



Syllabus

Administrative Law

(Revised June 7, 2010)

Candidates are advised that the syllabus may be updated from time-to-time without prior notice.

Candidates are responsible for obtaining the most current syllabus available.



Administrative Law

Nature of the course:

Administrative Law is the body of law regulating the ways in which government operates. It is about the rules and limits that apply to not only the operations of the Crown, Cabinets, Ministers, government departments, and municipal corporations but also the various administrative tribunals and agencies deployed by governments for the carrying out of governmental functions of all kinds. It is concerned with the procedures by which all these various instruments of government operate, the jurisdictional and substantive limits on their mandates, and the remedial structures that exist to ensure that decision-makers of various kinds act in accordance with the rule of law. As well, throughout the course, candidates are encouraged to reflect upon the divide between public law and private law and, in particular, the circumstances under which governmental authorities of various kinds or in various capacities are subject not to the special regime of Administrative Law principles and remedies but to the private law rules of contract, tort, restitution and the like.

Some regard Administrative Law as simply a subset of Constitutional Law and, to the extent that, for example, the *Canadian Charter of Rights and Freedoms* and other constitutional and other quasi-constitutional enactments (such as the *Canadian Bill of Rights*) serve to place limits or constraints on the way in which public decision-makers act, there is overlap between this course and that in Constitutional Law. However, it is not a course about the policing of the divide between federal and provincial jurisdiction enshrined in the *Constitution Act, 1867* and the other statutes that constitute the Canadian constitution. Nor does it concern itself in detail with the constitutional incidents of the Crown, Parliament and the various legislative assemblies, or the executive branch.

Rather the primary questions considered in this course are:

1. The circumstances under which governmental decision-makers are subject to an obligation of procedural fairness to those affected by their decisions, and, where applicable, the content of that obligation.
2. The extent to which the substantive decisions of assigned decision-makers are subject to merits scrutiny by the courts in the name of jurisdiction or other principles of substantive review such as error of law, error of fact, and abuse of discretion, and especially the standard of review that reviewing courts bring to bear in exercising that constitutionally guaranteed capacity.
3. The remedial framework within which the superior courts, both federally and provincially, exercise their review powers.
4. The bases upon which the courts will not only exercise direct powers of review but also provide monetary compensation for wrongful administrative action.

As presently structured, the assigned Casebook starts with a very important judgment of the Supreme Court of Canada that raises many of the course's critical issues. This is intended to provide candidates with an overview of the subject area through the lens of judicial review. Thereafter, the course builds on this with a detailed consideration of the four subject areas described above.

Some of you will bring to this course some knowledge of Administrative Law acquired during your legal studies in other jurisdictions. Sometimes, that knowledge will be useful even if the applicable case law is different. However, be very cautious in the deployment of knowledge gained elsewhere. There are some very distinctive aspects of Canadian public law that do not find analogues or exact parallels in other common law or British Commonwealth jurisdictions. In answering the examination in this course, you act at your peril if you automatically start applying the principles and the case law from the jurisdiction of your initial legal training.



Casebook

The assigned material on which candidates will be examined comprises a substantial portion of Evans, Janisch, Mullan & Risk, Administrative Law: Cases, Text & Materials (Toronto: Emond Montgomery Publications Ltd., 5th ed., 2003). It is now seven years old and there have been many developments in Canadian Administrative Law since 2003. As a consequence, candidates will also be expected to be familiar with further cases and statutory materials that do not appear in the Casebook. They are listed below along with the appropriate Casebook page cross-references.

Objectives

Candidates should have sufficient knowledge of these materials and the principles of Administrative Law embodied in the various segments of the course to enable them to answer problem-type questions on a three hour, open book final examination.

As well as knowledge of the principles and rules of Canadian Administrative Law, candidates are expected to display an aptitude for the application of that knowledge in the context of specific fact situations. That will involve an ability to analyse and distill relatively complex facts, to relate the law as identified to the salient facts, and to reason towards a conclusion in the form of advice to a client or the likely judgment of a court confronted by such a problem.

Modifications to Casebook

A. Additions

Dunsmuir v. New Brunswick, [2008] 1 S.C.R.190; 2008 SCC 9, at paras.1-26 and 77-117 - Casebook, page 116.

Authorson v. Canada (Attorney General), [2003] 2 S.C.R. 40; 2003 SCC 39 - Casebook, page 213.

May v. Ferndale Institution, [2005] 3 S.C.R. 809; 2005 SCC 82, at paras. 89-120 - Casebook, page 357.

Charkaoui v. Canada (Citizenship and Immigration), [2007] 1 S.C.R.350; 2007 SCC 9 - Casebook, page 414.

Thamotharem v. Canada (Minister of Citizenship and Immigration), (2007), [2008] 1 F.C.R. 385; 2007 FCA 198 - Casebook, page 568.

Bell Canada v. Canadian Telephone Employees Association, [2003] 1 S.C.R. 884; 2003 SCC 36 - Casebook, page 623.

Dunsmuir v. New Brunswick, [2008] 1 S.C.R. 190; 2008 SCC 9 (except paras. 77-117) - Casebook, page 733.

Administrative Tribunals Act, S.B.C. 2004, c. 45, ss. 58-59 - Casebook, page 790.

Canada (Citizenship and Immigration) v. Khosa, [2009] 1 S.C.R. 339; 2009 SCC 12 - Casebook, page 790.



Nova Scotia (Workers' Compensation Board) v. Martin, [2003] 2 S.C.R. 504; 2003 SCC 54 - Casebook, page 915.

Paul v. British Columbia (Forest Appeals Commission), [2003] 2 S.C.R. 585; 2003 SCC 55 - Casebook, page 915.

Administrative Tribunals Act, S.B.C. 2004, c. 45, ss. 43-45 - Casebook, page 932.

Administrative Procedures and Jurisdiction Act, R.S.A. 2000, c. A-3, ss. 10-16 (as inserted by S.A. 2005, c. 4).

Multani v. Commission scolaire Marguerite-Bourgeoys, [2006] 1 S.C.R. 256; 2006 SCC 6, Casebook, page 945.

Canadian Union of Public Employees v. Ontario (Minister of Labour), [2003] 1 S.C.R. 539; 2003 SCC 29 - Casebook, page 984.

Chamberlain v. Surrey School District No. 36, [2002] 4 S.C.R. 710; 2002 SCC 86 - Casebook, page 1000.

May v. Ferndale Institution, [2005] 3 S.C.R. 809; 2005 SCC 82 - Casebook, page 1147

Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner) (2005), 75 O.R. (3d) 309 (C.A.) - Casebook, page 1241.

Also, note that the Supreme Court of Canada affirmed the judgment of the Ontario Court of Appeal in *Pritchard v. Ontario (Human Rights Commission)*, Casebook, page 357 - see [2004] 1 S.C.R. 809; 2004 SCC 31.

As well, take account of *Garland v. Consumers' Gas Co.*, [2004] 1 S.C.R. 629; 2004 SCC 25, at paras. 70-73 especially, when dealing with the material on collateral attack - Casebook, pages 1303-09.

B. Omissions

116-129 (Substitute *Dunsmuir*, supra).

Chapters 8 and 16.

733-789 and 801-890.

916-31 (Substitute *Martin and Paul*, supra).

(In sum, you are responsible for all of the Casebook (except for this list of Omissions) as well as all the Additions.)



Supplementary Texts

Candidates wishing to consult texts for further clarification and elaboration of the various principles of Administrative Law are directed to the following:

Sara Blake, Administrative Law in Canada (Toronto: LexisNexis-Butterworths, 4th ed., 2006).

David J.M. Brown and John M. Evans, Judicial Review of Administrative Action in Canada (2 volumes) (Toronto: Canvasback, 1998) (a looseleaf service).

Colleen Flood and Lorne Sossin, Administrative Law in Context (Toronto, Emond Montgomery, 2008).
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David Phillip Jones and Anne S. de Villars, Principles of Administrative Law (Toronto: Carswell, 5th ed., Student, 2009).

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

Guy Régimbald, Canadian Administrative Law (Toronto: LexisNexis Canada, 2008)



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Internet Sites for Provincial Legislation

www.canlii.org

This is a listing for all the provinces and is highly recommended

Ontario:

<http://www.attorneygeneral.jus.gov.on.ca/english/legis/>

British Columbia (Queen's Printer):

<http://www.bclaws.ca/>

Alberta (Queen's Printer):

<http://www.qp.alberta.ca/>

Supreme Court Judgments

<http://scc.lexum.umontreal.ca/en/index.html>