

ADMINISTRATIVE LAW

LAW 372.001/509.001

Summer 2014 Syllabus

Contact Details

Course Instructor: Shannon Salter, BA, LL.B, LL.M
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Times and Location

Class: 5:00 – 9:00 p.m., Mon, Wed, Thursday
Dates: June 23-July 21, 2014
Room: Allard 105
Exam: July 30, 2014, Location TBA

Course Overview and Objectives

Administrative law is the body of rules which governs the executive branch's relationship with the individual, as well as the judiciary's oversight of this relationship. Administrative law affects the aspects of life we value most as a society; our nationality, health care, education, family, home, and employment, among many others. While few of us will participate in a court case, almost all of us will be affected by an administrative law decision, usually many times over the course of our lives.

This intensive course will examine the legal framework for administrative decision-making in a variety of contexts, from government administrators to quasi-judicial tribunals. We will study administrative law's foundational rules, principles, and policy considerations and explore the ways in which these continue to evolve. Finally, we will consider how Canada's administrative law system might progress to better fulfill its goals of independence, expertise, accessibility, and fairness.

We will cover the following major topics:

- The source and scope of administrative law powers
- The requirements of procedural fairness
- Bias and independence
- Standards of judicial review
- Administrative law and the constitution
- Policy-making vs. adjudication
- Proportionality: balancing efficiency with justice
- Administrative law reform

Administrative law is a challenging course to teach in one semester, much less one month. For this reason, the course will endeavour to provide students with the tools to assess government decision-making from an administrative law perspective in a variety of areas they may later study, including labour law, immigration law, and environmental law.

Biography

Shannon Salter (LL.B (University of British Columbia 2005), LL.M (University of Toronto 2011)) clerked with the British Columbia Supreme Court before practicing at Farris LLP for several years. In 2011, she was appointed as a vice chair of the Workers' Compensation Appeal Tribunal. Ms. Salter is also a commissioner of the Financial Institutions Commission, vice president of the British Columbia Council of Administrative Tribunals, and a past board member of the College of Registered Nurses of British Columbia. In 2013, she was an instructor for the UBC Faculty of Law's inaugural Summer Law Program. Ms. Salter is also actively involved with Access Pro Bono, providing low-income individuals with volunteer legal advice and representation. She is a member of the Law Society of British Columbia and the Institute of Corporate Directors.

Communication

I will occasionally communicate with the class by email, through UBC's Faculty Services Centre in order to send you updates, discussion points, etc. To be sure to receive my emails, please confirm which email address the University has on file for you through the Student Services Centre: www.students.ubc.ca.

If you have questions about the course, the class discussions, or the reading materials, I am always available by email and I will strive to respond to your question within 24 hours. I am also available to meet in person before class on most days; if you would like to meet, please email me to arrange an appointment.

Changes to the course outline and reading list, as well as other updates and class resources will be provided in class or by email.

Course Materials

Classes will be conducted on the assumption that the assigned reading material has been read. Please consult the reading list for details of assigned readings.

Required materials

The following materials are **required**:

Colleen Flood and Lorne Sossin, eds., *Administrative Law in Context*, 2nd ed. (Toronto: Emond Montgomery, 2013) [referred to as "Admin Law Text" on the reading list]

The text comes with access to a proprietary companion website, at www.emp.ca/adminlaw with access to the cases in the textbook, as well as other resources.

Anything else that I provide as class handouts or by email.

The following additional resources may be helpful background information for the course. The use of these resources is optional:

- Sara Blake, *Administrative Law in Canada*, 5th ed. (Toronto: LexisNexis Canada, 2011). In Law Library reference room: KE5015.B53 2011 [a practical textbook for practitioners].
- David Phillip Jones and Anne S. de Villars, *Principles of Administrative Law*, 5th ed. (Toronto: Thomson, 2009). KE5015.J66 2009 [another good textbook choice].
- Van Harten, Heckman & Mullan, *Administrative Law: Cases, Text and Materials*, 6th ed. (Toronto: Emond Montgomery, 2010) KE5015.A78 2003 [a large casebook with some commentary].
- CLE (BC) Administrative Law Annual Conference Materials: the CLE Society runs a full-day event each November, which produces excellent update materials on the latest developments in the field. At the time of writing the 2013 version was not available at the Law Library; however, the 2012 version is available at KE5015.A79 2012.
- David J. Mullan, *Administrative Law* (Toronto: Irwin Law, 2001). KE5015.M84 2001 [this is an accessible textbook for an overview of the administrative law framework, but it is quite out-of-date, especially with respect to standard of review].

Evaluation

You will be evaluated in this course based on the following:

JD students:

- Final Examination, July 30, 2014: open book, three hours (100%)

LLM students:

- Final Examination, July 30, 2014: open book, three hours (85%)
- In addition, graduate students will be responsible for preparing a 20-minute class presentation on an aspect of administrative law, accompanied by a five-page, double-

spaced summary of their presentation (15%). I will provide some presentation options, or students may choose a topic.

Grading Criteria

Please note that the following guidelines will generally be followed; however, they only apply to JD students. Graduate students are subject to UBC's minimum grade requirements for masters students. For more information, please see: <https://www.grad.ubc.ca/current-students/managing-your-program/satisfactory-progress-masters-students>:

80% to 100% (A- to A+)

Exceptional/Excellent performance: strong evidence of original thinking; good organization; capacity to analyze and synthesize; superior grasp of subject matter with sound critical evaluations; evidence of extensive knowledge base.

68% to 79% (B- to B+)

Competent/Good performance: evidence of grasp of subject matter; some evidence of critical capacity and analytic ability; reasonable understanding of relevant issues; evidence of familiarity with the readings.

50% to 67% (D to C+)

Adequate/Satisfactory performance: understanding of the subject matter; ability to develop solutions to simple problems in the material; acceptable but uninspired work, not seriously faulty but lacking style and vigour.

00% to 49% (F)

Inadequate performance: little or no evidence of understanding of the subject matter; weakness in critical and analytic skills; limited or irrelevant use of the material in answers.

Academic Integrity

All UBC law students are subject to the University's rules on Academic Misconduct: (<http://vpacademic.ubc.ca/integrity/ubc-regulation-on-plagiarism/>), and are expected to act with academic integrity at all times. Students should be especially aware of the University's rules in relation to plagiarism. Plagiarism includes: copying the work of another student; copying or paraphrasing from a textbook or reference book, journal article, case or electronic source without proper footnoting; copying your own work that has already been submitted for another course in this degree or another degree, passing off the ideas of another person as

your own. If you plagiarize, you will be subject to penalties set out in the UBC calendar (<http://www.calendar.ubc.ca/vancouver/index.cfm?tree=3,54,111,959>)

If you would like to learn more about academic misconduct, visit the UBC Library's website on academic integrity (<http://learningcommons.ubc.ca/guide-to-academic-integrity/>).

Examples of academic misconduct can also be found in the UBC Annual Report on Student Discipline (<http://universitycounsel.ubc.ca/discipline/>).

Reading List

Class	Casebook readings	Excerpts
<p>Introduction</p> <p>(June 23)</p>	None	None
<p>Sources and Limits of Administrative Justice</p> <p>(June 25)</p>	<p>Preamble – <i>Constitution Act, 1867</i></p> <p>Sections 96-101, <i>Constitution Act, 1867</i></p> <p>Preamble – <i>Constitution Act, 1982</i></p> <p>Preamble – <i>Canadian Bill of Rights</i></p> <p><i>Re: Residential Tenancies Act</i>, [1981] 1 S.C.R. 714</p> <p><i>Crevier v. A.G. (Québec) et al.</i>, [1981] 2 S.C.R. 220</p> <p><i>Administrative Tribunals Act</i>, S.B.C. 2004, c. 45 (ATA)</p> <p><i>Judicial Review Procedure Act</i>, R.S.B.C. 1996, c. 241</p>	<p><i>Prasad v. Canada (Minister of Employment and Immigration)</i>, [1989] 1 S.C.R. 560</p> <p><i>Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)</i>, [1989] 1 S.C.R. 1722</p> <p><i>Reference re Secession of Quebec</i>, [1998] 2 S.C.R. 217</p> <p><i>Rizzo & Rizzo Shoes Ltd. (Re)</i>, [1998] 1 SCR 27</p> <p><i>Air Canada v. Toronto Port Authority</i>, 2011 FCA 347</p>
<p>Procedural Fairness: Baker</p> <p>(June 26)</p>	<p><i>Baker v. Canada (Minister of Citizenship and Immigration)</i>, [1999] 2 S.C.R. 817</p> <p><i>Nicholson v. Haldimand-Norfolk Regional Police Commissioners</i>, [1979] 1 S.C.R. 311</p> <p><i>Cardinal v. Director of Kent Institution</i>, [1985] 2 S.C.R. 643</p> <p>Admin Law Text: Chapter 5, 147-170</p>	<p><i>Attorney General of Canada v. Inuit Tapirisat et al.</i>, [1980] 2 S.C.R. 735</p> <p><i>Reference Re Canada Assistance Plan (B.C.)</i>, [1991] 2 S.C.R. 525</p> <p><i>Knight v. Indian Head School Division No. 19</i>, [1990] 1 S.C.R. 653.</p>

<p>Procedural Fairness: Bias and Independence</p> <p>(June 30)</p>	<p><i>Ocean Port Hotel Ltd. v. British Columbia</i>, 2001 SCC 52</p> <p><i>International Woodworkers of America, Local 2-69 v. Consolidated-Bathurst Packaging Ltd.</i>, [1990] 1 S.C.R. 282</p>	<p><i>Rex v. Sussex Justices</i>, [1924] 1 K.B. 256</p> <p><i>Committee for Justice and Liberty et al. v. National Energy Board et al.</i>, [1978] 1 S.C.R. 369</p> <p><i>Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)</i>, [1992] 1 S.C.R. 623</p> <p><i>Kozak [Geza] v. Canada (Minister of Citizenship and Immigration)</i>, 2006 FCA 124</p> <p><i>Canadian Pacific Ltd. v. Matsqui Indian Band</i>, [1995] 1 S.C.R. 3</p> <p>2747-3174 <i>Québec Inc. v. Québec (Régie des permis d'alcool)</i>, [1996] 3 S.C.R. 919</p> <p>Section 23 and 56 of the <i>Quebec Charter of Human Rights and Freedoms</i></p> <p><i>McKenzie v. Minister of Public Safety and Solicitor General et al.</i>, 2006 BCSC 1372</p> <p><i>Saskatchewan Federation of Labour v. Saskatchewan (Attorney General, Department of Advanced Education, Employment and Labour)</i>, 2010 SKCA 27</p>
<p>Procedural Fairness: Other</p> <p>(July 2)</p>	<p><i>Blencoe v. British Columbia (Human Rights Commission)</i>, 2000 SCC 44</p> <p><i>Johnson v. Alberta (Appeals Commission for Alberta Workers' Compensation)</i>, 2011 ABCA 345</p>	<p><i>Gichuru v. Law Society of B.C.</i>, 2010 BCCA 543</p> <p><i>Phillips v. British Columbia (Workers' Compensation Appeal Tribunal)</i>, 2012 BCCA 304</p> <p><i>Singh v. Minister of Employment and Immigration</i>, [1985] 1 S.C.R. 177</p>

	<p><i>Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)</i>, 2011 SCC 62</p> <p>Admin Law Text, Chapter 5: 171-182.</p>	<p><i>Innisfil Township v. Vespra Township</i>, [1981] 2 S.C.R. 145</p> <p><i>Re County of Strathcona No. 20 v. Maclab Enterprises Ltd.</i> (1971), 20 D.L.R. (3d) 200</p> <p><i>Djakovic v. British Columbia (Workers' Compensation Appeal Tribunal)</i>, 2010 BCSC 1279</p> <p><i>Kane v. University of British Columbia</i>, [1980] 1 S.C.R. 1105</p> <p><i>Economical Mutual Insurance Company v. British Columbia (Information and Privacy Commissioner)</i>, 2013 BCSC 903</p>
<p>Procedural Fairness: Why does it matter?</p> <p>(July 3)</p>	<p><i>Mobil Oil Canada Ltd. v. Canada-Nfld. Offshore Petroleum Board</i>, [1994] 1 S.C.R. 202.</p> <p><i>Taiga Works Wilderness Equipment Ltd. v. British Columbia (Director of Employment Standards)</i>, 2010 BCCA 97</p> <p><i>Allard v. Assessor of Area #10 – North Fraser Region</i>, 2010 BCCA 437</p> <p>Admin Law Text, Chapter 3: 107-123</p>	<p><i>Westfair Foods Ltd. v. United Food and Commercial Workers' Union, Local 401</i>, 2007 ABCA 167</p> <p><i>Compass Group Canada (Health Services) Ltd. v. Hospital Employees' Union</i>, 2007 BCCA 237</p> <p><i>Moose Jaw Central Bingo Assn. Inc. v. Saskatchewan (Liquor & Gaming Authority)</i>, [1994] S.J. No. 76 (C.A.)</p> <p><i>Bago v. Canada (Minister of Citizenship and Immigration)</i>, 2004 F.C.J. No. 1565 (T.D.)</p> <p><i>Harelkin v. University of Regina</i>, [1979] 2 S.C.R. 561</p> <p><i>Zundel v. Canada (Human Rights Commission)</i>, [2000] 4 F.C. 255 (C.A.)</p> <p><i>Secord v. Saint John (City) Board of Commissioners</i>, [2006] N.B.J. No. 84 (Q.B.)</p>

		<p><i>Kvelashvili v. Canada (Minister of Citizenship and Immigration)</i> (2000), 180 F.T.R. 128</p> <p><i>Cosman Realty Ltd. v. Winnipeg (City)</i> (2001), 157 Man. R. (2d) 117 (Q.B.) aff'd (2001), 160 Man. R. (2d) 32 (C.A.)</p> <p><i>Jaouadi v. Canada (Minister of Citizenship and Immigration)</i> (2003), 257 F.T.R. 161</p> <p><i>MiningWatch Canada v. Canada (Fisheries and Oceans)</i>, 2010 SCC 2</p> <p><i>Penner v. Niagara (Regional Police Services Board)</i>, 2013 SCC 19</p>
<p>Administrative tribunal standing on judicial review</p> <p>(July 7)</p>	<p><i>Northwestern Utilities Ltd. v. City of Edmonton</i>, [1979] 1 S.C.R. 684</p> <p><i>Caimaw v. Paccar of Canada Ltd.</i>, [1989] 2 S.C.R. 983</p> <p><i>Children's Lawyer for Ontario v. Goodis</i> (2005), 253 D.L.R. (4th) 489 (Ont. C.A.)</p>	<p><i>Henthorne v. British Columbia Ferry Services Inc.</i>, 2011 BCCA 476</p> <p><i>Western Forest Products Inc. v. Sunshine Coast (Regional District)</i>, 2008 BCSC 1070</p>
<p>Substantive Review: Origins of SOR</p> <p>(July 9)</p>	<p>Admin Law Text, Chapter 9: 279-320 (no full case reading assigned).</p>	<p><i>National Corn Growers Assn. v. Canada (Import Tribunal)</i>, [1990] 2 S.C.R. 1324</p> <p><i>Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.</i>, [1979] 2 S.C.R. 227</p> <p><i>U.E.S., Local 298 v. Bibeault</i>, [1988] 2 S.C.R. 1048</p> <p><i>Canada (Director of Investigation and Research) v. Southam Inc.</i>, [1997] 1 S.C.R. 748</p>

		<p><i>Pushpanathan v. Canada (Minister of Citizenship and Immigration)</i>, [1998] 1 S.C.R. 982</p> <p>Baker, supra</p> <p><i>R.G. Facilities (Victoria) Ltd. v. Liquor Control Licensing Branch (General Manager)</i>, 2013 BCCA 402</p>
<p>Substantive Review: Standard of Review in BC and Canada</p> <p>(July 10)</p>	<p><i>Dunsmuir v. New Brunswick</i>, 2008 SCC 9</p> <p><i>Canada (Citizenship and Immigration) v. Khosa</i>, 2009 SCC 12</p>	<p>ATA, sections 1, 58, 59.</p> <p><i>Robertson v. British Columbia (Teachers Act, Commissioner)</i>, 2013 BCSC 1699</p> <p><i>Kerton v. Workers' Compensation Appeal Tribunal</i>, 2011 BCCA 7</p> <p><i>Canada (Canadian Human Rights Commission) v. Canada (Attorney General)</i>, 2011 SCC 5 (Mowat)</p> <p><i>Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association</i>, 2011 SCC 61</p> <p><i>Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada</i>, 2012 SCC 35</p> <p><i>Canada (Citizenship and Immigration) v. Khosa</i>, 2009 SCC 12</p> <p><i>Viking Logistics. Ltd. v. British Columbia (Workers' Compensation Board)</i>, 2010 BCSC 1340</p> <p><i>Coast Mountain Bus Company Ltd. v. National Automobile, Aerospace, Transportation and General Workers of Canada (CAW-Canada), Local 111</i>, 2010</p>

		<p>BCCA 447</p> <p><i>United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy (Allied Industrial and Service Workers International Union, Local 2009) v. Auyeung</i>, 2011 BCSC 220</p> <p><i>Morgan-Hung v. British Columbia (Human Rights Tribunal)</i>, 2011 BCCA 122</p>
<p>Delegation of Statutory Powers</p> <p>(July 14)</p>	<p>Admin Law Text, Chapter 4: 125-146 (no full case reading assigned).</p>	<p><i>The Queen v. Harrison</i>, [1977] 1 S.C.R. 238</p> <p><i>Thorne's Hardware Ltd. v. The Queen</i>, [1983] 1 S.C.R. 106</p> <p><i>Globalive Wireless Management Corp. v. Public Mobile Inc.</i>, 2011 FCA 194 (leave denied [2011] S.C.C.A. No. 349)</p> <p><i>Edgar v. Canada</i> (1999), 46 OR (3d) 294; 182 DLR (4th) 419 (C.A.)</p> <p><i>Enbridge Gas Distribution Inc. v. Ontario (Energy Board)</i> (2005), 74 O.R. (3d) 147 (C.A.)</p> <p><i>Skyline Roofing Ltd. v. Alberta (Workers' Compensation Board)</i>, 2001 ABQB 624</p> <p><i>Canadian Forest Products Ltd. v. British Columbia</i>, 2009 BCSC 1040</p> <p><i>Thamotharem v. Canada (Minister of Citizenship and Immigration)</i>, 2007 FCA 198</p>

<p>The Charter, Human Rights, and the Constitution: What can I argue before a tribunal?</p> <p>(July 16)</p>	<p><i>Nova Scotia (Workers' Compensation Board) v. Martin</i>, 2003 SCC 54</p> <p><i>Tranchemontagne v. Ontario (Director, Disability Support Program)</i>, 2006 SCC 14</p> <p><i>British Columbia (Workers' Compensation Board) v. Figliola</i>, 2011 SCC 52</p>	<p><i>Douglas/Kwantlen Faculty Assn. v. Douglas College</i>, [1990] 3 S.C.R. 570</p> <p><i>Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)</i>, [1991] 2 S.C.R. 5</p> <p><i>Tétreault Gadoury v. Canada (Employment and Immigration Commission)</i>, [1991] 2 S.C.R. 22</p> <p><i>Cooper v. Canada (Human Rights Commission)</i>, [1996] 3 S.C.R. 854</p> <p>ATA s. 44, 45, 46.1, 46.2, 46.3</p> <p><i>Constitutional Questions Act (BC)</i> RSBC 1996 c.68, s. 8.</p> <p><i>Blencoe</i>, supra</p> <p><i>R. v. Wigglesworth</i>, [1987] 2 S.C.R. 541</p> <p><i>Irwin Toy Ltd. v. Quebec (Attorney General)</i>, [1989] 1 S.C.R. 927</p> <p><i>Chandler v. Alberta Association of Architects</i>, [1989] S.C.J. No. 102</p>
<p>Administrative Law Reform</p> <p>(July 17)</p>	<p>Admin Law Text: 234-254</p>	<p>Excerpt: Ron Ellis, <i>Unjust By Design: Canada's Administrative Justice System</i>, (Vancouver: UBC Press, 2013) [to be handed out in class]</p>
<p>Review (Optional)</p> <p>(July 21)</p>		
<p>Final Exam</p> <p>(July 30)</p>		