

ADMINISTRATIVE LAW

LAWS 2000.02 (Four credits)

SYLLABUS – Winter 2010

Professor Sheila Wildeman

Contact information:

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Office hours:

Tuesdays 3:00-4:00, OR email or phone me to set up an appointment, or drop in anytime I am in and the door is open.

Email communication with students: Any emails sent to students will use their dal.ca email address and will have the re line: **Admin Law**. Please read these! Students will be deemed to have received course information sent by email.

Web page: All readings except those from the course text and/associated textbook website will be posted on the BLS Blackboard Learning system, accessible through My.Dal (“Learning Resources”) and the library web page. In addition, questions for discussion for the coming week’s readings will be posted there.

Class times

Monday 3:00-5:00 (room 104), Thursday 1:00-3:00 (room 104)

Materials: Flood & Sossin, et al., *Administrative Law in Context* (Emond Montgomery 2008)

Administrative Law in Context Companion Website at either of the following addresses

<http://www.emp.ca/index.php/administrative-law-in-context-companion-website>

<http://www.emp.ca/index.php?option=content&task=view&id=220>

The cases that accompany the text can be downloaded from the Companion website. I will post any additional readings on the Blackboard website for the course or distribute them as handouts. You are responsible for downloading and printing the cases.

Course Description

Administrative law is the law of public administration. In this course (and in law school courses on administrative law generally) the focus is on one part of this vast body of law: the law of judicial review. This is the branch of law (largely common law) that deals with sub-constitutional judicial review of public decision-makers who are not courts and who are usually exercising statutory authority. It is closely related to but distinct from constitutional law in that it largely concerns the legality of decisions made under or pursuant to laws passed by legislatures, whereas constitutional law of course also applies to such decisions (depending on the circumstances) as well as to legislative decision-making itself. It is closely associated with every area of law in which legislation assigns responsibility for decision-making to an administrative agency, including environmental law, securities law, immigration and refugee law, labour law, entertainment law, natural resources law, human rights law, intellectual property law, health law, international trade law, and school law (to name a few). Topics in this branch of public law include the duty of fairness, the rule against bias, the standard of review, administrative discretion, remedies, and the interplay between the Charter and administrative law. We will also venture beyond the traditional confines of judicial review to explore its connections to administrative regulation as a tool of governance, to the concept of the rule of law in the contemporary administrative state, and to administration rulemaking.

Evaluation: **CLOSED BOOK EXAM** (students will be given the table of contents from the text book and the list of assigned cases and any legislation that is part of the scenario presented in a

problem on which questions are posed)

Students may choose to write **either**:

- one 3 hour exam on the full course (**April 21**), or
- two 1.5 hour exams, the first on **Feb 18**, during class time, and the second on **April 21**.

Marks received on the February midterm exam will not be curved at that time. Instead, for consistency with those writing only in April, the raw February grade will be added to the raw April grade, and **all curving will occur in April**.

Intellectual Honesty and Discipline:

All students in this course should read:

- the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the plagiarism.dal.ca website; and
- the Law School policy on plagiarism, as set out in the law school regulations (available in hard copy from the Associate Dean's office and online at http://law.dal.ca/Current_Students), or the First Year Handbook (provided to all first year students and available from the Assistant Dean's Office).

Any paper or assignment submitted by a student at Dalhousie Law School may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Pandemic H1N1 Influenza Advisory in relation to Academic Continuity

In the event of an escalation of the pandemic H1N1 influenza virus, the University may need to authorize Academic Units to change elements of class schedules and/or evaluation plans as outlined in course syllabi. Any change is intended to support the primary goal of reducing the risk of spreading a pandemic influenza among students, faculty and staff.

Although it is difficult to predict the severity of the pandemic, the University is committed to minimizing the impact on student's academic progress. Therefore, every effort will be made to provide students with options for continued learning and for continued fair evaluations.

Changes may include but are not limited to:

- Adjustments to course assignments;
- Changes to the dates of exams;
- Arrangements for alternative evaluations for students affected by H1N1 influenza virus;
- Adjustments to work terms;
- Modification of marks awarded for participation;
- Adjustments to attendance policies.

Any alternative plan made in individual courses may be superseded by University-wide or Government measures to reduce the spread of the pandemic H1N1 influenza virus.

ACCOMMODATION

Students wishing to request accommodation regarding exam writing must make the request in writing to the Studies Committee and should see Associate Dean Deturbide or Assistant Dean Hughes for more information. Material for the Studies Committee should be given to Tiffany Coolen-Jewers, administrative assistant to the Associate Dean.

Professor Pothier is the faculty advisor to students with disabilities. Students with disabilities wishing to discuss in-class accommodation or study assistance needs should see Professor Pothier.

Readings schedule

Date	Text / Topic	Cases
Monday, Jan 4	Chapter 1: Introduction	Baker
Thurs, Jan 7	Chapter 3: Remedies	Domtar, Harelkin, Federal Courts Act
Monday, Jan 11	Chapter 4: Rule of Law	Roncarelli (chapter 10 edit), Imperial Tobacco * Optional: Tamanaha article [BLS]
Thurs, Jan 14	Chapter 8: Standard of Review I (pp.197-212)	CUPE, Southam
Monday, Jan 18	Chapter 8 (cont'd: 212-222)	Pushpanathan, Ryan
Thurs, Jan 21	Chapter 8 (cont'd: 222-227)	Dunsmuir
Monday, Jan 25	Post-Dunsmuir standard of review analysis	Lake, Khosa (selecting standard) [BLS] B.C. A.T.A. [BLS]
Thurs, Jan 28	Chapter 9: Standard of Review II (pp. 229-243) – Correctness review	Mossop, ATCO [BLS]
Monday, Feb 1	Chapter 9 (cont'd: pp.244-267): Reasonableness review	Review Southam (after para 47); Khosa (Tribunal) [BLS], Khosa SCC (applying standard) [BLS]; Clifford [BLS]
Thurs, Feb 4	Chapter 10: Discretion	Roncarelli (review), Baker (re-read in light of chapter), Suresh (BLS edit, to para 99)
Monday, Feb 8	Chapter 7: pp. 181-195 ONLY The Charter and Administrative Law (Review of Administrative Decisions Under the Charter; Agency Jurisdiction Over the Charter)	Slaight, Multani, Martin
Thurs, Feb 11	Catch-up; Substantive review practice	
Monday, Feb 15	Review for midterm	Practice exam
Thurs, Feb 18	Midterm exam	
Feb 22-26	READING WEEK – NO CLASSES	

Readings Schedule: Part II

Date	Text / Topic	Cases
Monday, March 1	Chapter 5: Fairness, pp. 115-122 Introduction to Procedural Review (Overview and Threshold)	Nicholson, Cardinal, Ontario <i>Statutory Power Procedures Act</i> [BLS]
Thurs, March 4	Chapter 5: Fairness, pp. 122-129 Common Law Threshold (Limits) Constitutional Threshold: Blencoe	Inuit Tapirisat, Homex, Blencoe (s.7 threshold)
Monday, March 8	Chapter 5: Fairness, pp. 129-137 Chapter 7: Charter, pp.170-181 Content of Procedural Requirements (Common Law, Constitution s.7)	Baker, Suresh (BLS edit – procedural fairness)
Thurs, March 11	Chapter 16: Advocacy Participatory Rights 1: - Notice (Ch 16) - Delay (Blencoe) - Disclosure (Gough) - Oral Hearing (Singh, Baker)	Blencoe (on delay / common law abuse of process), Gough [BLS], Singh (& review Baker: oral hearing)
Monday, March 15	Participatory Rights 2: - Counsel, Cross-examination (Re Men's Clothing, Ch. 16) - Those Who Hear Must Decide (Potter) - Reasons (Lafontaine, (Baker, Suresh))	Re Men's Clothing [BLS], Potter [BLS], Lafontaine [BLS] (& review Baker, Suresh: reasons)
Thurs, March 18	Chapter 6: Impartiality / Independence, pp. 157-159 only Impartiality	Old St. Boniface [BLS], Save Richmond Farmland [BLS], Newfoundland Tel [BLS]
Monday, March 22	Chapter 6: Full chapter Institutional Impartiality / Independence	Geza, Ocean Port, Consolidated Bathurst
Thurs, March 25	Chapter 14: Public Inquiries	T.B.A.
Monday, March 29	Catch-up / T.B.A.	
Thurs, April 1	Review: Procedure (Additional session on substantive review to be scheduled if required)	