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**COURSE:** LAWS 3506A – Administrative Law

**TERM:** Winter 2021

**PREREQUISITES:** LAWS 2502 and 0.5 credit in LAWS at the 2000 level

**CLASS:** Day & Time: Wednesdays 6:05 pm – 7:55 pm  
Room: All Courses in the Winter 2021 term are offered online.

Lectures in this course will include pre-recorded videos and weekly live sessions held during our scheduled class time via the Zoom conferencing platform.

**INSTRUCTOR:** Jean-Simon Schoenholz  
**(CONTRACT)** Associate, Norton Rose Fulbright Canada LLP

**CONTACT:** Office Hrs: By appointment (via phone or Zoom)  
Telephone: 613-780-1537 (work phone)  
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### **CALENDAR 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.

### **COURSE DESCRIPTION**

Administrative law is a branch of public law. It places legal limitations on a wide range of government actions, and provides for remedies available through appeals before administrative tribunals and judicial review before the courts. The course will provide an overview of this area of the law.

At the end of this course, students should be able to (1) identify and think critically about the fundamental principles underlying the field of administrative law; (2) understand the legal frameworks the courts have applied to various issues arising in this area; and (3) apply these legal principles to relevant, practical examples.

**REQUIRED TEXTS**

Colleen M. Flood and Lorne Sossin, eds., *Administrative Law in Context*, 3rd ed, Toronto: Emond, 2017. (available through the Carleton bookstore and the bookstore online portal: <https://www.bkstr.com/carletonstore/home>)

Students may find all other readings on CULearn.

**COURSE FORMAT**

We will be adapting the course to provide an accessible online experience including both live and pre-recorded components. This is meant to provide flexibility to each student's current circumstances while maintaining the interactive nature of the class.

There are two components to each week's course content:

- 1) Pre-recorded lecture: A pre-recorded lecture will be posted on CULearn. It will present the substantive course material for the week. The lecture will be posted at least a week ahead of the corresponding "live" component of the class.
- 2) Live Discussion and Q&A (via Zoom): The content of the live session will vary from week to week but may include discussion of the class content, practical exercises and group discussions. Students are strongly encouraged to watch the pre-recorded lecture and complete all corresponding reading prior to the live session and to bring any and all questions to the live discussion, so the entire class can benefit. **Live sessions will be recorded and posted to CULearn for those who cannot attend.**

Students are encouraged to use audio and/or video to engage with the instructor during the live sessions, as they feel comfortable.

**COURSE EVALUATION WILL INCLUDE CONTENT COVERED IN EACH OF THE TWO CLASS COMPONENTS.****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.

<b>Evaluation Component</b>	<b>Value</b>	<b>Due Dates</b>
<u>Participation</u>  Students must show regular engagement with the course content. Participation will be monitored and must be shown, by one of two ways for <b>at least 10</b> out of the 12 weeks of the class. To have their participation counted for a given week, students may either 1) attend a given week's live discussion OR, if unable to attend, 2) submit	15%	Ongoing*

a short entry responding to a discussion question and/or an application exercise relevant to the week's lecture/readings. Students may combine these two participation methods as necessary.		* Reflective journal entries due on date of corresponding live discussion.
<p><u>Hearing assignment</u></p> <p>This assignment requires you to virtually attend the hearing of a judicial review at the Federal Court or the Divisional Court. You will be required to report on case and your observations during the hearing.</p> <p>Although the instructor will provide some direction as to how to go about attending the hearing, this assignment rests entirely on student initiative. You will be required to (1) contact the Court to learn when their hearings are held and (2) make all necessary arrangements to attend the hearing virtually.</p> <p>A detailed rubric and assignment instructions will be posted on cLearn.</p> <p><b>I strongly recommend that you look into this and make necessary arrangements early on in the semester as hearing dates may be limited.</b></p>	35%	March 16, 2020
<p><u>Take Home Exam</u></p> <p>The take-home exam will cover all topics addressed during the semester. It will assess both a student's ability to apply legal principles to practical cases and to think critically about the principles underlying administrative law.</p>	50%	To be scheduled during the formal final examination period.

### **LATE PENALTIES AND REQUESTS FOR EXTENSIONS**

Late Assignments will be penalized as follows:

- Deduction of 5% for late on the next day after the deadline.
- Further 10% deduction for each subsequent day.
- If the Assignment is handed in more than seven days late, it will be accepted towards course completion but will receive zero marks.

The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>.

**Extensions for longer than 7 days will normally not be granted.** In those extraordinary

cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

## **SCHEDULE**

Subject to revision. All chapter numbers refer to Flood and Sossin, 3<sup>rd</sup> ed.

<b>Week</b>	<b>Topic</b>	<b>Material</b>
Week 1 (Jan 13)	Introduction  A Brief History of Administrative Law	<ul style="list-style-type: none"> <li>• Course Outline</li> <li>• Chapter 1</li> <li>• “Administrative Tribunals and the Courts: An Evolutionary Relationship”, speech by the Right Honourable Beverley McLachlin, former Chief Justice of Canada (<a href="https://www.scc-csc.ca/judges-juges/spe-dis/bm-2013-05-27-eng.aspx">https://www.scc-csc.ca/judges-juges/spe-dis/bm-2013-05-27-eng.aspx</a>)</li> </ul>
Week 2 (Jan 20)	Remedies in Administrative Law	<ul style="list-style-type: none"> <li>• Chapter 2</li> <li>• <i>Highwood Congregation v Wall</i>, 2018 SCC 26 (<a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/17101/1/document.do">https://scc-csc.lexum.com/scc-csc/scc-csc/en/17101/1/document.do</a>)</li> <li>• Daly, Paul, Governmental Power and COVID-19: The Limits of Judicial Review (May 25, 2020). Forthcoming, Flood et al eds., <i>The Law, Policy and Ethics of COVID-19</i> (University of Ottawa Press, 2020), Ottawa Faculty of Law Working Paper No. 2020-29, Available at SSRN: <a href="https://ssrn.com/abstract=3610339">https://ssrn.com/abstract=3610339</a> or <a href="http://dx.doi.org/10.2139/ssrn.3610339">http://dx.doi.org/10.2139/ssrn.3610339</a></li> </ul>
Week 3 (Jan 27)	Rule of Law and Parliamentary Sovereignty	<ul style="list-style-type: none"> <li>• Chapter 4</li> <li>• Chapter 8</li> <li>• <i>Reference re Pan-Canadian Securities Regulation</i>, 2018 SCC 48 (paras 53-68; 72-80)</li> </ul>
Week 4 (Feb 3)	The Standard of Review	<ul style="list-style-type: none"> <li>• Chapter 11</li> <li>• <i>Canada (Minister of Citizenship and Immigration) v Vavilov</i>, 2019 SCC 65 at paras 1-72 (majority opinion); 198-283 (concurring opinion) (<a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do?site_preference=normal&amp;pedisable=true">https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do?site_preference=normal&amp;pedisable=true</a>).</li> </ul>
Week 5 (Feb 10)	Reasonableness Review	<ul style="list-style-type: none"> <li>• Chapter 12</li> <li>• <i>Canada (Minister of Citizenship and Immigration) v Vavilov</i>, 2019 SCC 65 at paras 73-197 (majority opinion); 284-343 (concurring opinion) (<a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do?site_preference=normal&amp;pedisable=true">https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do?site_preference=normal&amp;pedisable=true</a>).</li> </ul>
<b>Feb 17: Reading Week</b>		
Week 6 (Feb 24)	<i>Vavilov</i> and its Implications  (No recorded lecture)	<ul style="list-style-type: none"> <li>• Daly, Paul, <i>Vavilov at One</i> (October 30, 2020). Available at SSRN: <a href="https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3722312">https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3722312</a></li> <li>• Mancini, Mark, <i>Vavilov's Rule of Law: A Diceyan Model and</i></li> </ul>

		<p>Its Implications (April 29, 2020). Canadian Journal of Administrative Law and Practice, Forthcoming, Available at SSRN: <a href="https://ssrn.com/abstract=3588786">https://ssrn.com/abstract=3588786</a></p> <ul style="list-style-type: none"> <li>• Daly, Paul, The Vavilov Framework and the Future of Canadian Administrative Law (January 15, 2020). Ottawa Faculty of Law Working Paper No. 2020-09, Available at SSRN: <a href="https://ssrn.com/abstract=3519681">https://ssrn.com/abstract=3519681</a> or <a href="http://dx.doi.org/10.2139/ssrn.3519681">http://dx.doi.org/10.2139/ssrn.3519681</a></li> </ul>
Week 7 (Mar 3)	Procedural Fairness	<ul style="list-style-type: none"> <li>• Chapter 5</li> <li>• <i>Baker v Canada</i>, [1999] 2 SCR 817</li> <li>• Daly, Paul, Canada's Bi-Polar Administrative Law: Time for Fusion (August 14, 2014). (2014) 40(1) Queen's Law Journal 213, Available at SSRN: <a href="https://ssrn.com/abstract=2480617">https://ssrn.com/abstract=2480617</a></li> </ul>
Week 8 (Mar 10)	Independence, Impartiality and Bias in Administrative Law	<ul style="list-style-type: none"> <li>• Chapter 7</li> <li>• <i>Ocean Port Hotel Ltd v British Columbia</i>, 2001 SCC 52</li> <li>• <i>IWA v Consolidated-Bathurst Packaging Ltd.</i>, [1990] 1 SCR 282</li> </ul>
Week 9 (Mar 17)	Substantive Review and the Charter	<ul style="list-style-type: none"> <li>• Chapter 13</li> <li>• <i>Doré v Barreau du Québec</i>, 2012 SCC 12 (<a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/7998/1/document.do">https://scc-csc.lexum.com/scc-csc/scc-csc/en/7998/1/document.do</a>)</li> <li>• <i>Law Society of British Columbia v Trinity Western University</i>, 2018 SCC 32 (<a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17140/index.do">https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17140/index.do</a>) <ul style="list-style-type: none"> <li>○ Headnote</li> <li>○ Majority Reasons: paras 57-59</li> <li>○ Reasons of the Chief Justice: paras 111-119</li> <li>○ Reasons of Rowe J.: 162-208</li> <li>○ Reasons of Côté and Brown JJ. : paras 302-314</li> </ul> </li> </ul>
Week 10 (Mar 24)	Thinking about <i>Doré</i>  (No recorded lecture)	<p>Mancini, Mark, The Conceptual Gap Between <i>Doré</i> and <i>Vavilov</i> (April 27, 2020). Dalhousie Law Journal (2020), Available at SSRN: <a href="https://ssrn.com/abstract=3586079">https://ssrn.com/abstract=3586079</a></p> <p>Macklin, Audrey, Charter Right or Charter Lite? Administrative Discretion and the Charter (October 9, 2014). Supreme Court Law Review, Vol 67, 2014, Available at SSRN: <a href="https://ssrn.com/abstract=2507801">https://ssrn.com/abstract=2507801</a></p>
Week 11 (Mar 31)	The Future of Judicial Review  (No recorded lecture)	<p>Williams, Rebecca A., Rethinking Deference for Algorithmic Decision-Making (August 31, 2018). Oxford Legal Studies Research Paper No. 7/2019, Available at SSRN: <a href="https://ssrn.com/abstract=3242482">https://ssrn.com/abstract=3242482</a> or <a href="http://dx.doi.org/10.2139/ssrn.3242482">http://dx.doi.org/10.2139/ssrn.3242482</a></p> <p>Scassa, Teresa, Administrative Law and the Governance of Automated Decision-Making: A Critical Look at Canada's Directive on Automated Decision-Making (October 30, 2020). Forthcoming:</p>

		(2021) 54:1 University of British Columbia Law Review, Available at SSRN: <a href="https://ssrn.com/abstract=">https://ssrn.com/abstract=</a>  Treasury Board Secretariat, <i>Directive on Automated Decision-Making</i> . Available at <a href="https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32592">https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32592</a> .
<b>April 2: Good Friday</b>		
Week 13 (April 14)	Review and Exam Preparation  (No recorded lecture)	None.

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## **ACADEMIC ACCOMMODATIONS**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

### **Pregnancy obligation**

Please contact 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 Department of Equity and Inclusive Communities (EIC): <https://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 Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

### **Academic Accommodations for Students with Disabilities**

If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or [pmc@carleton.ca](mailto: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 as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) <https://carleton.ca/pmc>

### **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 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:

<https://carleton.ca/registrar/academic-integrity/>

### **Survivors of Sexual Violence**

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/studentssupport/svpolicy/>

### **Accommodation for Student Activities**

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor 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. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: <https://students.carleton.ca/services/accommodation/>

### **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: <https://carleton.ca/law/current-students/>