

**JOHNSON-SHOYAMA GRADUATE SCHOOL OF PUBLIC POLICY
UNIVERSITY OF REGINA**

GSPP 809: Introduction to Law in Public Administration and Policy

Instructor: Robert E. Hawkins
Instructor's Title: Professor
Email: robert.hawkins@uregina.ca
Phone: 789-2888 (home)
585-5767 (office)

Term: Fall 2008
Class Room: ED 558
Class Time: M/W 2:30 – 3:45 pm
Office Hours: By appointment only

Subject to Revision: Final syllabus will be distributed at the first class

Course Description:

Administrative law as it affects the structure, powers and functions of organs of administration; limits of these powers; methods and procedures followed in exercising them; methods by which they are controlled, including the legal remedies available.

Course Objectives:

- Reflect on the place of rule of law in public administration and how that norm co-exists with the requirements of administrative efficiency in a complex administrative state
- Develop a familiarity with and understanding of basic administrative law and how it shapes the actions of public servants and agencies
- Develop an understanding of the requirements of procedural fairness in various administrative contexts including an ability to design appropriate procedures suitable to a variety of decision-making situations
- Learn the requirements of institutional independence and what the norms of individual and institutional impartiality (lack of bias) entail
- Examine when courts will intervene in the administrative process, on what grounds and the standards by which they will review the substance of administrative decisions. How much deference will judges show administrators? Who has the ultimate power to decide administrative matters – judges or administrators?
- Explore the scope and limits of discretion in administrative decision-making
- Learn how to handle legal materials related to public administration including how to interpret statutes that define administrative powers and how to read legal cases that affect public administration

Required Books/Course Materials

Colleen M. Flood and Lorne Sossin, eds., *Administrative Law in Context* (Toronto: Emond Montgomery: 2008)

This text is supplemented by an online set of cases that relate to each chapter in the book and that are required for the course. The edited cases can be found at: <http://www.emp.ca/index.php?option=content&task=view&id=220> . Alternately, all of the cases mentioned in this syllabus can be found unedited on-line by googling the appropriate court and using the date of the case to call it up as explained below.

Other Texts/ Other Readings: (Optional)

(alternate detailed casebook): David J. Mullan, *Administrative Law Cases, Text and Materials*, 5th edn (Toronto: Emond Montgomery, 2003 with on-line updating supplement)

(classic commentary): David J. Mullan, *Administrative Law*, (Toronto: Irwin Law, 2001)

(commentary): David Phillip Jones, Q.C. & Anne S. de Villars, Q.C., *Principles of Administrative Law*, 4th ed., (Scarborough: Thomson Carswell, 2004)

Evaluation (Subject to Revision)

- Three hour, open book, final examination worth 50% of the final mark.
- Written assignment worth 50% of the final mark. This will likely take the form of having the student select a Saskatchewan administrative decision-maker, board or agency, observe the procedure and proceedings of that agency and prepare a written evaluation of what was observed, its effectiveness, how it compares with alternative procedures and what improvements might be considered.

Academic Integrity and Conduct:

Ensuring that you understand and follow the principles of academic integrity laid out in the Graduate Calendar is vital to your success in graduate school (attached; and available at http://www.uregina.ca/gradstudies/calendar/policy_univ.shtml). Ensuring that your work is your own and reflects both your own ideas and those of others incorporated in your work is important: ensuring that you acknowledge the ideas, words, and phrases of others that you use is a vital part of the scholarly endeavour. If you have any questions at all about academic integrity in general or about specific issues, contact me.

Accommodations:

Student in this course who, because of a disability, may have a need for accommodations, are encouraged to come and discuss accommodations with the instructor, and to contact the Coordinator of Special Needs Services at 585-4631.

Class Schedule:

This schedule is subject to change. The dates on which topics are reached will depend on the time it will take to cover previous issues. The calendar below is a best estimate only.

Start reading with the relevant text passage and then go to the cases listed below. Some of the cases, in an edited version, can be found in the on-line supplement to the text (google the text name which will take you to 'Emond Montgomery' which will take you to a link called 'Companion Supplement – On-Line Cases.' Otherwise, for the full version of the cases (and you should read the most important cases in their full version) the following in helpful:

- For Supreme Court of Canada cases (most), google 'Supreme Court of Canada Decisions', use the date index and click on the relevant year and then click on the relevant number, given below. For example, SCC 2000 – 1, means a Supreme Court of Canada decision in the year 2000, number 1 in the list (which would be in Dec. 2000).

- For most other cases, go to 'Can LII' and find by relevant provincial jurisdiction and year.

- For the remaining few cases, follow the directions given below.

It may be necessary to reschedule several classes. If this occurs, the matter will be discussed in advance with the class. There will be no class Wed. Nov. 19.

INTRODUCTION**Class 1: Wed. Sept. 3:****Introduction to Administrative Law**

- Text: Chapters One, Two and Four (not suggested readings or cases for these chapters in on-line supplement)
- overview of administrative law topics
- rule of law v. administrative efficiency tension

PART ONE: THE PROCESS

Classes 2 and 3: Mon. Sept. 8 and Wed. Sept. 10:

Introduction to Procedural Fairness

- Text: Chapter One – in on-line supplement leave for the present *Crevier* and *Dunsmuir*
- Ombudsman Saskatchewan, *Hearing Back: Piecing together Timeliness in Saskatchewan's Administrative Tribunals*, December 2007 – google – skim and note especially the list of Saskatchewan Administrative Tribunals in Appendix One.
- *Cooper v. Board of Works for Wandsworth District* (1863), 143 ER 414 (Eng. CP) – google case name
- *Baker v. Canada (Minister of Citizenship and Immigration)* SCC 1999 – 39 [i.e. number 39 in the list of 1999 SCC decisions by date] (edited version in on-line supplement to Chapter 1 and Chapter 5) (Commentary on *Baker* in text at pp. 131 -135)

Classes 4 and 5: Mon. Sept. 15 and Wed. Sept. 17:

Hearing Procedures: What kinds of procedures are we talking about when we talk about fairness?

- Text: Chapter 5 at pp. 129 – 131; Chapter 16
- **Pre-Hearing:**
 - Notice: *Can Pacific Rwy v. Vancouver*, SCC 2006 – 55
 - Delay: *Blencoe v. British Columbia (Human Rights Commission)*, SCC 2000 – 25
Kodellas v. Saskatchewan (Human Rights Commission), SKCA, June 7, 1989
- **Hearing:**
 - Standing: Text: Chapter 15
 - *Finlay v. Canada (Minister of Finance)*, SCC, 1986 – 3
 - *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, SCC, 1992 – 104
 - *Vriend v. Alberta*, SCC, 1998 - 63

- *Hartwig v. Saskatchewan (Inquiry into Matters Relating to the Death of Stonechild, Commissioner)*, SKCA, June 7, 2007, paras 59 - 68

- Right to Counsel: *Markwart v. Prince Albert (City)*, SKCA, October 26, 2006

- Disclosure of Information: *May v. Ferndale Inst.*, SCC 2005 – 4

- Submissions: *Edmonton Police Assn. v. Edmonton (City)*, ABCA May 30, 2007

- Evidence and Cross-Examination: *Ocean Port Hotel v. British Columbia (Liquor Control and Licensing Branch)*, BCCA, May 16, 2002

- Standard of Proof: *Stetler v. Ontario Flue-Cured Tobacco Growers' Marketing Board*, Ont. CA, July 8, 2005, paras. 75 – 88

- Post-Hearing:

- Reasons for Decision: *VIA Rail Canada Inc. v. National Transportation Agency*, Fed CA, October 10, 2000

Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village), SCC 2004 – 35, paras 27 – 30

Markwart v. Prince Albert (City), SKCA, October 26, 2006, paras 22 - 24

Classes 6, 7, 8 and 9: Mon. Sept. 22, Wed. Sept. 24, Mon. Sept. 29 and Wed. Oct. 1

Hearing Procedures: Where in law does the requirement to provide fair procedures come from?

- Text: Chapter 5

- The Common Law: The Nature of the Decision / Decision-Maker

Legislative- Policy - Administrative

Martineau v. Matsqui Inmate Disciplinary Board, SCC,
1979 – 22

Wells v. Newfoundland, SCC, 1999 – 29, paras 57 – 62

Canada (Attorney-General) v. Inuit Tapirisat, SCC, 1980 – 24

Homex Realty v. Wyoming, SCC, 1980 – 16

Can. Pacific Rwy. v. Vancouver, SCC, 2006 – 55, paras 38 - 41

Cardinal v. Director of Kent Institution, SCC, 1985 – 1

Public Employment

Nicholson v. Haldimand-Norfolk (Regional) Police

Commissioners, SCC, 1978 – 52

Knight v. Indian Head School Division No. 19, SCC, 1990 – 116

Dunsmuir v. New Brunswick, SCC, March 7, 2008

Société de l'assurance automobile du Québec v. Yvan Cy,

SCC, March 28, 2008

Non-Dispositive (Investigative)

Irvine v. Canada (Restrictive Trade Practices

Commission), SCC, 1987 – 84

Credibility

Khan v. University of Ottawa, Ontario CA, June 27, 1997

(search using CanLII)

- The Common Law: Legitimate Expectations

Reference Re Canada Assistance Plan (B.C.), SCC, 1991 – 45

Mount Sinai Hospital Center v. Quebec, SCC, 2001 – 53

C.U.P.E. v. Ontario (Ministry of Labour), SCC, 2003 – 47

- The Charter

- Text: Chapter 7, pp. 169 – 180

- *Singh v. Canada (Minister of Employment and Immigration)*,
SCC, 1985 – 71

- *Chiarelli v. Canada (Minister of Justice)*, SCC, 1992 -80

- *Blencoe v. British Columbia (Human Rights Commission)*, SCC,
2000 – 25

- *Suresh v. Canada (Minister of Citizenship and Immigration)*,
SCC, 2002 – 86, paras. 113 – 128

- *Charkaoui v. Canada (Citizenship and Immigration)*, SCC, 2007 - 49

PART TWO: THE DECISION-MAKER

Classes 10, 11, 12 and 13: Mon. Oct. 6, Wed. Oct. 8, Wed Oct. 15 and Wed. Oct. 22

- Text: Chapter 6

Delegation:

- *International Woodworkers of America, Local 2-69 v. consolidated-Bathurst Packaging Ltd.*, SCC, 1990 – 121
- *Tremblay v. Québec (Commission des affaires sociales)*, SCC, 1992 – 72
- *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, SCC, 2001 – 89
- *Spring v. Law Society of Upper Canada*, Ont. Div. Ct., 1988. If you type the following case name into Google, Mullan’s casebook will come up. Go to page 550: *Energy Probe v. Canada (Atomic Energy Control Board)*.
- *Khan v. College of Physicians and Surgeons of Ontario*, 1992 CanLII 2784 (Ont. C.A.)
- *Bovbel v. Canada (Minister of Employment and Immigration)*, 1994 CanLII 3465 (F.C.A.)

Independence:

- *Canadian Pacific Ltd. V. Matsqui Indian Band*, SCC, 1995 – 105
- *2747-3174 Québec Inc. v. Québec (Régie des permis d’alcool)*, SCC, 1996 – 6
- *Ocean Port Hotel Ltd. v. British Columbia*, SCC, 2001 – 41
- *Bell Canada v. Canadian Telephone Employees Association*, SCC, 2003 – 39
- *C.U.P.E. v. Ontario (Minister of Labour)*, SCC, 2003 – 47

Impartiality (Attitudinal Bias)

Pecuniary, Antagonism during hearing, Association between party and decision-maker, Earlier involvement in decision, etc.

- *Committee for Justice and Liberty v. National Energy Board*, SCC, 1976 - 82
- *Energy Probe v. Canada (Atomic Energy Control Board)*, Fed CA, 1984.
Google the case name for the edited version in Mullan’s casebook.
- *Brosseau v. Alberta (Securities Commission)*, SCC, 1989 - 115
- *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, SCC, 1990 – 3
- *Save Richmond Farmland Society v. Richmond (Township)*, SCC 1990 – 5
- *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, SCC 1992 – 86
- *Imperial Oil Ltd. v. Québec (Minister of the Environment)*, SCC, 2003 -17
- *Chrétien v. Canada (Commission of Inquiry into the Sponsorship Program and Advertising Activities)*, 2008 FC 802 (CanLII), June 26, 2008

PART THREE: THE DECISION

- **Review of the substance of administrative decisions**
- **Who decides – court or agency? judge or administrator?**
- **Review can be by way of judicial review (common law) or statutory appeal**

Classes 14 and 15: Mon. Oct. 27 and Wed. Oct. 29

Scope of Judicial Review: Public Bodies

- *Volker Stevin NWT (1992) Ltd. v. Northwest Territories (Commissioner)*,
1994 CanLII 5246 (NWT C.A.)

Judicial Review Remedies

- Text: Chapter 3 and cases in supplement
- *May v. Ferndale Institution*, SCC, 2005 – 4
- *Holland v. Saskatchewan*, SCC, July 11, 2008

Judicial Review is a Discretionary Remedy

- *Harelkin v. University of Regina*, SCC, 1979 – 106
- *Canada v. Addison & Leye Ltd.*, SCC, 2007 – 24
- *Thamotharem v. Canada (Minister of Citizenship and Immigration)*,
2007 FCA 198 (CanLII), May 25, 2007

Privative Clauses (a.k.a. Preclusive Clauses)

- Text: pp. 19 – 21; 199 – 201
- *Crevier v. Québec*, SCC, 1981 - 23

Classes 16, 17, 18 and 19: Mon. Nov. 3, Wed. Nov. 5, Mon. Nov. 10 and Wed. Nov. 12

Grounds for Judicial Review

- Text: Chapters 8 and 9
- Early Grounds:
(no reading): Jurisdiction, Error of Law on the Face of the Record,
Procedure, Preliminary/Collateral Question, Wrong Question,
Relevant/Irrelevant Considerations

- Reasonableness of the Decision:

(i) Current (2008) Position: Two standards: ‘reasonableness’ and ‘correctness’

- *Dunsmuir v. New Brunswick*, SCC, March 7, 2008
- Text supplement: Sossin Commentary

(ii) 1979 Standard: ‘patently unreasonable’

- *C.U.P.E. v. New Brunswick Liquor Corp.*, SCC, 1979 – 105

(iii) 1988 – 2007: 3 (or more) standards

- *U.E.S., Local 298 v. Bibeault*, SCC, 1988 – 1
- *National Corn Growers Assn. v. Canada (Import Tribunal)*, SCC, 1990 – 3
- *Canada (Attorney-General) v. Mossop*, SCC, 1993 – 115
- *Canada (Director of Investigation and Research)*, SCC, 1997 – 33
- *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, SCC, 1998 – 25
- *Chamberlain v. Surrey School District No. 36*, SCC, 2002 – 1
- *Law Society of New Brunswick v. Ryan*, SCC, 2003 - 56
- *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, SCC, 2003 – 55
- *Barrie Public Utilities v. Canadian Cable Television Association*, SCC, 2003 – 46
- *Starson v. Swayze*, SCC, 2003 – 42
- *Toronto (City) v. C.U.P.E., Local 79*, 2003 – 13 (especially Libel, J. dissent)
- *Voice Construction v. Construction and General Workers’ Union, Local 92*, 2004 – 60

(iv) 2007: Segmentation of Decisions

- *Lévis (City) v. Fraternité des policières et policiers provinciaux du Québec*, SCC, 2007 – 44
- *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, SCC, 2007 – 41

Classes 20 and 21: Mon. Nov. 17 and Mon. Nov. 24. Note no class Wed. Nov. 19.

- Improper Exercise of Discretion:

- Text: Chapter 10
- *Roncarelli v. Duplessis*, SCC, 1959 - 25
- *Shell Canada Products Ltd. v. Vancouver (City)*, SCC, 1994 – 100
- *C.U.P.E. v. Ontario (Minister of Labour)*, SCC, 2003 – 47
- *Congrégation des témoins de Jéhovah de St- Jérôme-Lafontaine v. Lafontaine (Village)*, SCC 2004 – 35, paras 27 – 30
- *ATCO Gas & Pipelines Ltd. V. Alberta (Energy & Utilities Board)*, SCC, 2006 – 56
- *Thamotharem v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 198 (CanLII), May 25, 2007

Classes 22 and 23: Wed. Nov. 26 and Mon. Dec. 1

- Charter Grounds:

(Jurisdiction to decide Charter issues; Standard of Review of tribunal decisions on Charter grounds; application of Charter values)

- Text: Chapter 7
- *Slaight Communications Inc. v. Davidson*, SCC, 1989 – 89
- *Weber v. Ontario Hydro*, SCC, 1995 - 49
- *Paul v. British Columbia (Forest Appeals Commission)*, SCC, 2003 - 21
- *Nova Scotia (Workers' Compensation Board) v. Martin*, SCC, 2003 - 20
- *Multani v. commission scolaire Marguerite-Bourgeois*, SCC, 2006 – 54
- *Tranchemontagne v. Ontario (Director, Disability Support Program)*, SCC, 2006 – 47

Class 24: Wed. Dec. 3

Public Inquires

- Text: Chapter 14 and three cases in supplement
- *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, SCC, 1997 - 25