

Athabasca University

LGST 331 (Rev C5) Administrative Law

Detailed Syllabus

Unit 1 Foundations

Learning Outcomes

After completing this unit, you should be able to:

1. Define law, and explain the difference between substantive and procedural law, statute law and common law, public law and private law, and statutes and subordinate legislation.
2. Briefly describe the *Canadian Charter of Rights and Freedoms*, and explain when it can apply to a tribunal.
3. Identify the role of government-appointed boards, tribunals, and agencies.
4. Discuss the necessity of interpreting statutes, regulations, and bylaws.
5. Outline the traditional and modern approaches to statutory interpretation.
6. Identify the tools for interpreting statutes.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 1
- Appendix B

Unit 2 Administrative Agencies and Tribunals

As we saw in Unit 1, administrative law consists of rules that govern and impose legal limits on the action of government officials at all levels of government—including how to remedy their errors, omissions, and excesses. The development of administrative agencies in Canada is a feature of the second half of the twentieth century. In one form or another, though, administrative agencies and administrative law has been with us since before Confederation. In England, they have existed for centuries.

Learning Outcomes

After completing this unit, you should be able to:

1. Explain how administrative agencies and tribunals help carry out policy in the three branches of government.
2. Describe how the system of agencies developed and how they have modified the traditional approach to administering and enforcing laws.
3. List the issues these agencies raise for government accountability and independence.
4. Describe the various types of tribunals and other agencies and their differences.
5. Explain the similarities and differences between tribunals and courts.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 2
- Appendix A

Unit 3 The Legal Basis of Administrative Law

This unit explores the legal basis of administrative law. Because government agencies (the ABCs) affect almost every aspect of our daily lives, a separate body of rules and principles has developed that regulate how these agencies administer and enforce the law, and how they must behave when performing their functions. This unit looks at the evolution of administrative law, the concept of jurisdiction, the exercising of discretion in a fair or reasonable manner, and procedural fairness.

Learning Outcomes

After completing this unit, you should be able to:

1. List the core principles of administrative law.
2. Discuss the importance of the concept of jurisdiction for administrative agencies.
3. Explain the concept of discretion and how it must be exercised.
4. Apply the rules of fair procedure in different contexts.
5. Briefly explain the rule against subdelegation.
6. Describe the role of the *Canadian Charter of Rights and Freedoms* in administrative law.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 3
- Chapter 4
- Appendix C

Unit 4 Fairness: The Right to be Heard

Like the principle of natural justice, the principle of procedural fairness includes the right to be heard and the right to an unbiased decision-maker. This unit examines the first of these two main elements.

Learning Outcomes

After completing this unit, you should be able to:

1. Explain where the principle of procedural fairness comes from.
2. Explain the right to a hearing as the first main component of the rules of natural justice.
3. Describe the components of a hearing process that complies with the right to a hearing.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 6

Unit 5 Fairness: Bias

Impartiality, the second pillar of procedural fairness, is the focus of this unit. The right to be heard, discussed in the previous unit, is of little value to a party if they do not have a right to have their case heard by an impartial decision maker (adjudicator or tribunal). An adjudicator must be unbiased for or against any of the parties and should not be perceived as biased by a reasonable and well-informed observer.

Learning Outcomes

After completing this unit, you should be able to:

1. Discuss why impartiality is an essential component of procedural fairness.
2. Identify the two elements of impartiality.
3. Explain the relationship between a tribunal's independence and its impartiality.
4. List the factors that may be considered when determining whether a tribunal has an institutional bias.
5. Identify and explain the different kinds of interests that might lead a party to believe an adjudicator is biased.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 7

Unit 6 Advocacy before Administrative Tribunals

This unit describes the fundamentals of effectively advocating (presenting a case) before a tribunal. It outlines the basic steps that should be followed in most situations.

Subsequent units provide more detailed discussion of the procedures involved in preparing for and participating in a hearing before a tribunal.

Learning Outcomes

After completing this unit, you should be able to:

1. Discuss how to effectively represent a party in the administrative process.
2. Explain how to obtain the information needed where processes are not clear.
3. Identify the steps to follow in preparing to present a case before a tribunal.
4. Describe how to be an effective advocate before a tribunal.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 8

Unit 7 Tribunal Procedures Prior to Hearings

One of the main reasons for establishing tribunals is that they can settle disputes in less time and at less cost than courts. In recent years, the trend has been toward increased use of pre-hearing procedures as a means of improving both tribunal efficiency and fairness, which was sacrificed in the early years for speed and convenience. This unit will look at disclosure, rulings on motions, and other ways to either address the issues without a full hearing or to reduce the length of hearings generally.

Learning Outcomes

After completing this unit, you should be able to:

1. Outline what is required in a tribunal's notice of hearing.
2. Explain what procedures may be used by a tribunal prior to the hearing to identify participants and issues.
3. Describe the rights and responsibilities of parties regarding their participation before and during hearings.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 9

Unit 8 Tribunal Procedures During Hearings

The conduct of hearings varies greatly between tribunals. Some of these differences arise from the statutes governing particular tribunals, while some reflect a tribunal's preference for more formal or less formal procedures. A tribunal's procedures can vary from case to case, depending on the complexity of the issues and the sophistication of the parties.

Learning Outcomes

After completing this unit, you should be able to:

1. Explain the differences between an oral hearing, an electronic hearing, and a written hearing.
2. Discuss the advantages and disadvantages of each of these hearing formats.
3. Outline the roles of various participants in a hearing.
4. Identify the stages of a hearing and the procedures usually followed at each stage.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 10

Unit 9 Presenting Evidence at a Hearing

While decision makers in most government agencies can receive any information provided to them and decide what use to make of it—within the limits of their jurisdiction—a tribunal conducting a hearing is more restricted in the evidence it can receive and how it can be used. Evidence is information provided to a tribunal that the tribunal admits (allows to be taken into consideration), and it can take a variety of forms. This unit examines the concept of evidence, the rules that govern its use before a court, and how those “strict rules” (as they are sometimes called) used by courts are applied or adjusted as necessary by administrative tribunals. A tribunal must base its decisions on evidence that is relevant, reliable, necessary, and fair; and it must assure all parties of fairness and consistency in their presentation of evidence at the hearing.

Learning Outcomes

After completing this unit, you should be able to:

1. Distinguish between the kinds of information a tribunal will and will not receive from parties in a hearing.
2. Explain how a tribunal determines whether information is admissible as evidence at a hearing.
3. Discuss what makes evidence relevant, reliable, necessary, and fair.
4. Explain the difference between direct evidence and circumstantial evidence, between fact and opinion, and between direct observation and hearsay.
5. Explain how the credibility of a witness is assessed.
6. Describe the order of presentation of evidence.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 11

Unit 10 Management and Control of the Hearing Process

This unit examines both the authority and the tools given to a tribunal to manage and control the hearing process, including the powers to deal with contempt, to bar a representative, to compel witnesses, and to maintain order.

Learning Outcomes

After completing this unit, you should be able to:

1. Identify the source and scope of a tribunal's authority to manage and control the conduct of a hearing.
2. Describe the kinds of conduct at a hearing that are considered unusual or unacceptable.
3. List the steps a tribunal can take to deal with unusual or unacceptable conduct.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 12

Unit 11 Conduct Outside the Hearing

This unit introduces the standards that apply to conduct in a number of scenarios, such as communication outside the hearing between participants and tribunal members, social contact between tribunal members and individuals or organizations that may appear in future proceedings, contact with the media, and public statements by an adjudicator about a prior decision of the tribunal or issues that might come before it.

Learning Outcomes

After completing this unit, you should be able to:

1. Explain why hearing participants should not discuss any aspect of the case with a tribunal member unless all other participants are also present.
2. Explain why tribunal members should limit their social contact with participants in a hearing and with individuals and organizations that are likely to appear before the tribunal.
3. Discuss whether participants and tribunal members should talk to the media about a case that is underway.
4. Explain why tribunal members should not comment publicly on tribunal decisions.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 13

Unit 12 Tribunal Decision-Making Procedures

This unit looks at several important elements of the decision-making process. These include the basis for the decision, assistance in making the decision or drafting the reasons, the requirement to give reasons, and the release of the decision.

Learning Outcomes

After completing this unit, you should be able to:

1. Describe the kind of information on which a decision must be based.
2. Identify the sources of assistance to a tribunal in making its decision and drafting its reasons.
3. Explain the importance of giving reasons for a decision.
4. Explain how the requirement of procedural fairness affects the way the decision is communicated.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 14

Unit 13 Challenging Decisions of Tribunals

This unit explores the mechanisms available for challenging tribunal decisions once they have been made and issued. These mechanisms include the reconsideration of a decision by the tribunal itself, statutory appeal, applications for judicial review, and review by a watchdog agency such as an Ombuds. In many cases, the reviewing authority has the power to overturn a decision and substitute or order a different one. Some authorities, such as the Ombuds, can only make a recommendation.

Learning Outcomes

After completing this unit, you should be able to:

1. List the most common reasons for challenging decisions of tribunals and administrative agencies.
2. Describe the avenues available for challenging decisions.
3. Discuss the circumstances in which these review mechanisms are available.
4. Explain who is entitled to make use of the review process.
5. Explain how a decision is stayed and the effect of that on a party.
6. Describe the remedies available in the case of a successful challenge.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 15

Unit 14 Enforcement of Tribunal Decisions

This unit looks at tribunals' lack of authority when it comes to enforcing their own decisions (also known as orders). If a party fails to comply with an order, it is usually the responsibility of the injured or affected party to take legal action to obtain enforcement of the order.

Learning Outcomes

After completing this unit, you should be able to:

1. Describe the source of the authority of tribunals to enforce their decisions or orders.
2. Discuss the various methods of enforcing tribunal orders and the circumstances in which a particular enforcement mechanism might be used.
3. Describe the remedies available from a court once it has been established that a tribunal order has not been followed.

Reading Assignment

Administrative Law: Principles and Advocacy

- Chapter 16

Final Exam

After you have completed all the readings and learning activities, you should be ready to take the final exam. Please consult the [Examinations and Grades](#) section of the Undergraduate Calendar for detailed instructions on how to request and take this exam, including important deadlines. Be sure to arrange your exam date several weeks in advance. If you have any questions or concerns, contact your tutor as soon as possible.

Note: You are advised not to attempt the final exam until you have received feedback on all of your course work.

About the Final Exam

[This exam will be written online](#), and you will have **three hours** in which to write it. It is a closed book exam: you will not be permitted to use any texts or instructional aids.

The final exam is worth 50% of your total grade and consists of three parts:

- **Part I** consists of 20 multiple-choice questions (two marks each, for a total of 40 marks) covering material from the entire course. Some of these questions ask you to choose the best definition or meaning of a concept you have studied (such as judicial review, public law, or privative clause). Other questions may give you short fact situations and ask you to apply a rule or principle you have learned to come up with the correct answer. Some questions might ask you to pick out the correct or incorrect statement that describes a rule or principal of administrative law. You should make sure you know the meaning of all unfamiliar words and phrases you have come across while studying this course.
- **Part II** consists of 8 short-answer questions (five marks each, for a total of 40 marks) that are drawn from the concepts and ideas discussed in Units 3, 4, 5, and 8 of the course. These are questions such as “Write a paragraph explaining what is meant by a privative clause.”
- **Part III** consists of short-essay questions (20 marks) about a fact scenario similar to those found at the end of chapters 3, 4, 8, 11, 12, 13, 14, and 16 of the textbook. Be sure to study these fact scenarios and practice answering the questions that follow them. Similar to Assignments 2, 4, and 5, you will have to identify, explain, and comment on the administrative law issues raised in the scenario.

As with your assignments, accuracy in writing is important in the exam. Plan to spend at least fifteen minutes near the end of the exam to review your answers and essays for errors in sentence structure and spelling.

You can best prepare for this exam by reviewing the Study Guide, especially your knowledge of the outcomes found at the beginning of every unit, the study questions at the end of each unit, and the various assignments and readings.