

## Course Outline

COURSE:	LAWS 3506 A – Administrative Law
TERM:	Winter 2007-08
PREREQUISITES:	One of LAWS 2005, LAWS 3005, or LAWS 3502 (JOUR 3502, MCOM 3502), or PSCI 2000
CLASS:	Day & Time: Tuesday – 6:00-9:00 pm Room: 517 SA (Southam Hall)
INSTRUCTOR: (CONTRACT)	Tina Head
CONTACT:	Office Hrs: Immediately after class or by appointment Telephone: 613-952-4484 Email: <a href="mailto:thead@connect.carleton.ca">thead@connect.carleton.ca</a>

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Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or ITV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is March 14, 2008 for April examinations. For further information, please see, [http://www.carleton.ca/pmc/students/accm\\_policy.html](http://www.carleton.ca/pmc/students/accm_policy.html)

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**COURSE DESCRIPTION:**

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.

**EVALUATION:**

Assignments:	30%
Paper:	40%
Take Home Exam:	30%

**ALL COMPONENTS MUST BE COMPLETED IN ORDER TO GET A PASSING GRADE****Assignments:**

Students will be required to complete two short assignments worth 15% each that will be handed out in class at least one week prior to their due dates. **The due dates are, respectively, January 29<sup>th</sup> and February 12<sup>th</sup>.** Specific instructions will be provided when the assignments are handed out in class.

*Important Note:*

Group work will be permitted for the assignments. However, all members of the group must be identified at the time the assignment is submitted and all members of the group will receive the same mark.

**Paper:**

Students will be required to write a paper about an administrative tribunal or other administrative decision-maker. **The paper will be due at the beginning of class on March 11<sup>th</sup>; late penalties will apply.** The paper should be between 2500 and 3000 words (about 10-12 pages) (double spaced, Times New Roman, 12 font), excluding title page, table of contents, footnotes and appendices. Specific instructions will be provided in class in advance.

Final Exam:

The final exam will be a take home exam distributed during the last class. Students will be required to answer, in essay format, three of four questions drawn from required readings and class discussions throughout the entire term. **The take home exam will be due on the last day of the exam period, that is, April 29<sup>th</sup>; late penalties will apply.** Specific instructions will be provided in class in advance.

*Important Note:*

Each student's paper and take home exam answers must be exclusively his or her own work product. All work must be done independently; no group work or consultation other than the review class will be permitted. Students are not permitted to discuss the exam questions and possible answers with each other, with the exception of any discussion supervised by the Instructor.

For both the paper and take home exam, students should note the Law Department's Style Sheet at <http://www.carleton.ca/law/style.htm>.

**STUDENT SERVICES:**

All students should take note of the Writing Tutorial Service at 229 PA and the Student Academic Success Centre (SASC) at 302 Tory.

**DEPARTMENTAL POLICY AND PROCEDURE:**

For further instructions and warnings on issues such as prerequisites, assignments and grading (including the Department's policy on plagiarism), students should consult the Law Department's *Policy and Procedure Statement* and the relevant pages in the University's *Undergraduate Calendar*.

**REQUIRED TEXT:**

There is no single text that adequately covers all of the course material. A primary source of readings for this course is David J. Mullan, *Administrative Law* (Irwin Law, 2001), which is available in both a print and a digital edition.

Students are expected to be familiar with all required readings, whether or not they are specifically covered in class. Students are also responsible for other readings that may be assigned, including cases and web browsing, as well as material discussed in class. Students are encouraged to review the supplementary readings as these will provide more detail about or extend concepts provided in the required readings.

**OTHER USEFUL TEXTS:**

- Blake, Sara *Administrative Law in Canada*, 4<sup>th</sup> ed. (Markham: LexisNexis Butterworths, 2006)
- Braverman, Lisa *Administrative Tribunals: A Legal Handbook* (Aurora: Canada Law Book, 2001)
- Doern, Bruce et al. (eds.) *Changing the Rules: Canadian Regulatory Regimes and Institutions* (University of Toronto Press, 1999)
- Elliott, David W. (ed.) *Administrative Law and Process*, rev. 3<sup>rd</sup> ed. (Concord: Captus Press, 2003)
- Gall, Gerald *The Canadian Legal System*, 5<sup>th</sup> ed. (Toronto: Thomson Canada Ltd., 2004)
- Macauley, Robert & James Sprague, *Hearings Before Administrative Tribunals*, 3<sup>rd</sup> ed. (Toronto: Thomson Canada Ltd., 2007)
- Mullan, David J. et al. *Administrative Law: Cases, Text and Materials*, 5<sup>th</sup> ed. (Toronto: Emond Montgomery Publications Ltd., 2003)
- Swaigen, John *Administrative Law: Principles and Advocacy* (Toronto: Emond Montgomery Publications Ltd., 2005)
- University of Toronto Law Journal, *Special Issue: Administrative Law Today: Culture, Ideas, Institutions, Processes, Values* (Vol. 55, No. 3, Summer 2005), available online through CU Library.

**ANTICIPATED COURSE SCHEDULE****WEEK 1: January 8    *Introduction******Important Note:***

Students who do not already have a comfortable background in Canadian law should consult the supplementary readings for this week which provide: (1) an introduction to the Canadian legal system; (2) an overview of Canadian sources of legal information and how to access them; and (3) an introduction to basic principles of statutory interpretation. The course will proceed on the basis that all students have a basic familiarity with these concepts; they will not be reviewed in class. Students who are having difficulty with this material are encouraged to consult the instructor at the earliest opportunity.

**Supplementary Readings:**

- Lisa Braverman, *Administrative Tribunals: A Legal Handbook* (Canada Law Book, 2001), Chapter 1. pp. 1-18. Available on reserve at CU Library.
- Gerald Gall, *The Canadian Legal System*, 5<sup>th</sup> ed. (Toronto: Thomson Canada Ltd., 2004)
- John Swaigen, *Administrative Law: Principles and Advocacy* (Emond Montgomery Publications, 2005), Appendices A and B. pp. 265-294. Available on reserve at CU Library.

**WEEK 2: January 15    *What is Administrative Law?***

- I.        *Theory, Definitions, Policy Choices*
- II.       *An Introduction to Some Modern Day Players*
- III.      *Jurisdiction, Discretion, Delegation*

**Required Readings:**

- David J. Mullan, *Administrative Law*, Chapter 1, pp. 3-26.

Students are required to browse the following websites, with additional instructions to be given in class:

- Government of Ontario, *Public Appointments Secretariat*, online: <http://www.pas.gov.on.ca>
- Government of British Columbia, *Administrative Justice Office*, online: <http://www.gov.bc.ca/ajo>
- *Canadian Radio-television and Telecommunications Commission*, online: <http://www.crtc.gc.ca>

**Supplementary Readings:**

- Michael Prince, "Aristotle's Benchmarks: Institutions and Accountabilities of the Canadian Regulatory State" in G. Bruce Doern et. al (eds.) *Changing the Rules: Canadian Regulatory Regimes and Institutions* (University of Toronto Press, 1999) pp. 228-256 Available on reserve at CU Library.
- John Swaigen, *Administrative Law: Principles and Advocacy*, Chapter 3, pp. 49-53.

**WEEK 3: January 22    *Foundations of Administrative Law***

- I.        *Guest: TBA*
- II.       *A Short History of Fairness*

**Required Readings:**

- David J. Mullan, *Administrative Law*, Chapter 8, pp. 147-175
- *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, available online. <http://scc.lexum.umontreal.ca/en/1999/1999rcs2-817/1999rcs2-817.html>

Students are required to browse the following website, with additional instructions to be given in class:

- *Licence Appeal Tribunal*, online <http://www.lat.gov.on.ca>

**Supplementary Readings:**

- David Dyzenhaus and Evan Fox Decent, "Rethinking the Process/Substance Distinction: Baker v. Canada" *The University of Toronto Law Journal*, Vol. 51, No. 3 (Summer, 2001), pp. 193-242, available online and on reserve at CU Library.
- David J. Mullan, *Administrative Law: cases, text and materials*, Chapter 4, pp. 99-181.
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**WEEK 4: January 29 Choice of Procedures**I. *Audi Alteram Partem: Overview & Pre-Hearing Issues***Required Readings:**

- David J. Mullan, *Administrative Law*, Chapter 13, pp. 232-244
- *Goldberg v. Kelly*, 397 US 254 (1970), online: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=397&invol=254>
- *Mathews v. Eldridge*, 424 US 319 (1976), online: <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=424&invol=319>
- *Canada (Attorney-General) v. Canada (Commission of Inquiry on the Blood System in Canada)*, [1997] 3 S.C.R. 440, online: <http://scc.lexum.umontreal.ca/en/1997/1997rcs3-440/1997rcs3-440.html>
- *May v. Ferndale Institution*, 2005 SCC 82, online: <http://scc.lexum.umontreal.ca/en/2005/2005scc82/2005scc82.html>
- *Access to Information Act*, R.S.C. 1985, c.-A-1, online: <http://laws.justice.gc.ca/en/showtdm/cs/A-1>

Students are required to browse the following websites, with additional instructions to be given in class:

- *Office of the Commissioner of Review Tribunals, Canada Pension Plan/Old Age Security*, online: [http://www.octr-bctr.gc.ca/index\\_e.html](http://www.octr-bctr.gc.ca/index_e.html); *Pension Appeals Board*, online: <http://www.pab-cap.gc.ca/english/index.cfm?fuseaction=About>
- *Office of the Information Commissioner of Canada*, online: <http://www.infocom.gc.ca/menu-e.asp>

**Supplementary Readings:**

- Office of the Commissioner of Review Tribunals/Enviroics Research, *Client Satisfaction Survey* (2002), online: <http://www.octr.gc.ca/dapdep/r042002/index-eng.html>
- David J. Mullan, *Administrative Law: cases, text and materials*, Chapter 5, pp. 285-296, 335-361.

**WEEK 5: February 5 Choice of Procedures (cont'd)**I. *Guest: TBA*II. *Audi Alteram Partem: Hearing & Post-Hearing Issues***Required Readings:**

- David J. Mullan, *Administrative Law*, Chapter 13, pp. 244-318
- *Khan v. University of Ottawa*, (1997), 34 OR (3d) 535 (CA), online: <http://www.canlii.org/eliisa/highlight.do?language=en&searchTitle=Advanced+Search&path=/en/on/onca/doc/1997/1997canlii941/1997canlii941.html>
- *Williams v. The University of British Columbia*, 2007 BCSC 996, online: <http://www.canlii.org/eliisa/highlight.do?language=en&searchTitle=British+Columbia++Supreme+Court+of+British+Columbia&path=/en/bc/bcsc/doc/2007/2007bcsc996/2007bcsc996.html>
- *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, available online: <http://scc.lexum.umontreal.ca/en/1999/1999rcs2-817/1999rcs2-817.html>

Students are also required to browse the following website, with additional instructions to be given in class:

- *Carleton University Ombuds Services*, online: <http://www.carleton.ca/ombuds/>
- *Ombudsman Ontario*, online: <http://www.ombudsman.on.ca/welcome.aspx?langID=1>

**Supplementary Readings:**

- David J. Mullan, *Administrative Law: cases, text and materials*, Chapter 5, pp. 366-484

**WEEK 6: February 12 Nemo Judex In Causa Propria Sua Debet Esse**

- I. Guest: TBA
- II. Bias: Impartiality and Independence

**Required Readings:**

- David J. Mullan, *Administrative Law*, Chapter 14, pp. 321-349
- *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, available online: <http://scc.lexum.umontreal.ca/en/1999/1999rcs2-817/1999rcs2-817.html>
- *McKenzie v. Minister of Public Safety and Solicitor General*, 2006 BCSC 1372, online: <http://www.courts.gov.bc.ca/Jdb-txt/SC/06/13/2006BCSC1372.htm> (on appeal).
- *IWA v. Consolidated Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, online: <http://scc.lexum.umontreal.ca/en/1990/1990rcs1-282/1990rcs1-282.html>
- *Ocean Port Hotels v. British Columbia (General Manager Liquor Control)*, [2001] S.C.R. 781, online: <http://scc.lexum.umontreal.ca/en/2001/2001scc52/2001scc52.pdf>

Students are required to browse the following websites:

- RCMP External Review Committee, online: <http://www.erc-cee.gc.ca/>
- National Parole Board: <http://www.npb-cnrc.gc.ca/>.

**Supplementary Readings:**

- David J. Mullan, *Administrative Law: cases, text and materials*, Chapters 6 & 7, pp. 485-570, 571-674.

**WEEK 7: February 26**

- I. Guest: TBA
- II. General Procedures Statutes

**Required Readings:**

- David J. Mullan, *Administrative Law*, Chapter 11, pp. 214-225
- *Statutory Powers Procedure Act*, R.S.O 1990, C.S-22, online: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90s22\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90s22_e.htm)
- *Administrative Tribunals Act*, [SBC 2004], C.-45, online: [http://www.qp.gov.bc.ca/statreg/stat/A/04045\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm)
- *Administrative Justice Act*, R.S.Q., c. J-3, online: <http://www.canlii.org/qc/laws/sta/j-3/20070910/whole.html>

Students are required to browse the following website, with additional instructions to be given in class:

- *Immigration & Refugee Board*, online: <http://www.irb-cisr.gc.ca/>

**Supplementary Readings**

- Peter Showler, *Refugee Sandwich: Stories of Exile and Asylum* (McGill-Queen's University Press, 2006).
- Denis Lemieux, "The Codification of Administrative Law in Quebec" in Grant Huscroft and Michael Taggart (eds.) *Inside and Outside Canadian Administrative Law: Essays in Honour of David Mullan* (University of Toronto Press, 2006) 240-258. Available on reserve at CU Library.
- British Columbia, Administrative Justice Office, *Model Statutory Powers Provisions for Administrative Tribunals* (August 2003). Available on reserve at CU Library and online: [http://www.gov.bc.ca/ajo/down/ajo\\_aug25\\_03.pdf](http://www.gov.bc.ca/ajo/down/ajo_aug25_03.pdf)
- Saskatchewan, Law Reform Commission, *Consultation Paper: A Model Code of Procedure for Administrative Tribunals* (May 2003). Available on reserve at CU Library and online: <http://www.lawreformcommission.sk.ca/>
- Nova Scotia, Law Reform Commission, Discussion Paper, *Agencies, Boards and Commissions: The Administrative Justice System in Nova Scotia* (February 1996). Available on reserve at CU Library and online: [http://www.lawreform.ns.ca/Downloads/ABC\\_DIS.pdf](http://www.lawreform.ns.ca/Downloads/ABC_DIS.pdf)
- David J. Mullan, *Administrative Law: cases, text and materials*, Chapter 5, pp. 302-335

**WEEK 8: March 4 Discretionary Authority**

- I. Guest: TBA

- II. Abuse of Discretion
- III. Fettering Discretion / Rule-Making

**Required Readings:**

- David J. Mullan, *Administrative Law*, Chapter 6, pp. 100-132.
- *Roncarelli v. Duplessis*, [1959] S.C.R. 121, online:  
<http://www.canlii.org/en/ca/scc/doc/1959/1959canlii1/1959canlii1.html>
- *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, available online:  
<http://scc.lexum.umontreal.ca/en/1999/1999rcs2-817/1999rcs2-817.html>
- *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 SCR 231, online:  
<http://scc.lexum.umontreal.ca/en/1994/1994rcs1-231/1994rcs1-231.html>
- *Black v Canada (Prime Minister)* (2001), 54 OR (3d) 215 (CA), online  
<http://www.canlii.org/eliisa/highlight.do?language=en&searchTitle=Search+all+CanLII+Databases&path=/en/on/onca/doc/2001/2001canlii8537/2001canlii8537.html>
- *Ainsley Financial Corp. v. Ontario Securities Commission* (1995), 21 OR (3d) 105 (CA), online:  
<http://www.canlii.org/eliisa/highlight.do?language=en&searchTitle=Search+all+CanLII+Databases&path=/en/on/onca/doc/1994/1994canlii2621/1994canlii2621.html>

**Supplementary Readings:**

- David J. Mullan, *Administrative Law: cases, text and materials*, Chapter 12, pp. 947-1008

**WEEK 9: March 11 Competing Authorities**

- I. Guest: TBA
- II. Jurisdictional Wrangling

**Required Reading:**

- David J. Mullan, *Administrative Law*, Chapters 4 & 15, pp. 84-90, 352-367
- *Quebec (Attorney General) v. Quebec (Human Rights Tribunal)*, [2004] 2 SCR 223, online:  
<http://scc.lexum.umontreal.ca/en/2004/2004scc40/2004scc40.html>
- *Weber v. Ontario Hydro*, [1995] 2 SCR 929, online: <http://scc.lexum.umontreal.ca/en/1995/1995rcs2-929/1995rcs2-929.html>
- *Nova Scotia (Workers Compensation Board) v. Martin*, 2003 SCC 54, online:  
<http://scc.lexum.umontreal.ca/en/2003/2003scc54/2003scc54.html>
- *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513, 2006 SCC 14, online: <http://scc.lexum.umontreal.ca/en/2006/2006scc14/2006scc14.html>

Students are required to browse the following websites, with further instructions to be provided in class:

- *Canadian Human Rights Commission*, online: <http://www.chrc-ccdp.ca/default-en.asp>
- *Canadian Human Rights Tribunal*, online: [http://www.chrt-tcdp.gc.ca/index\\_e.asp](http://www.chrt-tcdp.gc.ca/index_e.asp)
- *Ontario Human Rights Commission*, online: <http://www.ohrc.on.ca/en>
- *Human Rights Tribunal of Ontario*, online: <http://www.hrto.ca/>

**WEEK 10: March 18**

- I. Guest: TBA

III. <i>Legitimate Expectation</i>
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**Required Readings:**

- David J. Mullan, *Administrative Law*, Chapter 9, pp.177-186
- *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41, available online: <http://scc.lexum.umontreal.ca/en/2001/2001scc41/2001scc41.html>

Students are required to browse the following websites, with further instructions to be provided in class:

- *Ecojustice*, online: <http://www.ecojustice.ca/>
- *North American Agreement on Environmental Cooperation – Canadian Office*, online: <http://www.naaec.gc.ca/>;  
*NAFTA Secretariat*, online: <http://www.nafta-sec-alena.org/DefaultSite/index.html>
- *Environmental Review Tribunal*, online: <http://www.ert.gov.on.ca/>

**Supplementary Readings:**

- David J. Mullan, *Administrative Law: cases, text and materials*, Chapter 1183-199.

<b>WEEK 11: March 25 Remedies</b>
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| I. Guest: TBA               |
| II. Judicial Review         |
| III. Money & Other Remedies |

**Required Readings:**

- David J. Mullan, *Administrative Law*, Chapters 17, 19 & 21, pp. 425-443, 461-464, 504-522.
- *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, online: <http://scc.lexum.umontreal.ca/en/1998/1998rcs1-982/1998rcs1-982.html>
- *Mugesera v. Canada (Minister of Citizenship and Immigration)* 2005, SCC 40, online: <http://scc.lexum.umontreal.ca/en/2005/2005scc39/2005scc39.html>.

Students are required to browse the following website, with further instructions to be provided in class:

- *Canadian Internet Policy and Public Interest Clinic*, online: <http://www.cippic.ca/en/>
- *Public Interest Advocacy Centre*, online: <http://www.piac.ca/>

**Supplementary Readings:**

- David J. Mullan, *Administrative Law*, Chapters 16, 18-20, pp. 403-421, 445-502.

<b>WEEK 12: April 1 Modern Challenges in Administrative Law</b>
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| I. Guest: TBA   |
| II. Globalization, Privatization and the End of the Modern State? |

**Required Readings:**

Students are required to browse the following websites:

- *Canadian Radio-television and Telecommunications Commission*, online: <http://www.crtc.gc.ca/eng/welcome.htm>
- *Telecommunications Policy Review Panel*, online: <http://www.telecomreview.ca/epic/site/tprp-gecrt.nsf/en/Home>

**Supplementary Readings:**

- H. W. Arthurs, "The Administrative State Goes to Market (And Cries 'Wee, Wee, Wee' All the Way Home)" (2005) 55 *University of Toronto Law Journal* 797-831. Available online and on reserve at CU Library.
- Michael Taggart, "Globalization, 'Local' Foreign Policy, and Administrative Law" in Grant Huscroft and Michael Taggart (eds.) *Inside and Outside Canadian Administrative Law: Essays in Honour of David Mullan* (University of Toronto Press, 2006) 259-295. Available on reserve at CU Library.
- Dwayne Winseck, *Reconvergence: A Political Economy of Telecommunications in Canada* (Hampton University Press, 1998)