

ADMINISTRATIVE LAW
LAW 372.001/509.001
Summer 2018 Syllabus

Contact Details

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

Class: Tuesdays, May 9 - July 17, 5:30 - 9:30 p.m.
Thursday, May 10 and Thursday, July 19, 5:30 - 9:30 p.m.
Dates: May 9 – July 19, 20178
Room: Room 105
Exam: July 23, 2018 9:00 a.m., room 105

Course Overview and Objectives

Administrative law is the body of rules which governs the executive branch's relationship with the public, 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 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. 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 is the Chair of the Civil Resolution Tribunal. She earned her BA (2001) and LLB (2005) from the University of British Columbia, and her LLM from the University of Toronto (2011). Ms. Salter clerked with the British Columbia Supreme Court, practiced litigation at a large Vancouver law firm for several years, and has served as a vice chair of the Workers' Compensation Appeal Tribunal. Ms. Salter is also a commissioner of the Financial Institutions Commission, board member of CanLII, vice president of the British Columbia Council of Administrative Tribunals, and a past board member of the College of Registered Nurses of British Columbia. She is co-author of the *Administrative Decision Maker's Manual*. She has been actively involved in providing pro bono legal advice and representation throughout her career and is a member of the Law Society of British Columbia.

Communication

I will communicate regularly with the class by email, through UBC's Faculty Services Centre, in order to send you updates, class handouts, 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. Please email me at shannonsalter@outlook.com for the quickest reply. 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

There is no required textbook for this class. The following materials are **required**:

- The cases and statutes in the list below under the heading “readings.” All of these materials are available through CanLII or other free, publicly available sources (as indicated by citation).
- Materials in the list below under the heading “excerpt” (which will be emailed to you) and anything else that is provided as class handouts or by email.

Recommended Materials

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*, 6th ed. (Toronto: LexisNexis Canada, 2017). In Law Library reference room: KE5015.B53 2011 [a practical textbook for practitioners].
- Colleen Flood and Lorne Sossin, eds., *Administrative Law in Context*, 2nd ed. (Toronto: Emond Montgomery, 2013) [a casebook with commentary].
- 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 24, 2017: open book, three hours (100%)

LLMCL students:

- Final Examination, July 24, 2017: open book, three hours (85%)
- In addition, graduate students will be responsible for a five-page, double-spaced paper on an administrative law topic of their choice (15%). Due in class or by email on July 20, 2017.

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	Reading	Excerpt (to be provided)
Introduction (May 8)	None	None
Sources and Limits of Administrative Justice (May 10)	Preamble – <i>Constitution Act, 1867</i> Sections 96-101, <i>Constitution Act, 1867</i> Preamble – <i>Constitution Act, 1982</i> Preamble – <i>Canadian Bill of Rights</i> <i>Re: Residential Tenancies Act, 1981</i> CanLII 24 <i>Crevier v. A.G. (Québec) et al.</i> , [1981] 2 S.C.R. 220 <i>Administrative Tribunals Act, S.B.C.</i> 2004, c. 45 (ATA) <i>Judicial Review Procedure Act, R.S.B.C.</i> 1996, c. 241	Subsection 82(11) of Canada Pension Plan, R.S.C. 1985, c. C- <i>Prasad v. Canada (Minister of Employment and Immigration)</i> , [1989] 1 S.C.R. 560 at pages 568-569: <i>Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)</i> , [1989] 1 S.C.R. 1722 <i>Reference re Secession of Quebec</i> , [1998] 2 S.C.R. 217: <i>British Columbia v. Imperial Tobacco Canada Ltd.</i> , 2005 SCC 49: Section 255 of the Workers' Compensation Act, [R.S.B.C. 1996] c. 492. <i>Re Residential Tenancies Act</i> , [1981] 1 S.C.R. 714 <i>Crevier v. A.G. (Québec) et al.</i> , [1981] 2 S.C.R. 220 : <i>Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur</i> , 2003 SCC 54: Human Rights Code, [R.S.B.C. 1996] c. 210: <i>Rizzo & Rizzo Shoes Ltd. (Re)</i> , [1998] 1 S.C.R. 27: Federal Courts Act, R.S.C. 1985, c. F-7: <i>Air Canada v. Toronto Port Authority</i> , 2011 FCA 347:
No class (May 15)		

<p>Procedural Fairness: Baker</p> <p>(May 22)</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><i>Nicholson v. Haldimand Norfolk (Regional) Police Commissioners</i>, [1979] 1 S.C.R. 311.</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 at para 64:</p> <p><i>Cardinal v. Kent Institution</i> [1985] 2 S.C.R. 643.</p> <p><i>Knight v. Indian Head School Division No. 19</i>, [1990] 1 S.C.R. 653.</p> <p><i>Baker v. Canada (Minister of Citizenship and Immigration)</i>, [1999] 2 S.C.R. 817</p> <p><i>Vancouver Island Community Forest Action Network v. Langford (City)</i>, 2010 BCSC 1357 at para 61:</p>
<p>Procedural Fairness: Bias and Independence</p> <p>(May 29)</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, at p. 259</p> <p><i>Charter of Human Rights and Freedoms, RSQ, c C-12</i></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>IWA v. Consolidated Bathurst Packaging Ltd.</i>, [1990] 1 S.C.R. 282</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. Quebec (Régie des permis d'alcool)</i>, [1996] 3 S.C.R. 919</p> <p><i>Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)</i>, 2001 SCC 52; [2001] 2 S.C.R. 781</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>(June 5)</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>Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)</i>, 2011 SCC 62</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>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>(June 12)</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><i>United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied</i></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>Industrial and Service Workers International Union v. British Columbia (Chief Inspector of Mines)</i>, 2014 BCSC 1403</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>Substantive Review: Origins of SOR</p> <p>(June 19)</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>

		<i>R.G. Facilities (Victoria) Ltd. v. Liquor Control Licensing Branch (General Manager)</i> , 2013 BCCA 402
Substantive Review: Standard of Review in Canada (June 26)	<i>Dunsmuir v. New Brunswick</i> , 2008 SCC 9 <i>Canada (Citizenship and Immigration) v. Khosa</i> , 2009 SCC 12 <i>McLean v. British Columbia (Securities Commission)</i> , 2013 SCC 67 <i>Sattva Capital Corp. v. Creston Moly Corp.</i> , 2014 SCC 53 <i>McCormick v. Fasken Martineau DuMoulin LLP</i> , 2014 SCC 39	ATA, sections 1, 58, 59. <i>Robertson v. British Columbia (Teachers Act, Commissioner)</i> , 2013 BCSC 1699 <i>Kerton v. Workers' Compensation Appeal Tribunal</i> , 2011 BCCA 7 <i>Canada (Canadian Human Rights Commission) v. Canada (Attorney General)</i> , 2011 SCC 5 (Mowat) <i>Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association</i> , 2011 SCC 61 <i>Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada</i> , 2012 SCC 35 <i>Wilson v. Atomic Energy of Canada Ltd.</i> , 2016 SCC 29
Substantive Review: Standard of Review in BC (July 3)	<i>British Columbia (Ministry of Public Safety and Solicitor General) v. Mzite</i> , 2014 BCCA 220	<i>Canada (Citizenship and Immigration) v. Khosa</i> , 2009 SCC 12 <i>Viking Logistics. Ltd. v. BC (Workers' Compensation Board)</i> , 2010 BCSC 1340 <i>Coast Mountain Bus Company Ltd. v. National Automobile, Aerospace, Transportation and General Workers of Canada (CAW-Canada), Local 111</i> , 2010 BCCA 447 <i>United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy (Allied Industrial and Service Workers International Union, Local 2009) v. Auyeung</i> , 2011 BCSC 220 <i>Morgan-Hung v. British Columbia (Human Rights Tribunal)</i> , 2011 BCCA 122

<p>Delegation of Statutory Powers</p> <p>Evidence in Administrative Decision-making</p> <p>(July 10)</p>	<p><i>Canadian National Railway Co. v. Canada (Attorney General)</i>, 2014 SCC 40</p> <p><i>Silver Campsites Ltd. v. James</i>, 2013 BCCA 292</p> <p><i>Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)</i>, 2006 BCCA 119 (CanLII)</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 (1999)</i>, 46 OR (3d) 294; 182 DLR (4th) 419 (C.A.)</p> <p><i>Enbridge Gas Distribution Inc. v. Ontario (Energy Board) (2005)</i>, 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 17)</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>Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401</i>, 2013 SCC 62</p> <p><i>Fraser Health Authority v. Workers' Compensation Appeal Tribunal</i>, 2016 SCC 25</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 and Review (optional)</p> <p>(July 19)</p>		<p><i>The Canadian Law of Judicial Review: A Plea for Doctrinal Coherence and Consistency</i>, Stratas, J.A.</p> <p>Download here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2733751</p> <p><i>Public-Centred Civil Justice Redesign: A Case Study of the British Columbia Civil Resolution Tribunal</i>, Salter, S & Thompson, D.</p> <p>Download here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2955796</p> <p>CRT Website: www.civilresolutionbc.ca</p>
<p>Final Exam</p> <p>(July 23)</p>		