

Course Outline

COURSE:	LAWS 3506A - Administrative Law
TERM:	Winter 2010-11
PREREQUISITES:	One of LAWS 2005, LAWS 3005, or LAWS 3502 (JOUR 3502, MCOM 3502), or PSCI 2000
CLASS:	Day & Time: Wednesday 6:05 – 9:00pm
	Room: Please check Carleton Central for room location
INSTRUCTOR: (CONTRACT)	Louisa Garib, MA., LLB, LLM.
CONTACT:	Office Hrs: Wednesday - 5:00-6:00pm – **in advance, by appointment**
	Telephone: 613-995-2066 during normal work hours (9am-5pm)
	Email: lgarib@connect.carleton.ca

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 15, 2010 for Fall exams and March 12, 2011 for Winter exams**. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

Administrative Law

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

Administrative law is the body of law that ensures that governments, their officials and representatives deal with individuals in a fair and lawful manner. Administrative law governs a range of relationships between individuals and their government: from the termination of employment with a school board; to a request to review a deportation order; the application for a municipal building permit, or the denial of an access to information request.

This course will examine the structure and procedure of various Canadian administrative authorities and the policy, statutory, and judicial environments in which they operate. Topics will include techniques for implementing public policy and structuring public authorities; statutory interpretation; procedural safeguards; exercise of statutory discretion; and remedies. Finally, the course will explore balancing effective and efficient government with the protection of individual rights and interests.

The main objective of the course is for students to acquire an understanding of the sources of administrative law and fundamental administrative law principles.

The course syllabus may change to accommodate student/instructor requirements. Changes will be made with as much advance notice as possible. Please check Web CT on a regular basis for updates to the course syllabus, class announcements and messages.

REQUIRED TEXT

Administrative Law by David Mullan (Irwin Law, 2001) (ISBN: 1-55221-009-X; ISBN-13: 978-155221-009-3) - \$49.95

*Note that an electronic version is also available for purchase and download (or hard copy for delivery) at: <http://www.irwinlaw.com/books.aspx?bookid=14>

You may also consider buying a used text at the Carleton bookstore, from past students or online. **It is the student's responsibility to obtain their copy of the required text.**

I have specifically chosen this text for its readability at the undergraduate level and for its relatively low cost. Other texts range upwards from \$90.00 to over \$100.00 and are primarily designed as casebooks for law students. The rest of the course materials are freely available excerpts from cases or news clips to which I have provided the links.

SUPPLEMENTARY TEXTS

Relevant links, articles, news clippings and administrative decisions will be distributed in class and/or posted to Carleton WebCT in advance.

EVALUATION

NOTE: ALL components must be completed in order to receive a passing grade.

You have 2 Options:

PAPER OPTION

10% - Class Participation - Attendance and participation in class discussions

30% - Mid-Term Exam

30% - Final Paper

30% - Final Exam

****You must indicate, in writing, via email to the instructor by the first class in March that you intend to submit a paper.****

EXAMS ONLY

10% - Class Participation - Attendance and participation in class discussions

40% - Mid-Term Exam

50% - Final Exam

Final Research Paper:

Students will be required to write a paper about an administrative tribunal, other administrative decision-maker or topic in administrative law approved by the instructor. **The paper will be due at the beginning of class on **TUESDAY, APRIL 6th, 2010.** Please DO NOT EMAIL ME YOUR PAPERS. Late penalties will apply of one grade point per day (e.g. A to A-, A- to B+ and so on). Extensions of the final paper must be requested, in writing – do not leave phone messages - as far in advance as possible, with an accompanying medical certificate as explanation for your inability to meet the deadline.**

The paper should be between a **minimum of 3000 to 4000 words** (from **12-16 pages double spaced, Times New Roman, 12 font, one inch margins**), excluding title page, table of contents, footnotes and appendices. Specific instructions will be provided in class in advance and additional guidance will be available on WebCT at the start of the course. Students are strongly encouraged to start thinking about their paper early and consult with their Professor.

A request for a deferral (a request to hand in the paper beyond the end term/last day of exams) is handled by application to the Registrar's Office with proper documentation. The Professor cannot grant a deferral.

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. **COMPETED EXAMS ARE DUE ON OR BEFORE THE LAST DAY OF EXAMS** – HAND INTO THE DEPARTMENT OF LAW OFFICE CLEARLY IDENTIFIED BY NAME, COURSE NUMBER AND PROFESSOR NAME. **DO NOT EMAIL ME YOUR FINAL EXAMS.**

No final exam will be accepted after that date. Specific instructions will be provided in class in advance and available WebCT from the start of the term.

Deferred Final Examinations

A student who is unable to write a scheduled **final examination**, or complete a **final take-home assignment** (0.5 credit/one term course), because of illness or other circumstances beyond his/her control, or whose performance on the examination has been impaired by such circumstances, may, on **application to the Registrar's Office**, be granted permission to write a deferred final exam or assignment with proper documentation. Your **instructor cannot grant you a deferral of the Final Exam.**

Applications for deferred final assignments AND final examinations must:

- be made in writing to the appropriate Registrar's Office **no later than 5 business** days after the date of the examination or the last day of classes; and
- be fully supported in the case of illness by a medical certificate or by appropriate documents in other cases (e.g. bereavement documentation).
- Medical documents **must** specify the date of the onset of the illness, the (expected) date of recovery, and the extent to which the student was/is incapacitated **during the time the exam or assignment was to be prepared.** <http://www.carleton.ca/registrar/deferral.htm>

Granting of a deferral requires that the student has performed satisfactorily in the course according to the evaluation scheme **established in the Course Outline** (excluding the final exam for which deferral privileges are requested).

Consult Carleton's Undergraduate Calendar for 2011 for academic and administrative deadlines:
<http://www2.carleton.ca/academics/schedules-dates/>

Important Note: Plagiarism on Exams, Papers and Class Assignments

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 discussion supervised by the Instructor.

Carleton's Academic Integrity Policy: http://www.carleton.ca/studentaffairs/academic_integrity/index.html

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*.

MY POLICY

Reasonableness: The "Reasonable Person Principle" applies throughout this course. This principle simply states that a reasonable request made in a reasonable fashion shall be reasonably handled by reasonable persons. Let's all be "reasonable people" working on the same team to make this a positive learning experience.

Reading: You will be given reading assignments associated with each lecture. You should finish the reading **before** coming to the lecture -- I will assume you've done this reading, and my lectures will enhance the material, rather than regurgitate it.

Some advice:

- 1) **Do the readings.**
- 2) **Come to class.**
- 3) **Pay attention.**
- 4) **Take your own notes** from the course readings and from the lectures
- 5) **Ask questions** when you don't understand something **after** doing the readings and listening to the lecture – I'm happy to clarify things for you
- 6) **Check Web CT regularly** – it's where readings, instructions, the course syllabus and other course materials are posted and updated
- 7) **Communicate** with me via my **Carleton.ca** email address listed in the syllabus - NOT Web CT. Or you can call me at my Office.
- 8) **Identify concerns or needs as soon as possible** – take control of the situation and don't let it get out of hand. As your Professor, I will do my best to help you.

Cheating/Plagiarism is considered a very serious offense. Please don't do it. Concern about cheating and plagiarism creates an unpleasant environment for everyone. If you cheat or plagiarize, you risk losing your position as a student in your programme and the university. The department's policy on cheating is to report any cases to the Department Chair. What follows afterwards is not fun for anyone. It's not worth it. Just do the work, and put it in your own words.

ANTICIPATED COURSE SCHEDULE (Wednesday evenings, 6:04-9:04)

The course syllabus may change to accommodate student/instructor requirements. Changes will be made with as much advance notice as possible. **Please check WebCT regularly for updates and additional information and materials** and Carleton's Undergraduate Calendar for relevant dates and deadlines:

<http://www.carleton.ca/calendars/ugrad/0910/university/academicyear.html>

NOTE: There will be NO classes held on:

- February 21, 2011 to February 25, 2011- Winter Break, classes are suspended.

Week 1: Jan 5 Course Introduction***Class exercise DUE following week:**

- 1.) Find an Administrative Tribunal online;
- 2.) Identify the governing statute;
- 3.) What is its jurisdiction? (subject matter; subjects; federal, provincial; municipal)
- 4.) Describe the Tribunal's general structure and process; is there a hearing before a board or adjudicator? Are there written submissions only?
- 5.) Remedies? What can an individual 'get' at the end of the process?
- 6.) Can you appeal? To whom or where?

Prepare a 1-2 minute presentation for **next class** and submit a **1 page answer** of the questions as well for next week.

****DO NOT SIMPLY CUT AND PASTE FROM THE TRIBUNAL OR ADMINISTRATIVE BODY'S WEBSITE.**

Week 2: Jan 12 What is Administrative Law – HAND AND AND PRESENT ASSIGNMENT?

- I. *Theory, Definitions, Policy Choices*
- II. *Decision-Makers*
- III. *Jurisdiction, Discretion, Delegation*

Readings:

David J. Mullan, *Administrative Law*, Chapter 1, pp. 3-26 – ****EXCERPT POSTED ON WEBCT****

Supp. Readings on *Religion and the reach of Administrative Law*.

Lakeside Colony of Hutterian Brethren v. Hofer, [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**

Week 3: Jan 19 Foundations of Administrative Law - Fairness**Readings:**

David J. Mullan, *Administrative Law*, Chapter 8, pp. 147-175 ****EXCERPT POSTED ON WEBCT****

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 - ****READ PARAS 1-48 and 76*** available online.
<http://scc.lexum.umontreal.ca/en/1999/1999rcs2-817/1999rcs2-817.html>

Week 4: Jan 26 Choice of Procedures

- I. *Audi Alteram Partem: Overview & Pre-Hearing Issues I*

Readings:

David J. Mullan, *Administrative Law*, Chapter 13, pp. 232-244 and pp. 244-318

Khan v. University of Ottawa, (1997), 34 OR (3d) 535 (CA), **READ PARAS 1-59** online:

<http://www.canlii.org/eliisa/highlight.do?language=en&searchTitle=Advanced+Search&path=/en/on/onca/doc/1997/1997canlii941/1997canlii941.html>

Mikkelsen v. University of Saskatchewan, 2000 SKQB 45 (CanLII) (short case, 13 pages long) available at:

<http://www.canlii.org/en/sk/skqb/doc/2000/2000skqb45/2000skqb45.html>

- Week 5: Feb 2 Choice of Procedures Cont'd.**
 I. *Audi Alteram Partem: Overview & Pre-Hearing Issues (contd)*
 II. *Nemo Judex In Causa Propria Sua Debet Esse*

Readings:

David J. Mullan, *Administrative Law*, Chapter 14, pp. 321-349

Reasons for decision, Bias, Impartiality and Independence

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 - ****REVIEW**

PARAS 1-48 and 76* available online.

<http://scc.lexum.umontreal.ca/en/1999/1999rcs2-817/1999rcs2-817.html>

Chrétien v. Canada (Commission of Inquiry into the Sponsorship Program and Advertising Activities), 2008 FC 802 (CanLII) - READ PARAS Facts: 1-15; Bias: 67-108, available online. <http://www.canlii.org/en/ca/fct/doc/2008/2008fc802/2008fc802.html>

- Week 6: Feb 09 In Class Mid-Term**

- Week 7: Feb 16 What is Judicial Review?**

Khadr repatriation overturned by top court, Fri. Jan. 29, 2010 – CBC

<http://www.cbc.ca/canada/story/2010/01/29/omar-khadr-supreme-court.html#ixzz0fX1LZzcm>

Canada (Prime Minister) v. Khadr, 2010 SCC 3

<http://scc.lexum.umontreal.ca/en/2010/2010scc3/2010scc3.html> (about 23 pages or 48 paragraphs).

The Khadr case will help explain:

- 1) What constitutes government action/decision that can be subject to judicial review ?
- 2) The division of powers between the executive and the judiciary.
- 3.) Available remedies on judicial review
- 4) How the Charter applies in administrative law cases

Khadr is a compelling case – people will have many opinions – but remember that in our class we are looking at the process of administrative decision making, and not the merits or the issues of Mr. Khadr's case (i.e. whether he is a terrorist, whether he is guilty of the charges against him – those are important legal questions directly addressed in separate proceedings.)

- Week 8: Feb 23 ****Winter Break – NO CLASS******

- Week 9: Mar 2 Competing Authorities/Concurrent Jurisdiction**

I. Jurisdictional Wrangling

*****REQUIREMENT TO NOTIFY INSTRUCTOR RE PAPER OPTION DEADLINE*****

Required Reading:

David J. Mullan, *Administrative Law*, Chapters 4 & 15, pp. 84-90, 352-367

The Court » Blog Archive » Jurisdiction or Access to Administrative Justice? How the Supreme Court of Canada missed the point in *Tranchemontagne* – 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/>

For interest only or to reference after reading Mullan:

Weber v. Ontario Hydro, [1995] 2 SCR 929, online:

<http://scc.lexum.umontreal.ca/en/1995/1995rcs2-929/1995rcs2-929.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>

Week 10: Mar 9 Competing Authorities/Concurrent Jurisdiction cont'd.

II. Legitimate Expectations

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, **READ PARAS 1-38; 52-74; 90-118** available online:

<http://scc.lexum.umontreal.ca/en/2001/2001scc41/2001scc41.html>

Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System), [1997] 3 S.C.R. 440 available at: <http://scc.lexum.umontreal.ca/en/1997/1997rcs3-440/1997rcs3-440.html> **READ PARAS 1-9 (Facts and Statutory Provisions) PARAS 28-42, and 55-76 EXCERPT POSTED ON WEBCT**

Week 11: Mar 16 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

Administrative Tribunals Act, [SBC 2004], C.-45, online:

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>

Federal Courts Act (R.S., 1985, c. F-7) <http://laws.justice.gc.ca/en/F-7/index.html>

PAY PARTICULAR FOCUS ON THE OBJECT AND PURPOSE CLAUSES OF THE ACTS, JURISDICTION and APPEALS/JUDICIAL REVIEW PROVISIONS.

EXCERPTS ARE POSTED ON WEBCT

Week 12: Mar 23 Discretionary Authority

I. Abuse of Discretion

II. 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 - ****REVIEW PARAS 1-48 and 76*** available online.

<http://scc.lexum.umontreal.ca/en/1999/1999rcs2-817/1999rcs2-817.html>

Week 13: Mar 31 Remedies –**I. Judicial Review Revisited****II. Financial Compensation and & Other Remedies**

David J. Mullan, *Administrative Law*, Chapters 17 & 21, pp. 425-443, 504-522.

Dunsmuir v. New Brunswick (2008 SCC 9) **READ PARAS 1-10, 25, and 77-119**

<http://scc.lexum.umontreal.ca/en/2008/2008scc9/2008scc9.html>

EXCERPT POSTED ON WEBCT

Helpful to Read this short piece:

Dunsmuir – Plus ca change, by Lorne Sossin, March 17th, 2008 online.

<http://www.thecourt.ca/2008/03/17/dunsmuir-%E2%80%93-plus-ca-change/>

Mugesera v. Canada (Minister of Citizenship and Immigration) 2005, SCC 40

ONLY READ PARAS 1-38, online:

<http://www.canlii.org/en/ca/scc/doc/2005/2005scc40/2005scc40.html>

Week 14: April 6th - Odds and Ends - COURSE REVIEW and TAKE HOME EXAM HANDED OUT

Canada (Citizenship and Immigration) v. Khosa, 2009 SCC 12, [2009] 1 S.C.R. 339

<http://scc.lexum.umontreal.ca/en/2009/2009scc12/2009scc12.html>

Another short piece:

Dunsmuir's standard of review analysis, one year later by Julian Ho, March 9th, 2009

<http://www.thecourt.ca/2009/03/09/dunsmuir-standard-of-review-analysis-one-year-later/>

[later/](#)

*****FINAL PAPERS DUE FOR THOSE WHO NOTIFIED THE PROFESSOR THAT THEY WILL BE TAKING THE PAPER OPTION*****

*******Final Papers Due at Beginning of Class.** Late Papers will be penalized at the rate of one letter grade per day (A to A-, A- to B+ etc.)

COURSE REVIEW – BRING YOUR QUESTIONS TO CLASS OR EMAIL THEM TO ME IN ADVANCE – THIS IS YOUR LAST OPPORTUNITY TO CLARIFY CONCEPTS THAT YOU DO NOT UNDERSTAND BEFORE THE EXAM – MAKE GOOD USE OF IT

TAKE HOME EXAM HANDED OUT –
COMPETED EXAMS ARE DUE ON OR BEFORE FRIDAY, APRIL 23rd^h

HAND INTO DEPARTMENT OF LAW OFFICE **CLEARLY IDENTIFIED BY NAME, COURSE NUMBER AND PROFESSOR NAME.**

****MAKE SURE YOU NOTE THE TIME THE OFFICE CLOSSES ON THAT DAY****