

Laws 2104: Environmental Law I Course Syllabus

Fall 2018

Class Credit Hours: 3

Class hours: Tuesday/Thursday 11:00 – 12:20, Weldon 207

Instructor: Professor Sara Seck

Office: W414

Office Phone: 902-494-7715

Office Hours: Tuesday/Thursday 3:00 - 4:00, or by appointment

Email: Sara.Seck@dal.ca

Course Description

This course will examine Canadian environmental laws in support of sustainable development. The relationship between international law and domestic environmental law will be briefly explored, including the principles of precaution, polluter pays and public participation. The role of common law in preventing and redressing environmental degradation will be considered. Federalism and constitutional realities and restrictions to environmental management will be examined. The traditional command-control approach to environmental regulation will be critiqued and alternate approaches introduced. Topics will include environmental impact assessment law (with attention to social dimensions including Aboriginal consultation and consent), environmental standard setting (with attention to precaution, uncertainty, and Indigenous knowledge), and compliance and enforcement (including criminal, regulatory, and citizen-led approaches). Throughout the course cross-cutting topics will be considered, including public interest standing and judicial review, biodiversity protection, toxic substance control, climate change, and environmental justice.

Course Pre-requisites, Co-requisites and/or other Restrictions

There are no pre- or co-requisites for this course.

Pedagogical Approach

There is no assigned participation grade in Environmental Law I, however, student engagement is important for the success of the course. There are many ways in which students can contribute in addition to regular class attendance. The class format will be a mix of lectures, in-class exercises, and discussion. Students are also encouraged to post comments on the class discussion board, found on the Brightspace course website. Comments may consider assigned readings, reflect on environmental law issues that have arisen in other classes or in the media, or otherwise demonstrate interest and engagement with environmental law. When guest lecturers have been

invited to share their knowledge, students are encouraged to ask questions and contribute to the discussion.

Electronic devices: there is increasing evidence that when students multi-task on their electronic devices during class, it negatively impacts their learning outcomes, as well as those of students who sit close by. As access to the internet for supplementary materials can enhance course learning, during this class we will at times reference materials available online. However, students are not required to have a computer or similar electronic device in class.

I have scheduled regular office hours and you will be able to sign up for specific times on the whiteboard on my office door. If these times don't work for you, just send me an e-mail and we can set up a different time to meet in person. Office hour meetings can be used to discuss any questions or concerns you might have about class materials, as well as about the opinion letter assignment (see further below). As a rule, I will not answer substantive questions by e-mail. In the case of emergency, my assistant Lauri MacDougall can assist: lauri.macdougall@dal.ca or 902-494-1988.

Learning Management System Site Information

A Brightspace course web site has been set up on which the course syllabus and required as well as optional supplementary readings will be posted. A class discussion board has also been set up, where students are invited to share reflections on current events and developments in environmental law. The opinion letter assignment is to be submitted through Brightspace, as well as in accordance with the instructions below.

Readings:

Required

- M. Doelle & C. Tollefson, *Environmental Law: Cases and Materials*, 2nd ed. (Toronto: Thomson/Carswell, 2013)
- Supplementary required readings will be posted on Brightspace

Optional

- Jamie Benidickson, *Environmental Law*, 4th ed. (Toronto: Irvin Law, 2013)
- Supplementary optional readings posted on Brightspace

Course Assessments (JD students)

| Assessment | Date Due/of Evaluation | Weighting |
|-------------------|-------------------------------|------------------|
| Opinion Letter | Friday, November 23 | 30% |
| Exam (open book) | Thursday, December 6 | 70% |

For details on the opinion letter assignment, see Assignment Instructions posted on Brightspace. The final opinion letter will be due no later than 4pm on Friday November 23rd and a hard copy of the assignment must be submitted to me or my assistant Laurie MacDougall in accordance with law school policy on the submission of major papers and assignments (see below). In addition, an electronic copy of your assignment must be submitted through Brightspace by the submission deadline as a Word or Open Office format document.

You are encouraged to discuss your opinion letter assignment with me at any time during term and to share drafts of the various sections of your opinion letter with me, provided that this is done in a timely fashion. You are also encouraged to engage with classmates working on similar topics; however, the final report has to represent the individual work of the student submitting it. Please note the rules on plagiarism below. Submitted assignments will be compared with those submitted for this course, and those submitted for similar assignments in previous years.

Graduate students: a research paper of 30-35 pages on a topic chosen in consultation with me. We will discuss and agree upon due date and other details including citation expectations.

1. Student Requests for Accommodation

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean, Academic Michael Deturbide or the Director of Student Services and Engagement Dana-Lyn Mackenzie as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit www.dal.ca/access for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at (902) 494-2836.

2. Submission of Major Papers and Assignments

Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties: <https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

Please note students may also be required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of

checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

- a) submit copies of multiple drafts demonstrating development of their work
- b) submit copies of sources
- c) submit an annotated bibliography

3. Plagiarism

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law 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 and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Advising support and information on fair dealing is available:

- General Academic Support – Advising Halifax: https://www.dal.ca/campus_life/academic-support/advising.html
- Fair Dealing Guidelines: <https://libraries.dal.ca/services/copyright-office/guidelines/fair-dealing-guidelines.html>

Course Outline

This course outline provides a brief overview of the topics that we will cover in the course, and how key chapters in the textbook fit with this outline. **DETAILS on assigned course readings will be posted on BRIGHTSPACE over the course of the term.**

Topic 1: Introduction to Course

Sep 6

What is the environment? Why do we need law to protect it? What legal tools might we use?

Take a quick look at the following websites before class to guide our discussions:

- UN Environment: <https://www.unenvironment.org>
- Stockholm Resilience Centre, Planetary Boundaries research: <http://www.stockholmresilience.org/research/planetary-boundaries.html>
- Environmental Justice Atlas: <https://ejatlas.org>

Topic 2: International Environmental Law and Domestic Environmental Law

Sep 11, 13

Reading Assignment: Chapter 1

Key Topic: Substance of International Environmental Law and its relationship to Domestic Law
Updates: [UNDRIP](#); Sustainable Development Goals ([SDGs](#)); [Paris Climate Agreement](#)
Supplements: [Castonquay Blasting Ltd v Ontario \(Environment\)](#) (SCC 2013) para 20.

Sep 18 Reading Assignment: Brightspace/online
2018 Framework Principles on Human Rights and the Environment, UN Doc [A/HRC/37/59](#):
Key Topic: International human rights law and the environment – a framework for legal tools?

Topic 3: Common Law

Sep 20, 25 Reading Assignment: Chapter 2
Key Topics: Traditional Tort Law, Limits, Recent Developments
Updates: Saik'uz First Nation and Stellat'en First Nation v. Rio Tinto Alcan Inc., [2015 BCCA 154](#)
(paras 1-90)
[Lynda Collins](#), "Material Contribution to Risk in the Canadian Law of Toxic Torts" (2016) 91 Chi.-
Kent. L. Rev. 567.

Optional: Herbicide Trials Film

<http://www.cultureunplugged.com/documentary/watch-online/play/11981/Herbicide-Trials>

Topic 4: Jurisdiction over the Environment

Sep 27, Oct 2 Reading Assignment: Chapter 3
Key Topics: Federal and Provincial Jurisdiction, Municipalities, Indigenous peoples

Topic 5: Environmental Regulation: Traditional Approaches & Alternatives

Oct 4, 9 Reading Assignment: Chapter 4
Key Topics: Traditional Regulatory Approaches, Alternatives, Economic Instruments,
Approaches in Key Statutes (such as CEPA, FA, NSEA)

Topic 6: Environmental Justice, Racism, and Rights in Canada

Oct 11 Reading Assignment: TBA
Key Topics: Indigenous environmental justice (Deborah MacGregor);
Environmental racism (Ingrid Waldron)

Topic 7: Compliance & Enforcement

Oct 16, 18 Reading Assignment: Chapter 5
Key Topics: Inspection, Investigation, Cooperative versus Adversarial Approaches, Experience at
the Federal Level

Topic 8: Environmental Tribunals and Judicial Review

Oct 23, 25 Reading Assignment: Chapter 6
Key Topics: Environmental Tribunals, Standard of Review, Grounds for Review, Public Interest
Standing, Interim Relief, Costs

Topic 9: Environmental Assessment Law in Canada

Oct 30, Nov 1 Reading Assignment: Chapter 7

Key Topics: Old and New Federal Processes, Scoping, Challenges Ahead for EA
Guest lecture: Meinhard Doelle [Oct 30]

Topic 10: Biodiversity

Nov 6, 8 Reading Assignment: Chapters 8, 9

Key Topics: Parks, Species at Risk Legislation

Break week: No classes Nov 13 & 15

Nov 20 continued...

Topic 11: Climate Change

Nov 22, 27 Reading Assignment: Chapter 10

Key Topics: Climate Change & Environmental Law

Topic 11: Review, Exam

Nov 29 [Dec 4]

Exam: **Dec 6**