programs. The first was an all-day session offered by the Ontario Federation of Indian Friendship Centers (OFIFC). The OFIFC is a very long standing and very reliable organization. Their training program is probably too general in scope and not easily tailored to law students. And the program is costly. Based on estimated of their existing offering and class sizes, the OFIFC program would cost a minimum of \$10,000 to provide 200 seats.

The Native Canadian Center of Toronto (NCCT) offers a program that is historical in scope and focuses on issues of cultural identity and its challenges in the face of residential schools, the 60's scoop and other events and contexts. The NCCT is also a long-standing service provider with a good reputation. The NCCT program is still more expensive than the OFIFC program, with a cost of \$275 per person (or \$55,000 for 200 seats). It is not clear how much if any customization is possible.

On recommendation from the First Nations Representations on Ontario Juries report, the Indigenous Justice Division of the Ministry of the Attorney General (MAG), initiated a cultural competency training program for justice sector workers. While legal in orientation, the program is

delivered to a maximum 25 persons at a time. We have not been able to gain a lot more in terms of details, but it seems like this is a program designed by MAG for MAG employees.

While falling short of a course of any kind, the Indigenous Bar Association (IBA) has developed a guide for lawyers working with Indigenous people. It is a free volume available in pdf form.

The Committee is not certain that any of these existing programs are suitable for our purposes, and so we continue to consider other means of delivering cultural competency training. One proposal is to create a list of books that provide historical and cultural context to Indigenous settler relations, and then ask incoming 1L students to read at least one of these texts prior to arriving for their first day of school. This proposal is modest but is easily implemented. Of course, we will have no way of knowing if students will actually read the texts, but, by setting out the list, and our expectation that students commit to reading about the subject matter, we are sending a strong signal to students that reconciliation is their job, as well as ours.

In summary, as academic year 2018-19 comes to an end, these are our recommendations for the coming year:

- The Committee be directed to continue and to complete its mapping exercise with two aims:
 - To create some uniformity in teaching property and constitutional law such that a minimum number of hours are taught to each 1L student in the context of Indigenous and Aboriginal law. And to do this by sharing among our professors' materials, strategies, and content currently being used in our 1L curriculum.
 - To assess the diversity and extent of Indigenous and Aboriginal law taught in the upper years of our program; and to match course content between professors teaching the same subject, thereby making it easy for some professors to increase the Indigenous/Aboriginal content in their classrooms.
- The Committee be directed to continue examining ways of delivering cultural competency training to our student body. And relatedly, to implement a plan to ask all incoming 1L students to read a book from a list (to be generated by the committee) on Canadian history and Indigenous-Settler relations.
- The committee be asked to continue to consider how to increase the number of courses we teach in Indigenous/Aboriginal law such that it will be possible to make taking one of these courses a graduation requirement.

Appendix 1 – Courses offered in Indigenous and Aboriginal Law

[Indigenous Peoples and Canadian Law \(LAW370H1S\)](#)

[Indigenous People and Canadian Courts: Advocacy, Evidentiary and Ethical Issues \(LAW476H1F\)](#)

[Issues in Aboriginal Law and Policy \(LAW281H1F\)](#)

[Aboriginal Law Practicum \(LAW377H1S\)*](#)

[Canadian Legal History: Law and Indigenous Peoples in the New Dominion \(LAW576H1S\)](#)

[Indigenous Legal Traditions and the Imperial Response \(LAW274H1S\)](#)

[Intensive Course: Anishinaabe Law in Toronto: Understanding Constitutionalism in Context \(LAW710H1S\)](#)

[Intensive Course: snuwyulh: Indigenous Legal Traditions in the Coast Salish World \(LAW717H1S\)](#)

The following are not traditional classes, but do offer significant content in Aboriginal/Indigenous law:

[Journal: Indigenous Law \(LAW494Y1Y\)](#)

[Moot - Kawaskimhon Moot Competitive Program & Advanced Aboriginal Studies Competitive Program \(LAW331Y1Y\)](#)

The following may involve significant content in Aboriginal law:

[Clinical Legal Education: Asper Centre for Constitutional Rights \(LAW391H1F\)](#)

[Clinical Legal Education: Externship - Aboriginal Legal Services \(0104\) \(LAW248Y1Y\)](#)

[Wrongful Convictions \(LAW542H1F\)](#)