

Course Outline

COURSE: LAWS 3506 A – Administrative Law

TERM: Winter 2014

PREREQUISITES: LAWS 2502 or LAWS 3005

CLASS: Day & Time Thursday at 1805 – 2055
Room: TB 446 (Please check with Carleton Central for current room location)

INSTRUCTOR: Tom Jarmyn
(CONTRACT)

CONTACT: Office: Contract Instructor's Office
Office Hrs: By Appointment (in Person or Online)
Telephone: 613 875-3884
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 in Context (2nd edition). Colleen M. Flood and Lorne Sossin

SUPPLEMENTARY TEXTS – Various readings that will be posted to CU Learn.

EVALUATION

(All components must be completed in order to get a passing grade)

1. Take Home Mid-term. Made available on CU Learn by noon February 13th, 2013. To be submitted in person at commencement of class on Thursday February 27th 2013 or via e-mail before 1200 on February 27th, 2013. Materials not submitted by the deadline will receive a zero mark. The Mid-term will count for 30% of total final mark. Your answer is to be no more than 1200 words.
2. Two short answer questions with respect to lecture materials. Each answer will be worth five percent and will be no more than 200 words long. These will be posted on CULearn with the names of the people that will be assigned to answer them. You will have 48 hours to answer the question.
3. Final exam (60%) – will be a take home exam distributed during the last class and made available the day after the last class on CU Learn. Students will be required to answer in essay one question with respect to an assigned case and one of two other questions. Completed exams are due on Thursday April 24th, 2013. Exams are to be submitted by email no later than 1200 on Thursday April 24th, 2013.

Optional

4. Presentation of assigned case (10%). Students may elect to present a case in class either on their own or as partners. Cases will be assigned to one or two students for presentation depending

upon the nature and complexity of the case. Each student's presentations should be ten to twelve minutes (for the typical speaker that is somewhere between 1100 and 1500 words). You should also be prepared for questions. If you pursue this option then you should advise me by the end of the class on January 23rd. The final exam will count for 50% for students who take this option.

- a. Where two students are assigned to a case then the first student will present the case for the applicant (the first party named in the case name) and the second student will present the case for the respondent (the second party named in the case name). Where two students are assigned coordinate with your colleague to ensure that you are not both preparing to present the same side of a case. In this scenario you are each making an argument for the party to which you are assigned.
- b. Where a single student is assigned then you should present the entirety of the case including the facts and the relevant conclusions of the Court.
- c. I will also call upon students to discuss aspects of the readings. This will factor into the participation element of this mark.

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 may 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. Text or e-mail me with 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 CU Learn. Alternatively, 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 9	<p>Introduction of instructor Review expectations Review syllabus Sources of information and research How to answer an essay question for me</p> <p>Setting the Stage - The Big Picture - Chapter 1 of Text</p>
January 16	<p>The Administrative State and the Rule of Law Chapter 2 of Text</p> <p>Cases <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 <i>Roncarelli v Duplessis</i> http://www.canlii.org/en/ca/scc/doc/1959/1959canlii50/1959canlii50.html <i>Baker</i>. http://www.canlii.org/en/ca/scc/doc/1999/1999canlii699/1999canlii699.pdf</p> <p>Regulation and Rulemaking - Chapter 4 of Text</p>
January 23	<p>Natural Justice and The Duty of Fairness Chapter 5 <i>Nicholson v Haldimand-Norfolk Regional Board of Commissioners -</i> http://www.canlii.org/en/ca/scc/doc/1978/1978canlii24/1978canlii24.pdf <i>Knight v Indian Head School Division</i> http://www.canlii.org/en/ca/scc/doc/1990/1990canlii138/1990canlii138.html <i>Baker v Canada (Minister of Citizenship and Immigration)</i> http://www.canlii.org/en/ca/scc/doc/1999/1999canlii699/1999canlii699.html <i>Canada v Mavi</i> http://www.canlii.org/en/ca/scc/doc/2011/2011scc30/2011scc30.html</p> <p>Choice of Procedures Common Law procedural requirements <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>
January 30th	<p>Choice of Procedures <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/118n2 <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 6th	<p>Access to Administrative Justice Chapter 7 of Text <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>

	<p><i>Tranchemontagne v Ontario (Director, Disability Support Programs)</i> SCC [2006] http://www.canlii.org/en/ca/scc/doc/2006/2006scc14/2006scc14.html 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>
February 13th	<p>Tribunal Independence, Bias, Lack of Impartiality, Fettering discretion – Chapter 8 of Text <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). http://www.emp.ca/downloads/adminlaw/AdminLaw_05_extra_KeenComment.doc</p>
February 20th	Break Week
February 27th	<p>Tribunal Independence, Bias, Lack of Impartiality, Fettering discretion – Chapter 8 of Text (continued) <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). http://www.emp.ca/downloads/adminlaw/AdminLaw_05_extra_KeenComment.doc <i>Thamatharem v Canada (Citizenship and Immigration)</i> http://www.canlii.org/en/ca/fct/doc/2006/2006fc16/2006fc16.html</p>
March 6th	<p>The Charter and Administrative Law - Chapter 12 <i>Singh v Minister of Employment and Immigration</i> http://www.canlii.org/en/ca/scc/doc/1985/1985canlii65/1985canlii65.html <i>Slaight Communications v Davidson</i> http://www.canlii.org/en/ca/scc/doc/1989/1989canlii92/1989canlii92.html <i>Nova Scotia(WCB) v Martin</i> http://www.canlii.org/en/ca/scc/doc/2003/2003scc54/2003scc54.html</p>
March 13th	<p>Administrative law pivots – Judicial Review – Chapter 9 of Text <i>CUPE v NB Liquor Corporation</i> http://www.canlii.org/en/ca/scc/doc/1979/1979canlii23/1979canlii23.html <i>Pushpanathan v Canada</i> http://www.canlii.org/en/ca/scc/doc/1998/1998canlii787/1998canlii787.html <i>Dunsmuir v New Brunswick</i> http://www.canlii.org/en/ca/scc/doc/2008/2008scc9/2008scc9.html <i>Newfoundland and Labrador Nurses Union v Newfoundland</i> http://www.canlii.org/en/ca/scc/doc/2011/2011scc62/2011scc62.html <i>Border Paving Ltd. v. Alberta (Occupational Health and Safety Council), (Alberta CA)</i> [2009] (arriving at the standard). http://www.canlii.org/en/ab/abca/doc/2009/2009abca37/2009abca37.html <i>Alberta (Information and Privacy Commissioner) v Alberta Teachers</i> http://www.canlii.org/en/ca/scc/doc/2011/2011scc61/2011scc61.html <i>McLean v BC Securities Commission</i> http://www.canlii.org/en/ca/scc/doc/2011/2011scc61/2011scc61.html</p>

	<p>Additional readings: D. Mullan, "Recent Developments in Administrative Law" (2008) http://www.law.utoronto.ca/documents/conferences/dunsmuir_Mullan.pdf</p>
March 20th	<p>Judicial Review continued and remedies that can be awarded by a reviewing court <i>Harelkin v University of Regina</i> http://www.canlii.org/en/ca/scc/doc/1979/1979canlii18/1979canlii18.html <i>Air Canada v Lorenz</i> http://www.canlii.org/en/ca/fct/doc/1999/1999canlii9373/1999canlii9373.html</p>
March 27th	<p>What sorts of decisions are subject to judicial review <i>Canada (Prime Minister) v. Khadr</i>, [2010] SCC 3 http://scc.lexum.org/en/2010/2010scc3/2010scc3.html <i>Black v Canada (Prime Minister)</i> http://www.canlii.org/en/on/onca/doc/2001/2001canlii8537/2001canlii8537.pdf <i>Canada (Attorney General) v Telbani</i> http://www.canlii.org/en/ca/fct/doc/2012/2012fc474/2012fc474.html 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 <i>Omar Khadr v. The Royal Prerogative over Foreign Affairs</i>, 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>
April 3rd	Complete any remainder. Review. Distribute Exam.