

Law 329 - ENVIRONMENTAL LAW
Fall 2009

Course Description and Syllabus

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| <u>Course Names:</u> | Law 329 - Environmental Law |
| <u>Pre/Co-requisites:</u> | None |
| <u>Unit Value:</u> | 1.5 |
| <u>Hours per Week:</u> | 3 - Mondays and Wednesdays, 3:30-5:00 p.m. |
| <u>Term Offered:</u> | Fall |
| <u>Instructor:</u> | John Pennington, JohnPennington@shaw.ca , 250-652-5481 |
| <u>Course Website:</u> | http://www.law.uvic.ca |

A. 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 process and emerging critiques
8. to understand some of the key implications of NAFTA and its environmental side agreement for environmental regulation, protection and enforcement
9. to consider selected approaches to, and issues in, wilderness and wildlife protection.
10. to become familiar with emerging environmental law and policy issues including SLAPPs, citizen suits and market instruments

B. METHODOLOGY:

Lectures, student presentations, class discussion, guests.

C. EVALUATION:

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| Class Presentation | 25% |
| Final Examination | 75% |

D. COURSE MATERIALS:

Environmental Law Cases, Notes and Materials, 1st edition, Doelle and Tollefson, Carswell, 2009.

E. IN-CLASS PRESENTATIONS

Students will be expected to complete a presentation in class. These will be in the form of a moot appeal, a law reform submission or a reaction paper. Each student will be expected to present for roughly 10 – 15 minutes (i.e. for a moot appeal, involving four students, the presentation time will be about 50 minutes), with discussion afterward. A list of topics and

presentation dates is set out below. Students will be able to sign up for a topic during the first class.

Wednesday, Sept. 16: Comment on *Pakootas v. Teck Cominco* or law reform submission on electronic waste.

Pakootas is ongoing litigation concerning contamination of the Columbia River in Washington State by a lead smelting facility in Trail, British Columbia. In 2006, a U.S. appeals court ruled that the release of heavy metals into the river triggered the application of U.S. legislation, effectively allowing the plaintiffs to continue their lawsuit. Students wishing to sign up for this assignment will be given a 13-page paper written by the lawyer for the plaintiffs and will be asked to comment on the international law implications of the decision. Up to two students could sign up for this, with one taking the point of view of the plaintiff and the U.S. Government, the other taking the point of view of Teck Cominco.

The assignment related to electronic waste would require students to consider the implementation of the *The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*. The Convention was initiated in response to numerous international scandals regarding hazardous waste trafficking that began to occur in the late 1980s. The Convention entered into force on 5 May 1992. For more information, see the website of the Basel Action Network:

http://www.ban.org/main/about_basel_conv.html .

Wednesday, Sept. 23: moot of *Cambridge Water v. Western Counties Leathers* (excerpted in Doelle and Tollefson). The case concerns the use of common law remedies to address environmental issues. (4 students)

Wednesday, Sept. 30 : moot of *British Columbia (Agriculture and Lands) 2009 BCSC 136* . The case concerns the constitutionality of British Columbia's regulation of fish farms. (4 students)

Wednesday, October 7: moot of *R. v. City of Kingston* (excerpted in Doelle and Tollefson). This case concerns prosecution of a municipality under the *Fisheries Act*.

Monday, October 19: Law reform paper on availability of information on environmental prosecutions, or on whether BC should have an Environmental Bill of Rights.

The environmental prosecutions paper would involve finding out whether there is any comprehensive reporting of environmental prosecutions in B.C. by either the federal or provincial governments. The student(s) would then evaluate whether the extent of any reporting is adequate from the perspective of transparency and government accountability, and whether law reform would be advisable.

The paper on an Environmental Bill of Rights would examine Ontario's *Environmental Bill of Rights, 1993* and make recommendations for British Columbia.

Monday, October 26: Reaction paper on Tollefson article: *Costs in Public Interest Litigation: Recent Developments and Future Directions*" (reprinted in Doelle and Tollefson). A reaction paper critically reviews and comments on the original paper. Up to two students could sign up for this, with each taking a different perspective.

Monday, November 2: moot of *Red Chris*, an environmental assessment case under the federal CEAA (excerpted in Doelle and Tollefson). (4 students)

Monday, November 16: moot of *Canadian Parks and Wilderness Society v. Canada (Minister of Canadian Heritage)* (excerpted in Doelle and Tollefson. This case concerns the application of the phrase "ecological integrity" in the *Canadian National Park Act* (4 students)

Monday, November 23: mock presentations to the Parliamentary review of the federal *Species at Risk Act*. This could be one student of several, taking different points of view.

Students will, in advance of the presentation, discuss with the instructor the nature of the presentation and, where more than one student is involved, how students have allocated work responsibilities within the group. Each presenting group will also provide to the class list serve a one or two page outline of their presentation at the start of the class.

An individual grade will be awarded to each student for their 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 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.

F. 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. The exam will be open book.

G. CLASS SCHEDULE AND READINGS

| DATE | SESSION | READINGS from DOELLE & TOLLEFSON | STUDENT PRESENTATION OR IN-CLASS ACTIVITY |
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| Sept. 9 | Course Overview & Administration: Q & A; sign up for in-class presentations | | |
| Sept. 14 | International Law I: Sources of; Relevance and Application | Ch. 1, Pts. I & II | |

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| Sept. 16 | International Law II: Precautionary Principle; Regimes to Watch | Ch. 1, Pts III & IV | Reaction paper on <i>Pakootas v. Teck Cominco</i> or law reform submission on electronic waste |
| Sept. 21 | Common Law I: Tort law in the environmental context; limits of tort system | Ch. 2, Pts I & II | |
| Sept.23 | Common Law II: Class Actions; SLAPPs and public rights NOTE: This session may have to be re-scheduled to a later date. | Ch. 2, Pts III to V | Moot of <i>Cambridge Water v. Western Counties Leathers</i> |
| Sept. 28 | Jurisdiction over the Environment I: Overview of division of powers and leading cases (up to Hydro Quebec) | Ch 3, Pts I & II | |
| Sept. 30 | Jurisdiction over the Environment II: <i>Hydro Quebec</i> ; Mackay article (optional); Emerging Issues | Ch. 3, Pts. II to IV | Moot of <i>British Columbia (Agriculture and Lands)</i> . |
| Oct. 5 | Environmental Regulation I: Emerging perspectives on; standard setting; forms of standard | Ch. 4, Pts. I & II | |
| Oct. 7 | Environmental Regulation II: Governance-based approaches; overview of regulatory models | Ch. 4, Pts. III & IV | Moot of <i>Fletcher v City of Kingston</i> |
| Oct. 14 | Compliance and Enforcement I: Compliance and enforcement strategies; cooperative vs. adversarial approaches; criminal enforcement. | Ch. 5, Pts. I to III (up to AMPs) | |
| Oct. 19 | Compliance and Enforcement II: AMPs; citizen enforcement and private prosecutions | Ch. 5, Pt. III (AMPs) & Part IV | Law reform paper on availability of information on environmental |

prosecutions, or on whether BC should have an Environmental Bill of Rights.

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| Oct. 21 | Judicial Review I: Administrative law and JR; standard of review; grounds for review including illustrative case law | Ch. 6, Pts. I to III | |
| Oct. 26 | Judicial Review II: Public interest standing; injunctive relief. | Ch. 6, Pts. IV & V | Reaction paper to Tollefson article on costs. |
| Oct. 28 | Environmental Assessment I: Overview of EA and CEAA; evolution of scoping (up to <i>True North</i>). | Ch. 7, Pts. I & II (to end of <i>Sunpine</i>) | |
| Nov. 2 | Environmental Assessment II: Scoping cases continued: <i>True North</i> and <i>Red Chris</i> . | Ch. 7: Pt. II | Moot of <i>Red Chris</i> |
| Nov. 4 | Environmental Assessment III: Challenges ahead. | Ch. 7, Pt. III | |
| Nov. 9 | Parks and Protected Areas I: History and overview; role of parks and protected areas; current issues. | Ch. 8, Pts. I – III (up to <i>CPAWS</i>) | |
| Nov. 16 | Parks and Protected Areas II: <i>CPAWS</i> and emerging issues. | Ch. 8: rem. Pt III; Pt. IV up to Ontario Parks Legislation | Moot of <i>CPAWS v Minister of Heritages</i> |
| Nov. 18 | Species Protection I: Overview; endangered species legislation in Canada and US with focus on the <i>Species at Risk Act</i> . | Ch. 9, Pts. I & II | |

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| Nov. 23 | Species Protection II: Continue endangered species legislation; species protection as governance issue; emerging perspectives. | Ch. 9, Pts. II to IV | Presentation to Parliamentary review of SARA. |
| Nov. 25 | Climate Change I: Emergence of the issue; climate change, int'l. law & domestic implementation. | Ch. 10, Pts. I & II | |
| Nov. 30 | Climate Change II: Regulatory options (cap and trade, carbon taxes); constitutional issues; the common law. | Ch. 10, Pts. III to V | |
| Dec. 2 | Climate Change III: Climate change and EA; climate change and endangered species; climate change and indigenous peoples. | Ch. 10, Pts. VI to VIII | |

H. 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 | |
|--------------|-------------------|------------------|-----------------------|---|
| 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. |
| B | 5 | 70-74% | Good | |

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| B- | 4 | 65-69% | Solid | These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area. |
| 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 | |

I. OTHER IMPORTANT NOTES

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, both I as instructor and you as students must 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. If 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/calendar2006/FACS/UnIn/UARe/PoAcI.html>].

Students with a Disability:

If you have any type of disability, there are support systems, resources, and accommodation actions available to you. 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/home.ihtml>] 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.