

# Environmental Law I

## Fall Term 2008

Environmental Law I / Law 2104.03  
Tuesday 3:00 to 6:00  
Classroom 207 – 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. Besides 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, and 30% by way of in course assignments. There will be two assignments worth 15% each. The assignments will be made available early in the course with individual due dates usually in October and November. The assignments each have a word limit of 1500 words.

Please note that the final exam will be a take home exam. The exam will be available at 2:00 on Friday, November 28 and will be due on Monday, December 1<sup>st</sup> at 11:00 am. The final exam has a word limit of 3000 words.

## Required Texts

Doelle (2008) Environmental Law I Casebook

## 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*, 3<sup>rd</sup> ed. (Toronto: Edmond Montgomery, 2003)
- Jamie Benidickson, *Environmental Law*, 2<sup>nd</sup> ed. (Irvin Law, 2002)

## Special Needs

Professor Pothier is the faculty advisor to students with disabilities. Students with disabilities wishing to discuss in-class accommodation or study assistance needs should see Professor Pothier. Students wishing to request accommodation regarding exam writing or other aspects of evaluation must make the request in writing to the Studies Committee and should see Associate Dean Deturbide or Assistant Dean Hughes for more information. Material for the Studies Committee should be given to Tiffany Coolen-Jewers, administrative assistant to the Associate Dean.

## Course Outline

### **Topic 1**

#### **Introduction to Course**

- Overview of objectives of the course, overview of sources of Environmental Law
- Guest Lecture: Rob Miedema on the practice of environmental law (Sept 9)
- Brief Exercise/Follow-up

### **Topic 2**

#### **Influence of International Law on Domestic Environmental Law**

- Overview of Customary Int'l Law, Treaties, Soft Law Concepts
  - Applying Int'l Law in Canada (Review of Brandon & Case law)
  - Exercise on the application of international law
  - Introducing 4 Key International Regimes (WTO, NAFTA, Basel, CBD)
- Reading Assignment: Casebook: Chapter 1

### **Topic 3**

#### **Common Law Review**

- Palmer v. Nova Scotia Forest Industries (CB Spray) Case (Video)
- Discussion on Video, and what the case teaches us about the limits of the common law

- Broader discussion about the limits of the common law (causation, foreseeability, burden of proof...)
  - Class Action suits, SLAPP suits, public trust ...
- Reading Assignment: Casebook: Chapter 2

#### Topic 4

##### **Constitutional Law Overview/Refresher**

- Overview of key issues and cases
- Exercise

Reading Assignment: Casebook: Chapter 3: up to 3-58 only

#### Topic 5

##### **Environmental Law In Private Practice (~2 weeks)**

##### **Wading Through the NS Environment Act**

- General Overview of NSEA
- Approvals, Releases and Contaminated Sites
- Exercise
- Liability for Environmental Harm
- Exercise
- Balancing environmental protection and economic development?
- Guest speaker: Bill Lahey on the EGSPA (Oct 14)

Reading Assignment: Casebook: Chapter 4. Also please review the EGSP Act prior to class on the 14<sup>th</sup>.

#### Topic 6

##### **Regulatory Approaches: Standards, Approvals & Alternatives**

- Command and Control: Standard Setting, Approval Granting,
- CEPA
- The Fisheries Act
- Alternative Approaches

Reading Assignment: Casebook: Chapter 5:

#### Topic 7

##### **Implementation, Enforcement, Inspection and Investigations**

- Introduction to topic, covering theory, get ready to critically assess presentation
- Guest Speaker: York Friesen, Head of Enforcement, Environment Canada (Oct 28)
- Follow-up discussion/exercise

Reading Assignment: Casebook: Chapter 6:

#### Topic 8

##### **Judicial Review**

- Overview (the role and nature of judicial review in the environmental context)
- Grounds for Judicial Review
- Public Interest Standing
- Interim Injunctive Relief
- The Issue of Costs

Reading Assignment: Casebook: Chapter 7

#### Topic 9

##### **Environmental Assessment Law in Canada (~2 weeks)**

- Overview of the Federal Process
- Exercise on when the Act applies
- Scoping cases under CEAA
- Guest Speaker: Lesley Griffiths, Panel Chair, Sydney Tar Ponds, Voisey's Bay, Tidal SEA (Nov 18)
- Guest Speaker: Lisa Mitchell, Whites Point Quarry Panel Review (Nov 18)
- Future of EA, How to make EA effective

Reading Assignment: Casebook: Chapter 8:

#### Topic 10

##### **Biodiversity**

- Introduction to Biodiversity: Importance and major threats
- The role of the SARA in protecting biodiversity in Canada
- The role of National Parks in protecting biodiversity

Reading Assignment: Casebook: Chapter 9

#### Topic 11

##### **Future of Environmental Law**

- Environmental Rights as the solution
- Review of major issue covered
- Class discussion/exercise on what the future might hold for environmental law

Reading Assignment: Casebook: Chapter 3:63 -