

Course Outline

COURSE:	LAWS 4507A - Administrative Law & Control
TERM:	Winter 2016
PREREQUISITES:	LAWS 2501 and LAWS 2502, or LAWS 3505 or LAWS 3506 or PADM 5413
CLASS:	Day & Time: Thursday - 6:05 – 8:55 p.m. Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Dr. Roger R. Rickwood, LL.M., LL.B. Office: B442 – Contract Instructors' Office, Loeb Building
CONTACT:	Office Hrs: Thursdays 4:00 – 5:15 p.m. or by appointment Telephone: Email: RogerRickwood@cunet.carleton.ca OR rogerrickwood@aol.com cuLearn Website: For announcements & background documents as well as other required readings Dept. Website: www.carleton.ca/law

Academic Accommodations:

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://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://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://carleton.ca/pmc/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://carleton.ca/equity/>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance

Outline – LAWS 4507A

compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at:

<http://carleton.ca/studentaffairs/academic-integrity/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>

OFFICIAL COURSE DESCRIPTION

LAWS 4507 – Administrative Law and Control

Examination of characteristics and selected problems of control of administrative action. Topics include: varieties of traditional and constitutional, legal and judicial control, impact of the *Charter*, reforms to administrative law control systems in Canada, and comparisons with developments outside Canada.

Also offered at the graduate level, with different requirements, as PADM 5307, for which additional credit is precluded.

GENERAL COURSE OBJECTIVES

To understand origins, principles and nature of administrative law. To understand constitutional, judicial and administrative law rules affecting the operation and control of public organizations in Canada. To recognize this framework is based on four unwritten constitutional principles: federalism; democracy; constitutionalism and rule of law; protection of minorities as enunciated by the SCC in *The Quebec Secession Reference*, [1998] 2 SCR 211. Federalism and entrenched individual and group rights require both an independent judiciary and an independent bar to police the distribution of powers and prevent unjustified infringement of fundamental rights. Recognition of both an independent bar and an independent judiciary to protection fundamental rights, administrative justice and democratic political processes was first recognized by Sir Lyman Duff, C.J.C. in the *Canadian Bar Review*, (1944), p.1. To know that Canada is a federal state; a constitutional monarchy; has responsible and representative government; rule of law and judicial review as well as entrenched guarantees of individual and group rights. To overview the nature and role of administrative tribunals and regulatory boards as well as the rights of citizens and users of public services. To educate users as to where and when constitutional remedies should be used rather than administrative law remedies. This course trains students to recognize effective advocacy skills and, more importantly, gain understanding of the legal principles underlying these practices.

Administrative law shares many similarities with constitutional law; it deals with the institutions of the state and the individual. The difference between them is one of level and detail. Constitutional law provides the ground rules for major state institutions and the operations of its legislatures, executives, and courts. Constitutional law sets out the basic framework while administrative law regulates day to day operations of state officials and institutions and public disputes. The focus of this course will be on the development of administrative law in Canada with selected comparisons with developments outside Canada.

Definition of Administrative Law as used in LAWS 4507A

Administrative law applies to the rules that govern executive action by both public and private organizations. However, this course is primarily concerned with the rules of law that deal with the exercise of the powers, privileges and practices of the executive branch of governments and related administrative tribunals and statutory agencies. All executive power in Canada is exercised in the name of the federal or provincial Crown by federal or provincial cabinets. However, this view is being increasingly challenged by some aboriginal representatives who litigate infringements of their rights and seek a new third order of government. Subject to federal and constitutional legal limitations, territorial governments exercise powers similar to those of the provinces. Powers of governments are set out in *Constitution Act 1867* (see Dodek, c.2).

It is concerned with the actions and decisions pursuant to the powers given to the executive (Crown/cabinet) by Parliament or the legislatures within the accountability, control and supervisory framework of the Constitution of Canada, constitutional conventions, statutes and the common law. This framework also includes royal prerogative powers, regulations and rules of practice for both tribunals and courts. Administrative law also is concerned with statutory and administrative powers assigned to municipal governments by provinces.

Statutes delegate to the Governor-in-Council (Canada) or the Lieutenant Governors-in-Council (provinces) or ministers of the federal or provincial Crown to make administrative decisions or regulations to secure desired legislative ends. In addition, statutory bodies (e.g. Canada Post, municipalities) or tribunals (e.g. CRTC, OMB) are set up by Parliament and/or legislatures to provide public works, products and services and to make administrative and regulatory decisions outside the framework of the ordinary courts. Under principles enshrined in the Constitution (such as rule of law) and/or the common law, (such as natural justice and rules against bias), actions of these bodies are subject to either appeals and/or judicial review by the courts appointed by the federal and provincial governments. Such bodies are also subject to statutory and certain political controls. Alternate dispute resolution, such as labour/management arbitration, is also included within the orbit of administrative

law. The independence of courts from government administrative and political control is canvassed as well as steps to make administrative tribunals more independent from government interference.

For definitions of key terms see Dodek, pp. 13-16

COURSE FORMAT

- Lectures and in-class discussions, simulations, case studies, group presentations, readings, role playing
- Three hours a week
- In-class registration taken

REQUIRED TEXTS

- Elliott, David, *Judicial Control of Administrative Action: Source Book*, fifth edition (Captus Press: Concord, 2011) Paper. – available at Carleton University Bookstore
- Ellis, Ron, *Unjust by Design: Canada's Administrative Justice System*, (Vancouver: U.B.C. Press, 2013) Paperback edition (available at Carleton University Bookstore)
- Dodek, Adam, *The Canadian Constitution*, (Toronto: Dundurn Press, 2013), Paper – Available at Carleton University Bookstore
- Swaigen, John, *Administrative Law: Principles and Advocacy*, second edition (Toronto: Emond-Montgomery, 2011) Paper. – Available at Carleton University Bookstore

Additional required materials will be distributed in class and/or posted to cuLearn web site. These include: *Universal Declaration of Human Rights*; *Highlights of the Canadian Constitution*, as well as selected cases and sections from the *Canadian Bill of Rights*; *Canada Human Rights Act*, provincial *Human Rights Codes*, provincial *Ombudsman Acts*; conflict of interest acts, *Controlled Drugs and Substances Act* and the *Criminal Code of Canada*, *Canadian Charter of Rights and Freedoms*. See in particular background chapter on “Administrative Law” by D. Johnson, *Thinking Government* on cuLearn site. Supplementary excerpts from court hierarchy diagrams, cases, statutes, regulations, rules and commentaries will be, as needed, handed out or posted to cuLearn.

EVALUATION

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

Mid-term test (2 hours) (closed book)	25% - February 11 (6:05 – 8:05 p.m.)
Case Analysis/Thematic Essay	20%- Due April 7
Group Presentation on selected Admin. Agencies Methodology to be discussed in class	15% (Feb. 25 – Mar. 31)
Final examination (3 hours)	30%- (TBA in examination period – April 11-23, 2016)
Class/lecture participation	10%- (in-class registration taken)

Attendance & Class Participation

ALL STUDENTS are required to sign the register at every class. Your participation mark is based in part on attendance and in part on active participation in class discussions. Explanation of your absence for medical and compassionate reasons will be considered in adjusting the registration record. Excuses that you did not know there is a sign-in registration will not be accepted. ONLY ATTENDING AN IN-CLASS EXAM WILL NOT BE CONSIDERED ATTENDANCE FOR PURPOSES OF THE PARTICIPATION MARK.

Case Study/Thematic Essay

Students can select any SCC case considered in class for a case study or inclusion in a thematic essay. Topic to be approved by instructor. Information on how to write a case analysis is contained in R. Rickwood's “Case Writing Guidelines” posed on CuLearn.

There will be a late penalty of 2 per cent per calendar day after April 7 and no case study report will be accepted after April 11. Case studies will **only** be accepted for marking in **hard copy format**. Electronic copy will be accepted as the receipt date of a paper. However, this version will not be printed off or marked. A hard copy must be submitted.

Group Presentations

“In class” presentations will be done by groups of students in the classes after the mid-term test using concepts and specific cases or groups of cases set out in the texts. Presentations will be based on those administrative agencies listed in Elliott, Ch. 15 or any other agency selected by the students and approved by the instructor.

The same mark will be given for all members of a group.

Students requiring computerized equipment and other audio visual materials for their presentations should notify the instructor in advance. Each group is required to provide the course instructor with an

aide memoire of at least one page in length summarizing the presentation at the time of the presentation. A group may provide a copy of their power points as a substitute for an *aide memoire* and the instructor will post the power points to cuLearn. **Key content points in presentations will be tested in the final day test.** Presentations should be at least 20 minutes long. If there are extra presenters in a group, it will need to be longer. Marks are awarded on content (60%), presentation style (20%) and engagement (20%) of the other students in discussions, simulations or game exercises (Jeopardy, Who Wants to Be a Millionaire etc.). A schedule of presentations will be drawn up on a first-come first-served basis. So identify your topic and the members of your group in writing to the instructor as soon as possible. Students are free to handout sample illustrative materials to assist their student colleagues to understand content and processes. Students can use formats, such as panel discussions, news and talk shows, tribunal and court case proceedings, simulations and debates as well as videos from You Tube and Media outlets. The whole time of a group presentation cannot be used up in a game show format activity or activities. Nominal candy rewards to elicit audience participation and the use of stage props and costumes can sometimes enhance class presentations. Respect for participant viewpoints different from your own and use of limited preambles to questions is to be encouraged.

N.B. I want to reiterate here the Carleton University Academic Integrity Policy with respect to the “Unauthorized Resubmission of Work A student shall not submit substantially the same piece of work for academic credit more than once without prior written permission of the course instructor in which the second submission occurs. Minor modifications and amendments to an essay or paper, such as changes in phraseology, do not constitute a significant and acceptable reworking of an assignment.”

This policy applies to all aspects of your work, including the group presentation.

SCHEDULE

- Jan. 7 **Introduction – Course and Evaluation Scheme Overview – General Principles and Theory of Administrative Law**
- Elliott, Ch. 1
 - Swaigen, Chs. 1, 2 & 3

Outline – LAWS 4507A

- Dodek, Chs. 1 & 3
- D. Johnson, “Administrative Law” from *Thinking Government* on CU Learn website

Jan. 14 **Procedural Review - Fairness – The Right to be Heard + Bias and other Concepts**

- Elliott, Chs. 2 & 3
- Swaigen, Chs. 6 & 7

Jan. 19 LAST DAY TO REGISTER/CHANGE COURSES OR SECTIONS

Jan. 21 **Substantive Review – Decline and Rise of Contextualism**

- Elliott, Chs. 5 & 6
- Organization of Group Presentations**

Jan. 28 **Substantive Review – Contemporary**

- Elliott, Ch. 7

Jan. 31 LAST DAY TO WITHDRAW WITH FULL FEE ADJUSTMENT

Feb. 4 **Constitutional Control, *Charter*, and Quasi-Constitutional Laws**

- Elliott, Ch. 9
- Dodek, Ch. 5
- Swaigen, |Chs. 4 & 5
- Ellis, Ch.2

Review for Midterm

Feb. 11 **MID-TERM Test (In-class – 2 hours, closed book)**

Feb. 12 **APRIL FINAL EXAM SCHEDULE POSTED ON LINE**

Feb. 15 - STATUTORY HOLIDAY – UNIVERSITY CLOSED

Feb. 15-19 WINTER BREAK– NO CLASS – NO OFFICE HOURS

Feb. 25 **Applying Administrative Law Principles Before Hearings**

Swaigen, Chs. 8 & 9, Appendix A

**Interpreting Statutes, Regulations and By-Laws
PRESENTATIONS**

Mar. 3 **Management and Control of Hearing Process, Procedures and Evidence**

- Swaigen, Chs. 10, 11, 12
- PRESENTATIONS**

Mar. 6 LAST DATE TO SUBMIT PMC FINAL EXAM REQUEST TO PMC

Mar. 10 **Tribunal Decision Making – Procedures and Judicial Impact on Conduct Outside Hearings:**

- Swaigen, Chs. 13, 14, 15

PRESENTATIONS**Mar. 17 Decisions of Tribunals and Administrative Agencies – Legal Grounds for Challenging Decisions and Avenue of Review and Enforcement**

- Swaigen, Chs. 16, 17
- Chalk River Nuclear Safety Commission case handout

PRESENTATIONS**Mar. 24 Reforms to Administrative Law Control Systems in Canada and Comparisons with Developments outside Canada**

- Elliott, Chs. 10 & 11
- Ellis, Chs. 5 & 6

PRESENTATIONS**Mar. 25 GOOD FRIDAY STATUTORY HOLIDAY-UNIVERSITY CLOSED****Mar. 31 Torts and Alternative Control Systems.
Constitutional versus Administrative Law Remedies**

- Elliott, Chs. 12 & 13
- SLAPPS Handout
- Summary of Bill 52, *Protection of Public Participation Act*, effective 3 November, 2015, on Federation of Ontario Cottagers' Association website, www.foca.on.ca/slapp-protection-of-participation-act

Final Exam Review

Apr. 7 Last Class
Case Study/Thematic Essay **DUE** in hard copy

Apr. 8 LAST DAY TO WITHDRAW FROM COURSE WITHOUT GRADE BEING ASSIGNED.**Final Term Work Receipt Day for Approved Deferrals**

Apr.9-10 **Study Days**

Apr. 11-23 **Official Exam Period**

FINAL EXAM - TBA (Date available on line Feb. 13)
(2 hours – closed book – in exam period) (covers lectures & materials from Feb. 25-Apr. 1 – 50% quiz and 50% essay)

June 6-16 FALL/WINTER AND WINTER TERM DEFERRED FINAL EXAMINATIONS
