The quarry proposed by St Marys Cement Inc. for a location near Carlisle, Ontario should not be permitted: Introduction

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The following three contributions were developed as part of ENVS 4300 Environmental Law, Fall Semester, 2010

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The following three papers were developed by one of the three lab sections of ENVS 4300, Environmental Law, in the fall semester of 2010. During the course, students participate in a series of three role playing exercises involving three environmental topics. Over the course of the semester, each student is part of three teams: one that makes a case in support of an assigned environmental proposition, one that makes a case against an assigned environmental proposition and one that conducts an impartial adjudication of a dispute. The two contending teams also cross examine their opponents as part of the process. The following three papers are based on the submissions of the two opposing sides in one of the disputes in the fall semester, 2010, as well as on the adjudicators report. These reports were produced to address the third dispute topic of the semester, "The quarry proposed by the St. Mary's Cement Company for a location near Carlisle, Ontario, should not be permitted."

Environmental Law (ENVS 4300) was developed under the leadership Associate Dean Joseph Ackerman and the program committee of the BSc (Env) program committee as part of a comprehensive curriculum review completed in 2006. The aim of the course is to familiarize environmental science students with that ways in which environmental law shapes environmental stewardship, largely in the Canadian context.

One of the main theories of the nature of law emphasizes the role of law as an adversarial non-violent dispute resolution process. This process involves representations on behalf of plaintiffs, embodied as the crown in criminal or regulatory prosecutions, representations on behalf of defendants, both in civil and in criminal or regulatory actions and, finally, some individual or group authorized to hear and to adjudicate the dispute. Each of the three roles is essential to the process. Each has distinct functions and responsibilities.

To help students develop an understanding of these three roles and also of the overall function of law as dispute resolution system, the course is organized around a series of three disputes. Generally, one of the disputes involves an international environmental issue, one a national or provincial issue and one a local issue. Students are assigned to teams in labs. For each dispute, one third of the lab section is assigned to a team called "the proponents." Their job is to present a case in support of what would generally be considered to be the pro-environment position. One third of the lab is assigned to a team called "the opponents." The opponents present a case against the proposition in the

dispute. The remaining third of the class is assigned to be a team of adjudicators. Their job is to hear evidence presented by the proponents and the opponents determine which side presented the more compelling case.

Students are assigned to teams and dispute topics are announced at the beginning of the semester. Dispute presentations are made in weeks 4, 7 and 10. Written reports (briefs) are submitted by the two opposing sides and presentations are also made by each side in the labs. The two opposing sides, after presentations have been made, cross-examine one another. The adjudicators observe the presentations as well as the cross examinations. They also read and review the written reports. One week after the initial presentations, the adjudication team submits its findings. This may take the form of a consensus report on behalf of all of the adjudicators. Or it may take the form of a majority and a minority (or minorities) report(s). The adjudicators, in their report, must demonstrate impartiality. They may only render judgement based on the evidence that has been presented to them. They are not allowed to conduct their own research or to introduce their own experiences, knowledge, preferences or values into the adjudication process.

In the fall semester, 2010, the three dispute propositions were

Dispute #1 - International

"The international ban on the production, distribution and use of DDT should be maintained"

Dispute #2 – Provincial

“Ontario’s ban on the residential use of 2,4-D should be continued”

Dispute #3 - Local

“The quarry proposed by the St. Mary’s Cement Company for a location near Carlisle, Ontario, should not be permitted”

There were three lab sections during this particular course offering. One of the lab sections elected to revise its reports from the third dispute as a submission to *SURG*. Given the nature of the exercise, the opportunities for revisions to these reports are limited. The adjudication report reflects the panel’s evaluation of the original reports. Extensive revision of the content of either the proponents or the opponents reports could render some or all of the adjudicators report irrelevant. So, revisions were limited to correction of grammatical and style errors and to improving the quality of Figures and Tables.

Readers should appreciate three important aspects of the work that is presented in the following three contributions. First, this is the third of three such exercises

that students complete during the semester. Since this is the third dispute topic, these students have benefitted from the experience in their previous two disputes, as well as from feedback from the teaching assistants, the instructor, and from interaction with several outstanding practicing environmental lawyers who contribute their time to the course as guest lecturers. Among other things, these environmental lawyers offer valuable insights on the role of scientific evidence and expert witness testimony in environmental litigation, on strategy for case development and case presentation and on tactics for cross-examination.

Second, these reports require students to work together effectively as interdisciplinary teams to organize and present evidence on a short time line.

Finally, readers should appreciate that students were assigned randomly to their teams. Proponents, opponents and adjudicators did not get to pick their preferred roles in the dispute. All team members, by the time that they participated in this third dispute, had been assigned to all three roles and had been a part of three different teams.