

Environmental Law I

Fall Term 2010

Environmental Law I / Law 2104.03
Mon. 3:00 – 4:30, Wed. 9:00 – 10:30
Classroom 207/304 – Weldon Law Bldg.

Professor: Meinhard Doelle

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Objective:

The course provides an overview of environmental law, policy approaches and challenges at the national and provincial levels. While sampling the numerous categories of law relevant to environmental issues, including international law, common law, constitutional law, legislative and regulatory regimes, and administrative law, the course seeks to highlight the ethical, political and social context of environmental law development and implementation.

Evaluation:

Evaluation will be 70% final examination, 20% based on an in-class law reform advocacy exercise, and 10% based on BLS posts on selected readings identified in the course outline below. Students are required to sign up for one of the law reform advocacy exercises early in the course. Spots will be allocated on a first come first served basis. Students are expected to post a brief comment on BLS/OWL for each of the articles identified for reaction posts in the course outline below. The posts are expected to be only one or two paragraphs each. The basic concept is for students to post their own views on selected readings before the readings are discussed in class. The posts should be brief, and should demonstrate that the student has read the article(s) in question while offering the student's personal perspective. The dates for the posts are also noted on the Calendar on BLS/OWL.

Please note that the final exam will be a take home exam. The exam will be made available during the time slot assigned on the regular exam schedule.

Required Texts

M. Doelle & C. Tollefson, *Environmental Law: Cases and Materials* (Toronto: Thomson/Carswell, 2009)

Other Reading Material

- David R. Boyd, *Unnatural Law, Rethinking Canadian Environmental Law and Policy*, (UBC University Press, 2003)
- E. L. Hughes, A. R. Lucas and W. A. Tillman (eds.), *Environmental Law and Policy*, 3rd ed. (Toronto: Edmond Montgomery, 2003)
- Jamie Benidickson, *Environmental Law*, 3rd ed. (Irvin Law, 2008)

Students with Special Needs/Requests for Accommodation

Students seeking special accommodation with regard to course evaluation, such as exam deferral and extensions to deadlines, should consult with Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes as soon as possible, and before an exam is scheduled to be written or an assignment is due. Requests for special accommodation for reasons such as illness or personal circumstances will require an application to the Law School Studies Committee. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes if they require more information about the Studies Committee process. Students wishing to discuss arrangements for classroom assistance should see Professor Wildeman, the law faculty advisor to students with disabilities.

Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require academic accommodation for the writing of tests, quizzes and exams should make their request to the Office of Student Accessibility & Accommodation (OSAA) prior to or at the outset of each academic term (with the exception of X/Y courses). Please see www.studentaccessibility.dal.ca for more information and to obtain Form A – Request for Accommodation. Students may also contact the Office of Student Accessibility & Accommodation directly at 494-2836, and they may contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information.

Plagiarism:

All students in this course must read

- the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the plagiarism.dal.ca website, and
- the Law School policy on plagiarism, as set out in
 - the law school regulations (available in hard copy from the Associate Dean's office and online at http://law.dal.ca/law_3104.html) or
 - the Orientation Handbook (provided to all first year students and available online at http://law.dal.ca/law_6945.html).

Any paper or assignment submitted by a student at Dalhousie Law School may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Course Outline

Topic 1 Sept 8 **Introduction to Course**

Topic 2 Sept 13 **Influence of International Law on Domestic Environmental Law**

Readings: Chapter 1
Key Topics: Substance of International Environmental Law, Role in Shaping Domestic Law
BLS Reaction Post: C. Tollefson & J. Thornback article p. 25
Other:

Topic 3 Sept 15, 20 **Common Law Review**

Readings: Chapter 2
Key Topics: Traditional Tort Law, Limits, Recent Developments
BLS Reaction Post: L. Collins article p. 66 (1st class)
Other: Herbicide Trials Film

Topic 4 Sept 22, 27, 29 **Constitutional Law Overview/Refresher**

Readings: Chapter 3
Key Topics: Federal and Provincial Jurisdiction, Role of Municipalities, Aboriginal Issues
BLS Reaction Post: William R. MacKay article p. 144 (2nd Class)
Other: In-Class Law Reform Exercise #1: (Sept 29: Reforming the division of powers over environmental matters)

Topic 5 Oct 4, 6, 13, 18 **Environmental Regulation: Traditional Approaches & Alternatives**

Readings: Chapter 4
Key Topics: Traditional Regulatory Approaches, Alternatives, Economic Instruments, Approaches in Key Legislation (such as CEPA, FA, NSEA)
BLS Reaction Post: Emond & M'Gonigle articles pp. 176, 180 (1st Class)
Other: Guest Speaker: Peter Tyedmers, Economic Instruments (Oct 6)
In-Class Law Reform Exercise # 2: (October 18: Regulating the Pulp& Paper Industry)

Topic 6
Oct 20, 25

Implementation, Enforcement, Inspection and Investigations

Readings: Chapter 5
Key Topics: Cooperative versus Adversarial Approaches, Experience at the Federal Level.
BLS Reaction Post: Zinn article, p. 231 (1st Class)
Other: Guest Speaker: York Friesen, Enforcement Division, Environment Canada (Oct 20)

Topic 7
Oct 27
Nov 1

Judicial Review

Readings: Chapter 6
Key Topics: Standard of Review, Grounds for Review, Public Interest Standing, Interim Relief, Costs
BLS Reaction Post: Tollefson article, p. 304 (1st Class)
Other: In Class Law Reform Exercise # 3 (November 1: Reforming Judicial Review of Environmental Decisions)

Topic 8
Nov 3, 8, 10, 15

Environmental Assessment Law in Canada

Readings: Chapter 7
Key Topics: Federal Process, Scoping, Challenges Ahead for EA
BLS Reaction Post: Gibson & Fonseca articles, p. 367, 370 (2nd Class)
Other: In Class Law Reform Exercise # 4: (November 15: Reforming Federal EA)

Topic 9
Nov 17, 22, 24

Biodiversity

Readings: Chapters 8, 9
Key Topics: Parks, Species at Risk Legislation
BLS Reaction Post: Dearden article, p. 398 (1st Class)
Other: Derek Simon on Protected Areas Legislation (Nov 17)
Law Reform Exercise # 5 (November 24: Reforming the Federal Species at Risk Act)

Topic 10
Nov 29
Dec 1, 6

The Future of Environmental Law

Key Topics: Practicing Env Law (Rob Miedema Nov 29th)
Env Goals & Sust Prosp. Act (Bill Lahey, Dec 1)
Public Trust (David VanderZwaag, Dec 1)
Facing the Challenge of Climate Change (Dec 6)
Readings: Posted on OWL if any
Other: