

## Report of the Curriculum Committee re New Course on Indigenous Peoples and the Law

### *Introduction*

This year, the Dean's Mandate for the Curriculum Committee included the following items:

1. Develop recommendations concerning the introduction of a mandatory course on Indigenous Peoples and law in Canada, bearing in mind the TRC's Calls to Action, into the Faculty's curriculum. To these ends, I ask that the Committee consult Faculty members, students and relevant stakeholders, and liaise with the TRC Committee, to inform its deliberations on content and placement (first year vs. upper year) of the course.
2. Consider and make recommendations concerning any changes to the first year or upper year curriculum necessary to accommodate a mandatory course on Indigenous Peoples and law in Canada.
3. Conclude consideration of the structure of small group teaching in first year and make recommendations for improvements, if any.

The Committee worked throughout the year to fulfill this mandate, and has now concluded its deliberations. We recommend that Faculty Council approve the adoption of a new set of courses on Indigenous Peoples and the Law. These courses will include a one-credit ungraded course to be taken in the fall semester of the first year program, and a three-credit graded courses to be taken in the winter semester of the first year program. To fit the new course into the program, the Committee recommends the removal of the Legal Process course, and asks the Dean to include in the Committee's mandate for 2022-23 further consideration of that course's place in the law school curriculum along with such other changes as may be associated with such consideration.

A Motion to effect the curricular changes is included at the end of this Report.

### *Deliberations*

The Committee met several times over the course of the year (including both live meetings and email exchanges), during which it discussed a wide range of considerations surrounding the adoption of the new course. The Committee (or its delegates) also had the opportunity to consult with Faculty members, members of the administration, students, and the Indigenous Law Students Association, and to liaise with the TRC Committee. The Committee wishes to extend its gratitude to everyone who participated in this process for their helpful and constructive comments.

The Committee, in the light of these considerations, also had the opportunity to review and discuss programs being offered at other Canadian law schools leading in this area, including McGill and Dalhousie, and, through its Chair, to discuss those courses with members of those faculties.

In its own discussions, the Committee has been mindful of several broad guiding considerations, including the following:

- Call to Action 28 of the Truth and Reconciliation Commission's Report;
- The centrality of the issues to be covered in any new course to the study of law at the Faculty of Law;
- The need to ensure that any new mandatory course meet the Faculty of Law's extremely high standards for content, quality;
- Interactions between a mandatory course on Indigenous issues and the other parts of the law school's co- and extra-curricular programming in the area, including questions of 'cultural competency' training;
- Considerations, broadly speaking, of academic freedom, in the sense that the Committee does not view its role as drafting a syllabus for a course but rather as providing the general outlines of a course leading, most probably, to a course description which could then be taken up by potential instructors to teach different versions of the same course according to their own interests, areas of expertise, etc.

*Material to be covered*

Based on discussions with the stakeholders mentioned above as well as its review of syllabi at other Canadian law schools and on the contents of Call to Action 28, the Committee believes that first year students ought to receive instruction in a wide range of topics, including many of the following:

- Basic competency in the various different Indigenous groups in Canada (First Nations, Inuit, Metis), their history and relations and so on. This topic stands out as needing a slightly different treatment than the others (as will be discussed below);
- Legal History, broadly construed: the present situation of Indigenous peoples in Canada is hard to understand without at least some detailed discussion of a series of legal and political choices made around the second half of the 19th century, and potentially other historical periods. It is important to emphasize that the point here is not that the course's subject matter is 'in the past,' but rather than the historical inquiry is a necessary part of an inquiry into the present;
- Indigenous Legal Orders considered as such: there is an increasingly prevalent and developed body of literature on the nature and contents of various different Indigenous Legal Orders, and a related emphasis on the pedagogical value of thinking about these legal orders on their own terms, which is to say learning, say Anishinaabe law on its own terms as its own legal system;
- Theoretical questions about the nature of Indigenous sovereignty, the idea of Canada's constitution as constituted, in part, by Indigenous law, and so on;
- Aboriginal Law: questions about the Indian Act, about s. 35, and so on, potentially including some overlap with what is typically now covered in our first year Property and Constitutional Law courses;
- Contemporary practical questions, including issues around liability for residential schools and the 60s scoop;
- International Law questions, including UNDRIP.

The Committee's recommendation is that this material be covered in two connected but separate courses.

*Fall Semester: One Credit Ungraded Introduction*

The first of the topics listed above—basic competency on the history and present situation of Indigenous peoples in Canada—stands out, as noted above, as somewhat different than the others, in that it is arguably non-legal or pre-legal. There has been concern raised (both at the Committee and in wider discussions last year) that this material is not suitable for a for-credit course at the Faculty, both from the point of view of the nature of a for-credit law school course and from the point of view of the material itself, as this material arguably ought to be approached in a spirit of openness that may be difficult to reconcile with the law school's grading scale. At the same time, there seems to be a good case that can be made that our student body arrives in law school with quite a wide range of basic competency about Indigenous Issues and that some basic work to ensure everyone starts 'on the same page' might be valuable, at least in the short term.

The Committee therefore recommends that this material be covered in a one-credit ungraded course to be held in the first semester, and (tentatively) entitled *Introduction to Indigenous Peoples and the Law*. Other Canadian law schools have done this with some success, including by taking advantage of independently created online courses. On this way of proceeding, the basic information would not be a part of a graded course but would still be something that students need to take as a graduation requirement, and could be offered, for instance, in a format like Legal Methods or in a different format in the first semester of the first year program.

*Winter Semester: Indigenous Peoples and the Law*

The Committee's next (and central) recommendation is that the other topics form the contents of a new three credit course to be held in the winter semester of the first year program. Given the amount of material to be covered, the Committee recommends that the new course be a three credit course, that is, a course that meets for three hours per week for the entire semester.

Keeping in mind that the Committee's role is to recommend the adoption of the new course, but that the specific contents of the actual course to be taught will be a matter for the individual instructors of the course, the Committee recommends at this point the adoption of a course whose course description might take a form like the following:

**Indigenous Peoples and the Law**

This course aims to address a range of considerations arising out of past and present interactions between Indigenous peoples and the Canadian legal system. Topics to be covered may include the following: the history of Crown-Indigenous relations, Indigenous legal orders, the nature of Indigenous sovereignty, Aboriginal Rights and law, Treaties, UNDRIP, the history and legacy of residential schools, and other contemporary topics.

Of the other topics, the Committee's view was that the first two—the history and the Indigenous Legal Orders—were the most important, and that an ideal version of the course would involve both of them, at a minimum. But, as noted above, the Committee was also sensitive to the idea that different instructors might choose to offer different versions of such a course, and so could choose from the above topics in terms of how to set up a particular version of the course. That would situate the new course in a way very similar to other mandatory courses, where a single course description covers a wide range of different actual instances. Further, of course, individual instructors might choose to add to or to adjust their course descriptions accordingly.

It should also be noted that this new course is not meant to cover all of the material in this area. We are hopeful that it could integrate with other courses in the first year and upper year programs, and serve as a foundation for further advanced study in any of the areas outlined above.

In addition, it should be noted that ILSA have requested that the Dean mandate next year's TRC Committee to begin a process to consider if the new course should carry a different name, and in particular a name in an Indigenous language.

#### *Placement in the First Year*

As noted, the Committee recommends that the new course take place in the second semester of the first year program. There are both pedagogical and practical reasons for this recommendation. Pedagogically, the Committee's current thinking about the course is that it ought to be placed in a way that balances between an early-enough introduction to ensure that the course material is not seen as an afterthought vis-à-vis the other first year courses and a late-enough introduction to allow students to approach it with some understanding of basic legal concepts. The winter semester placement seems best suited to achieve this balance.

Practically, the Committee is sensitive to the need to ensure that addition of new courses be 'credit neutral,' in the sense of neither adding nor subtracting credits to the first year program. Given that the two components of the course add up to four credits, and given the results of consultations that took place last year, according to which Legal Process was viewed broadly (although by no means universally) by students and Faculty as the part of the first year program that was most amenable to being removed, the Committee recommends that Legal Process be removed and replaced by the new course. The Committee does not at this time recommend any final determination as to the fate of Legal Process, but asks the Dean to mandate next year's Committee to continue consideration of the role of Legal Process in the law school curriculum, and to consider further options for reform associated with rethinking Legal Process.

Note that moving Legal Process out of the first year program buys a 'free' year during which to deliberate about Legal Process, since current first year students have already taken it, and so any mandatory upper year version of the course will not be required until fall 2023.

The Committee also wishes to note that, at present, a full day of Legal Methods is dedicated to discussing issues that will make up the contents of the new course, and that this day will henceforth be opened up; the Committee's suggestion is that the Legal Methods curriculum be adjusted to include some material about the basics of the legal process, to address the gap created by moving Legal Process out of the first year program.

### *Motions*

Be it resolved that:

As of September 2022, JD students enrolled in the Faculty of Law, as part of the class of 2025 and beyond, be required to take a one credit ungraded course, to be called *Introduction to Indigenous Peoples and the Law*, to take place in the fall semester of the first year program;

As of September 2022, JD students enrolled in the Faculty of Law, as part of the class of 2025 and beyond, be required to take a three credit graded course, to be called *Indigenous Peoples and the Law*, to take place in the winter semester of the first year program, and to have a course description indicating coverage of topics modelled on the following:

This course aims to address the range of considerations arising out of past and present interactions between Indigenous peoples and the Canadian legal system. Topics to be covered may include the following: the history of Crown-Indigenous relations, Indigenous legal orders, the nature of Indigenous sovereignty, Aboriginal Rights and law, Treaties, UNDRIP, the history and legacy of residential schools, and other contemporary topics.

As of September 2022, JD students enrolled in the Faculty of Law, as part of the class of 2025 and beyond, no longer be required to take *Legal Process* as part of the first year program.