Faculty of Environmental and Urban Change York University

GRADUATE COURSE SYLLABUS

Course: EUC 5061 3.0 Environmental Law & Justice

Term: Winter 2025

Calendar Description: This course examines and evaluates how contemporary advocates employ law to protect the environment, secure equal access to environmental health, and contribute to social justice.

Course Director: Professor Dayna Nadine Scott, Osgoode and EUC; dscott@osgoode.yorku.ca

Seminar Time and Location: Tuesdays 11:30-2:30, HNES XXX

Office Hours: Tuesdays or Thursdays 3-4pm or by appointment. Osgoode room 4045. A zoom appointment for virtual office hours is also possible.

Course Management: A course website is available on eClass | https://eclass.yorku.ca/course/view.php?id=74317

Purpose and Objectives of the Course:

Where environmentalists over the past three decades have invested heavily in legal strategies as a means to achieve social change, the environmental justice movement, in contrast, explicitly calls this focus on law reform into question by noting how it continues to entrench privilege at the expense of people working on the ground to improve their communities. Similarly, the environmental justice movement has focused on the health and wellbeing of people, rather than on the need to protect "the environment" conceptualized as wilderness spaces, endangered species or national parks, with the latter sometimes dismissed as 'playgrounds for the rich'.

Tracking the evolution of the movement, this course examines how contemporary advocates employ law in their struggles against environmental inequities. In doing so, it critically evaluates the potential of environmental law to protect the environment, secure equal access to environmental health, and contribute to social justice.

Understandings of the contested concepts of "environment" and "justice" will be continually refined throughout the course. Students will also gain a grounding in the basic legal and regulatory regime that governs the environment in Canada, and exposure to the theoretical underpinnings of the environmental justice movement. Particular attention will be paid to the dynamics of gender, race and class in contemporary debates, the struggles of Indigenous peoples for #LandBack, and the restoration of Indigenous jurisdiction through recognition of inherent territorial governing

authority.

We encounter the central debates over authority and legitimacy in claims-making and claims-contesting, the relative roles for science, law, experts and citizens in knowledge-making and decision-making, alternative ways of knowing, and the complex question of causality that continues to plague judicial challenges to environmental inequities. Utilizing active workshop sessions, we critically interrogate the dynamics of multiparty environmental disputes considering the role of grassroots activism, political organizing, and the law, as tools for the prevention and redress of environmental harm.

In the final section of the course, students will present the results of their research projects detailing the stories and struggles of various communities in Canada striving to achieve environmental justice.

The specific learning outcomes for the course include:

- 1. to provide students with the skills to critically evaluate the legal and regulatory frameworks for the protection of the environment and environmental health in Canada;
- 2. to introduce students to the politics of protecting the environment and regulating land-use;
- 3. to review the theoretical underpinnings of the environmental justice movement and its history in Canada;
- 4. to explore how race, gender, Indigeneity, and class dynamics play into the resolution of environmental justice claims;
- 5. to analyse and evaluate the utility of litigation and law reform strategies to environmental justice advocates;
- 6. to assist students in the development of their oral and written advocacy skills; and
- 7. to open up a forum for the telling of the "untold" environmental justice stories all around us.

Organization of the Course

The course meets in person on campus each Tuesday, according to the detailed schedule posted to eClass. In order to encourage active and reflective learning, students will be provided with resources in text, video and audio formats to engage with inside and outside of class hours. Our in-person time together will include short lectures, discussions, workshops, and break-out group exercises. We will watch some short films together and follow them with reactions and debate. We will also incorporate guest speakers, a field trip, and opportunities for students to raise issues related to their own research for the instructor and their colleagues to provide input.

Topics to be considered will include the following:

January 7	Introduction to the Themes of the Course FILM: In Our Own Backyard, 1983
January 14	The Law and Politics of Protecting the Environment CASE STUDY: Drinking Water on First Nation Reserves
January 21	**Field Trip** SAVE EGLINGTON FLATS COALITION INJUNCTION Community group challenging Eglington Crosstown route alleges "environmental racism" by Metrolinx
January 28	**NO CLASS –
February 4	Theories and Practices of Environmental Justice CASE STUDIES: Elsipogtog, Unist'ot'en, and 1492 Landback Lane
February 11	The Politics of Waste, Race and Place CASE STUDIES: Africville, DEW Line, Toronto's Garbage Sign up for Workshop Sessions
February 18	READING WEEK – NO CLASS
February 25	Intergenerational Environmental Justice CASE STUDY: Youth Climate Litigation Mid-Term Test (BES only)
March 4	WORKSHOP: Locally-Unwanted Land Uses (LULUs) Siting a Deep Geological Repository (DGR) for Nuclear Waste
March 11	Contesting Claims: The Role of Residents, Science, Experts CASE STUDIES: Air Pollution in Sarnia's Chemical Valley / Aamjiwnaang First Nation Research Progress Report Due & Ethics Discussion
March 18	WORKSHOP: Contested Extraction and its Infrastructure Building a Road to the Ring of Fire

March 25	Strategies of Resistance: Law and other Illusions
April 1	Student Storytelling & Research Presentations
April 4	Research Projects Due

Required Readings

The required readings will all be provided electronically through the course Moodle page.

The following resources are highly recommended to read in their entirety, but not required (except where indicated on the syllabus):

Andil Gosine and Cheryl Teelucksingh, *Environmental Justice and Racism in Canada: An Introduction* (Emond, 2008).

Ingrid Waldron, *There's Something in The Water: Environmental Racism in Indigenous & Black Communities* (Fernwood Publishing, 2018).

Recommended Resources

- Environmental Justice Atlas
- Indigenous Climate Action, https://www.indigenousclimateaction.com/
- The Indigenous Environmental Justice Project, http://iejproject.info.yorku.ca/
- Indigenous Environmental Network, http://www.ienearth.org/
- The Center for Environmental Health Equity, http://www.cehe.ca/environmental-justice-for-canadian-cities
- Ecojustice, https://ecojustice.ca/
- Canadian Environmental Law Association (CELA), https://cela.ca/
- West Coast Environmental Law, https://www.wcel.org/

MES Evaluation

The grade for the course will be based on the following items weighted as indicated:

Workshop Role 25%

Independent Research
Progress Report 15%

Workshop Role – 25%

For each workshop, MES students will play assigned "roles" according to personalized, confidential instructions. BES students in the class will also participate in the "role-playing" exercise, and will assist us to unpack the themes and tensions following the exercise.

MES students in the course will be evaluated on their participation in the two workshops. The **first workshop** will stage a facility-siting dispute ("locally unwanted land –use" or LULU) about a **Deep Geological Repository (DGR) for Nuclear Waste in Ontario.** Students will represent the interests of the utility wishing to establish a long- term waste disposal facility, a local municipality hoping to declare itself as a "willing host", a federal agency, and a local First Nation opposed to the site, among others. The setting will be the meeting of a local city council in which a limited number of parties have been given permission to speak after which the council is expected to vote.

The **second workshop** will involve a public consultation meeting hosted by the Impact Assessment Agency of Canada regarding the format of a planned "**Regional Assessment for the Ring of Fire**". The Ring of Fire is a mineral deposit in the far north of Ontario, around which Ontario has become invested in creating a hub to produce "battery minerals" for the green economy, despite the fact that, at present, there are no roads to access the potential mine site. The area is exclusively occupied by Indigenous peoples and its peatlands represent a massive carbon storehouse. Students will represent remote Anishinaabe communities both opposed and in support of the mining, the Matawa Tribal Council, the Mushkegowuk Council, Ontario, Canada, various ENGOs and Noront Resources Ltd.

Workshop performance is judged on the basis of background preparation, understanding of the context, ability to convey important facts and raise critical issues, invocation of the course themes, and oral advocacy skills, including ability to respond to questions on the spot.

Group Research Project -- "Stories & Struggles"

There are plenty of untold environmental justice stories across this country. Students will work in a group to choose a particular environmental justice struggle, historical or current, involving any community in Canada, to focus the research for their final project. Groups will have considerable flexibility in terms of how they want to approach the project, and how they want to employ storytelling in their presentation and in their final project.

Research Progress Report (Individual Assessment) – 15%

An initial progress report with respect to the group research project is due in class on **March 11**. The purpose of this report is to indicate to the instructor that the group has chosen a community for study, that *each student's background research* is well underway and that each student has been thinking critically about research methodology and any issues that might be anticipated. The assignment is a good opportunity for the student to obtain useful feedback as to how the project can be best designed so as to engage meaningfully with the themes of the course as a whole.

Final Project (Group Assessment) – 40%

Groups are expected to engage the themes of the course, and to detail the particular ways in which key questions over authority and credibility, expertise and experience, law and science play out in the context of each community's story. Was "free, prior, and informed consent" an issue? Was "causation" an issue? How were these questions resolved? Did the community or its advocates invoke law or legal strategies as a means of achieving social change? What strategies in particular were tried? Were they effective? What strategies for being heard were employed? What forms of dispute settlement were tried? Does "justice" for this community involve compensation, legislative change, an admission of guilt, a change in practice or a physical change in their "environment"? Is it a struggle for self-determination? Finally, a key aspect of the evaluation will be based on the extent to which the group connects the community's struggles with the themes of environmental justice scholarship to date, citing sources discussed in class.

Students will work in groups. Groups will be evaluated on the quality and comprehensiveness of their research, their creative deployment of storytelling techniques, their engagement with the course themes and central questions, and the effectiveness of the presentation of their thoughts.

The final project should include **20-25 double-spaced pages of text**, but may also include excerpts from interviews, photographs, maps, charts or other contributions agreed to in discussion with the Instructor.

The final project for MES students will be due on April 4.

Final course grades may be adjusted to conform to Program or Faculty grades distribution profiles.

For details on Submission and Return of Assignments see: https://euc.yorku.ca/academic-policies-procedures-petitions/.

Class Participation -- 20%

It is expected that you will participate actively in class discussions based on your advance preparation, ie. having read and reflected on the assigned materials. Students are expected to contribute actively to the critical analysis of the issues raised and to think broadly about the approaches and direction of the environmental justice movement. Active participation is very important to the success of the class and the workshop sessions. Your participation grade will be

based on the quality (not quantity!) of your interventions, and your contributions to class exercises, break-out group discussions, and workshops.

<u>Detailed Reading List – Environmental Law & Justice – Fall 2022</u>

January 7	Introduction to the Themes of the Course
	FILM: In Our Own Backyard, Lynn Corcoran, 1983 (50 min)
	Required Reading:
	• Alice Mah, (2020) "Toxic Legacies and environmental justice" in Coolsaet (ed.) <i>Environmental Justice: Key Issues</i> 121-131 (10pp).
	Follow-up to Class:
	 Browse the website of the Center for Health, Environment & Justice, founded in 1981 by Lois Gibbs in the wake of the Love Canal battle: https://chej.org
	 Lois Gibbs on the legacy of Love Canal, "We Can Be" podcast, 2018, (28"). https://www.podbean.com/media/share/pb-p29w7-9403bf
	• If you missed the first class – you MUST watch the film: <u>In Our Own Backyard</u> , (Please click on the link, login to York Library with your Passport York login, click on "available online" under the first item, and then on "view full text", which will redirect you to the film.)
January 14	The Law and Politics of Protecting the Environment
	CASE STUDY: Drinking Water on First Nation Reserves
	The Constitutional Division of Powers; The Separation of Powers; Distinction between public law, private law, criminal law (pollution as crime), statute law, common law; Environmental Rights; class actions
	WATCH IN CLASS:
	• "Life is hard': Ontario First Nation under a 29-year boil water advisory", Global News, September 26, 2024

• "Neskantaga First Nation fights for end to 25-year boil water advisory," *CBC News: The National*, November 26, 2020.

Assigned Course Materials:

- Gosine & Teelucksingh, Environmental Justice and Racism in Canada
 Chapter 1 "Environmental Justice: A Brief History" (15pp)
- Dayna N Scott, "The Environment, Federalism and the Charter" (2017) The Oxford Handbook of the Canadian Constitution.

Government of Canada, <u>Achieving Clean Drinking Water in First Nations</u>
<u>Communities</u>

First Nations Drinking Water Settlement

January 21

Field Trip –

SAVE EGLINGTON FLATS COALITION INJUNCTION

Community group challenging Eglington Crosstown route alleges "environmental racism" by Metrolinx

Required Reading:

Metrolinx taken to court over trees: Group says removal amounts to 'environmental racism' - ProQuest

- Laura Pulido (2016) Flint, Environmental Racism, and Racial Capitalism, Capitalism Nature Socialism, 27: 3, 9 pp. (Excerpt)
- George Will, "The Poison Poor Children Breathe", *Washington Post*, September 16 1982, A23.
- First National People of Colour Environmental Leadership Summit, Principles of Environmental Justice, 1991 (2pp) (Included in Gosine & Teelucksingh Chapter 1)
- Luke Cole & Sheila Foster, (2002) "History of the Environmental Justice Movement", in From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement" (10pp)
- Advocates welcome bill to tackle environmental racism in Canada, Al

	Jazeera, July 2024 (2pp)
January 28	 NO CLASS All students must post to social media about the Eglington Flats campaign based on attendance at the field trip and/or background readings above Due Jan.28 by 2:30pm, upload screenshots to eClass folder
February 4	Theories and Practices of Environmental Justice
	CASE STUDY 1: #LandBack Elsipogtog (New Brunswick), 1492 Landback Lane (Six Nations) (Ontario)
	CASE STUDY 2: Gender and Toxics
	WATCH IN CLASS:
	Environmental Noxiousness, Racial Inequalities & Community Health Project, Annie Clair, Mi'kmaq Land Defender, 2016, Indigenous Environmental Justice Symposium (11min)
	Assigned Course Materials:
	• Gosine & Teelucksingh (2008). Chapter 2, "Naming/Framing Environmental Justice in Canada", (8pp)
	• Schlosberg, David (2013) "Theorising environmental justice: the expanding sphere of a discourse." <i>Environmental Politics</i> 22.1, 37-55 (18pp)
	 <u>Violence on the Land is Violence on Our Bodies</u>, Women's Earth Alliance and NYSHN, 2016 (4pp)
	 Brown, Desmond. <u>"Year-long Six Nations protest forces cancellation of major development in Caledonia, Ont."</u> July 2, 2021, CBC.
	Gignac, Julien. "1492 Land Back Lane," April 29, 2021, The Canadian Encyclopedia.
	 Dayna Nadine Scott, Jennie Haw & Robyn Lee (2016): <u>'Wannabe Toxic-Free?' From precautionary consumption to corporeal citizenship</u>, Environmental Politics (17pp)

	 Giovanna Di Chiro, (2020) "Mobilizing 'intersectionality' in environmental justice research and action in a time of crisis" in Coolsaet (ed.) Environmental Justice: Key Issues, pp.316-333 (17pp). Recommended Resources: Dayna Nadine Scott (2020) "Extraction Contracting: The Struggle for
	Control of Indigenous Lands" South Atlantic Quarterly
	https://breachmedia.ca/land-back/
	 VIDEO: Kyle Whyte, <u>Indigenous Peoples and Climate Justice</u>, 2018 (14 min)
	 VIDEO: INVASION (18 min) (a film about the Unist'ot'en Camp, Gidimt'en checkpoint and the larger Wet'suwet'en Nation standing up to the Canadian government and corporations)
	PHOTO ESSAY: Wet'suwet'en matriarchs arrested as RCMP enforce Coastal GasLink pipeline injunction (3pp)
	Reforming the Canadian Environmental Protection Act: The assessment and regulation of toxic substances should be equitable, precautionary, and evidence-based. Brief to the Standing Committee on Environment and Sustainable Development, 3 June 2016 (LISTEN here)
	Podcast: Nail Salons, Toxics and your Health: Thu Quach, a Research Scientist at the Cancer Prevention Institute of California and Assistant Professor at Stanford University; and Minhthu Le, Research Assistant at the Cancer Prevention Institute of California and licensed manicurist
	 Julie Sze, "Gender, Asthma Politics, and Urban Environmental Justice Activism" in Rachel Stein, New Perspectives on Environmental Justice: Gender, Sexuality and Activism (New Brunswick: Rutgers University Press, 2004) (11pp)
February 11	The Environmental Justice Movement in Canada: The Politics of Waste, Race and Place
	CASE STUDIES: Africville, DEW Line, Toronto's Garbage

	Sign up for Workshop Sessions
	• FILM: Remember Africville, Shelagh Mackenzie, 1991 (34 min)
	Assigned Course Materials:
	 Waldron, I. (2018). There's Something In The Water: Environmental Racism in Indigenous & Black Communities (chapters 2 & 4): Chapter 2: "A History of Violence: Indigenous & Black Conquest, Dispossession & Genocide in Settler Colonial Nations" (15pp)
	• Chapter 4: "Not in My Backyard: The Politics of Race, Place & Waste in Nova Scotia"
	 McGregor, D. (2009). Honouring Our Relations: An Anishinaabe Perspective on Environmental Justice. In: Agyeman, J., Haluza-Delay, R., Peter, C., and O'Riley, P. (eds.). Speaking for Ourselves: Constructions of Environmental Justice in Canada. UBC Press, Vancouver, BC. pp. 27-41 (14pp)
	Recommended Resources:
	FILM: There's Something in the Water, Ian Daniel and Ellen Page, 2019 (83 min), available on Netflix: https://www.netflix.com/ca/title/81206890
February 18	READING WEEK
February 25	Intergenerational Environmental Justice
	CASE STUDY: Youth Climate Litigation
	Mid-Term Test (BES only) **Test begins at 11:30am, 60 min. Class begins for everyone at 12noon **
	Required Readings:
	Stepan Wood, <u>Mathur v. Ontario: Grounds for Optimism about the Recognition of a Constitutional Right to a Stable Climate System in Canada?</u> , McGill Law Journal 2024

	 David Naguib Pellow, (2020) "Critical Environmental Justice Studies" in Coolsaet (ed.) Environmental Justice: Key Issues, pp.293-302 (9 pp) LISTEN: #GorClimate Action Facilitation Our Piggest Climate
	LISTEN: #GenClimateAction. <u>Ecojustice</u> : <u>Our Biggest Climate Lawsuit Yet</u> , November 2019 (34 min)
	Recommended Resources:
	McGill Law Journal Podcast: The Charter and Climate Litigation in Canada, Fall 2020
	Mathur v. His Majesty the King in Right of Ontario, 2023 ONSC 2316
March 4	WORKSHOP: Locally-Unwanted Land Uses
	Siting a Deep Geological Repository (DGR) for Nuclear Waste
	Each participating student will receive individual confidential "Role" instructions, with links to primary sources
	Assigned Course Materials (for all):
	• Young, Iris M. "Justice and hazardous waste." The Applied Turn in Contemporary Philosophy: Bowling Green Studies in Applied Philosophy 5 (1983): 171-183 (12pp)
	Dayna Nadine Scott & Adrian A. Smith, <u>"The Sacrifice Zones of the Green Energy Economy"</u> , McGill Law Journal (2017) excerpts
	Colin Butler, <u>In an Ontario town split over a nuclear dump site</u> , the <u>fallout is over how they'll vote on the future</u> , CBC News, April 14, 2024
March 11	Contesting Claims: The Role of Residents, Science, Experts
	The Importance of "the Data"
	• Watch in class. FILM: <u>The Beloved Community</u> , Pamela Calvert, 2007 (56 min)
	CASE STUDY: Aamjiwnaang First Nation and Canada's Chemical Valley
	Watch / Listen in Advance:

- Film Clip: The Land and the Refinery Pollution Reporter App, Technoscience Research Unit, 2019 (9 min)
- Ecojustice podcast, Episode 3, "Tackling Law Reform and Taking the Ontario Government to Court" Part 2 (starting at min 14; 27 min)

Assigned Readings:

- Dayna Nadine Scott, "Confronting Chronic Pollution: A Socio-Legal <u>Analysis of Risk and Precaution</u>", Osgoode Hall Law Journal (2008), 30 pp.
- Dayna Nadine Scott, "We are the Monitors Now" (2016) Social & Legal Studies 25(3), 261-287 (26pp)
- Colin Graf, "A state of emergency in Ontario's Chemical Valley", The Narwhal, April 29, 2024

IN-CLASS BREAK-OUT GROUP ACTIVITY:

- Briefly scan the earlier Ecojustice report: "Exposing Canada's Chemical Valley: An Investigation of Cumulative Air Pollution Emissions in the Sarnia, Ontario Area", 2007: https://www.ecojustice.ca/wp-content/uploads/2015/09/2007-Exposing-Canadas-Chemial-Valley.pdf. Discuss what has changed since 2007.
- Read Ron and Ada's <u>Notice of Application</u>. Explain to the group how the s.7 and s.15 rights apply in the Aamjiwnaang situation.
- Read Ecojustice notice announcing the case has been withdrawn: <u>Changing Course in Chemical Valley</u>, 2016 and watch short video "A Tale of Two Valleys". Are you convinced by the Ecojustice argument?
- Read Ecojustice report, "Return to Chemical Valley", 2019: https://www.ecojustice.ca/wp-content/uploads/2019/06/Return-to-Chemical-Valley_FINAL.pdf
- Government of Canada, "<u>Protections for the Aamjiwnaang First Nation</u> and Sarnia from benzene emissions officially extended for two years", May 28, 2024

Research Progress Report Due & Ethics Discussion

March 18	WORKSHOP: Contested Extraction and its Infrastructure
	Building a Road to the Ring of Fire
	Each participating student will receive individual confidential "Role" instructions, with links to primary sources
	Assigned Course Materials (for all):
	Synthesis Report: <u>Implementing a Regional</u> , <u>Indigenous-Led and Sustainability-Informed Impact Assessment in Ontario's Ring of Fire</u>
	James Wilt, <i>The battle for the 'breathing lands': Ontario's Ring of Fire and the fate of its carbon-rich peatlands, The Narwhal,</i> July 11, 2020
	Emma McIntosh, <u>Scratch That: Feds to rethink Ring of Fire environmental assessment after First Nations criticism</u> , The Narwhal, March 7, 2023
	<u>Draft Terms of Reference for the Regional Assessment for the Ring of Fire Area</u> , October 2024
March 25	Strategies of Resistance: Law and other Illusions
	 Assigned Course Materials: Richard Toshiyuki & Flora Chu, "From White Knight Lawyers to Community Organizing: Citizens for a Better Environment" Frances Calpotura, "Why the Law?" Luke Cole, "Empowerment Lawyering" (all three in PDF: C. Rechtschaffen, & E. Guana, eds., Environmental Justice: Law, Policy & Regulations (1994)(15pp)
	• 'We have been met with a hard heart': Frustrated at lack of progress, Grassy Narrows sues governments for failing to clean up mercury pollution, Toronto Star, June 4, 2024
	• First Nation court action against Ontario could invalidate all mining claims in the province, Globe & Mail, July 12, 2024
April 1	Student Storytelling & Research Presentations

April 4	Research Projects Due

ADDITIONAL INFORMATION

For details on Grading Schemes, Assignment submissions, Lateness Penalties, Missed Tests, Group Work, Inclusivity in EUC, Religious Observance Days, Academic Honesty, Intellectual Property Notice, Student Conduct, Student Support and Student Accessibility Services. See https://euc.yorku.ca/academic-policies-procedures-petitions/ and go to "Undergraduate Courses Common Instructions".

Group Work. This course requires group work. Group work, when done well, can teach collaborative skills that are essential in many work contexts. It can enrich everyone's learning by making all students resources for each other and can create a synergy based on the diversity of histories and perspectives of the group members.

To ensure that group work is a positive experience, each group should first discuss how everyone can be accountable to the whole group. Best practice is to agree to set of ground-rules for everyone, such as: 1) active listening and facilitating equal participation of all; 2) respecting different opinions and different ways of knowing or communicating; 3) considering issues of power, difference and discrimination; 4) identifying a clear path of communication with Course Director should there be issues/concerns; and 5) making clear a path of action for issues regarding equity-related or harassment concerns.

Useful articles on working through equity issues in groups:

Burke, Bev et al. "Thinking Equity." Education for Changing Unions. Toronto: Between the Lines, 2002, 74-77.

Narayan, Uma. "Working Together Across Differences: Some Considerations on Emotions and Political Practice." Hypatia, Vol. 3, No. 2 (Summer, 1998), pp. 31-47.