

Environmental Law: ENV 422H/ 1701H

Fall Term 2020

Pre-recorded Lectures/Live webinar, Tuesday 7 – 9 pm

Course Instructor: Graham Rempe

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Course adviser/Guest Lecturer

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Your primary contact for assignment work should be **Serra Buchanan**, our course TA
(serrawillow.buchanan@mail.utoronto.ca)

Office hours will be held by appointment via Quercus.

Course description

Law, policy, and ethics are key in understanding how we respect, manage and utilize our environment. This course will introduce students to basic principles of environmental law. What is it? How did it evolve? Does it deal fairly with resource preservation, use and allocation? Can it deal with complex emerging problems such as climate change, species at risk, accumulation of toxics, urban sprawl and so on?

We will review the state of the environmental law, with an emphasis on topical issues in Toronto, Ontario, and Canada. Throughout the course, students will be asked to consider the ethical foundations for environmental laws, and their capability of addressing today's challenges.

We will also consider how to present information in a legal setting. Students will be required to research and prepare a presentation (on-line) on a current issue in environmental law. This work will be done individually, and as a group, using the tools available on Quercus.

All students will be expected to have a secure internet connection and a familiarity with Quercus and Blackboard Collaborate.

Webinar sessions will be recorded and posted on Quercus.

Any course materials are not to be reproduced or distributed without my express written consent.

Learning Objectives

1. Develop a basic understanding of environmental law
2. Apply ethical principles of environmental law to contemporary environmental problems
3. Improve ability to prepare, present and defend environmental evidence

Assessment

Environmental Mini hearing

This assignment builds over the semester. Students will research a current environmental problem and prepare a written summary of evidence which they will present at an online mini hearing. Worth 40%. Details below in Appendix 1.

Quickie quizzes

There will be a series of six quick (15 minutes) quizzes in webinars 2, 4, 6, 8, 10 and 12. **These will be held during the webinar.** Each will be worth 10%. Only the best four will be counted toward the student's mark. (We may have to adjust the quiz timing based on scheduling limitations.) Questions will be short answer, true/false, multiple choice, etc. Worth 40%

Participation

There will be a 20% mark, based on attendance and participation in both online and webinar activities (polls, surveys, quizzes, discussions, etc.). We expect to make good use of the tools available on Quercus through what we are calling "particip-action" events and hope you will too. Legitimate COVID related issues will be accommodated through alternate means of assessment if necessary.

Graduate Students

Graduate students will be expected to take a greater role in the management of the various team presentations at the mini-hearing and will be assigned as **team leaders** in those groups. Details below in Appendix 1. Graduate students will also be asked to **lead brief discussions** on certain current issues in environmental law as specified in the webinar schedule below (or as you may request).

The Harsh stuff

Work that is late without an acceptable excuse (see the fine print in App 2 below) will be subject to a penalty of 3% of the value of the assignment per day late.

Learning Activities

Asynchronous Lecture Modules (online – at your own pace, but before the weekly webinar)

Twelve basic lecture modules will be pre-recorded and loaded on Quercus through the term. Students will have access to these materials at least four days in advance of the webinar. These lecture modules will remain available all term.

Lectures may be accompanied by discussions, surveys, etc, within each module. These should also be completed before the webinar as they provide feedback and may be considered in the participation mark). Each module will be reviewed and discussed in the following webinar.

The content of the twelve lecture modules is:

1. Environmental ethics and the principle of sustainability
2. The structure of the law. Jurisdiction and the principle of purposiveness
3. Courts and tribunals and the principle of fairness
4. The common law and the principle of polluter pays
5. Environmental rights, The holy grail?
6. Legislation: standard setting and the principle of precaution
7. Legislation: implementation and the principle of pollution prevention
8. Environmental assessment and the principle of evidence-based decision making
9. Voluntarism and the principle of adaptability
10. Planning and municipal regulation and the principle of subsidiarity
11. Public consultation. Indigenous consultation. The principle of transparency
12. International law and the principles of equity

Synchronous “LIVE” Webinars

Twelve live webinars will be held using Blackboard Collaborate during the assigned Tuesday evening class time slot. These will start at 7 p.m. and will run until 9 p.m. EST (at the latest), depending on scheduled activities. Typical format for the webinars may include:

- Brief review of current events (participation encouraged!)
- Brief review of the asynchronous lecture unit assigned (instructor)
- Discussion of lecture unit (participation encouraged)
- Administrative issues/student issues (if any)
- “Special” presentations. These may include
 - guest lectures, panel discussions
 - student presentations
 - in class polls, surveys, quizzes, etc

The details of the weekly webinar schedule are set out below. They may need to be modified a bit based on class size, COVID contingencies, etc

Course Materials

You are responsible for:

- **all of the online lecture contents, and materials posted on Quercus as well as any materials presented during the webinars by guest lecturers, other students in the course as part of their assignment etc.**
- **DeMarco, Jerry V. *Building a Strong Foundation for Action: A Review of Twelve Fundamental Principles of Environmental and Resource Management Legislation. Journal of Environmental Law and Practice* 19.1 (Oct 2008): 59-69. See link on Quercus**

We **recommend, but you are not responsible for:**

- Muldoon et al *An Introduction to Environmental Law and Policy in Canada (Third Edition)*. Toronto: Emond Montgomery, 2020. It is available at the bookstore.

Additional reference texts are:

- Benidickson – *Essentials of Canadian Law – Environmental Law* (3d. ed.) Irwin Law Inc. Toronto, 2009 – available at the library <http://go.utlib.ca/cat/6664646> (print) - <http://go.utlib.ca/cat/8283066> (online)

- Boyd, Unnatural Law. Rethinking Canadian Environmental Law and Policy. Vancouver: UBC Press, 2003 - <http://go.utlib.ca/cat/4999129> (print), <http://go.utlib.ca/cat/9091509> (ebook)
- Estrin et al, Environment on Trial (3d ed.). Toronto: Emond Montgomery, 1993- available at the library <http://go.utlib.ca/cat/3414114>

Some of these materials are available on reserve. See *Library Course Reserves* tab in Quercus. Some reserves may be restricted as a result of COVID.

Weekly Webinar Schedule

Webinar 1 - September 15

Who speaks for the triffula trees?

- Module 1 : brief review and discussion
- Discuss assignment. Identify issues for hearing/teams
- Exercise – How many cod can you catch? (And other Tragedies of the Commons.)
- **Read DeMarco paper**
- **Grad student discussion.** Environmental principles? Are there any? What are they?
- **Optional read** text ch. 1-4

Webinar 2 - September 22

Sources of law from Hammurabi to Judge Judy

- Module 2 : brief review and discussion
- Assignment update ALL ISSUE GROUPS WILL BE FINALIZED BY END OF Webinar 2
- **Paul Muldoon lecture/discussion: History of environmental law in Canada A review of a few basic principles of the law.**
- QUIZ 1 (15 mins)
- **Read DeMarco paper**
- **Optional read** text ch. 1-4
- **Grad student discussion.** The GGPPA (Who's got the power?)
- Optional reading on jurisdiction to regulate GHGs (or do a bit of research)
<https://irpp.org/research-studies/constitutional-law-and-the-politics-of-carbon-pricing-in-canada/>

<https://www.nortonrosefulbright.com/en-ca/knowledge/publications/7b195ef7/climate-change-and-canadian-federalism>

Webinar 3 - September 29

Courts and Tribunals. Here comes the Judge!

- Module 3: brief review and discussion
- Workshop on procedure, evidence and the “expert” witness
- Assignment update: writing reports and giving testimony
- **Optional read** text ch. 1-4
- Grad student discussion on whether an expert witness is simply a “hired gun”.
- Optional reading on expert witnesses in the courts
<https://www.canadianlawyermag.com/practice-areas/litigation/in-search-of-the-right-expert-witness/270469><https://www.beardwinter.com/content/uploads/1451925100ARoadMaptotheAdmissibilityofExpertEvidence.pdf>
<https://www.cba.org/Sections/Insurance-Law/Articles/2018/Expert-or-advocate>

Webinar 4 – October 6

The “common” law. Just not for the commoners, or the Commons!

- Module 4: brief review and discussion
- Exercise – Legal Research overview
- QUIZ 2 (15 mins)
- **Optional read** text ch.2, 10
- Grad student discussion on “Greta’s case” or litigation funding or changes to the CPA?
- Optional reading on climate change litigation
<https://www.siskinds.com/citizen-suits-against-the-government-for-ghg-emissions/>
<https://www.bennettjones.com/Blogs-Section/Charter-Challenge-for-Stable-Climate-System>
http://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2020/07/Global-trends-in-climate-change-litigation_2020-snapshot.pdf
<https://www.nature.com/articles/d41586-020-00175-5>
<https://www.whitecase.com/sites/default/files/2019-11/thought-leadership-climate-change-litigation-new-class.pdf>
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Webinar 5 - October 13

Environmental Rights. In search of the Holy Grail!

- Module 5: brief review and discussion
- **Paul Muldoon Lecture Environmental Rights in Ontario – Do we have them? Are they endangered?!?**
- Assignment update: discussion groups, WIKIs, etc
- Serra Buchanan presentation on proper citation and referencing
- Exercise -Using the Environmental Registry (if we have time)
- **Optional** text ch 12
- **Optional reading on environmental rights in Ontario**
<https://www.ontario.ca/page/environmental-bill-rights>
<https://ecojustice.ca/environmental-regulations-rollback-covid-19/>

Webinar 6 - October 20

Command and Control. In a good way...Setting Standards

- Module 6: brief review and discussion
- **Paul Muldoon Lecture – What happens to standard setting in the year of the plague!**
- QUIZ 3 (15 mins)
- **Optional** text ch. 5,6,8
- **Grad student discussion – Do we have a realistic approach to risk and risk management? How much risk is OK?**
- **Optional on effect of COVID on environmental regulation:**
<https://gowlingwlg.com/en/insights-resources/articles/2020/update-changes-environmental-obligations-covid-19/>
<https://www.fasken.com/en/knowledge/2020/04/8-covid-19-environmental-compliance>
<https://sustainability.freshfields.com/post/102gaq8/does-a-sustainable-recovery-align-with-the-economic-imperative-a-look-at-recover>

Webinar 7 – October 27

Command and Control. In a serious way...Compliance and Enforcement

- Module 7 : brief review and discussion
- **ASSIGNMENT PART II DUE TODAY (20%)**

- **Optional** text ch. 5,6, 8
- Grad-student discussion of the elements of due diligence. Are Environmental Management Systems a good idea? What is ISO 14001?
- Optional reading on the significance and proof of due diligence:
<https://www.airdberlis.com/insights/publications/publication/due-diligence-a-brief-refresher>
<https://www.mondaq.com/canada/environmental-law/569944/what-is-environmental-due-diligence>
https://www.willmsshier.com/docs/default-source/articles/directors-and-officers-environmental-liability.pdf?sfvrsn=db2055d5_2

Webinar 8 – November 3

Environmental Assessment – A Modest Proposal?

- Module 8 : brief review and discussion
- Marcia Valiante Lecture – What is the Impact of the Impact Assessment Act? What is happening to Ontario's EAA ?
- QUIZ 4 (15 mins)
- **Optional** text ch. 7
Grad discussion Is EA a dead duck? Is sustainability measurable? Can we ever expect cumulative impacts or ecosystem integrity to be properly protected?
- Optional reading on environmental assessment:
<https://www.fasken.com/en/knowledge/2019/08/the-new-federal-impact-assessment-act>
<https://www.mccarthy.ca/en/insights/blogs/canadian-era-perspectives/aiming-maximum-ghg-impacts-federal-government-releases-guidance-assessing-climate-change-impacts-major-projects#page=1>
<https://sites-gowlingwlg.vuturevx.com/50/4669/landing-pages/5-things-project-proponents-need-to-know-about-canada-s-new-impact-assessment-act.asp?sid=4852f849-87a1-4e29-8c88-2982453d5210>
<https://cela.ca/wp-content/uploads/2020/07/Preliminary-Analysis-Schedule6-Bill-197-July-10-2020.pdf>
<https://gowlingwlg.com/en/insights-resources/articles/2020/modernized-ontario-environmental-assessment-act/>

NO WEBINAR ON NOV 10!!

Webinar 9 – November 17

Voluntarism – “Trust me...what could go wrong?”

- Module 9 : brief review and discussion

- Pity the poor orphan well. The *Grant Thornton* case at the SCC
- Assignment update and evidence refresher/questions
- **Optional** text ch. 9
- **Grad discussion – What is CSR and can it help? Is it different from greenwashing?**
- Optional reading on CSR, greenwashing:
<https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng>
<https://www.iisd.org/business/issues/sr.aspx>
https://www.huffpost.com/entry/corporate-responsibility_b_4881590

Webinar 10 – November 24

Municipal Role – Acting Locally (or trying to!)

- Module 10 : brief review and discussion
- **STUDENT PRESENTATIONS (20%). SUMMARIES OF GROUP PRESENTATIONS MUST BE POSTED ON QUERCUS BY END OF NOV 19**
- QUIZ 5 This is a “take home” quiz which will include short essay answers and will be open for 24 hrs.
- **Optional** text ch. 8
- **Optional reading on the principle of subsidiarity:**
<https://www.lerners.ca/lernx/climate-cases/>
<https://commentary.canlii.org/w/canlii/2019CanLIIDocs2719#!fragment//BQCwhgziBcwMYgK4DsDWszlIQewE4BUBTADwBdoByCgSgBpltTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA>

Webinar 11 – December 1

Transparency in Consultation. Indigenous consultation and accommodation

- Module 11 : brief review and discussion
- **STUDENT PRESENTATIONS (20%). SUMMARIES OF GROUP PRESENTATIONS MUST BE FILED ON QUERCUS BY END OF NOV 26**
- **Optional** text ch. 3
- **Optional reading on indigenous consultation and accommodation:**
https://www.cba.org/cba/cle/PDF/Constit09_Sterling_paper.pdf
<https://westawaylaw.ca/consultation-and-accommodation/>
<https://www.oktlaw.com/scc-clarifies-role-national-energy-board-consultation-process/>
<https://www.stikeman.com/en-ca/kh/canadian-energy-law/Reconciling-the-Honour-of-the-Crown-and-the-Duty-to-Consult>

<http://www.newrelationshiptrust.ca/wp-content/uploads/2019/05/Consultation-and-Accommodation-Best-Practices-FINAL-Feb2019.pdf>

Webinar 12 – December 8

International Environmental Law - Bringing it all together?

- Module 12 : brief review and discussion
- **Paul Muldoon Lecture -What are the emerging issues in environmental law? Have we got a hope?**
- QUIZ 6 (15 mins)
- **Optional** text ch.4
- Grad student discussion on outstanding questions/issues of environmental law. Do we get good marks for species at risk? Greenhouse gas regulation?
- **Optional reading on international environmental law:**
<https://www.canada.ca/en/environment-climate-change/corporate/international-affairs/partnerships-organizations/participation-international-environmental-agreements.html>
<https://ironline.american.edu/blog/beginners-guide-environmental-agreements/>
<https://www.cleantechloops.com/environmental-agreements/>
<https://www.whitecase.com/publications/alert/climate-change-disputes-take-center-stage-paris-arbitration-week-paw>

Appendix 1 - Environmental Law Student Assignment - UTSG 2020

Here are the two proposed topics:

- 1 The Province of Ontario (Infrastructure Ontario) is proposing a new “Ontario Line” transit system from Don Mills to Ontario Place.
- 2 The Ontario Ministry of Transportation is proposing a new 400 series highway, the “GTA West Corridor” linking Highway 400 in Vaughan with Highway 401 in Georgetown.

Great ideas? Crazy talk? You tell us.

That is the assignment. Students will work on their assigned project individually, and in groups, working toward the presentation of a case in a mini hearing to be held during the webinar. The presentation will be prepared in advance and defended “live”. (scheduling to be finalized).

The steps in the project require students to:

1. individually, post on Quercus a summary of the project, their role in the project, and the evidence they will present in the hearing, with full bibliography worth 20%, by the end of October 27 (Webinar 7). Max 6 pages double spaced excluding references
2. as a group, prepare a presentation summary, posted on Quercus in advance of the hearing date, and present (by pre-recorded presentation) and defend (“live”) your case online during one of the webinars (scheduling details to be finalized).

We will construct WIKIs and discussion groups on Quercus to facilitate the sharing of information and posting of documents as part of the hearing process.

We will define the issues and process with greater detail in the first two weeks. **We have allotted time in the webinars to discuss progress on the assignments and to provide students with an opportunity to seek input.**

The procedure on presentation day will follow the typical procedure of an administrative tribunal as closely as possible. (This will all be done online; however, that is the way many administrative tribunals and courts are operating these days!)

Each “side” of the problem will make their case to three adjudicators (Rempe, Muldoon, Buchanan).

Proponents will go first. Each issue team will have 10 minutes to present their evidence, then there will be five minutes for questions from the other side, the adjudicators, and members of the “public”. (This may be done through live questions, or “chat”)

After that, the process will be repeated for the Opponent side. We may elect to hear in order of issues rather than sides. (I will explain if this is confusing). If time permits, we may schedule VERY BRIEF opening and/or closing remarks from the teams. We will have working sessions on presentation of evidence.

We have asked the grad students in the class to take a “leader” role in the process. That means they will be acting as co-ordinators, facilitators, and organizers in getting their team’s testimony ready for the mini hearings.

Appendix 2- The fine print (important stuff)

Absences:

Update - COVID may influence these policies. Further direction from the administration is expected. At this time, VOI’s are not being required in relation to flu-like symptoms; however, illness must be reported on the ACORN system. Stay tuned.

If you need to miss a term test for any legitimate reason, you must submit an original copy of any appropriate documentation within **three** business days of your absence. If the reason for your absence is medical, you must submit an official U of T Verification of Illness Form

<http://www.illnessverification.utoronto.ca/index.php>. Note that conditions ranked as mild or negligible will not be considered a valid excuse.

Missed term work:

If a legitimate reason prevents you from submitting a piece of term work by its posted deadline, you must submit an original copy of any appropriate documentation within **three** business days of your absence. If the reason is medical, you must submit an official U of T Verification of Illness Form <http://www.illnessverification.utoronto.ca/index.php>. Note that conditions ranked as mild or negligible will not be considered a valid excuse.

Accessibility Needs:

Students with diverse learning styles and needs are welcome in this course. The University of Toronto is committed to accessibility: if you require accommodations for a disability, or have any other accessibility concerns about the course, please contact [Accessibility Services](#) as soon as possible.

Academic Integrity:

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:

<https://www.artsci.utoronto.ca/academic-advising-and-support/student-academic-integrity-osai>

Familiarize yourself with the University of Toronto's *Code of Behaviour on Academic Matters*

(<http://www.governingcouncil.utoronto.ca/Assets/Governing+Council+Digital+Assets/Policies/PDF/ppjun011995.pdf>). 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.

Misrepresenting/altering documentation:

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

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 constitutes appropriate academic behaviour, or appropriate research and citation methods, seek out additional information from our TA, or from other available campus resources like the [U of T Writing Website](#).

Use of Turnitin

Normally, students will be required to submit their written presentations to Turnitin.com for a review of textual similarity and detection of possible plagiarism. In doing so, students will allow their essays to be included as source documents in the Turnitin.com reference database, where they will be used solely for the purpose of detecting plagiarism. The terms that apply to the University's use of the Turnitin.com service are described on the Turnitin.com web site

Additional Resources for Students

The following are some important links to help you with academic and/or technical service and support

- General student services and resources at [Student Life](#)
- Full library service through [University of Toronto Libraries](#)
- Resources on conducting online research through [University Libraries Research](#)
- Resources on academic support from the [Academic Success Centre](#)
- Learner support at the [Writing Centre](#)
- Information for [Technical Support/Quercus Support](#)

Students are encouraged to review the Calendar for information regarding all services available on campus.