

Course Outline

COURSE: LAWS 3506A - Administrative Law
TERM: Winter 2012
PREREQUISITES: One of LAWS 2005, LAWS 3005, or LAWS 3502 (JOUR 3502, MCOM 3502), or PSCI 2000
CLASS: **Day & Time:** Tuesday, 6:05-9:00pm
Room: Please check with Carleton Central for current room location
INSTRUCTOR: Louisa Garib, MA., LLB, LL.M.
(CONTRACT)
CONTACT: **Office Hrs:** Tuesday - 5:00-6:00pm – **in advance, by appointment**
Telephone: 613-995-2066 during regular work hours (9am-5pm)
Email: Louisa_Garib@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://www2.carleton.ca/pmc/students/accommodations> . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by 11 November 2011 for December exams and 7 March 2012 for April 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 - Class Assignment, Attendance and participation in class discussions
30% - Mid-Term Exam – February 14th, 2012
30% - Final Paper – April 5th 2012
30% - Final Exam – April 24st 2012

****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 – Class Assignment, Attendance and participation in class discussions
40% - Mid-Term Exam – February 14th, 2012
50% - Final Exam – April 24st 2012

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 on **THURSDAY, April 5th, 2012.** 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 to the Registrar's Office – do not leave phone messages for the Professor – 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 APRIL 24th 2012** – HAND INTO THE DEPARTMENT OF LAW OFFICE CLEARLY IDENTIFIED BY NAME, COURSE NUMBER AND PROFESSOR NAME. **DO NOT EMAIL ME YOUR FINAL EXAMS. EXAMS MUST BE DATE STAMPED. ENSURE YOU KNOW WHAT TIME THE OFFICE CLOSSES THAT DAY.**

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 and Final Assignments (Essay)

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://www5.carleton.ca/exams/deferred-exams/>

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). Reasons for denial of a deferral may include, among other conditions, a failure to (i) achieve a minimum score in the course before the final examination; (ii) attend a minimum number of classes; (iii) successfully complete a specific task (e.g. term paper, critical report, group project, computer or other assignment); (iv) complete laboratory work; (v) successfully complete one or more midterms; or (vi) meet other reasonable conditions of successful performance.

Consult Carleton's Undergraduate Calendar for 2012 for academic and administrative deadlines:
<http://www4.carleton.ca/calendars/ugrad/current/pdf/>

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://www1.carleton.ca/studentaffairs/academic-integrity/>

For both the paper and take home exam, students should note the Law Department's Style Sheet at http://www1.carleton.ca/law/ccms/wp-content/ccms-files/legal_style_sheet.pdf

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 for success in the course:

- 1) **Do the readings.**
- 2) **Come to class.**
- 3) **Pay attention.**
- 4) **Take your own notes** from the course readings and from the lectures. **Absent?** Ask a classmate for their notes and return the favour when they are absent.
- 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 rather than 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 (Tuesday 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://www4.carleton.ca/calendars/ugrad/current/pdf/>

NOTE: There will be NO classes held on:

- February 20, 2012 to February 24, 2012- Winter Break, classes are suspended.
- April 3rd 2012 is our LAST CLASS

**Week 1: Jan 10 Course Introduction – VIEW: Justice Education Video BC:
What is Administrative Law? <http://www.adminlawbc.ca/>**

***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 17 What is Administrative Law? – HAND IN AND PRESENT ASSIGNMENT

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

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

Supp. Readings on Religion and the reach of Administrative Law (possible paper topic):

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 24 Foundations of Administrative Law – Procedural Fairness

READ: David J. Mullan, *Administrative Law*, Chapter 8, pp. 147-175

READ: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817
PARAS 1-48 and 76 ONLY see WebCT or <http://scc.lexum.org/en/1999/1999scr2-817/1999scr2-817.html>

Week 4: Jan 31 Choice of Procedures

- I. *Overview & Pre-Hearing Issues I*

READ:

David J. Mullan, *Administrative Law*, Chapter 13, pp. 232-279 **"A to H" ONLY**
Khan v. University of Ottawa, (1997), 34 OR (3d) 535 (CA) **PARAS 1-59 ONLY**
<http://canlii.ca/t/6hd1>

Mikkelsen v. University of Saskatchewan, 2000 SKQB 45 (CanLII)
(short case, 13 pages long) <http://canlii.ca/t/118n2>

Kane v. Board of Governors of the University of British Columbia [1980] 1 S.C.R. 1105
(11 pages – also cited in *Khan*) <http://canlii.ca/t/1mjtx>

Week 5: Feb 07 Choice of Procedures Cont'd.

- I. **Overview & Pre-Hearing Issues (contd)**
- II. **Reasons for decision, Bias, Impartiality and Independence**

READ: David J. Mullan, *Administrative Law*, Chapter 13, pp. 279-318 “I to O” **AND** Chapter 14, pp. 321-349

READ: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 - ***REVIEW PARAS 1-48 and 76*** see WebCT or <http://scc.lexum.org/en/1999/1999scr2-817/1999scr2-817.html>

READ: *Chrétien v. Canada (Commission of Inquiry into the Sponsorship Program and Advertising Activities)*, 2008 FC 802 (CanLII) **ONLY PARAS: 1-15 (Facts); 67-108 (Bias)** <http://canlii.ca/t/1z93k>

Week 6: Feb 14 In-Class Mid-Term CLOSED BOOK**Week 7: Feb 21 ****Winter Break – NO CLASS********Week 8: Feb 28 What is Judicial Review?**

READ: *A Guide to Judicial Review* – Law Help Ontario **sections 1-5, p. 2-7 ONLY** <http://www.lawhelpontario.org/search/item.234084>

IN CLASS VIEWING: Khadr repatriation overturned by top court, January. 29, 2010 – CBC Online <http://www.cbc.ca/canada/story/2010/01/29/omar-khadr-supreme-court.html#ixzz0fX1LZzcm>

READ: *Canada (Prime Minister) v. Khadr, 2010 SCC 3* <http://scc.lexum.org/en/2010/2010scc3/2010scc3.html> (about 23 pages, 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, a forced child soldier, whether he is guilty of the charges against him – those are important legal questions directly addressed in separate proceedings.)

FOR INTEREST OR FURTHER RESEARCH:

- David J. Mullan, *Administrative Law*, Chapter 10, Procedural Protections under the Charter and the Various Bill of Rights, at pp 187-213
- *Khadr v. Canada: The Long Winding Road to a Charter Remedy*, 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/>
- *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/>

Week 9: Mar 06 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/>

Jaffer v. York University, 2010 ONCA 654 (CanLII) <http://canlii.ca/t/2cvj2>
READ paras 3-15 and 45-59 ONLY. POSTED ON WEB CT

For interest only or to reference after reading Mullan and the Sossin piece:

Weber v. Ontario Hydro, [1995] 2 SCR 929 <http://scc.lexum.org/en/1995/1995scr2-929/1995scr2-929.html>

Tranchemontagne v. Ontario (Director, Disability Support Program), [2006] 1 S.C.R. 513; 2006 SCC 14 <http://scc.lexum.org/en/2006/2006scc14/2006scc14.html>

Week 10: Mar 13 Competing Authorities/Concurrent Jurisdiction cont'd**II. Legitimate Expectations**

READ: 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 ONLY** available online:
<http://scc.lexum.umontreal.ca/en/2001/2001scc41/2001scc41.html>

Public Inquiries

READ: Ed Ratushny, *The Conduct of Public Inquiries; Law, Policy and Practice*, Chapter 2, pp. 11-32 (Irwin Law, 2009)

VIEW: Judges and Public Inquiries, The Agenda, TV Ontario, March 19, 2010 (1st 10 mins)
<http://www.youtube.com/user/AgendaStevePaikin#p/search/0/uzpa9VYaQuY>

READ: *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440 **PARAS 1-9** (Facts and Statutory Provisions), **PARAS 28-42, and 55-76 ONLY** ON WebCT or <http://scc.lexum.org/en/1997/1997scr3-440/1997scr3-440.html>

Week 11: Mar 20 General Procedures Statutes

READ: David J. Mullan, *Administrative Law*, Chapter 11 & 17, pp. 214-225 and 425-443

REVIEW:

Judicial Review Procedure Act, R.S.O. 1990, C J.1

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90j01_e.htm

Statutory Powers Procedure Act, R.S.O 1990, C.S-22,

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.

Week 12: Mar 27 Discretionary Authority

I. Abuse of Discretion

II. Fettering Discretion / Rule-Making

READ: David J. Mullan, *Administrative Law*, Chapter 6, pp. 100-132.

READ *Roncarelli v. Duplessis*, [1959] S.C.R. 121, online:

<http://www.canlii.org/en/ca/scc/doc/1959/1959canlii1/1959canlii1.html>

VIEW : CBC Archives – The *Roncarelli Affair* May 25, 1965

http://archives.cbc.ca/politics/provincial_territorial_politics/topics/1461-9821/

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

**** PARAS 1-48 and 76*** see WebCT or <http://scc.lexum.org/en/1999/1999scr2-817/1999scr2-817.html>

Week 13: Apr 3 Remedies - COURSE REVIEW and TAKE HOME EXAM HANDED OUT

I. Judicial Review Revisited – Standard of Review

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

see WebCT or <http://scc.lexum.org/en/2008/2008scc9/2008scc9.html>

Helpful to Read this short piece:

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

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

II. Financial Compensation and & Other Remedies

READ: David J. Mullan, *Administrative Law*, Chapter 16, **sections A, D, H, & J ONLY**; Chapter 21, **pp. 504-509** (re Intro & Bad Faith) & **pp. 515-518** (re *Charter*) **ONLY**

READ: David Cheifitz, Show me the Money? (July 23, 2010)

<http://www.slaw.ca/2010/07/23/show-me-the-money/>

Week 13: Apr 3 Remedies - COURSE REVIEW and TAKE HOME EXAM HANDED OUT contd...

CLASS 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 AT END OF CLASS

**COMPETED EXAMS ARE DUE BY TUESDAY APRIL 24th - ALL UNIVERSITY TAKE HOME EXAMS ARE
DUE ON THIS DATE**

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

**FINAL PAPERS ARE DUE THURSDAY APRIL 5th FOR THOSE WHO PREVIOUSLY NOTIFIED THE
PROFESSOR THAT THEY WILL BE TAKING THE PAPER OPTION. ALL FINAL COURSE
ASSIGNMENTS AT THE UNIVERSITY ARE DUE BY THIS DATE.**

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

****MAKE SURE YOU KNOW THE TIME THE LAW OFFICE CLOSES ON THESE DATES****