

Dr. JANNA PROMISLOW
THOMPSON RIVERS UNIVERSITY, FACULTY OF LAW
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AREAS OF SCHOLARLY AND PROFESSIONAL INTEREST:

Colonial Legal History and Canadian Legal History
Indigenous Law, Canadian Law Regarding Aboriginal Peoples
Canadian Public Law (Constitutional and Administrative Law)
Indigenous-Settler Relations (Canada, British Empire, other post-colonial states)
Ethnohistory, Legal Pluralism, Law and Society

1. DEGREES

- 2013 **PH.D., Osgoode Hall Law School, York University, Toronto, Ontario**
“I smooth’d him up with fair words”: Intersocietal law, from fur trade to treaties.
Supervisory committee: Kent McNeil (Supervisor), Brian Slattery, and Susan Drummond.
- 2004 **LL.M., Osgoode Hall Law School, York University, Toronto, Ontario**
Towards a Legal History of the Fur Trade: Looking for Law at York Factory, 1714-1763. Supervisory committee: Kent McNeil (Supervisor), Brian Slattery, and Susan Drummond.
- 1998 **LL.B., Faculty of Law, University of Victoria, Victoria, British Columbia**
First year completed at McGill University, Montreal, Quebec.
- 1993 **B.A. (Honours), Faculty of Arts, University of Alberta, Edmonton, Alberta**
Double major in Economics and Political Science; graduated with first class honours (highest distinction).

2. ACADEMIC AND PROFESSIONAL EMPLOYMENT

ACADEMIC

- July 2011 - Present **ASSISTANT PROFESSOR**
Faculty of Law, Thompson Rivers University, Kamloops, British Columbia
• Granted tenure and promotion to Associate Professor as of July 1, 2015
- July 2010 - July 2011 **ASSISTANT PROFESSOR, CONTRACTUALLY LIMITED APPOINTMENT**
Faculty of Law, University of Victoria, Victoria, British Columbia

- 2006, **ADJUNCT PROFESSOR**
2008-2010, *Osgoode Hall Law School, York University, Toronto, Ontario*
2012
- July 2004 **EXECUTIVE DIRECTOR, CENTRE FOR CONSTITUTIONAL STUDIES**
–July 2005 *Faculty of Law, University of Alberta, Edmonton, Alberta*
- Sept 2003 **INSTRUCTOR**
– May 2004 *Osgoode Hall Law School, York University, Toronto, Ontario*
Course: Legal Research and Writing
- July 2002 **BELZBERG LECTURER IN LEGAL RESEARCH AND WRITING**
–July 2003 *Faculty of Law, University of Alberta*

PROFESSIONAL

- July 2008 **SENIOR POLICY ADVISOR**
–July 2010 *Consultation Unit, Aboriginal Relations and Ministry Partnerships Division
Ministry of Aboriginal Affairs, Government of Ontario; Toronto, ON*
- Developed policy and educational programs to support government actors in meeting the Crown’s duty to consult with aboriginal peoples.
- March **CONSULTANT**
–July 2008 *Toronto, Ontario*
- Expert review of grade nine social studies resource materials for the Alberta Government, Dept. of Education. Materials covered aboriginal and treaty rights, Charter rights, immigration and refugee law and policy, and legislative process in Canada.
 - Drafted an opinion for a group of counsel on an Ontario treaty claim.
- June– **RESEARCH COUNSEL**
August 2003 *Alberta Law Reform Institute, University of Alberta*
- Drafted an issues paper for the Institute’s Rules of Court project.
- 1999–2001 **BARRISTER & SOLICITOR**
Davis & Company; Yellowknife, NWT (1999 - Sept. 2000; March - Sept. 2001)
Self-employed; Toronto, Ontario (Sept. 2000 - March 2001)
- Negotiated compensation agreements for Indian residential schools survivors as well as aspects of the dispute resolution process by which these agreements were reached (2001); assisted senior counsel in the same process (2000-2001).
 - Advised land claims organizations and resource co-management boards, specializing in land claim implementation issues and community development (1999-2000).
- 1998–1999 **LAW CLERK**
Law Courts of Alberta (Court of Appeal and Queen’s Bench); Edmonton, AB
- Fall 1995 & **COMMUNITY DEVELOPMENT CONSULTANT**
Summer 1996 *Behdzi Ahda” First Nation; Colville Lake, NWT*

3. SCHOLARLY AND PROFESSIONAL CONTRIBUTIONS

SCHOLARSHIPS & AWARDS (SINCE COMMENCING LL.B.)

2008	Adjunct Faculty Teaching Award, Osgoode Hall Law School, York University
2005-2008	Canada Graduate Doctoral Scholarship, SSHRC
2003/04	Harley D. Hallett Graduate Scholarship, York University
2000/01	Sir James Lougheed Award of Distinction, Alberta Heritage Fund
2000/01	York Scholarship
2000/01	Northwest Territories Law Foundation Grant
1998	Maclean Scholarship in Legal History & Criminal Law, University of Victoria
1998	David Roberts Prize in Legal Writing, University of Victoria
1997	Canada Law Book Company Prize, Second Year Law: Alternative Dispute Resolution Course, University of Victoria

GRANTS

2011- 2013	<i>A Genealogy of the Honour of the Crown</i> , Law Foundation of British Columbia, Legal Research Grant; \$10,700
2011	Thompson Rivers University Research Enhancement Fund (\$500, declined)
2006	<i>Peuples autochtones et gouvernance/Indigenous Peoples and Governance</i> (co-researcher); Major Collaborative Research Initiative, SSHRC (2006-2011), coordinated by Centre de recherche en droit public, Université de Montréal; \$47,500 over 5 years (my portion; contributed to other researchers' work after leaving the University of Alberta in 2006 and returning to doctoral studies).
2005	<i>The Dynamics of Custom: An Examination of the Interaction of Custom and Law in Colonial History</i> , Relationships in Transition Program 2005, Law Commission of Canada & SSHRC: Customary Practices and Law; Principle Investigator with collaborator Prof. David Yarrow, Monash University, Australia; \$25,000 (declined due to leaving the University of Alberta in 2006 and returning to doctoral studies).

PUBLICATIONS

Articles and Book Chapters

“Treaties in History and Law” (2014) 47 UBC Law Review (special issue: *Law on the Edge*) 1085-1183. (peer-reviewed)

“Irreconcilable? The Duty to Consult and Administrative Decision Makers” (2013) 22 Constitutional Forum constitutionnel 63-78.

Updated version republished in (2013) 26 Canadian Journal of Administrative Law and Practice 251-74.

“*It would only be just*’: Territoriality and trading posts along the Mackenzie River, 1800-1827” in Lisa Ford & Tim Rowse, eds, *Between Indigenous and Settler Governance* (New York: Routledge, 2012) 35-47. (peer-reviewed)

“*Thou wilt not die of hunger ... for I bring thee merchandise*’: Consent, Intersocietal Normativity and the Exchange of Food at York Factory, 1682-1763” in Jeremy Webber & Colin Macleod, eds., *Between Consenting Peoples: Political Community and the Meaning of Consent* (Vancouver: UBC Press, 2010) 77-114. (peer-reviewed)

“One Chief, Two Chiefs, Red Chiefs, Blue Chiefs: Newcomer Perspectives on Indigenous Leadership in Rupert’s Land and the North-West Territories” in Hamar Foster, Benjamin L. Berger, & A.R. Buck, eds., *The Grand Experiment: Law and Legal Culture in British Settler Societies* (Vancouver: UBC Press, 2008) 55-76. (peer-reviewed)

“Introduction”, *Special Issue: The Natural Resources Transfer Agreements at 75*, (2007) 12(2) *Review of Constitutional Studies/Revue d’études constitutionnelles* 127-34.

Textbooks

Administrative Law. Cases, Text, and Materials, 7th ed (contributing editor, primary author of a new chapter on the duty to consult, with Gus Van Harten, Gerald Heckman, and David J Mullan) (Toronto: Emond Montgomery Publications Ltd, 2015).

“In Search of Aboriginal Administrative Law” (first author, with Lorne Sossin) in Colleen M. Flood & Lorne Sossin, eds., *Administrative Law in Context*, 2d ed (Toronto: Emond Montgomery Publications, 2012) 449-87.

Book Reviews

“Book Review of *Reconciling Sovereignties. Aboriginal Nations and Canada*, by Felix Hoehn (Saskatoon: Native Law Centre, 2012)” (2013) 18 *Review of Constitutional Studies/Revue d’études constitutionnelles* 133-39.

“Book Review of *The Duty to Consult. New Relationships with Aboriginal Peoples*, by Dwight G. Newman (Saskatoon: Purich Publishing Ltd., 2009)” (2010) 48 *Osgoode Hall Law Journal* 183-90.

Editing

Guest Editor, *Special Issue: The Natural Resources Transfer Agreements at 75*, (2007) 12(2) *Review of Constitutional Studies/Revue d’études constitutionnelles*.

Managing Editor, *Review of Constitutional Studies/Revue d’études constitutionnelles*, volumes 10 (1) & (2).

Managing Editor, *Constitutional Forum constitutionnel*, volumes 13(3), 14(1), 14(2); Co-editor with Judy Garber on volumes 14(3) & 15(1).

Other works

“*I smooth’d him up with fair words*”: *Intersocietal law, from fur trade to treaties*. (Ph.D. Dissertation, Osgoode Hall Law School, York University, 2013). (unpublished)

“Consultation Update: Emerging & Persistent Issues” Materials, Legal Education Society of Alberta, Constitutional Law Symposium, 28 September 2012. (unpublished)

“Reflection: Resistance is Not Futile”, an invited reflection piece following *An Exploratory Workshop: Thinking About and Practicing with Indigenous Legal Traditions* (convened by Prof. V. Napoleon in Fort St. John, BC, October 2011); included in the materials developed for community Indigenous Law workshops held since. (unpublished)

Towards a Legal History of the Fur Trade: Looking for Law at York Factory, 1714-1763 (LL.M. Thesis, Osgoode Hall Law School, York University, 2004). (unpublished)

Works in progress

“A Genealogy of The Honour of the Crown” (draft in progress). The paper will argue that the application of the honour of the Crown principle in Canadian aboriginal law shares a common history and some purposes with the principle as used in the construction of grants in seventeenth and eighteenth century England and as applied across the British Empire. Although not a perfect continuity, this history demonstrates aboriginal rights as an ongoing problem for the rule of law and illustrates how the doctrine mediates the line between legal and political.

“Indian Act”, “Indigenous law”, “Canadian law of Aboriginal Peoples”, “Aboriginal Rights”, “Aboriginal Self-Governance” (drafts in progress). These articles are revisions to the articles in the Canadian Encyclopedia, published by Historica Canada (online: <http://www.thecanadianencyclopedia.ca/en/>), with new entries for “Indigenous law” and “Canadian law of Aboriginal Peoples”.

“*Courtoreille v Canada (Aboriginal Affairs and Northern Canada)*, 2014 FC 1244: A duty to consult on legislation?” (draft in progress). This paper will examine the finding of a breach of the duty to consult in regards to the federal omnibus legislation in 2012 that removed fish habitats and navigable waters from federal oversight (amongst other things). It will consider the need to reconcile the constitutional principles of the honour of the crown and the separation of powers that arises when a duty to consult is applied to legislative decisions. It will also consider the larger implications of a determination that legislative decisions can trigger a duty to consult, including the impact on related elements in the threshold test for a duty of fairness, and whether greater recognition of indigenous governance and jurisdictions is necessitated by this determination to make such a duty practicable.

REVIEWS

2015 Supreme Court Law Review, article peer review

2015 Osgoode Hall Law Journal, article peer review

2015 Review of Constitutional Studies/Revue d'études constitutionnelles, article peer review

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- 2015 Histoire Social/Social History, article peer review
- 2013 UBC Law Review, article peer review (2)
- 2013 SSHRC, peer review for Insight Grant Application
- 2012 McGill-Queen's Press, manuscript review
- 2011 UBC Law Review, article peer review
- 2008 UBC Law Review, article peer review
- 2008 SSHRC, external assessor for the Jules and Gabrielle Léger Fellowship
- 2003 Ottawa Law Review, article peer review

CONFERENCES, SEMINARS & SYMPOSIA

Invited Papers & Presentations:

- Oct 2013 *Peace, Friendship & Respect. A Critical Examination of the Honour of the Crown on the 250th Anniversary of the Royal Proclamation and the Treaty of Niagara*
25th Annual Indigenous Bar Association Fall Conference, Chippewas of Rama First Nation, Ontario
 - Panellist on “Treaty Remedies: How Should History Shape the Law?”

- July 2013 *Law on the Edge: Joint conference of the Canadian Law and Society Association And The Law and Society Association of Australia and New Zealand*, University of British Columbia, Vancouver, BC
 - Panellist on “Author Meets Reader” session, discussing *Hunger, Horses, and Government Men: Criminal Law on the Aboriginal Plains, 1870-1905* by Shelley Gavigan (Vancouver: UBC Press, 2012).

- Aug 2011 *Between Indigenous and Settler Governance: Histories and Possibilities*, Centre for Citizenship and Public Policy, University of Western Sydney, Australia
 - Presented: “‘It would only be just’: A Study of Territoriality and Trading Posts in the Indian Territories, 1800-1827.”

- Feb 2008 *Osgoode Constitutional Law Roundtable: Rights, Developments and Transitional Justice*, Osgoode Hall Law School, York University
 - Presented: “History in Law: Historical Injustice and Canadian Treaty Jurisprudence.”

- June 2005 *Canadian Law and Society Association, Annual Meeting*, Harrison Hot Springs, BC
 - Panellist on “Author Meets Reader” session, discussing Peter H. Russell, *Recognizing Aboriginal Title: The Mabo Case and Indigenous Resistance to English-Settler Colonialism* (Toronto: University of Toronto Press, 2005).

- Oct 2004 *Colloque Autochtonie et Gouvernance*, Centre de recherche en droit public; Université de Montréal
 - Responded to a paper by John Leclair, entitled “Federal Constitutionalism and Aboriginal Sovereignty.”

- Oct 2004 *Consent as the Foundation of Political Community*, Consortium on Democratic Constitutionalism; Faculty of Law, University of Victoria (inaugural conference)

- Presented: “Trading on Pity: An Exploration of Intersocietal Normativity in Relations Between Cree and Hudson's Bay Company Traders in the Eighteenth Century.”

Selected Peer Reviewed Abstracts/Proposals and Other Conference Papers and Presentations:

- June 2015 *'Après ... le Deluge': Future Directions for Environmental Law and Policy in Canada*, Journal of Environmental Law and Policy 5th Biennial Conference, University of Calgary, Calgary & Kananaskis, AB
- Presented: “The significance of *Courtoreille v Canada (Aboriginal Affairs and Northern Canada)*, 2014 FC 1244”
- July 2013 *Law on the Edge: Joint conference of the Canadian Law and Society Association And The Law and Society Association of Australia and New Zealand*, University of British Columbia, Vancouver, BC
- Presented: “Getting Over History Through Law: Problems and Approaches in Aboriginal Rights Jurisprudence.”
- June 2013 *Canadian Association of Law Teachers, Annual Meeting*, University of Victoria, Victoria, BC
- Presented: “The Paradoxes of a New Law School: The Case of Thompson Rivers University.”
- July 2012 *Law, Spaces, Cultures & Empire: Engagements & Legacies*, National University of Singapore and the Faculty of Law & Centre for Asia Pacific Initiatives, University of Victoria, Singapore
- Presented: “The Honour of the Crown in English Legal History and in the British Empire.”
- Sept 2008 *Active History: History for the Future*, York University & University of Toronto Toronto, Ontario
- Presented: “History in Law: Problems in Canadian Treaty Jurisprudence” on a panel entitled “Peoples with Histories: Beyond Recognition.”
- May 2006 *9th N. American Fur Trade Conference & 12th Rupert's Land Colloquium*, St. Louis, Missouri
- Presented: “Making Friends and Relatives: Ideas of Leadership and Political Community Amongst Aboriginal Peoples in the Early Fur Trade Along Hudson's Bay”
- Oct 2005 *Western History Association - 45th Annual Conference*, Scottsdale, Arizona
- Presented: “Nations, Tribes, and Friends: Glimpses of Aboriginal Political Community and Sovereignty Along the Coast of Hudson Bay in the Eighteenth Century.”

- June 2005 *Canadian Law and Society Association, Annual Meeting*, Harrison Hot Springs, BC
- Presented: “Nations, Tribes, and Friends: Glimpses of Aboriginal Political Community and Sovereignty Along the Coast of Hudson Bay in the Eighteenth Century.”
- Sept 2004 *9th Annual Wanapitei Aboriginal History & Politics Colloquium*, Temagami, Ontario
- Presented: “Regulating Exchange at York Factory, 1714-1763: An Intersocietal Law of the Fur Trade?”
- May 2004 *Law and Society Association, Annual General Meeting*, Chicago, Illinois
- Presented: “Middle Grounds and Missed Meanings: Tracing Intercultural Normativity from Fur Trade to Treaties in the Canadian Northwest.”

PROFESSIONAL MEMBERSHIPS AND AFFILIATIONS

Canadian Association of Law Teachers
 Canadian Law and Society Association
 Osgoode Hall Society for Canadian Legal History
 Law Society of Alberta (1999-present, *non-practicing*)
 Law Society of the Northwest Territories (1999-2007)

4. TEACHING

THOMPSON RIVERS UNIVERSITY, FACULTY OF LAW (2011-Present, Assistant Professor)

Courses Taught

LAWF 3010:	Constitutional Law (5 credits)	2011-12, 2012-13, 2013 (Fall semester)
LAWF 3900:	Administrative Law (3 credits)	Fall 2012, Fall 2013, Winter 2015
LAWF 3890:	Indigenous Peoples & the Law (3 credits)	Winter 2015
LAWF 4010:	Kawaskimhon National Aboriginal Moot (3 credits)	Winter 2013
LAWF 3760:	Supervised Independent Study/ Directed Readings (3 credits)	2013: C.A. “Aboriginal Blockades and the Rule of Law: Acknowledging the Paradigm of Struggle”; M.B. “The Duty to Consult First Nations.”

Other Contributions to the Faculty’s Teaching Program

- Co-organized a joint Property Law and Constitutional Law field trip to the old residential school on the T’kemplups Reserve, now an annual event and part of the Constitutional Law curriculum (January 2012 (with Prof. S. Mascher), January 2013 and January 2015 (with Prof. N. Schabus and T. Dagne)).
- Fundamental Legal Skills, First Year Moot Judge (Winter 2012).
- Fundamental Legal Skills, taught several classes (Winter 2012).

UNIVERSITY OF VICTORIA, FACULTY OF LAW (2010-2011, Assistant Professor)

Courses Taught

LAW 100: The Constitutional Law Process (3 units) 2010-2011
LAW 110: Legal Research and Writing (1.5 units) 2010-2011
LAW 359: Civil Liberties and the *Charter* (1.5 units) Winter 2011

YORK UNIVERSITY, OSGOODE HALL LAW SCHOOL (2003-2004, Instructor; 2006, 2008-2010, 2012, Adjunct Professor)

Undergraduate Courses Taught:

LAW 3390: Indigenous Peoples and the Law (3 credits) Winter 2010, Winter 2008
LAW 2010.04: Administrative Law (4 credits) Fall 2006, Winter 2006
LRW Program Instructor 2003-2004

Graduate Courses Taught (Osgoode Professional Development LL.M. Program):

GS LAW 6727P: Aboriginal Peoples and the Canadian Constitution (co-taught with Ron Stevenson) (6 credits) Spring 2012, Fall 2009, Winter 2009

UNIVERSITY OF BRITISH COLUMBIA, FIRST NATIONS STUDIES PROGRAM, COMMUNITY-BASED TEACHING (2007)

Courses Taught

First Nations Studies

Program 405: Oral History Research Methods (3 credits) Summer 2007

- Taught in a condensed manner in three Treaty 8 communities (Doig River First Nation, West Moberly First Nation and Fort Nelson First Nation), to provide some training to community members in collecting their oral histories.

UNIVERSITY OF ALBERTA, FACULTY OF LAW (2002-2003, Lecturer)

Courses Taught

LAW 405: Legal Research and Writing (4 credits) 2002-2003

5. SERVICE

FACULTY AND UNIVERSITY (THOMPSON RIVERS UNIVERSITY ONLY)

2015 Chair, Faculty Graduate Studies Committee

- Chair, Faculty Moots, Internships, and Clerkships Committee
 Chair, Ad Hoc Petitions Sub Committee, Academic Status Committee
 Member, Faculty Curriculum/Academic Planning Committee
 Member, Faculty Appointments Committee
 Member, Faculty Tenure and Promotion Committee
 Member, Department of History Appointments Committee (Aboriginal History hire)
- 2013-14¹ Chair, Faculty Appeals Committee Chair (to December 2013)
 Orientation Week – Co-organized (with Prof. N. Schabus) presentations on
 Indigenous law and Secwepemc territory and people
- 2012-2013 Chair, Faculty Appeals Committee Chair (inaugural, established Committee
 procedures, conducted 7 appeals)
 Chair, Faculty Equity Committee
 Member, Faculty Curriculum/Academic Planning Committee
 Member, Faculty Admissions Committee
 Co-Organizer (with the Environmental Law Centre, University of Victoria), “On the
 Ground and in the Field: Engaging in Public Interest Environmental Law,” a
 workshop for students, lawyers, and interested community members held at TRU
 in March 2013
 Faculty Co-Advisor (with Prof. N. Schabus), Indigenous Law Students Association
 Orientation Week – Co-organized (with Prof. N. Schabus) presentations on
 Indigenous law and Secwepemc territory and people
- 2011-2012 Member, Faculty Curriculum/Academic Planning Committee
 Member, Faculty Appointments Committee
 Member, University First Nations and Aboriginal Affairs Committee
 Faculty Advisor, Indigenous Law Students Association
 Directed the Faculty Academic Support Program
 Orientation Week –Organized presentations on Indigenous law and Secwepemc
 territory and people

PROFESSION

- 2013 Conference Program Chair and Organizer, Canadian Association of Law Teachers
 2012, 2013 Adjudicator, Canadian Association of Law Teachers Scholarly Paper Award
 Sept 2012 Panellist, Aboriginal Rights Update, *Constitutional Law Symposium*, Centre for
 Constitutional Studies/Legal Education Society of Alberta, University of Alberta,
 Edmonton, Alberta
- 2011-present Board Member, Canadian Association of Law Teachers
 Dec 2010 Panellist, *Critical Case Update: Rio Tinto Alcan v Carrier-Sekani Tribal Council and
 Little Salmon/Carmacks First Nation v Yukon*, Osgoode Professional Development
 Tele-seminar.

¹ On maternity/parental leave from January 2014 - December 2014.

COMMUNITY

- 2012-Present Participant, *Secwepemc Territorial Authority Research Group*
- A group of academics and Secwepemc leaders concerned to explore and support indigenous governance under indigenous law in Secwepemc territory.
- 2011 Grant Application to the Law Foundation with Shuswap Nation Tribal Council
- Contributed to drafting of a grant application for a co-operative project with SNTC: *Secwepemc Children & Families: Developing Options for an Indigenous Law*. Application unsuccessful.
- Oct 2011 Participant, *An Exploratory Workshop: Thinking About and Practicing with Indigenous Legal Traditions*, Convener: Prof. V. Napoleon, Faculty of Law, University of Victoria, Fort St. John, BC.
- July 2011 Participant, *Neskonlith Indigenous Legal Traditions Workshop*, Convener: Prof. V. Napoleon, Faculty of Law, University of Victoria, Neskonlith, Secwepemculew.