

**Law 329 - ENVIRONMENTAL LAW**  
**Fall 2011**

**Course Description and Syllabus**

<b><u>Course Names:</u></b>	Law 329 - Environmental Law
<b><u>Pre/Co-requisites:</u></b>	None
<b><u>Unit Value:</u></b>	1.5
<b><u>Hours per Week:</u></b>	3; Mondays and Wednesdays 1:30-3:00pm (Room 152)
<b><u>Term Offered:</u></b>	Fall
<b><u>Instructor:</u></b>	Prof Chris Tollefson <a href="mailto:ctollef@uvic.ca">ctollef@uvic.ca</a>
<b><u>Course Website:</u></b>	This course has a moodle site.

**Objectives:**

1. to gain an appreciation of the social, political and economic context of environmental law and policy making and enforcement.
2. to consider the challenges of environmental law making and regulation within the Canadian federation, including First Nations issues and the role of local government
3. to understand the scope and limitations of common law actions and remedies in the environmental context.
4. to gain a basic familiarity with environmental regulation and law making at the federal and provincial levels including standard-setting, the emerging debate with respect to “smart regulation” and related issues of public participation, enforcement, judicial review and standing.
5. to evaluate the efficiency and effectiveness of these models within a broader socio-political context, and consider possibilities for reform.
6. to consider the role of the criminal law in environmental regulatory enforcement including private prosecutions
7. to acquire an understanding of the environmental assessment and species protection processes, with an emphasis on federal issues and emerging critiques
8. to consider the impact of climate change on selected areas of environmental law and policy

**Methodology:** Lecture, Guests, Class discussion,  
Student Presentations

<b><u>Evaluation:</u></b>	Class Presentation or Paper	25%
	Final Examination	75%

## The Class Presentation

Some students will have the chance to participate in a class presentation to be chosen from a selection of topics which will be circulated during the first class. These presentations will occur throughout the term on a regular basis (see attached Class Schedule and Sign-Up sheet for dates) and will relate to issues arising during the course.

There will be five opportunities to do an oral presentation during the term. At present, these are scheduled to run as follows (further details to follow):

**Wednesday, September 21:** Moot of a case on appeal (*Smith v Inco*, Ont SCJ 2010)

**Monday, October 3:** Moot of a case on appeal (*Morton v British Columbia*, SC, 2009)

**Wednesday, October 19:** Submissions on behalf of key stakeholders to a BC legislative committee considering “Design considerations in Environmental regulatory policy”

**Wednesday, November 9:** Submissions on behalf of key stakeholders to a federal parliamentary committee considering amendments to the *Canadian Environmental Assessment Act*

**Monday, November 21:** Moot of a current case under the federal *Species at Risk Act* (SARA)

Each presentation will involve small groups of students (usually around 4: see signup sheet). I will play the role of judge; guest judges may also be asked to preside. As the number of students which will be able to participate in a presentation is limited, you are encouraged to sign up for your preference as soon as possible.

Approximately 50 minutes will be allocated to each moot; to be followed by questions from the class, and a debriefing session. Group members are free to allocate time allocated as they wish, in consultation with the instructor; however, **all** students in each group are expected to participate orally.

Students in the presenting group will meet in advance with the instructor to discuss the nature of the presentation and indicate how they have allocated work responsibilities within the group. Each presenting group will also post to the course website (Moodle) a one or two page outline of their presentation at least 12 hrs prior to the start of the class.

An individual grade will be awarded to each student for their contribution to the presentation at the end of the course. The grade will be based upon the following evaluation criteria appropriately adapted to the forum in which the presentation is made:

**CLARITY AND ACCURACY:** apparent comprehension of the subject matter and ability to communicate clearly;

**ORGANIZATION:** ability to develop coherent account of the material; rational argument and/or analysis;

INTEGRATION: effective of use of relevant class materials (authorities; readings etc.); ability to place subject matter in the broader context where appropriate;

PERSUASIVENESS: ability to present argument in most compelling way possible; ability to respond to questions;

FACILITATION SKILLS: ability to stimulate and effectively channel class discussion;

TIMING/WRAP-UP: ability to use time effectively; appropriate pacing and summarization of main points.

**Alternative Evaluation Option: Student Papers**

The alternative to an oral presentation is a paper on the subject-matter of one of the class presentations. The report should be approximately eight-to-ten typed pages (double spaced; Times New Roman font 12) in length. It should briefly summarize the ideas presented in the materials or class, and provide a critical evaluation, analysis or application of those ideas. You are free to develop a draft of your paper before the class session dealing with your topic, although you should keep in mind you will be evaluated on how you synthesize the discussion and deal with issues that are raised by this session. As such, it is advisable to allocate time to work on your paper after the session has occurred.

The report must be submitted in the class that is held one week after the presentation of the topic you address. Late reports will be docked one grade level per day (i.e. an "A" paper will be reduced to an "A-").

If you wish to elect this form of evaluation, please indicate your name and topic on the sign-up sheet being circulated. Except in extraordinary circumstances, this election is final.

**The Final Exam**

There will be a final exam in the course covering all assigned readings in the course, including material dealt with in class presentations and by guests. It will be open book. It is valued at 75% of the total mark.

**Grading Scheme**

The Law Faculty uses the following marking scheme to determine your final letter grade. The “narrative description” column reflects a rough general consensus among faculty members in regard to assessing student performance. I adopt this description in my grading for this course:

Letter Grade	Grade Point Value	Percentage Value	Narrative Description
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A+	9	90-100%	Exceptional	Grades in this range are normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
A	8	85-89%	Outstanding	
A-	7	80-84%	Excellent	
B+	6	75-79%	Very Good	Grades in this range are normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	70-74%	Good	
B-	4	65-69%	Solid	
C+	3	60-64%	Satisfactory	These grades indicate a satisfactory performance and knowledge of subject matter.
C	2	55-59%	Minimally Satisfactory	
D	1	50-54%	Marginal	A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49 and below	Unsatisfactory	

### **Other Important Notes**

#### ***Regulations:***

Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2008-2009 (“U Vic Calendar”, available online at <http://web.uvic.ca/calendar2008>), both generally and specifically for the Faculty of Law.

The Undergraduate Academic Regulations (2008-2009) of the UVic Calendar (<http://web.uvic.ca/calendar2008/FACS/UnIn/UARe/PoAcI.html>) set out the University’s expectations about attendance and assignments. The Faculty of Law’s Academic Regulations can also be found in the University Calendar at <http://web.uvic.ca/calendar2008/FACS/FoLa/FARe.html>.

*Classroom Climate:*

An inclusive, respectful, and diverse classroom environment is crucial to our work in this course. To ensure that all class members feel welcomed and equally able to contribute to class discussions, we must all endeavor to be respectful in our language, our examples, and the manner in which we conduct our discussions and group work. We have both an ethical and legal obligation to support this kind of environment. For your reference, you may wish to consult the University's Discrimination and Harassment Policy (<http://web.uvic.ca/uvic-policies/pol-1000/1150HPP.html>). The University of Victoria and the Faculty of Law are committed to promoting, providing and protecting a positive, supportive and safe learning and working environment for all its members. I expect all aspects of this class to be conducted with this commitment firmly in mind. If you have any concerns about the climate of the class, please feel free to contact me or the Associate Dean.

*Academic Integrity:*

As part of the academic community of both the Faculty of Law and the University as a whole, academic integrity is centrally important in the work of faculty and students. Please consult the University Calendar for policies respecting paraphrasing, plagiarism, and cheating. **It is your responsibility to familiarize yourself with the university policy on academic integrity. If, after reviewing this policy, you have any concerns or questions, or require clarification, do not hesitate to drop by my office or to send me an e-mail.**

The policy on academic integrity can be found on the web at the following address:  
<http://web.uvic.ca/calendar2008/FACS/UnIn/UARe/PoAcI.html>.

*Accommodation, Health Concerns, and Counseling Services*

If any issues arise during the course of the term that may affect your ability to complete course requirements or meet deadlines, it is your responsibility to contact me and/or the Associate Dean as soon as reasonably possible to discuss available supports and possible accommodation.

We would like you to be aware of the services offered by UVic Counselling Services (<http://www.coun.uvic.ca/>) as well as UVic Health services (<http://health.uvic.ca/>).

Accommodation for Students with a Disability:

There are support systems, resources, and forms of accommodation available to students with a disability. If you wish to access any of these supports, resources or accommodations, I encourage you to contact the Associate Dean or the Resource Centre for Students with a Disability (<http://rcsd.uvic.ca/>) and I would be more than happy to work with you to ensure your success in this course.

*Accommodation of Religious Observances:*

The University of Victoria and the Faculty of Law have policies guaranteeing accommodation for those students who are unable to participate in a class or an aspect of the course owing to a religious holiday or observance (<http://web.uvic.ca/calendar2006/GI/GUPo.html>). If you will be missing a class, know that you will be unable to complete an assignment or exam, or otherwise require accommodation on account of a religious holiday or observance, please speak with me (or the Associate Dean) and I will be pleased to work out some satisfactory form of accommodation.

### Class Schedule and Readings

The assigned readings noted in this course are from Doelle & Tollefson (Carswell, 2009), unless otherwise specified. Suggested reading for the moots and other presentations will be made available through the course website.

DATE	CLASS #	ROOM	SESSION TITLE	TOPICS COVERED	READINGS	STUDENT PRESENTATION
Wednesday Sept. 7	1	<b>MacLaurin D110</b>	Course Overview & Administration	Q & A; signup for in-class presentations and papers		
Monday Sept. 12	2	Rm 152	Common Law I	<i>Palmer, Cambridge Water</i> and Collins article	47-76	
Monday Sept. 19	3	Rm 152	Common Law II	Public Rights Environmental Class Actions	85-102 76-80	
Wednesday Sept. 21	4	Rm 152	Common Law III	Review of applicable cases and principles	Excerpts from <i>Smith v Inco</i> decision	<b>Presentation #1</b> <b>Moot of</b> <b>SMITH v INCO,</b> 2010 ONSC 3790
Monday Sept. 26	5	Rm 152	Constitutional Law I	Basic Doctrine and Jurisprudence	105-143	
Wednesday Sept. 28	6	Rm 152	Constitutional Law II	Doctrine in Political Context Aboriginal Rights Municipal and local govt	143-152 152-159 164-172	
Monday Oct. 3	7	Rm 152	Constitutional Law III		Excerpts from <i>Morton v BC</i> decision	<b>Presentation #2</b> <b>Moot of</b> <b>MORTON v</b> <b>BRITISH</b> <b>COLUMBIA,</b> 2009 BCSC 136
Wednesday Oct. 5	8	Rm 152	Environmental Regulation I: Concepts, Jurisdiction & Institutions	Basic features of provincial & federal environmental regulation; distinctions between forms of regulation; standard setting	175-207	
Wednesday Oct. 12	9	Rm 152	Environmental Regulation II: An Overview of the <i>Fisheries Act</i>	Case study of regulation under the <i>Fisheries Act</i>  Intro to Compliance and Enforcement	207-218  225-235	
Monday Oct. 17	10	Rm 152	Environmental Regulation III: Enforcement and Compliance Issues	Issues in Enforcement Citizen Enforcement	235-251 252-261	
Wednesday Oct. 19	11	Rm 152	Environmental Regulation IV: Tribunal Reform and Environmental Bill of Rights	Review preceding materials in this component prior to presentation		<b>Presentation #3</b> Submissions to a BC Legislative Committee on “Design Considerations in Environmental Regulatory Policy”

DATE	CLASS #	ROOM	SESSION TITLE	TOPICS COVERED	READINGS	STUDENT PRESENTATION
Monday Oct. 24	12	Rm 152	Judicial Review & Public Participation I	Introduction Standard of Review Grounds for Review	263-268 269-277 277-288	
Wednesday Oct. 26	13	Rm 152	Judicial Review & Public Participation II	Public Interest Standing Injunctive relief Costs and access to justice	288-296 296-303 303-313	
Monday Oct 31	14	Rm 152	Environmental Assessment I	Key concepts; overview of CEAA Evolution of Scoping	315-324 324-350	
Wednesday Nov 2	15	Rm 152	Environmental Assessment II	<i>Miningwatch Canada</i> (we will also read and discuss the SCC decision) Overview of Challenges in Environmental Assessment	350-357  358-372	
Monday Nov 7	16	Rm 152	Environmental Assessment III	Environmental Assessment in BC	Excerpts from ELC Report on EA Reform (2010)	
Wednesday Nov 9	17	Rm 152	Environmental Assessment IV	Reform of EA at the federal and provincial levels	TBA	<b>Presentation #4:</b> Group presentation on EA reform to a federal Parliamentary Committee
Monday Nov 14	18	Rm 152	Species at Risk I	Introduction S@R & Governance S@R & Biodiversity Species Listing	421-426 445-449 452-456 426-432	
Wednesday Nov 16	19	Rm 152	Species at Risk II	Habitat designation Harm prohibitions Compensation Provincial approaches	432-439 439-442 442-445 450-452	
Monday Nov 21	20	Rm 152	Species at Risk III	TBA	Excerpts from recent SARA caselaw including <i>Sage Grouse</i> , <i>Nootsack</i> and <i>Consolidated Orcas</i>	<b>Presentation #5:</b> Moot of current SARA case (TBA)
Wednesday Nov 23	21	Rm 152	Climate Change I	TBA	TBA	
Monday Nov 28	22	Rm 152	Climate Change II	TBA	TBA	
Wednesday Nov 30	23	Rm 152	Review Session		NA	