

Environmental Law: ENV 422H/ 1701H

Fall Term 2017
Tuesday 6:30-9:30
SS2106

(Sidney Smith Hall (Willcocks and Huron Streets))

Course Instructor: Paul Muldoon

paul.muldoon@utoronto.ca paul.muldoon@sympatico.ca

NOTE: Graham Rempe will be assisting Paul in presenting lectures. Graham's email is:

graham.rempe@utoronto.ca

TA: Rachel Levine

rachel.levine@mail.utoronto.ca

Office: #315, Anthropology Building, 19 Russell St. *office hours by appointment, via online Doodle poll sign-up form.

NOTE that Rachel should be considered your key contact point in this course. Please contact Rachel with administrative questions, personal emergencies, etc. Include ENV422/ENV1701 in subject heading.

Course Description

Law is a key instrument in environmental management. What is the general framework which governs the Canadian environment? What are the values, assumptions, and guiding principles which underlie this framework? How does the Canadian model compare to other models?

The course will address these questions with the intention of giving students a basic understanding of regulatory policies in Canada governing the environment and natural resource use and allocation.

Required course text

Paul Muldoon, Alastair Lucas, Robert Gibson, Peter Pickfield, **An Introduction to Environmental Law** (2nd Edition) (Toronto: Emond Montgomery Publications, 2015). This paper will be available at the University of Toronto bookstore.

A recommended text is:

Jamie Benidickson, **Essentials of Environmental Law** (2d) Irwin, 2002).

Additional Readings will also be assigned by Blackboard.

Blackboard - -PLEASE NOTE

Students in ENV1701 must email Rachel Levine with their UTORid so that they can be manually added to the ENV422 Blackboard page. The ENV422 Blackboard page is where all course materials, announcements, and Q&A (discussion board) will be located. Grades for ENV1701 students will still be on the ENV1701 Blackboard pag

Communication Policy and Discussion Board

Please use the ENV422 Blackboard discussion board for all course questions that are NOT of an urgent, private nature. (Those should be emailed to Rachel Levine). Rachel will regularly check into the discussion board to answer questions, but you are all welcome to chime in and help or expand on questions. You can also use the discussion board to share links, event invitations, or request notes if you missed class.

Overview of requirements

1) Environmental Bill of Rights paper

- The purpose of this short written assignment is for you to critically assess the Environmental Bill of Rights database, a tool for public involvement in legal environmental decision-making. Your focus here is on concepts of legal accessibility and participation. A document will be posted on Blackboard that outlines the details of this assignment, including the marking scheme.

2) Group conference presentation.

The conferences have three main goals:

- ✓ To give students the opportunity to look at, and to critically interrogate, **“real-world” examples** of the (uneven) application of law and the myriad complicated questions that arise around environment, society, ‘nature,’ and inequality. You are expected to bring course material into your presentations, but are more importantly *required* to think well beyond the scope of this course in your connections, critique, questions, etc.
- ✓ To provide an occasion for students to **contribute to existing and growing scholarly conversations** re: the environment and legal practice.
- ✓ To permit students the chance to **creatively “feel out” emerging topics in environmental and legal scholarship**. The presentations are relatively early in the term so that we can all continue, and build on, the engendered discussions.

UNDER SPECIAL REQUEST, students may undertake a research paper instead of a conference presentation. However, conference attendance and discussion participation is mandatory for all students regardless of whether or not they present. Please make your special request to Rachel in person, during office hours, IN ADVANCE OF OCTOBER 19.

- The exam will focus largely on Professors Muldoon and Rempe’s lectures and assigned reading material, but will also incorporate conference presentations and other class content (debates, screened media, guest lectures, etc.).

Marking scheme(s) and important dates

Requirement	(Due) Date	% for ENV422	% for ENV1701
Quiz/ Test	October 31	30%	30%
→ Rough outline: individual plan for conference contribution	October 19	Considered in conference presentation grade	Considered in conference presentation grade
→ Outline: group conference panel (submit 1x/group)	November 7	Considered in conference presentation grade	Considered in conference presentation grade
→ Group/panel check-in meeting with Rachel	By appointment	Considered in conference presentation grade	Considered in conference presentation grade
Conference Presentation	November lectures	30%	30%
Final exam	Formal exam period	40%	40%

Detailed guidelines for all requirements will be distributed well in advance of due dates. Guidelines will be posted under “course materials” on Blackboard, and an email will go out announcing their upload. Further questions re: the technical details of course requirements should be posted on the class Blackboard discussion board, so that all students benefit evenly from the information provided.

Accessibility, emergencies, etc.

Please speak with Rachel *as soon as possible* if you have an accessibility requirement or any other concern that will shape your course participation, contribution, ability to meet deadlines, etc (this includes family and personal emergencies). Rachel will do her best to accommodate you, but options are constrained with late or incomplete communication. Rachel will keep Professor Muldoon apprised of student requirements and will work with the Accessibility Services office or the student(s)’ home department if necessary.

If you have any accessibility-related concerns about the course, the classroom, or course materials, you may also consider contacting Accessibility Services directly: <http://studentlife.utoronto.ca/accessibility>

Class Outline**Class 1 - September 12 (PM and GR)**

INTRODUCTION

- (a) Overview to the Course
- (b) Brief History on the Development of Environmental Law in Canada
- (c) The Tragedy of the Commons

Class 2 - September 19 (PM)

AN OVERVIEW OF THE CANADIAN JUDICIAL SYSTEM - PART I (PM)

- (a) The Concept of Law in Our Society
- (b) How Laws are Made

- (c) Courts and Their Structure
- (d) Role of Law to Protect the Environment

Class 3 - September 26 (GR)

AN OVERVIEW OF THE CANADIAN JUDICIAL SYSTEM - PART II (GR)

- (a) The Canadian Legal Framework
 - (i) The Constitution and Division of Powers
 - (ii) The Charter of Rights and Freedoms
 - (iii) Civil (Common Law) and Criminal Law
- (b) Constitutional Reform and the Environment

Class 4 – October 3 (PM)

THE ENVIRONMENTAL BILL OF RIGHTS

- (a) The Environmental Bill of Rights
 - (i) Evolution and Overview of the EBR
 - (ii) Elements of the Bill:
 - Purposes
 - Environmental Registry
 - Public Participation Scheme
 - Environmental Commissioner
- (b) Other Initiatives re: environmental rights

Class 5 - October 10 (GR)

THE ENVIRONMENTAL PLANNING PROCESS – PART I

- (a) Introduction to the Environmental Planning Process
- (b) The Canadian Environmental Assessment Act
 - (i) History
 - (ii) Contents and Evaluation
 - (iii) CEAA Regulations/ Recent Cases

THE ENVIRONMENTAL PLANNING PROCESS - PART II

- (a) The Ontario Environmental Assessment Act
 - (i) Overview to Act
 - (ii) Environmental Review Tribunal
 - (iii) How the Act works

Class 6 - October 17 (GR)

AN INTRODUCTION TO PLANNING LAW

- (a) Overview
- (b) Planning Act
- (c) Official Plans and Zoning By-laws

BROWNFIELDS LEGISLATION – “How Clean is Clean”

Class 7 - October 24 (PM)

STANDARD-SETTING, APPROVALS & ENFORCEMENT - PART I

- (a) Definition and Nature of "Standard-Setting"
- (b) Types of Standards - The Range of Legal/ Policy Tools
- (c) Case Examples of How Standards are Developed

STANDARD-SETTING, APPROVALS & ENFORCEMENT - PART II

- (a) New Issues and Approaches in Standard Setting
 - (i) Pollution Prevention
 - (ii) Regulatory versus Non-Regulatory Approaches
 - (iii) Precautionary Principle
- (b) An Overview to Enforcement and Compliance

Class 8 – October 31 (GR)

- (a) The Connections of Environment and Indigenous Issues
- (b) Compliance (From Enforcement Actions to Corporate Voluntarism)
- (c) In Class Quiz

No Class on November 7th ☺

Class 9 - November 14 (PM)

ENVIRONMENTAL RIGHTS: USING THE COURTS – PART I

- (a) Overview of Court Actions
- (b) Common Law Causes of Action
 - (i) Nuisance
 - (ii) Negligence
 - (iii) Trespass
 - (iv) Other

ENVIRONMENTAL RIGHTS: USING THE COURTS - PART II

- (a) Statutory Causes of Action
 - (i) Breach of Charter Rights
 - (ii) Canadian Environmental Protection Act
 - (iii) Environmental Bill of Rights
- (b) Private Prosecutions

Class 10 – November 21 (PM and GR)

ENVIRONMENTAL RIGHTS: PARTICIPATION IN HEARINGS

- (a) Environmental Tribunals in Canada
- (b) Basic Concepts: Natural Justice, Evidence
- (c) Expert evidence (a special case)
- (d) Keeping the Process Fair: Judicial Review
- (e) Some “On the Ground” Experience

Class 11 – November 28 (PM)

INTERNATIONAL ENVIRONMENTAL LAW

- (a) Definition, Sources, Origins, Enforceability
- (b) Rights and Duties: Custom
- (c) Rights and Duties: Treaties
- (d) Relationship to Canadian Law

Class 12 – EXAM PREP/OVERVIEW: WRAP-UP AND REVIEW OF COURSE CONTENT (PM and GR)

Synthesis, Q&A, format discussion(s), debate, possible exam spoilers etc.

Academic Integrity – IMPORTANT

Academic integrity is fundamental to learning and scholarship at the University of Toronto. Participating honestly, respectfully, responsibly, and fairly in this academic community ensures that the U of T degree that you earn will be valued as a true indication of your individual academic achievement, and will continue to receive the respect and recognition it deserves. Please see:

www.artsci.utoronto.ca/osai/students

Familiarize yourself with the University of Toronto's *Code of Behaviour on Academic Matters* (<http://www.governingcouncil.utoronto.ca/policies/behaveac.htm>). The *Code* is the rulebook for academic behaviour at the U of T, and you are expected to know the rules. Potential offences include, but are not limited to:

In papers and assignments:

- Using someone else's ideas or words without appropriate acknowledgement.
- Copying material word-for-word from a source (including class and study group notes) and not placing the words within quotation marks.
- Submitting your own work in more than one course without the permission of the instructor.
- Making up sources or facts.
- Including references to sources that you did not use.
- Obtaining or providing unauthorized assistance on any assignment including
 - working in groups on assignments that are supposed to be individual work,
 - having someone rewrite or add material to your work while "editing".
- Lending your work to a classmate who submits it as his/her own without your permission.

On tests and exams:

- Using or possessing any unauthorized aid, including a cell phone.
- Looking at someone else's answers
- Letting someone else look at your answers.
- Misrepresenting your identity.
- Submitting an altered test for re-grading.

Misconference presentation:

- Falsifying or altering any documentation required by the University, including doctor's notes.
- Falsifying institutional documents or grades.

To remind you of these expectations, and help you avoid accidental offences, Rachel will conduct “integrity checks” on all student work.

The University of Toronto treats cases of academic misconduct very seriously. All suspected cases of academic dishonesty will be investigated following the procedures outlined in the *Code*. The consequences for academic misconduct can be severe, including a failure in the course and a permanent notation on your transcript. If you have any questions about what is or is not permitted in this course, please do not hesitate to contact Rachel. If you have questions about appropriate research and citation methods, seek out additional information from me, or from other available campus resources like the [U of T Writing Website](#). If you are experiencing personal challenges that are having an impact on your academic work, please speak to Rachel or seek the advice of your college registrar.