

Course Outline

COURSE:	LAWS 3506 A – Administrative Law
TERM:	Winter 2013
PREREQUISITES:	One of LAWS 2005 (no longer offered), 2502 3005, or 3502 (or equivalents)
CLASS:	Day & Time: Tuesday at 1805 – 2055 Room: Please check Carleton Central for current room location.
INSTRUCTOR: (CONTRACT)	Tom Jarmyn
CONTACT:	Office: Contract Instructor's Office (B442 Loeb) Office Hrs: By Appointment (in Person or Online) Telephone: 613 617 1789 Email: tomj@jarmyn.com

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.carleton.ca/equity/>

COURSE DESCRIPTION This course will serve as an introduction to the theory and practice of Administrative Tribunals in Canada.

Administrative law is the body of law dealing with the determination of individual rights or interests by non-judicial decision makers. It looks at the actions and operations of government and governmental agencies. It also includes the judicial review of decisions of an administrative decision maker.

The course will examine the structure and procedure of Canadian administrative authorities; policy, statutory and judicial environments in which they operate. Topics include techniques for implementing public policy and structuring public authorities; statutory interpretation; procedural safeguards; exercise of statutory discretion; reconciling efficiency and fairness.

Upon completion of the course it is expected the student will have acquired an understanding of the sources of administrative law, fundamental administrative law principles and the core principles of judicial review.

The syllabus may change in order to accommodate student/instructor requirements and interests. Changes will be made with as much notice as possible. Web CT will be used a primary method of communication with respect to the course and readings for the course. Please Check Web CT on a regular basis for course updates and messages.

REQUIRED TEXTS – Administrative Law Cases, Text and Materials (6th edition). G Van Hartin, G. Heckman and D. Mullan.

SUPPLEMENTARY TEXTS – Various readings that will be posted to the WebCT account.

EVALUATION

1. Take Home Mid-term. Made available on Web CT by noon February 13th, 2013. To be submitted in person at commencement of class on Tuesday February 26th 2013 or via e-mail before 1200 on February 26th, 2013. Materials not submitted by the deadline will receive a zero mark.(30% of total final mark)
2. Presentation of assigned readings and other class participation (10%). Each assigned reading will be assigned to one or two students to present. Students will be expected to present the substance of the reading, the relevance of the reading to the course and the evening's lecture, and, provide some point of criticism of the reasoning of the reading. Readings will be assigned by noon of the Wednesday prior to their presentation. Assignments will be made on Web CT. If you do not present the reading on the assigned night then you will receive 0% for this portion of the mark.
3. Quiz through Web CT – available March 13th, 2013 to March 15th, 2013. Student may elect to have this result count for 10% of final mark. Election made after receipt of mark and before noon March 29th, 2013.
4. Final exam – will be a take home exam distributed during the last class and made available the day after the last class on Web CT. Students will be required to answer in essay format three of the five questions. Completed exams are due on Thursday April 25th, 2013. Exams are to be handed into the Department of Law Office. They must be clearly marked with **student name, course number, student number and professor name.** Exams must be date stamped.

FINAL EXAMS ARE NOT TO BE EMAILED TO ME. NO FINAL EXAM WILL BE ACCEPTED AFTER THURSDAY APRIL 25TH. ENSURE YOU KNOW WHEN THE OFFICE CLOSSES ON THURSDAY APRIL 25TH.

Plagiarism in all forms is not acceptable and the University's policies with respect to plagiarism will be strictly enforced. It is expected that all assigned work will be done independently and that the work you submit is exclusively your own. Students are not permitted to discuss the exam questions with each other and are not to collaborate in the preparation of any answers.

Deferrals may be granted in accordance with university policies and must be submitted to the appropriate Registrar's Office in accordance with the deadlines and procedures set out in the university calendar. Applications for deferrals cannot be granted by the instructor.

Take home mid-term must be completed in accordance with the covering instructions and the Department of Law's Style Sheet (http://www1.carleton.ca/law/ccms/wp-content/ccms-files/legal_style_sheet.pdf). Minor deviations from those instructions will result in a loss of one grade and major deviations will result in a two or three grade loss as appropriate. Spelling and grammar errors will count as a minor deviation.

My Approach

Readings will be assigned prior to each lecture. Do the readings. My lecture will amplify or supplement the assigned readings and will not regurgitate them. The lectures assume that you have done the reading.

The expectation is that you will read the assigned readings from the texts and the headnotes of the assigned cases. Individual classmates will be assigned to read the entirety of the noted cases and provide a detailed briefing with respect to those cases and their relationship to the assigned readings.

Take notes while you read and be prepared to participate. While there is no explicitly assigned participation mark experience shows that those who have done the work and are prepared to participate in the class fare much better in their marks.

Ask questions – if the readings and/or the lecture is unclear raise the matter in class or after class with me. If there is an interest I am more than happy to use tools like Google Hangouts in order to answer questions.

Be respectful. Law is by nature a contentious subject with many conflicting views. Those views should be heard.

Communicate with me via the e-mail address above or my Carleton.ca address rather than through Web CT. Or we can set up a time to speak on the phone.

If you have concerns raise them early in order that we can address them before they get out of hand.

SCHEDULE

January 8	Introduction of instructor Review expectations Review syllabus Sources of information and research What is administrative law? (video www.adminlawbc.ca) Types of administrative tribunals? (video www.adminlawbc.ca) <u>Readings (Web CT)</u> J. King, "Institutional Approaches to Judicial Restraint" (2008) 28 <i>Oxford Journal of Legal Studies</i> 409.
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	J. Willis, “The Administrator as Judge – The Citizen’s Right to an Impartial Tribunal” (1953) 2 UBC Legal Notes 427.
January 15	<p>The Administrative State Required Readings - Text Chapter 1 <i>Lakeside Colony of Hutterian Brethren v. Hofer</i>, [1992] 3 S.C.R. 165, [1992] 3 S.C.R. 165 available online at http://csc.lexum.umontreal.ca/en/1992/1992rcs3-165/1992rcs3-165.pdf and Posted on WebCT</p> <p>Role of Judicial Review</p> <p>Required Readings: Text Chapter 2, <i>Baker</i>. (full case online at http://www.canlii.org/en/ca/scc/doc/1999/1999canlii699/1999canlii699.pdf)</p>
January 22	<p>Administrative law pivots</p> <p>Required readings: Text Chapter 8 <i>Dunsmuir v. New Brunswick</i> (SCC) [2008] (but skip para 77-117). http://csc.lexum.umontreal.ca/en/2008/2008scc9/2008scc9.html</p> <p>L. Sossin, “<i>Dunsmuir</i> – plus ca change?” (17 March 2008). http://www.thecourt.ca/2008/03/17/dunsmuir-%e2%80%93-plus-ca-change/</p> <p><i>Border Paving Ltd. v. Alberta (Occupational Health and Safety Council)</i>, (Alberta CA) [2009] (arriving at the standard). http://www.canlii.org/en/ab/abca/doc/2009/2009abca37/2009abca37.html</p> <p>Additional readings: D. Mullan, “Recent Developments in Administrative Law” (2008) http://www.law.utoronto.ca/documents/conferences/dunsmuir_Mullan.pdf</p> <p>D. Dyzenhaus, “The Politics of Deference: Judicial Review and Democracy” in D. Dyzenhaus, ed., <i>The Unity of Public Law</i> (Oxford: Hart Publishing, 2004), especially p. 279-86.</p>
January 29	<p>Choice of Procedures Text pp. 255 – 302 Common Law procedural requirements <i>Nicholson v Haldimand-Norfolk Regional Board of Commissioners</i> - http://www.canlii.org/en/ca/scc/doc/1978/1978canlii24/1978canlii24.pdf <i>Suresh</i> - http://www.canlii.org/en/ca/scc/doc/2002/2002scc1/2002scc1.pdf <i>Krever</i> - http://www.canlii.org/en/ca/scc/doc/1997/1997canlii323/1997canlii323.pdf</p>
February 5 th	<p>Choice of Procedures Text 302 – 353 <i>Khan v. University of Ottawa</i>, (1997), 34 OR (3d) 535 (CA) PARAS 1-59 particularly http://canlii.ca/t/6hd1 <i>Mikkelsen v. University of Saskatchewan</i>, 2000 SKQB 45 (CanLII) (short case, 13 pages long) http://canlii.ca/t/1l8n2 <i>Mount Sinai Hospital v. Quebec (Minister of Health and Social Services)</i> (SCC) [2001] (legitimate expectations). http://scc.lexum.umontreal.ca/en/2001/2001scc41/2001scc41.html</p>
February 12 th	<p>Bias and Lack of Impartiality – Text 441 – 455, 483 – 516, 528 – 530, 553-557 <i>Ocean Port Hotel Ltd. v. BC (Liquor Control and Licensing Branch)</i> (SCC) [2001] (institutional considerations). http://scc.lexum.umontreal.ca/en/2001/2001scc52/2001scc52.html <i>Chrétien v. Gomery and Canada</i> (AG) (FC) [2008], especially para. 1-8 and 38-108 (individual aspects). http://decisions.fct-cf.gc.ca/en/2008/2008fc802/2008fc802.html <i>Keen v. Canada (Attorney General)</i> (FC) [2009], but skip para. 35-43. http://www.canlii.org/en/ca/fct/doc/2009/2009fc353/2009fc353.pdf L. Sossin, “Administrative Law at Pleasure: <i>Keen v. Canada</i>” (31 May 2009).</p>

	http://www.emp.ca/downloads/adminlaw/AdminLaw_05_extra_KeenComment.doc
February 19 th	BREAK WEEK
February 26 th	<p>Standing Text – 1087 – 1139 <i>Finlay v Canada (Minister of Finance)</i> <i>Canadian Council of Churches v Canada (Minister of Employment and Immigration)</i> <i>Energy Probe v Canada (Atomic Energy Control Board)</i></p>
March 5 th	<p>Jurisdiction Text 895 – 951 <i>Nova Scotia (Workers Compensation Board) v Martin</i> <i>Tranchemontagne v Ontario (Director, Disability Support Programs)</i> SCC [2006] http://scc.lexum.umontreal.ca/en/1996/1996rcs3-854/1996rcs3-854.html <i>Canada (Prime Minister) v. Khadr</i>, [2010] SCC 3 http://scc.lexum.org/en/2010/2010scc3/2010scc3.html</p> <p>Additional Readings <i>Khadr v. Canada: The Long Winding Road to a Charter Remedy</i>, Cris Best, The Court Blog - Osgoode Hall Law School, (October 19, 2010) http://www.thecourt.ca/2010/10/19/khadr-v-canada-the-long-winding-road-to-a-charter-remedy</p> <p>Omar Khadr v. The Royal Prerogative over Foreign Affairs, Cris Best, The Court Blog - Osgoode Hall Law School, (November 16, 2010) http://www.thecourt.ca/2010/11/16/omar-khadr-v-the-royal-prerogative-over-foreign-affairs</p> <p>The Court » Blog Archive » Jurisdiction or Access to Administrative Justice? How the Supreme Court of Canada missed the point in <i>Tranchemontagne</i> – Lorne Sossin, Feb 2007 - http://www.thecourt.ca/2007/02/20/jurisdiction-or-access-to-administrative-justice-how-the-supreme-court-of-canada-missed-the-point-in-tranchemontagne/</p>
March 12 th	<p>Discretionary Authority of Tribunal Policy making by tribunal – Text 632 - 651 <i>Thamotheram v Canada (Minister of Citizenship and Immigration)</i> [2008] 1 FCR 385 Fettering discretion – 951 – 1009 <i>Suresh v Canada (Minister of Immigration)</i> [2002] SCC <i>Black v Canada (Prime Minister)</i> [2001] (Ont CA)</p>
March 19 th	<p>Privative Clauses Text 697 – 721 <i>Crevier v. Quebec (AG)</i> (SCC) [1981] (constitutional limits of privative clauses). http://scc.lexum.umontreal.ca/en/1981/1981scr2-220/1981scr2-220.html</p> <p>Expertise and Statutory Purpose Text 721-757 <i>Pezim v British Columbia</i> <i>Canada (Director of Investigations and Research) v Southam Inc</i></p>
March 26 th	Remedies that can be awarded by a tribunal Text 1009 – 1080
April 2 nd	Discretion of the Court Text 1141 – 1234
April 9 th	Review Distribute take home exam.