
COURSE: LAWS 3506A – Administrative Law

TERM: Fall 2022

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

CLASS: Day & Time: Mondays 6:05 pm – 8:55 pm
Room: 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)
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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 Paul Daley, eds., *Administrative Law in Context*, 4th ed, Toronto: Emond, 2021. (available through the Carleton bookstore and the bookstore online portal: <https://www.bkstr.com/carletonstore/home>)

Please note that the most recent edition contains **significant changes** to the law in this area. Earlier editions should not be relied upon.

Students may find all other readings on Brightspace.

COURSE FORMAT

The course includes 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 Brightspace. It will present the substantive course material for the week.
- 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 Brightspace 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.

Evaluation Component	Value	Due Dates
<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 at least 10 out of the 12 weeks of the class. To have their participation counted for a given week, students may either 1) attend a given	20%	Ongoing* * Reflective journal entries are due a week after the corresponding live discussion. For example, the reflective

<p>week's live discussion OR, if unable to attend, 2) submit 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.</p>		<p>journal entry for Week 1 is due September 19th.</p>
<p><u>Hearing assignment</u></p> <p>This assignment requires you to 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 Brightspace.</p> <p>I strongly recommend that you look into this and make necessary arrangements early on in the semester as hearing dates may be limited.</p>	<p>40%</p>	<p>October 30, 2022</p>
<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>	<p>40%</p>	<p>To be scheduled during the formal final examination period.</p>

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

All chapter numbers refer to Flood and Daley, 4th ed.

Week	Topic	Material
Week 1 (Sept 12)	Introduction A Brief History of Administrative Law	<ul style="list-style-type: none"> • Course Outline • Chapter 1 • “Administrative Tribunals and the Courts: An Evolutionary Relationship”, speech by the Right Honourable Beverley McLachlin, former Chief Justice of Canada (https://www.scc-csc.ca/judges-juges/spe-dis/bm-2013-05-27-eng.aspx)
Week 2 (Sept 19)	Remedies in Administrative Law	<ul style="list-style-type: none"> • Chapter 2 • <i>Highwood Congregation v Wall</i>, 2018 SCC 26 (https://scc-csc.lexum.com/scc-csc/scc-csc/en/17101/1/document.do)
Week 3 (Sept 26)	Rule of Law and Parliamentary Sovereignty	<ul style="list-style-type: none"> • Chapter 3 • Chapter 4 • <i>Reference re Pan-Canadian Securities Regulation</i>, 2018 SCC 48 (paras 53-68; 72-80)
Week 4 (Oct 3)	The Standard of Review	<ul style="list-style-type: none"> • Chapter 11 • Chapter 12 • <i>Canada (Minister of Citizenship and Immigration) v Vavilov</i>, 2019 SCC 65 at paras 1-72 (majority opinion); 198-283 (concurring opinion) (https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do?site_preference=normal&pedis_able=true). • <i>Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association</i>, 2022 SCC 30 at paras 22-42 (https://scc-csc.lexum.com/scc-csc/scc-csc/en/19441/1/document.do)
Oct 10: Statutory Holiday		
Week 5 (Oct 17)	Reasonableness Review	<ul style="list-style-type: none"> • Chapter 12 • <i>Canada (Minister of Citizenship and Immigration) v Vavilov</i>, 2019 SCC 65 at paras 73-197 (majority opinion); 284-343 (concurring opinion) (https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do?site_preference=normal&pedis_able=true).
Oct 24: Reading Week		
Week 6 (Oct 31)	<i>Vavilov</i> and its Implications (No recorded lecture)	<ul style="list-style-type: none"> • Daly, Paul, <i>Vavilov and the Culture of Justification in Contemporary Administrative Law</i> (June 3, 2020). (2020) <i>Supreme Court Law Review</i> (2d), Forthcoming, Ottawa Faculty of Law Working Paper No. 2020-18, Available at SSRN: https://ssrn.com/abstract=3618743

		<ul style="list-style-type: none"> Green, Andrew James, How Important are the Groundbreaking Cases in Administrative Law? (May 19, 2022). Available at SSRN: https://ssrn.com/abstract=4114959 or http://dx.doi.org/10.2139/ssrn.4114959 Liew, Jamie, The Good, the Bad, and the Ugly: A Preliminary Assessment of Whether the Vavilov Framework Adequately Addresses Concerns of Marginalized Communities (January 20, 2020). Ottawa Faculty of Law Working Paper No. 2020-08, Available at SSRN: https://ssrn.com/abstract=3522597 or http://dx.doi.org/10.2139/ssrn.3522597
Week 7 (Nov 7)	Procedural Fairness	<ul style="list-style-type: none"> Chapter 6 <i>Baker v Canada</i>, [1999] 2 SCR 817 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: https://ssrn.com/abstract=2480617
Week 8 (Nov 14)	Independence, Impartiality and Bias in Administrative Law	<ul style="list-style-type: none"> Chapter 9 <i>Ocean Port Hotel Ltd v British Columbia</i>, 2001 SCC 52 <i>IWA v Consolidated-Bathurst Packaging Ltd.</i>, [1990] 1 SCR 282
Week 9 (Nov 21)	Substantive Review and the Charter	<ul style="list-style-type: none"> Chapter 15 <i>Doré v Barreau du Québec</i>, 2012 SCC 12 (https://scc-csc.lexum.com/scc-csc/scc-csc/en/7998/1/document.do) <i>Law Society of British Columbia v Trinity Western University</i>, 2018 SCC 32 (https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17140/index.do) <ul style="list-style-type: none"> Headnote Majority Reasons: paras 57-59 Reasons of the Chief Justice: paras 111-119 Reasons of Rowe J.: 162-208 Reasons of Côté and Brown JJ. : paras 302-314
Week 10 (Nov 28)	Thinking about <i>Doré</i> (No recorded lecture)	<p>Mancini, Mark, The Conceptual Gap Between <i>Doré</i> and Vavilov (April 27, 2020). Dalhousie Law Journal (2020), Available at SSRN: https://ssrn.com/abstract=3586079</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: https://ssrn.com/abstract=2507801</p> <p>Roy, Vincent, The Implications of the Vavilov Framework for <i>Doré</i> Judicial Review (April 14, 2022). Queen's Law Journal, (Fall 2022) Forthcoming , Available at SSRN: https://ssrn.com/abstract=4148032</p>

<p>Week 11 (Dec 5)</p>	<p>The Future of Judicial Review</p> <p>(No recorded lecture)</p>	<p>Daly, Paul and Raso, Jennifer and Tomlinson, Joe, Administrative Law in the Digital World (January 13, 2022). Forthcoming in Carol Harlow ed., Research Handbook on Administrative Law (Edward Elgar, Aldershot, 2021) , Available at SSRN: https://ssrn.com/abstract=4008531 or http://dx.doi.org/10.2139/ssrn.4008531</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: (2021) 54:1 University of British Columbia Law Review, Available at SSRN: https://ssrn.com/abstract=</p> <p>Treasury Board Secretariat, <i>Directive on Automated Decision-Making</i>. Available at https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32592.</p>
<p>Week 12 (Dec 9)</p> <p>*Monday in Carleton calendar</p>	<p>Review and Exam Preparation</p> <p>(No recorded lecture)</p>	<p>None.</p>

University and Departmental Policies

DEPARTMENT POLICIES AND REGULATIONS

Please review the following webpage to ensure that your practices meet our Department’s expectations, particularly regarding standard departmental protocols and academic integrity requirements: <https://carleton.ca/law/student-experience-resources/>.

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/>.

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 accommodation regarding a formally-scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

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 [click here](#).

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).

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 where 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/equity/sexual-assault-support-services>

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. Read more here:

<https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit:

<https://students.carleton.ca/services/accommodation/>.

COVID Update

It is important to remember that COVID is still present in Ottawa. The situation can change at any time and the risks of new variants and outbreaks are very real. There are [a number of actions you can take](#) to lower your risk and the risk you pose to those around you including being vaccinated, wearing a mask, staying home when you're sick, washing your hands and maintaining proper respiratory and cough etiquette.

Feeling sick? Remaining vigilant and not attending work or school when sick or with symptoms is critically important. If you feel ill or exhibit COVID-19 symptoms do not come to class or campus. If you feel ill or exhibit symptoms while on campus or in class, please leave campus immediately. In all situations, you must follow Carleton's [symptom reporting protocols](#).

Masks: Carleton has paused the [COVID-19 Mask Policy](#), but continues to strongly recommend masking when indoors, particularly if physical distancing cannot be maintained. It may become necessary to quickly reinstate the mask requirement if pandemic circumstances were to change.

Vaccines: Further, while proof of vaccination is no longer required as of May 1 to attend campus or in-person activity, it may become necessary for the University to bring back proof of vaccination requirements on short notice if the situation and public health advice changes. Students are strongly encouraged to get a full course of vaccination, including booster doses as soon as they are eligible, and submit their booster dose information in [cuScreen](#) as soon as possible. Please note that Carleton cannot guarantee that it will be able to offer virtual or hybrid learning options for those who are unable to attend the campus.

All members of the Carleton community are required to follow requirements and guidelines regarding health and safety which may change from time to time. For the most recent information about Carleton's COVID-19 response and health and safety requirements please see the [University's COVID-19 website](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca.