

Course Outline

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| COURSE: | LAWS 3506 A – Administrative Law |
| TERM: | Fall 2024 |
| PREREQUISITES: | LAWS 2502 and 0.5 credit in LAWS at the 2000 level |
| CLASS: | Format: Online Asynchronous |
| INSTRUCTOR: | Jean-Simon Schoenholz Senior Associate, Norton Rose Fulbright Canada LLP |
| CONTACT: | Office Hrs: By appointment (via phone or Zoom) Telephone: 613-780-1537 (work phone) Email: jeansimonschoenholz@cunet.carleton.ca |
| BRIGHTSPACE: | https://brightspace.carleton.ca/d2l/home/290260 |

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.

LEARNING OUTCOMES

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.

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 |
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| <p><u>Journal Entries</u></p> <p>Students must show regular engagement with the course content. This must be shown for at least 10 out of the 12 weeks of the class. For each week, students must submit a short entry (1-2 pages, single spaced) responding to a discussion question and/or an application exercise relevant to the week's lecture/readings.</p> | 20% | <p>Ongoing*</p> <p>* Reflective journal entries are due on the Monday of the following week for a corresponding topic. For example, the reflective journal entry for Week 1 is due September 16th.</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> | 40% | October 18, 2024 |

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| <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> | 40% | To be scheduled during the formal final examination period. |
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All components must be successfully completed in order to get a passing grade.

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 short-term extensions, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/academic-consideration-coursework-form/>

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).

For more information regarding academic consideration for short-term incapacitation (illness, injury, or extraordinary circumstances beyond a student's control), please visit the following link: <https://students.carleton.ca/course-outline/#academic-consideration-for-short-term-incapacitation>.

SCHEDULE

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

| Week | Topic | Material |
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| Week 1 (Sept 9) ¹ | 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) |

¹ As this is an asynchronous course, the dates for each week are associated with the Monday of that week to assist students in keeping track of the course consent. The work can be completed on students' own schedule.

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| Week 2 (Sept 16) | 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 23) | 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 (Sept 30) | 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) |
| Week 5 (Oct 7) | 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). <i>Optional Reading: Mason v. Canada (Citizenship and Immigration)</i>, 2023 SCC 21 (https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20081/index.do) |
| Week 6 (Oct 14) | <i>Vavilov</i> and its Implications | <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 Green, Andrew James, <i>How Important are the Groundbreaking Cases in Administrative Law?</i> (May 19, 2022). Available at SSRN: https://ssrn.com/abstract=4114959 or http://dx.doi.org/10.2139/ssrn.4114959 Liew, Jamie, <i>The Good, the Bad, and the Ugly: A Preliminary Assessment of Whether the Vavilov Framework Adequately Addresses Concerns of Marginalized Communities</i> (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 |
| Oct 21: Reading Week | | |
| Week 7 (Oct 28) | Procedural Fairness | <ul style="list-style-type: none"> Chapter 6 <i>Baker v Canada</i>, [1999] 2 SCR 817 Daly, Paul, <i>Canada's Bi-Polar Administrative Law: Time for</i> |

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| | | Fusion (August 14, 2014). (2014) 40(1) Queen's Law Journal 213, Available at SSRN: https://ssrn.com/abstract=2480617 |
| Week 8 (Nov 4) | 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 11) | 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>Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)</i>, 2023 SCC 31 (https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20177/index.do) |
| Week 10 (Nov 18) | Thinking about <i>Doré</i> | <p>Mancini, Mark, The Conceptual Gap Between <i>Doré</i> and <i>Vavilov</i> (April 27, 2020). <i>Dalhousie Law Journal</i> (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). <i>Supreme Court Law Review</i>, Vol 67, 2014, Available at SSRN: https://ssrn.com/abstract=2507801</p> <p>Roy, Vincent, The Implications of the <i>Vavilov</i> Framework for <i>Doré</i> Judicial Review (April 14, 2022). <i>Queen's Law Journal</i>, (Fall 2022) Forthcoming , Available at SSRN: https://ssrn.com/abstract=4148032</p> |
| Week 11 (Nov 25) | The Future of Judicial Review | <p>Daly, Paul and Raso, Jennifer and Tomlinson, Joe, Administrative Law in the Digital World (January 13, 2022). Forthcoming in Carol Harlow ed., <i>Research Handbook on Administrative Law</i> (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 <i>University of British Columbia Law Review</i>, 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> |
| Week 12 (Dec 2) | Review and Exam Preparation | None. |

University and Departmental Policies

PLAGIARISM

The University Academic Integrity Policy defines plagiarism as “*presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one’s own.*” This 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, artworks, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, material on the internet and/or conversations.

Examples of plagiarism include, but are not limited to:

- any submission prepared in whole or in part, by someone else, including the unauthorized use of generative AI tools (e.g., ChatGPT);
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another’s data or research findings without appropriate acknowledgement;
- submitting a computer program developed in whole or in part by someone else, with or without modifications, as one’s own; and
- failing to acknowledge sources through the use of proper citations when using another’s work and/or failing to use quotations marks.

Plagiarism is a serious offence that cannot be resolved directly by the course’s instructor. The Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of “F” for the course.

STATEMENT ON STUDENT MENTAL HEALTH

As a University student you may experience a range of mental health challenges that significantly impact your academic success and overall well-being. If you need help, please speak to someone. There are numerous resources available both on- and off-campus to support you.

For more information, please consult <https://wellness.carleton.ca/>

Emergency Resources (on and off campus):

- <https://carleton.ca/health/emergencies-and-crisis/emergency-numbers/>

Carleton Resources:

- Mental Health and Wellbeing: <https://carleton.ca/wellness/>
- Health & Counselling Services: <https://carleton.ca/health/>
- Paul Menton Centre: <https://carleton.ca/pmc/>
- Academic Advising Centre (AAC): <https://carleton.ca/academicadvising/>
- Centre for Student Academic Support (CSAS): <https://carleton.ca/csas/>
- Equity & Inclusivity Communities: <https://carleton.ca/equity/>

Off Campus Resources:

- Distress Centre of Ottawa and Region: (613) 238-3311 or TEXT: 343-306-5550, <https://www.dcottawa.on.ca/>
- Mental Health Crisis Service: (613) 722-6914, 1-866-996-0991, <http://www.crisisline.ca/>
- Empower Me: 1-844-741-6389, https://studentcare.ca/rte/en/IHaveAPlan_CarletonUniversityUndergraduateStudentsCUS_A_EmpowerMe_EmpowerMe
- Good2Talk: 1-866-925-5454, <https://good2talk.ca/>
- The Walk-In Counselling Clinic: <https://walkincounselling.com>

ACADEMIC ACCOMMODATIONS

Carleton is committed to providing academic accessibility for all individuals. You may need special arrangements to meet your academic obligations during the term. The accommodation request processes, including information about the Academic Consideration Policy for Students in Medical and Other Extenuating Circumstances, are outlined on the Academic Accommodations website (students.carleton.ca/course-outline).

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows.

Pregnancy Obligation and Family-Status Related Accommodations

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 about the accommodation policy, visit the [Equity and Inclusive Communities \(EIC\)](#) website.

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, please go to: <https://carleton.ca/equity/focus/discrimination-harassment/religious-spiritual-observances/>.

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. You can find the Paul Menton Centre online at: <https://carleton.ca/pmc/>

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/>.

Academic Consideration for Medical and Other Extenuating Circumstances

Due to medical and other extenuating circumstances, students may occasionally be unable to fulfill the academic requirements of their course(s) in a timely manner. The University supports the academic development of students and aims to provide a fair environment for students to succeed academically. Medical and/or other extenuating circumstances are circumstances that are beyond a student's control, have a significant impact on the student's capacity to meet their academic obligations, and could not have reasonably been prevented.

Students must contact the instructor(s) as soon as possible, and normally no later than 24 hours after the submission deadline for course deliverables. If not satisfied with the instructor's decision, students can conduct an "informal appeal" to the Chair of the department within three (3) working days of an instructor's decision. We have created a webform specifically for appeals to the Chair, which can be found here: <https://carleton.ca/law/application-for-review-of->

[refusal-to-provide-academic-consideration/](#). *Note: This form only applies to LAWS courses and is not the same as a formal appeal of grade.* More information about the academic consideration can be found [here](#).