

**SUSTAINABILITY LAW - LAW 353a**  
**Environmental Law Centre Clinic Intensive**  
**2011-2012**

**COURSE INFORMATION**

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| <b>Prerequisites</b> | <b>None</b>  |
| <b>Unit Value</b>    | <b>2.0 units (1 unit in class and 1 unit project-based)</b>  |
| <b>Term Offered</b>  | <b>Fall 2011 and Spring 2012 (both terms mandatory)</b>  |
| <b>Classes</b>       | <b>Wednesday 3:30-5:30 p.m.</b>  |
| <b>Instructors</b>   | <b>Deborah Curran &amp; Mark Haddock</b>   |
|                      | <b>Telephone: 250-853-3105 (DC) 250-721-8180 (MH)</b>  |
|                      | <b>Email: <a href="mailto:dlc@uvic.ca">dlc@uvic.ca</a>; <a href="mailto:mhaddock@uvic.ca">mhaddock@uvic.ca</a></b> |
|                      | <b>Office Hours: By appointment</b>  |

**MAJOR EDUCATIONAL GOALS/COURSE OBJECTIVES**

The practice of environmental law is evolving rapidly in this century. Concerns about global problems like climate change are spurring governments to take new regulatory action, and are creating new causes of action and practice areas in law. At the same time, community organizations, citizens and environmental groups are becoming more sophisticated in challenging unsustainable land development practices and decisions that have an adverse impact on human health. The focus of environmental law no longer rests with the natural environment. It now includes proactive sustainability strategies such as green buildings, demand management and joint decision-making. These approaches to public interest environmental law significantly expand the practice areas involved in this approach to law, and offer new opportunities for the legal profession to integrate sustainability considerations into traditional areas of legal practice.

The purpose of this course is to complement Law 353 Environmental Law Centre Clinic by:

- becoming familiar with the emerging areas of sustainability law;
- understanding the practice skills required for sustainability law;
- acquiring law office, case management and planning skills;
- developing legal writing, presentation and team work skills in class and by working with clients involved in public interest environmental law issues or disputes; and
- becoming familiar with a range of public interest environmental law issues, actors, and strategies for using the legal system to pursue sustainability goals.

**SUBJECT MATTER TO BE COVERED**

- (1) Overview of public interest environmental law and the trend to sustainability law.
- (2) Case practice management including ethics, file management and client relations.
- (3) Review of sustainable land development in both the urban and rural resource contexts.
- (4) Discussion and practice of legal writing and writing for non-lawyers.
- (5) Consideration of the evolving issues of climate change and legal strategies to address it.
- (6) Study and practice of effective legal advocacy and presentations to non-lawyer audiences.

- (7) Overview of demand management in law, from pollution prevention to dematerialization, with a case study of water demand management.
- (8) Exploration of the increasingly important role of shared decision-making and the lawyer's role in representing clients in co-management processes.

## **REQUIRED MATERIALS**

All course materials are available via the internet as linked from this course outline or will be emailed to you.

## **RESOURCES**

Legislation: [www.bclaws.ca](http://www.bclaws.ca)

Information:

- B.C. Utilities Commission [www.bcuc.com](http://www.bcuc.com)
- Canadian Environmental Law Association [www.cela.ca](http://www.cela.ca)
- Canadian Institute for Environmental Law and Policy [www.cielap.org](http://www.cielap.org)
- Canadian Institute for Resources Law <http://cir1.ca/>
- Ecojustice Canada (Sierra Legal Defence Fund) [www.ecojustice.ca](http://www.ecojustice.ca)
- Environmental Appeal Board (B.C.) [www.eab.gov.bc.ca](http://www.eab.gov.bc.ca)
- Local Governments in B.C. <http://ubcm.ca/>
- Environmental Law Centre [www.elc.uvic.ca](http://www.elc.uvic.ca)
- West Coast Environmental Law Association [www.wcel.org](http://www.wcel.org)

## **METHODOLOGY**

Lectures, guest lectures, classroom discussion, presentations, practice exercises, field trips and work with more than one client.

## **EVALUATION**

The course will be graded on a pass/fail basis. Students must attend all classes, excusable only for medical, family or other pressing reasons. Permission to miss a class should be obtained ahead of time from the instructor or Associate Dean. Unexcused absences may be grounds for failure. Students must:

1. Participate in class discussions and activities
2. Make a presentation in a public setting (recommended Term I)
3. Write at least one legal opinion and a short advocacy article (Term I)
4. Lead a classroom topic (Term II)
5. Work with the class as a team on a group project (2 weeks in Term II)
6. Negotiate a resource management dispute (Term II)
7. Manage one or more client files

### **1. Participating in class discussions and activities**

It is expected that students will have read assigned materials prior to class and will be prepared to discuss them and one of their case projects each week.

### **2. Presenting in a public setting**

Each student will make a presentation in a public setting. Ideally this presentation will be part of their client work. However, if no presentation opportunity arises the student may choose to make a presentation to any public body such as a local government, a legislative committee, or at a public hearing. The presentation must occur before February 28, 2012, unless agreed otherwise. The instructor must approve the venue/topic and be notified ahead of time of the location and time of the presentation.

### **3. Writing a legal opinion and advocacy article**

The cornerstone of the legal profession is providing legal opinions to clients about the state of the law as it pertains to a client's legal issue, and making recommendations about the desired course of action for the client. Students will draft at least one legal memo in the course of their client work, and will redraft the legal memo as a short advocacy piece for non-lawyers. An outline of the legal opinion is due on October 7. The legal opinion and advocacy piece are due on October 21. The Instructors will provide comments and revisions to you that week. The second draft is due November 4.

### **4. Leading a classroom topic in Term II**

Term II is largely devoted to two case studies. Each student will facilitate the discussion of one class and present an element of the case study.

### **5. Working with the class on a group project**

The first two weeks of the second term will be devoted to a group project that responds to an Environmental Law Centre client. The group project will familiarize the class with working in teams and joint problem-solving.

### **6. Participating in a negotiation**

Two classes in Term II are devoted to a negotiation exercise where students negotiate a resource management dispute. Students represent a party to the dispute, take instructions from that party, and negotiate a settlement over a two week period, with face-to-face negotiations occurring during two class times.

### **7. Managing client files**

Classroom hours make up half of the credits for this course. The other credits are fulfilled by working with one or more clients or lawyers on public interest environmental law issues. In addition to attending the once per week two hour class, students will manage one or more public interest environmental law files at minimum twelve hours per week. Students will normally meet with the instructor outside of class time once per week for the first month, and every two weeks after that. Students may meet with the instructor more or less frequently, as needed. In keeping with the file management protocols established through good law practice and the Environmental Law Centre, students will e-mail to the instructor their timesheets and record of activities on a weekly basis. Failure to do so will result in failing grade.

## OTHER

**Regulations:** Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2010-2011 (“U Vic Calendar”), both generally and specifically for the Faculty of Law. The Undergraduate Academic Regulations of the UVic Calendar set out the University’s expectations about attendance and assignments (<http://web.uvic.ca/calendar2011/FACS/UnIn/UARe/index.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, both I as instructor and you as students must endeavour to be respectful in our language, our examples, and the manner in which we conduct our discussions. We have both an ethical and legal obligation to support this kind of environment (see the University’s Discrimination and Harassment Policy ([http://www.uvic.ca/shared/shared\\_usecdocs/policies/GV0205\\_1150.pdf](http://www.uvic.ca/shared/shared_usecdocs/policies/GV0205_1150.pdf)), and the Faculty is committed to promoting, providing and protecting a positive, supportive and safe learning and working environment for all its members. If you have any concerns about the climate of the class, please contact me.

**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/calendar2011/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/about.html>) and we 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. 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 please speak with me so that we can work out a satisfactory arrangement.

## Course Outline

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| <p>September 7<br/>Week 1</p>  | <p><b>Public Interest Environmental Lawyering: Views from the Field</b><br/>           What is sustainability law and public interest environmental law?<br/>           What do sustainability and public interest environmental law practitioners do?<br/>           Where are we going with environmental law &amp; sustainability?<br/>           Class procedure &amp; skills to be covered</p> <p>PLTC Materials, Practice Management<br/>           Chapter 4, Client File Management pp.27-49<br/>           Chapter 5 Client Relations pp.53-61<br/> <a href="http://www.lawsociety.bc.ca/docs/becoming/material/PracticeManagement.pdf">http://www.lawsociety.bc.ca/docs/becoming/material/PracticeManagement.pdf</a><br/>           D. Curran, Reflections on Public Interest Environmental Lawyering in British Columbia (<i>The Advocate</i>, March 2009)</p> |
| <p>September 16<br/>Week 2</p> | <p><b>Field trip to O.U.R. Ecovillage</b><br/>           3-5pm</p>  |
| <p>September 21<br/>Week 3</p> | <p><b>Sustainable Land Development</b><br/>           Crown land use structures, impact on indigenous communities, environmental justice; urban/near urban land development and environmental protection</p> <p>Deborah Curran (2008). Local Government Sustainability Trends (Vancouver: Continuing Legal Education Society of B.C.)<br/> <a href="http://online.cle.bc.ca/CourseMaterial/pdfs/2008/182_5_1.pdf">http://online.cle.bc.ca/CourseMaterial/pdfs/2008/182_5_1.pdf</a><br/>           Green Bylaws Toolkit (skim pp.15-113 to get a sense of structure)<br/> <a href="http://www.greenbylaws.ca">www.greenbylaws.ca</a><br/>           John Borrows, Living Between Water and Rocks: First Nations, Environmental Planning and Democracy 47 <i>U of Toronto Law J.</i> 417</p>  |
| <p>September 28<br/>Week 4</p> | <p><b>Persuasive Writing</b><br/>           Overview of legal memos (“objective) and public interest (“advocacy”) writing; keys to successful written advocacy</p> <p>Law Society of British Columbia, Professional Conduct Handbook Chapters 1-3<br/> <a href="http://www.lawsociety.bc.ca/page.cfm?cid=383&amp;t=Professional-Conduct-Manual">http://www.lawsociety.bc.ca/page.cfm?cid=383&amp;t=Professional-Conduct-Manual</a></p>  |

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|   | <p>Do-Ellen Hansen, <i>The Legal Research Plan: A Tool for Effective Legal Research</i> (Vancouver: Continuing Legal Education Society 2004)<br/> <a href="http://online.cle.bc.ca/CourseMaterial/pdfs/2004/598_1_1.pdf">http://online.cle.bc.ca/CourseMaterial/pdfs/2004/598_1_1.pdf</a></p>  |
| <p>October 5<br/>Week 5</p> <p><b>Outline of Legal Memo Due October 7</b></p>                                     | <p><b>Effective Presentations</b><br/> Rate that advocate – review of celebrity presentations<br/> Overview of effective advocacy skills</p> <p>PLTC Materials, <i>Civil Litigation</i>, Chapter 6: Professionalism for Litigators pp.103-112<br/> <a href="http://www.lawsociety.bc.ca/docs/becoming/material/CivilLitigation.pdf">http://www.lawsociety.bc.ca/docs/becoming/material/CivilLitigation.pdf</a><br/> Law Society of British Columbia, <i>Professional Conduct Handbook Chapter 8 – The Lawyer as Advocate</i><br/> <a href="http://www.lawsociety.bc.ca/page.cfm?cid=1037&amp;t=Professional-Conduct-Handbook-Chapter-8-The-Lawyer-as-Advocate">http://www.lawsociety.bc.ca/page.cfm?cid=1037&amp;t=Professional-Conduct-Handbook-Chapter-8-The-Lawyer-as-Advocate</a><br/> Peruse - Hints for Good Presentations<br/> <a href="http://lrs.ed.uiuc.edu/students/scagnoli/presentations/">http://lrs.ed.uiuc.edu/students/scagnoli/presentations/</a></p>  |
| <p>October 12<br/>Week 6</p>  | <p><b>Effective Presentations - Practice</b><br/> Record individual presentations with class providing feedback</p>  |
| <p>October 19<br/>Week 7</p> <p><b>1<sup>st</sup> draft of legal memo and advocacy writing due October 21</b></p> | <p><b>Climate Change – Canadian Perspective</b><br/> The emerging role of climate change in environmental law and responses to its challenges – litigation and senior government action<br/> Constitutional and regulatory approaches, plus B.C. action</p> <p>C. Rolfe, <i>Climate Change as an Environmental Law Driver and Opportunity</i> (Continuing Legal Education Society, 2008)<br/> <a href="http://online.cle.bc.ca/CourseMaterial/pdfs/2008/182_4_1.pdf">http://online.cle.bc.ca/CourseMaterial/pdfs/2008/182_4_1.pdf</a><br/> Hsu, Shi-Ling, and Robin Elliot. "Regulating greenhouse gases in Canada: constitutional and policy dimensions." <i>McGill Law Journal</i> 54.3 (2009): 463+. <i>LegalTrac</i>. Web. 6 July 2010.<br/> <a href="http://find.galegroup.com/gtx/infomark.do?&amp;contentSet=IAC-Documents&amp;type=retrieve&amp;tabID=T002&amp;prodId=LT&amp;docId=A216338949&amp;source=gale&amp;srcprod=LT&amp;userGroupName=uvictoria_p&amp;version=1.0">http://find.galegroup.com/gtx/infomark.do?&amp;contentSet=IAC-Documents&amp;type=retrieve&amp;tabID=T002&amp;prodId=LT&amp;docId=A216338949&amp;source=gale&amp;srcprod=LT&amp;userGroupName=uvictoria_p&amp;version=1.0</a></p> |
| <p>October 26<br/>Week 8</p>  | <p><b>Climate Change - Local Government Response</b><br/> Trisolini, Katherine A. "All hands on deck: local governments and the potential for bidirectional climate change regulation." <i>Stanford Law Review</i> 62.3 (2010): 669+. <i>LegalTrac</i>. Web. 6 July 2010.<br/> <a href="http://find.galegroup.com/gtx/infomark.do?&amp;contentSet=IAC-Documents&amp;type=retrieve&amp;tabID=T002&amp;prodId=LT&amp;docId=A22486381">http://find.galegroup.com/gtx/infomark.do?&amp;contentSet=IAC-Documents&amp;type=retrieve&amp;tabID=T002&amp;prodId=LT&amp;docId=A22486381</a></p>   |

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|   | <p><a href="http://www.communityenergy.bc.ca/sites/default/files/CEA%20Case%20Study%20Guide.2008Oct.pdf">3&amp;source=gale&amp;srcprod=LT&amp;userGroupName=uvictoria_p&amp;version=1.0</a><br/> Community Energy Association, Energy Sustainability Case Study Guide (October 2008)<br/> <a href="http://www.communityenergy.bc.ca/sites/default/files/CEA%20Case%20Study%20Guide.2008Oct.pdf">http://www.communityenergy.bc.ca/sites/default/files/CEA%20Case%20Study%20Guide.2008Oct.pdf</a></p>   |
| <p>November 2<br/> Week 9</p> <p><b>Final draft of legal memo and advocacy writing due November 4</b></p> | <p><b>Demand Management</b><br/> What is it?<br/> The small legal steps towards dematerialization, pollution prevention, the precautionary principle, water demand management, risk assessment</p> <p>J. Salzman, Sustainable Consumption and the Law (1997) 27 <i>Envtl. L.</i> 1243.<br/> R. Percival, Who's Afraid of the Precautionary Principle? 23 <i>Pace Env'tl L. Rev.</i> 21 (2005-2006)</p>  |
| <p>November 9<br/> Week 10</p>  | <p><b>Demand Management – Case Study of Water Use</b><br/> O. Brandes and D. Curran, Water Licenses and Conservation: Future Directions for Land Trusts in British Columbia (Salt Spring Island: The Land Trust Alliance of B.C., 2008)<br/> <a href="http://www.landtrustalliance.bc.ca/docs/Water_Licence_Report_FINAL2.pdf">http://www.landtrustalliance.bc.ca/docs/Water_Licence_Report_FINAL2.pdf</a><br/> B. Pardy, Seven Deadly Sins of Canadian Water Law 13 <i>J. Env. L. &amp; Prac.</i> 89 (2003)</p>  |
| <p>November 16<br/> Week 11</p>   | <p><b>Shared Decision Making</b><br/> Overview and discussion of the pitfalls and potential of the myriad fora in which communities share management (jurisdiction) for regulatory or resource management processes, and the lawyer's role.</p> <p>C. Proudfoot, Accomplishing Shared Decision-Making (Continuing Legal Education Society 2006)<br/> <a href="http://www.cle.bc.ca/Practice%20Points/ABOR/Accomplishing%20Shared%20Decision%20Making.pdf">http://www.cle.bc.ca/Practice%20Points/ABOR/Accomplishing%20Shared%20Decision%20Making.pdf</a><br/> BC First Nations' – All Chiefs Forum (Nov 25-26 2008) Discussion Paper: Shared Decision Making<br/> <a href="http://www.fns.bc.ca/pdf/Doc3SDMDiscussionPaperFinal.pdf">http://www.fns.bc.ca/pdf/Doc3SDMDiscussionPaperFinal.pdf</a><br/> Robert Bullard &amp; Glenn Johnson, Environmental Justice: Grassroots Activism and Its Impact on Public Policy Decision Making. <i>Journal of Social Issues</i> 56:3, 2000 pp.555-578<br/> <a href="http://www.unc.edu/courses/2005spring/epid/278/001/Bullard2000JSocIssues.pdf">http://www.unc.edu/courses/2005spring/epid/278/001/Bullard2000JSocIssues.pdf</a></p> |

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| <p>November 23<br/>Week 12</p>                          | <p><b>Shared Decision Making Continued</b><br/> <i>Tsilhqot'in Nation v. B.C.</i> paragraphs 1357-1380<br/> E. J. Peters, Organisational Design for Co-Management: Comparing Four Committees in Nunavik 44 <i>Cahiers de Droit</i> 667-690 (2003)<br/> Materials from guest to be distributed.</p> |
| <p>November 30<br/>Week 13<br/>Last class fall term</p> | <p><b>Term 1 Class Evaluation</b><br/> In-class evaluation of course content and materials to date<br/> Review of course content and expectations<br/> Set the stage for Term 2</p>  |