

RACE, SEX, FAMILIES¹
Law 343-6
Spring 2021

Faculty of Law, University of Victoria
Professor Gillian Calder

Office location: Diana Priestly Law Library, Rm 305
Office telephone: (250) 472-5127
Cell: (250) 881-2655
E-mail address: gcalder@uvic.ca
Course website: Brightspace: <https://bright.uvic.ca/d21/home/51799>
Zoom link: <https://uvic.zoom.us/j/89075053650>

Course Outline: Race, Sex, Families
First Nation Caring Society: Imaginative Advocacy and Transformational Change
Spring 2021

I. Course Description

This course takes up the challenging moment that we are living through, paying attention to the way that racism, in particular, shapes the Canadian family. What is “the family” in the Canadian legal context and why do particular understandings of the family hold such political power? The course will enable students to address the intersections of racism, colonialism and gendered ways of knowing and being, and to interrogate the breadth and depth of family ideologies in Canada today.

This year, the course will centre the 2016 decision of the Canadian Human Rights Commission: *First Nations Child and Family Caring Society v Canada*, 2016 CHRT 2 substantively and as an example of creative legal advocacy for transformative change.

See also: <https://fncaringsociety.com/i-am-witness-tribunal-timeline-and-documents>

II. Course Objectives

- stimulate your interest in the relationship between race, colonialism, gender, sexuality, childhood and law; with attention to the ways in which families are constructed as a result;
- convey basic principles that underlie and inform substantive questions of familial ideology in Canada, with attention to explanations of intersecting inequalities such as gender, race, ability, class and sexual identity;
- offer opportunities to critically examine those same principles, using a range of perspectives, with primary attention to creative means of legal advocacy;

¹ Huge gratitude to Dr Patricia Cochran for sharing resources and to Jenny Lee for extraordinary research assistance.

- enable you to identify key issues across substantive areas of law, and to write about those issues with attention to complex social and legal forces;
- provide you with an opportunity to examine and discuss the political forces and theoretical debates that shape the law in this area;
- challenge you to interrogate the role that legal education plays in the adequate preparation of legal advocates; and
- develop your ethical imaginations, centring the legal skills of creativity, empathy, community mobilization and collaboration.

III. Instructor

Gillian Calder has been teaching law at UVic since 2004 and was Associate Dean for students from 2015-2020. She teaches at the intersections of public and private law, and is fascinated by performativity. She is a scholar of amongst other things, feminist legal theories, constitutional and family law, art as law, and critical legal pedagogy. She believes that the classroom is a laboratory, and that deep learning comes from iteration and embodiment; that you can't really understand the dynamic nature of any legal concept unless you are moving yourself. Outside of this building she is a single parent, a lapsed rock climber, a lover of penguins, and the maker of the world's third best shortbread. Pronouns: she/her

IV. Learning Law in the COVID-19 Pandemic

Our course is taking place solely on-line. The issues that we will be addressing in this course are challenging ones, and arguably, it would be easier to have these difficult conversations in person, and with the benefit of a diversity of learning modalities. I am also cognizant that we will all be teaching and learning law balancing the effects that the pandemic has wrought on our families, our incomes, health and housing. I will do my best to pay attention to our learning environment as we learn difficult law at a distance from each other, and through this most unsettling of moments.

I have set a reading list and worked to create a vision for this course that keeps at front of mind the distance learning and the challenges of COVID times. To that end, the learning in this course will be **fluid**. I will adapt the course as our collective needs evolve. I have set the expectations and evaluation based on what I think we could all do today. But if there is need, based on the pandemic, individual health, or other factors, we will adjust.

My aim is to teach mostly synchronously. That is, I will assign readings, and offer a class environment for an hour and a half, each Tuesday and Thursday at our set time. We are a small group, but I will use break out rooms on occasion, and draw on other forms of learning on occasion as well. The plan is that Tuesday will be synchronous and discussion based – drawing on the assigned materials. Thursday's class each week will be putting those materials into action, and sometimes that will be asynchronous work.

We will use Brightspace and Zoom. Brightspace will be the repository of materials, and Zoom will be used for content delivery. I don't intend to use many bells and whistles, and I will pay as much attention

as I can to the fatigue that comes from too much screen time.

Finally, please be reminded of the resources of the front office, the Centre for Accessible Learning and the Amicus Team. We are living and learning in a pandemic, and that is stressful for us all. If your learning is impacted by the exigencies of the pandemic, please do contact me directly, or seek the supports that the law school and the University has at this time.

V. Administrative Details

A. Class location and Times

Tuesdays and Thursdays, 11:00 – 12:20

Zoom link: <https://uvic.zoom.us/j/89075053650>

B. Office Hours

I have an open door policy, and that will continue in this virtual world. Just send me an email and we can find a way to chat on the phone or via Zoom: gcalder@uvic.ca

C. Course Web-site

This course has a Brightspace site which will be used for posting of all extra materials handed out in class and for announcements. The website is located at: <https://bright.uvic.ca/d2l/home/51799>

VI. Materials

A. Required Materials

All reading will be from on-line materials, or handouts posted to Brightspace. In addition to this syllabus there is also a reading outline that details what the choices are for each week. As we move through the course there may be a need to shift some of what is assigned, but we will cross that bridge when we get to it, if need be.

B. Supplementary Materials

There is a world of supplementary material that can be accessed in a course such as this, I will do my best to create an archive on Brightspace. Your papers, projects and visual work will also diversify what extra readings will be valuable to your learning. It is my practice to use Twitter for things I find of relevance to our course. Access to Twitter does not require an account. Follow me at <https://twitter.com/gilliancalder> or search the hashtag #Law343.

VII. Teaching Methodology, Attendance and Participation

This is a discussion-based seminar, and as such, regular attendance and active participation of students is encouraged. There will, of course, be times when your participation or your attendance will be affected due to illness, an unexpected occurrence and for other reasons. If you miss a class due to these reasons, you should feel free to come and discuss with us material that was covered in the class you were unable to attend.

This course **will not** be recorded, and please note that recording of the class, by students, without express permission (in the absence of accommodation) is not permitted. Given the subject matter, I will ask students to participate on Zoom with cameras on.

An inclusive and respectful classroom environment is crucial to a positive learning experience. So is constantly challenging what “inclusive” and “respectful” means. To ensure that all students feel welcome and able to participate in class discussions, we must strive to be courteous, considerate but also courageous in our use of language and examples, and the manner in which we engage with each other individually and as a group. The University and Faculty are committed to promoting, providing and protecting a positive, supportive and safe learning and working environment for all their members. But we don’t always succeed in meeting this goal. We will need to work together to ensure that all aspects of this class live up to this commitment – particularly in our new virtual reality. If you have any concerns about the climate of the class, please feel free to speak to me at anytime.

If you would like to discuss classroom or assignment accommodation necessitated by a permanent or temporary disability, or for other reasons, please see Yvonne Lawson, the Manager Administration and Student Services (lawmaass@uvic.ca) as soon as possible.

VIII. Evaluation and Expectations

A. Overview

There will be three evaluation components: a visual documentary project, a research presentation, and a final project or paper.

B. Detailed Assessment Expectations

1. Visual Documentary (20%)

A theme of this course is understanding the way that questions of law and identity are shaped in our communities, and to enable students to understand their own roles of self-education, allyship and collaboration in those spaces. All students will be asked to create a visual documentary, in a form

of their choosing, on the theme of “family as community/community as family.” More information will be provided in a detailed handout provided the week of January 19th. **Due date: Tuesday, March 16, 2021.**

2. Research Presentation (10%)

In the four classes that precede our final week of classes you will be asked to present on the research you are doing for your final project/paper. The goal of the presentation is to reflect back to the class your research choice and findings on the intersection of race, sex, families in the project or paper chosen. This presentation can be done solely or in a group of any size. The presentation will be time-limited (likely 20 minutes), but can be in any form that the student chooses. **Due date: March 23, 25, 30 or April 1, 2021.**

3. Research Paper/Project (70%)

All students will be required to submit a 20-25 page research paper on a question or topic the draws on the themes of the course – race, sex, families. The aim of this paper is to apply the knowledge and insights that you have gained during the course to a topic that we have not covered in any great depth. A detailed hand-out with respect to this assignment will be circulated the week of January 19th. All students will be expected to meet with me at least once to discuss their topics, research questions and ideas. Students who wish for this to be their major paper are required to submit a 30-35 page paper, and should meet with me early in the course to discuss this option.

It will be possible, and indeed welcomed, to propose a research project instead of a research paper to fulfill this aspect of the course. All students who aim to fulfill this component of the course through another medium must have their idea approved by me. Students interested in doing projects should look at this blog: <https://onlineacademiccommunity.uvic.ca/projectpedagogy/> and be thinking in advance about the connection between the argument you wish to make and your proposed medium.

The paper or project will be due two weeks from our final class: **Thursday, April 22, 2021.**

C. Page length

“Pages” mean letter-size (8 ½" x 11") paper, double-spaced, typed, with 12 point font and 1" margins. Students must use Times New Roman Font.

Any assignments that are handed in late without accommodation will be docked one grade level for each partial day beyond the due date.

IX. Regulations

- A. Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2020-2021 (“UVic Calendar”), both generally and specifically for the Faculty of Law.
- B. The assignments will be due to Brightspace on the date specified in the instructions distributed with the assignment. Penalties will flow for lateness and or non-compliance with formatting and other assignment related requirements. Consult the assignment handout for specifics.
- C. Academic integrity is expected of all participants in the University Community. **Please familiarize yourselves with the University’s Policy on Academic Integrity set out in the U Vic Calendar; and on-line at:**
https://www.uvic.ca/calendar/undergrad/index.php#/policy/Sk_0xsM_V?bc=true&bcCurrent=08%20-%20Policy%20on%20Academic%20Integrity&bcGroup=Undergraduate%20Academic%20Regulations&bcItemType=policies
- D. The following breakdown of letters and percentages is the one that the University of Victoria Faculty of Law uses to determine course grades:

	Grade Point Value	Percentage Value	Narrative Description
A+	9	90-100%	An A+, A, or A- is earned by work which is technically superior, shows mastery ² of the subject matter, and in the case of an A+ offers original insight and/or goes beyond course expectations.
A	8	85-89%	
A-	7	80-84%	
B+	6	77-79%	A B+, B, or B- is earned by work that indicates a good comprehension of the course material, a good command of the skills needed to work with the course material, and the student’s full engagement with the course requirements and activities. A B+ represents a more complex understanding and/or application of the course material.
B	5	73-76%	
B-	4	70-72%	

2 Blech. I do not like the word “mastery.” My expectation here is that your work is outstanding, it pushes boundaries, is comprehensive and inclusive, rigorous, accessible, and where relevant, of publishable quality.

C+	3	65-69%	A C+ or C is earned by work that indicates an adequate comprehension of the course material and the skills needed to work with the course material and that indicates the student has met the basic requirements for completing assigned work and/or participating in class activities.
C	2	60-64%	
D	1	50-59%	A D is earned by work that indicates minimal command of the course materials and/or minimal participation in class activities that is worthy of course credit toward the degree.
F	0	49 and below	F is earned by work, which after the completion of course requirements, is inadequate and unworthy of course credit towards the degree.

X. Detailed Outline

The detailed course outline is provided separately on the course Reading List. This reading list may change over the course of the term. If so, updated reading lists will be posted to our Brightspace site.

Gillian Calder
January 10, 2021

Law 343-6: Race, Sex, Families¹

Reading Outline: Spring 2021

Reading Strategy: for each Tuesday's class please read (listen to, or watch) the assigned readings for the week. We will typically spend the Tuesday class discussing the assigned materials and the Thursday class applying them in some form of practice.

Most readings assigned are available on-line at the links below (and accessible when you are signed into a computer with your netlink ID); others will be archived on our Brightspace site. If the link doesn't work on your home computer, search for the article name either through google, or in a database like Hein Online. #OpenAccess

<u>Date</u>	<u>Topic</u>
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January 12-14: Trauma, Toolkits and Laying the Groundwork

<https://www.goldeneaglerising.org/docuploads/Golden-Eagle-Rising-Society-Trauma-Informed-Toolkit-2020-10-18.pdf>, pp. 9-15, 24-35

Sara Ahmed, "A Killjoy Survival Kit" in *Living a Feminist Life* (Durham and London: Duke University Press, 2017), pp. 235-249 (on Brightspace)

Assembly of First Nations and the First Nations Child and Family Caring Society Canadian Human Rights Commission Complaint (2007), pp. 1-3
https://fncaringociety.com/sites/default/files/caring_society_afn_hr_complaint_2007.pdf

January 19-21: Intersectionality, Jurisprudence and Law's Stories

Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) 1(8) *University of Chicago Legal Forum* 139-167.
<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=uclf>

Mari Matsuda, "When the First Quail Calls: Multiple Consciousness as Jurisprudential Method" (1989) 11 *Women's Rights Law Reporter* 7-10
<https://scholarspace.manoa.hawaii.edu/bitstream/10125/65954/When%20the%20First%20Quail%20%20Calls.pdf>

Val Napoleon, "An Imaginary for Our Sisters: Spirits and Indigenous Law" forthcoming in Jeffery Hewitt and Richard Moon, eds., *Indigenous Spirituality* (2021), pp. 1-10 (on Brightspace)

Christy Jordan-Fenton and Margaret Pokiak-Fenton, *Fatty Legs: A True Story* (Vancouver: Annick Press, 2010), pp. 1-15 (on Brightspace)

¹ Thank you to Jenny Lee for excellent research assistance.

January 26-28: Jordan’s Principle

Alanis Obomsawin, National Film Board of Canada, “Jordan River Anderson, The Messenger”: <https://www.nfb.ca/film/jordan-river-anderson-the-messenger/> (1 hour, 5 minutes)

First Nations Child and Family Caring Society of Canada (2016 CHRT 2): https://fncaringsociety.com/sites/default/files/2016_chrt_2_access_0.pdf, paras., 1-113.

February 2-4: First Nations Child and Family Caring Society of Canada v. Canada

First Nations Child and Family Caring Society of Canada (2016 CHRT 2): https://fncaringsociety.com/sites/default/files/2016_chrt_2_access_0.pdf, paras., 114-494.

February 9-11: A Human Right to Self-Governance: Litigation as Advocacy

The Trauma Informed Lawyer, hosted by Myrna McCallum “Practising Cultural Humility in Human Rights Advocacy: A Debrief Session with Amber Prince”: <https://thetraumainformedlawyer.simplecast.com/episodes/practising-cultural-humility-in-human-rights-advocacy-a-debrief-session-with-amber-prince> (49 minutes)

Naiomi Walqwan Metallic, “A Human Right to Self-Government Over First Nations Child and Family Services and Beyond: Implications of The Caring Society Case” (2018) 28 *Journal of Law and Social Policy* 4-41
<https://digitalcommons.osgoode.yorku.ca/jlsp/vol28/iss2/2/>

Canadian Human Rights Commission, Human Rights Handbook for First Nations (2020): <https://fncaringsociety.com/sites/default/files/english.pdf>, pp. 33-42

February 16-18: Reading Break

February 23-25: Child Welfare Law: Legislation as Advocacy

The Truth and Reconciliation Commission of Canada, “Honouring the Truth, Reconciling for the Future, Summary of the Final Report of the Truth and Reconciliation Commission of Canada” (2015): Volume 5, Chapter 1 “Child Welfare: A System in Crisis, pp. 11-60, Calls to Action 1-5
http://www.trc.ca/assets/pdf/Volume_5_Legacy_English_Web.pdf

Yellowhead Institute, An Act respecting First Nations, Métis and Inuit children, youth and families: Does Bill C-92 Make the Grade? (2019): https://yellowheadinstitute.org/wp-content/uploads/2019/03/does-bill-c-92-make-the-grade_-full-report.pdf, pp. 1-24

March 2-4: Spirit Bear, Shannen’s Dream and I am a Witness: Creativity Advocacy

Seven Free Ways to Make a Difference: <https://fncaringociety.com/7-free-ways-make-difference>

- [Spirit Bear](#)
- [I am a witness](#)
- [Jordan's Principle](#)
- [Shannen's Dream](#)
- [Touchstones of Hope](#)
- [Many Hands, One Dream](#)
- [Indigenous Kids Rights Path](#)

March 9-11: Op-Ed Workshop: Opinion as Advocacy

Dorothy Roberts, <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>

Deepak Bidwai, <https://ryersonian.ca/how-white-journalists-serve-as-canadian-historys-gatekeepers/>

March 16-18: Law and Art: Performativity and the Visual as Advocacy

Elizabeth Rule, “Seals, Selfies, and the Settler State: Indigenous Motherhood and Gendered Violence in Canada” (2018) 70:4 *American Quarterly* 741-754
https://theasa.net/sites/default/files/project_muse_711841_0.pdf

Aboriginal Children’s Hurt and Healing Initiative: Healing through Art
<https://achh.ca/healing-through-stories/healing-through-art/>
<https://achh.ca/healing-through-stories/healing-through-art/art-from-the-heart/>

Kali Spitzer Photography: <https://kalispitzer.photoshelter.com/index> (See: Lindsay Nixon, “A Different Kind of Futurism” (June 13, 2019) Review of Kali Spitzer, *An Exploration of Resilience and Resistance*: <https://canadianart.ca/reviews/a-different-kind-of-futurism/>)

March 23-25, 30 -April 1: Research Workshops

April 6-8: Conclusion

In the final week we will work to pull the threads of this course together and map the learning we have done.