



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

October 23, 1998

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**Response by Canadian Environmental Law Association to Proposed
Secondary Curriculum for Law**

Introduction:

The Canadian Environmental Law Association (CELA) is a public interest group founded in 1970 to use and improve laws to protect the environment and conserve natural resources. Funded as a community legal clinic specializing in environmental law, CELA represents individuals and citizens' groups before trial and appellate courts and administrative tribunals on a wide variety of environmental issues. In addition to environmental litigation, CELA undertakes public education, community organization, and law reform activities.

The purpose of these comments are to respond to the proposed Secondary School Curriculum for three courses: "Understanding Law - Workplace" (grades 11, 12), "Understanding Law - College" (grades 11, 12) and "Canadian and International Law - University". They will be referred to hereafter as "Workplace", "College" and "University" respectively.

These comments follow comments originally submitted by CELA by letter of August 31, 1998 regarding the curriculum outlines as originally posted. We now review the detailed course outlines against the suggestions that we provided in that correspondence.

The Canadian Environmental Law Association is providing these comments from the perspective of assessing whether the proposed curriculum includes coverage of environmental law, as well as providing general comments as to the basic level of understanding of our legal processes that secondary school students should acquire in a secondary school Law course.

Background:

In the original outlines, Environmental Law was included in the Law courses overview under the strand, titled “Civil Regulation and Protection” in a sentence that describes “civil law” as including environmental protection.

In the Law course, under the strand titled “Civil Regulation and Protection”, was a statement that, by the end of the course, students will...”demonstrate an understanding of the role of law and of public and private agencies and collective and individual action in protecting the consumer, regulating the workplace and protecting the environment”.

In the Advanced Law course, under the strand titled “Civil Regulation and Protection” was a statement that, by the end of the course, students will...”examine and evaluate the role of governments, the courts, and individual and collective action in regulating the marketplace and the environment; demonstrate an understanding of the legal processes, systems, and sanctions used to protect Canadian citizens in the workplace and marketplace, and the environment.”

Comments:

We encourage the recognition that environmental law must be part of the Law courses.

We replicate here in italics the suggestions made in our original correspondence, and then in bold type provide our comments as to whether these suggestions have been included in the detailed course outlines for each of the Workplace, College and University law courses.

1. Every law course should include an explanation of the difference between common law and the remedies available under common law, compared with legislation and the remedies available by legislation. This explanation is relevant to, and well illustrated by, environmental law examples. For example, the common law torts of negligence, nuisance, and trespass, to name a few, are important tools in environmental law. Other rights, responsibilities, obligations and remedies are available by statute.

This suggestion has been well covered in all three of the proposed courses.

2. Every law course should include at least an overview and brief explanation of the major environmental statutes in Ontario and Canada, such as the Environmental Protection Act

(Ontario), the Ontario Water Protection Act, the Environmental Assessment Act (Ontario), the Pesticides Act (Ontario), the Ontario Environmental Bill of Rights, their federal counterparts, as well as conservation statutes, Parks statutes, resource statutes, special protection statutes such as the Niagara Escarpment Plan Act, and mining and resource extraction legislation. No more than an overview could be contemplated in a secondary school level course, but students should be expected to have a good grasp of the regulatory context of these various statutes, as well as an understanding of the frequency of change in the areas regulated by statute.

This suggestion has been covered in general in all three of the courses in that the difference between statute and regulation has been included. However, specifics of environmental legislation is lacking. On the other hand, this is no different than any of the other areas identified, where the course outline does not yet provide that level of detail.

3. Some time should be spent on the underlying goals of common law remedies and regulatory statutes. Students should grapple with the conflicts that make legal and statutory remedies necessary, specifically in the context of environmental issues and impacts. Students should be able to study and comment on some of the policy conflicts behind various statutes, as well as their underlying reasons. Examples could include energy production, waste handling and disposal, resource conservation and exploitation, and development pressures.

This suggestion is missing in the Workplace course; is moderately covered in the College course, and is covered adequately in the University course.

4. Every course on law should also set out the basic division of powers issues as between federal and provincial levels of government, as well as delegated from provincial to municipal levels of government.

This suggestion is covered in all three of the courses with the exception of the municipal delegation. Further comment is contained below under paragraph 5.

5. The law courses should include a basic explanation of municipal laws; the source of their authority, their decision making process, and the impact of municipal decision making on that community and the surrounding areas. For example, land use plans and by-laws and other municipal by-laws as well as their enforcement should be explored.

This suggestion is missing in all three courses. Given the extensive impact of local decision making and the increased role that municipal decision makers are taking, it is important to provide to all students some understanding of local processes.

6. *It would be important in a secondary law course to include an understanding of the multi-disciplinary aspects of law in general, and in environmental law in particular. Students should have some understanding of how they will be involved in, utilize, be responsible to, or have careers that require knowledge of environmental law.*

This suggestion is covered in the Workplace and College courses, but is missing in the University course. It is as important to university-bound students to begin to gain an appreciation of possible career opportunities at the high school level as to students who don't plan on university education.

7. *The law courses should also require exploration of compliance and enforcement tools. Students should study the range of sanctions and compliance methods available, from criminal sanctions including criminal conviction and sentence at one end, to community pressure at the other. Students should examine the utility of a range of sanctions, and should consider the appropriate use of sanctions to accomplish the underlying goals - which, in the case of environmental law, include environmental protection, sustainability, conservation, ecosystem health and human health.*

This suggestion has been only partially recognized in all three of the courses. There should be an understanding that there is a continuum of sanctions, and that regulatory responses may contain an element of criminal or quasi-criminal sanction. The issue of what type of sanction is most appropriate is an important consideration.

8. *Students should understand the roots of environmental conflicts and should study conflict resolution mechanisms, including political decisions (local, provincial and national), decisions by civil courts, criminal courts, and provincial courts, alternative dispute resolution, negotiated solutions, public consultation, decisions by boards and tribunals, and community decision making. Students should consider the appropriate use of the various possible methods of conflict resolution, and should consider the appropriate decision makers for various types of conflicts.*

This suggestion is adequately included in the College and Workplace courses; it is missing in the University course, at least in the Canadian context. Only international conflict resolution appears there, and while this is useful and important, there should still be a section dealing with domestic law conflict resolution.

9. *Students should also study the international agreement making process. They should develop an understanding of the implications of international agreements for local decision making,*

specifically in terms of environmental decisions. They should also understand cross-border and international implications of environmental actions, and the necessity for legal mechanisms to deal with cross-border or international environmental harm. Federal laws enacted to carry out federal treaty obligations should also be briefly explored (such as Migratory Birds, Navigation, Fisheries, climate change).

This suggestion is covered in the University course, but is missing in the College and Workplace courses. There should at least be an understanding that there is a body of law at the international level included in these latter courses, even if not in as much detail as in the University course.

10. Students should also explore the concepts of jurisdictional limits and the reach of Canadian laws. Students should explore the legal obligations of Canadian persons and corporations engaging in activities in other countries.

The previous comment is equally applicable to this suggestion.

Thank you for the opportunity to comment on the proposed curriculum. On the whole, we are encouraged by the range and depth of content planned for the high school level Law courses. We appreciate that each course is only one course, and at a high school level. On the other hand, the importance of law to students in their future lives and careers cannot be underestimated, and the better grasp that can be provided, the better prepared they will be to appreciate that impact. We continue to encourage inclusion of environmental law issues, both explicitly in the course outlines, and as demonstrative of general legal principles and concepts. As these courses are further developed, we would continue to appreciate an opportunity for review and comment.

Submitted by

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

per
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