

ADMINISTRATIVE LAW*

372.003

COURSE OUTLINE, Winter 2004

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* “the heart and soul of the constitution”

Structure And Purpose Of The Course

A. THE STRUCTURE OF THE COURSE

TIME: Tuesdays and Thursdays, 9:30-11:00

LOCATION: Room 177

OFFICE HOURS & AVAILABILITY:

Office: 148 Curtis Building (downstairs, north, in office wing)

I am generally available to talk after class and am often in my office at other times. Though I try to maintain an "open door" policy and am always happy to see you, other commitments sometimes intrude. It is best to book appointments in advance if possible.

REQUIRED READING: David J. Mullan, *Administrative Law Cases, Text, and Materials*, (5th edition of J.M. Evans, H.N. Janisch, David J. Mullan, R.C. B. Risk casebook) (Emond Montgomery Publications, Ltd., 2003)
Available from UBC Bookstore. .

SUGGESTED SUPPLEMENTARY RESOURCES:

- D. Mullan, *Administrative Law* (Irwin Law, 2001)
- S. Blake, *Administrative Law in Canada* (3rd ed. Butterworths 2001)
- D. Jones and A. de Villars, *Principles of Administrative Law* (3d ed. Carswell 1999)
- D. Brown and J. Evans, *Judicial Review of Administrative Action in Canada* (Canvasback Publishing, 1998-)
- R. Macaulay and J. Sprague, *Practice and Procedure Before Administrative Tribunals* (Carswell 1988-) four volumes, looseleaf
- R. Dussault and L. Borgeat, *Administrative Law: A Treatise* (Carswell, 2d ed. 1985-90) five volumes, 2341 pages in total
- Marie-Helene Blais, et. al., *Standards of Review of Federal Administrative Tribunals* (LexisNexis Butterworths, 2003)

EVALUATION:

Students may select to be evaluated in one of two ways. Regardless of which option is selected, the examination will be **closed book**. You may take no more than one page of notes (up to 8 ½ x 14 size paper, written on one or both sides) *in your own handwriting* into the examination room.

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Standard Option: 100% 3 hour closed book exam currently scheduled for Thursday, April 22, 2004, 9:00 – noon) (be sure to confirm time and place nearer to date)

Paper Option:* 60% 3 hour closed book examination (scheduled as above) + 40% term paper*

* Students wishing to be evaluated by paper option must obtain permission of instructor. This requires a **written proposal** of 1-3 pages outlining a research topic suitable for submission in this course. Proposals must be made in hard-copy and handed in before the end of class on Thursday, **January 29, 2004**. Papers will normally be in the range of 15 to 25 pages of original administrative law research. All **papers are due** before noon on Thursday, **April 1, 2004**. Permission to pursue the paper option will be given in writing.

B. THE PURPOSE OF THE COURSE

1) GOALS: To develop the ability of students to:

- Understand basic administrative law rules and concepts;
- Identify administrative law issues in concrete fact situations;
- Apply administrative law rules and concepts in concrete fact Situations;
- Think critically about and evaluate administrative law doctrines.

2) IMPLICATIONS OF GOALS

Readings: We will together try to identify the legal doctrines or principles for which the key cases stand as we discuss assigned readings in class. As this is an upper year law course it is expected that students will:

- Come to class prepared and willing to participate in discussion;
- Carefully read assigned materials in advance, working through difficult concepts or issues on their own or in discussion groups before attending class;
- Joyfully participate in a spirit of open, informed and courteous collegial discussion in the classroom.

The challenges of administrative law, like other common law fields, include both the identification of issues and doctrine and the application of doctrine in concrete fact situations. In order to develop these skills, students need to be exposed to a lot of examples of the way judges reason in administrative law cases, and must learn to identify the types of arguments that lawyers and judges find compelling. As a result readings are longer than they would be if the object of the exercise were simply to identify legal doctrines. If that alone were the object of legal education, the readings would be two pages long (one page on “jurisdiction” and another on “rule of law”), and the course no longer than a few hours.

Class Discussion:

- Learning, not “content delivery” is the objective of the classes.

- "Content delivery" is provided by assigned and supplemental readings. Because everyone has equal access to content, class discussion will focus on working through some of the complexities laying behind the readings.
- This will be a "Socratic"/ discussional course, **not a lecture course**.

The benefit derived from class discussions depends on the effort you put in.

Seminar-style individual feedback is not possible in a large class. My goal is to encourage active, informed, participation in discussion and problem-solving by as many students as possible. I know that some students are more comfortable participating in large-class discussions than others (please let me know if this presents a particular difficulty for you). Students who come to class well prepared and who participate actively will learn more than those who do not.

- They will also have more fun - an important part of legal education.

Student Feedback: The formal student evaluation process is useful. But formal evaluations come too late to improve a course as it is being taught. Socratic/ discussional teaching provides continuous feedback, allowing the course to adapt naturally to student needs and concerns as they arise. Please let me know if you are having difficulty understanding particular aspects of the course or if you have concerns with the course in general. Though it is not always possible to implement every suggestion or address every concern, your ideas and concerns will get serious and respectful consideration.

Some Important Dates

Monday, 5 January 2004 Law, all years: classes begin.

Monday, 19 January 2004 Last day for changes between credit and audit for Term 2 courses. Last day for withdrawal from most Term 2 courses without withdrawal standing of "W" recorded on a student's academic record. Student Information System remains open for course withdrawals with "W" standing.

Thursday, January 29, 2004 – paper proposals due (for those wishing to complete a research paper as part of Administrative Law) (requirements as above)

Friday, 13 February 2004 Last date for withdrawal from most Winter Session Term 2 courses with withdrawal standing of "W" recorded on a student's academic record.

Monday, 16 – Friday, February 20, 2004 - Midterm break Classes cancelled.

Monday, 1 March 2004 - Last day for graduation applications to be submitted to the Registrar's Office by all students expecting to graduate in May.

Thursday, April 1, 2004 All **papers for law 372.003 are due** before noon.

Friday, 2 April 2004 Law, all years: last day of classes.

Tuesday, 6 April 2004 Law: examinations begin

Friday, 9 April – Monday, 12 April, 2004 Easter - University closed.

Tuesday, 27 April 2004 Law, all years: last day of examinations. 2003/04 Winter Session ends.

Tentative Course Outline

The following indicates the general pattern for course coverage only. some deviation from the pattern prescribed here is to be expected:

Tuesday, January 6 – first class

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Thursday, January 8 pp. 1-87

- Ch. 1 “Administrative State and the Rule of Law”
- Ch. 2 “Constitutional Basis of Judicial Review”
 - Crevier v. Quebec (AG)
- Ch. 3 “Role of Judicial Review”
 - Baker v. Canada (MinC&I)

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Tuesday, January 13 pp. 89-183

Thursday, January 15

- **Procedures**
- “Ch. 4. Fairness: The Threshold”
 - Cooper v. Bd. Works Wandsworth District
 - Nicholson v. Haldimand-Norfolk RPComm.
 - Knight v. Indian Head School Division
 - Emergencies
 - Legislative/ General Decisions
 - Cambine/ Cabinet Appeals: Can. AG v. ITC
 - Bylaws/ Rulemaking: Homex Realty v. Wyoming Village
 - Policy Making: Bezaire v. Windsor RC School Board; Can. Assn. Regulated Importers v. Can. AG
 - Individual Decision making/ Broad discretion
 - Rights/ Privileges/ Interests: Webb & Ont. Housing Corp.; Hutfield v. Bd. Ft. Sask. Gen. Hospital.
 - Procurement
 - Non-Dispositive Decisions: Abel and Advisory Review Board; Dairy Producers’ Co-Op. v. Sask. (HRC); Irvine v. Can (Restrictive Trade Practices Commission);

Tuesday, January 20 pp. 183-283

Thursday, January 22

- Legitimate Expectations: Ref. Re. Can. Assistance Plan; Furey v. RC School Board for Conception Bay; Mt. Sinai Hospital v. Quebec (Min. Health/ Soc. Services)
- Fault as element in Procedural Fairness
- Constitutional Dimensions: Charter & CBR; Natl Anti-Poverty Org. v. Can (AG); Singh v. Can (Min Emp & Imm); Chiarelli v. Canada (Min. J); Wilson v. BC (Med Serv. Comm); Blencoe v. BC (HRC)
- Deference

Tuesday, January 27 pp.285-381

Thursday, January 29

- Ch. 5: Choice of Procedures Goldberg v. Kelly; Mathews v. Eldridge; Suresh v. Canada (Min C&I)
- General Statutes about procedures

- Specific content issues – prehearing
 - Notice: AG Can. V. Krever Commission
 - Discovery: Ont HRC v. Ont (Bd Inq NW Gen Hosp); CIBA – Geigy Ltd. V. Can (Pat. Medicine Prices Review Board)
 - Delay: Kodellas v. Sask. HRC
- Specific content issues – hearing
 - Oral Hearings: Masters v. Ont; Khan v. U. Ottawa
 - Open Hearings

Tuesday, February 3 pp. 381-484

Thursday, February 5

- Specific content issues – hearing
 - Right to Counsel: Men’s Clothing Manurcaturers & Toronto Joint Board Textile Workers; Parrish; Howard v. Stony Mountain; NB Min Helath v. J.G.
 - Disclosure & Official Notice: Napoli & Workers Comp. Board; Gallant v. Canada (D-Commissioner, Correctional Services); Gough v. National Parol Bd.
 - Official Notice
 - Admissibility of Evidence
 - X-examination: Innisfil v. Vespra; Co. Strathcona &McLab Enterprises; B. & Catholic Children’s Aid Socy of Toronto
- Limits of Trial-like hearing
- Post-Hearing Issues: Reasons: VIA v. Natl Transport. Agency

Friday February 6 – Chief Justice McLachlin @ UBC

Tuesday, February 10 pp.485-570

Thursday, February 12

- “Chapter 6: Institutional Decisions”
- Delegation: Vine v. Natl. Dock Labour Board
- Deciding without Hearing:
 - Delegating Hearing: LGB v. Arlidge; Jeffs v. NZ Dairy Production & Marketing Bd.
 - Consultations among agency members: IWWAmerica v. Consolidated Bathurst; Tremblay v. Quebec; Ellis-Don v. Ont. LRB; Payne v. Ont. HRC
 - Agency Counsel: At hearing; preparation of reasons (Spring v. LSUC; Khan v. College Physicians Surgeons Ont.; Reasons Review – Bovbel v. Can Min Empl & Imm.
 - Agency Guidelines

Tuesday, February 17, Thursday, February 19 – Reading Week – no classes [review portions of book on Remedies – these will not be discussed in class]

Tuesday, February 24 pp. 571-674

Thursday, February 26

- “Chapter 7: Bias & Lack of Independence”
- Pecuniary and other material interests: Energy Probe v. Atomic Energy Control Board
- Bias: General Test – antagonism during hearing – association between party & decision-maker – Involvement of decision-maker in earlier stage of process
- Statutory authorization: Brosseau v. Alt. Securities Commsn; E.A. Manning Ltd. v. Ont. Sec. Commsn; 2747-3174 Quebec v. Quebec Regie des permis d’alcool; MacBain v. Can (HRC)
- Attitudinal Bias: Paine v. UT; Gt. Atlantic & Pacific Co. v. Ont. HRC; Large v. Stratford

- Variations in Standards: Old. St. Boniface Residents v. Winnipeg; Save Richmond Farmland v. Richmond; Nfld. Telephone Co. v. Nwfld PUB
- Independence: Alex Couture Inv. v. AG Can.; CP v. Matsqui Indian Band; 2747-3174 Quebec v. Quebec Regie des permis d'alcool

Tuesday, March 2 pp. 675-696

- Chapter 8: Rulemaking



Thursday, March 4 pp. 697-763

Part III: Substantive Review

- Chapter 9: Standard of Review
- Privative Clauses
- 3 Approaches: Preliminary Question; Wrong Questions/ Irrelevant Considerations/ CUPE 963 v. NB Liquor – A new Start; NLRB v. Hearst Publications.
- Modern Standard –
 - CUPE 963 v. NB Liquor; Life after CUPE 2 steps back?;
- Jurisdictional Provisions – Correctness Standard – Union des employes de service, Local 298 v. Bibeault
- Deviations from Standard –
 - AG Can. V. Mossop;
 - United Brotherhood Carpteners 579 v. Bradco
- Reinforcing Modern Standard: CUPE 301 v. Montreal

Monday, March 8 to Friday, March 12 – UBC Research Awareness Week; Mr. Justice Binnie @ UBC

Tuesday, March 9 pp. 763-867

Thursday, March 11

- Extending the reach of deference theory: Statutory Appeals
 - Pezim v BC Supt Brokers
 - Canada v. Southam
 - LSNB v. Ryan
 - Judicial Review Procedure Act; Federal Courts Act
- Rearticulating Modern Standard: Pushpanathan v. Can. Min C&I
- Focusing on the Nature of the Question:
 - TWU v. BC College Teachers
 - Dep. Min NR (Can) v. Mattel Canada
- Ch. 10: Applying the Standard of Review
- Correctness:
 - Q. of Law
 - AG Can. V. Mossop
 - Nanaimo v. Rascal Trucking Ltd.
 - Q. of Fact
 - Reddall & College Nurses Ont.
 - Mixed Q. Law/Fact
 - Zurich Ins. V. Ont. HRC
 - Reasonableness
 - Can. v.. Southam

Tuesday, March 16 pp. 867-946

Thursday, March 18

- Patent Unreasonableness
 - Methodology

- Ntl Corn Growers v. Can.
 - PU & Remedies
 - CUPE 301 v. Montreal
 - Inconsistency:
 - Domtar v. Quebec
 - PU Findings of Fact
 - Toronto Bd Ed. v OSSTF Dist. 15
- Ch. 11. The Jurisdiction of Tribunals and the Constitution
- jd to decide con challenges: Cooper v. Can. HRC
- Con. Challenges/ remedies – appropriate forum: Weber v. Ont Hydro.
- Standard of Review

Tuesday, March 23 pp. 947-1046

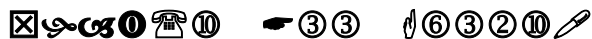
Thursday, March 25

- Ch. 12: Use & Misuse of Discretion
- Abuse/ Discretion as Ground of Review
 - Suresh v. Can Min C&I
 - Sheehan & Crim. Inj. Comp Bd
 - Shell v. Vancouver
- Profl Licensing & relevancy principle
- Failure to consider relevant factors
- Multiple Purposes/ Considerations
- Purpose & Proof
- Discretion & Charter, Constitutionalism, Int'l Law:
 - Slight Communications v. Davidson
 - Lalonde v. Ont.
- Delegated Legislation
 - Governor/ Lt-G in Council
 - Thorne's Hardware v. Can.
 - R. v. Toohy, ex p. Northern Land Council
 - Ministers & Independent Agencies: Cox v. College of Optometrists Ont.
 - Municipal Bylaws:
 - Grounds of Review: General Principles: Immeubles Port Louis v. Lafontaine
 - Unreasonableness, Oppression, Discrimination: Shell v. Vancouver
 - Unreviewable Discretionary Powers? Prerogative Powers/ Non-Justiciability
 - Council of Civil Service Unions v. Min for Civ. Service
 - Operation Dismantle v. Can.
 - Black v. Can. PM

Tuesday, March 30 pp. 1047-1087

Thursday, April 1 – last class

- Public Interest Immunity: Cabinet Documents, Common Law, Legislation
- Government Funding
- Preclusive Clauses and Abuse of Discretion
- Private Powers of Public Authorities
- Confining and Structuring Discretion
- Rules, Precedents, Policy Statements, etc.
- Ontario Securities Commission: Policies & Rules



April 22, 2004, 9:00 a.m. – noon: Final Examination (confirm time and place nearer to date)