

# Athabasca University

## LGST 331 Administrative Law

### Detailed Syllabus

#### Unit 1 Foundations

##### Learning Objectives

After completing this unit, you should be able to:

1. Explain what law is and the difference between substantive and procedural law; statute law and common law; public law and private law; and statutes and subordinate legislation.
2. Explain briefly what the Charter of Rights and Freedoms is, and when it can apply to a tribunal.
3. Identify the role of government-appointed boards, tribunals, and agencies.
4. Discuss the necessity to interpret 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 and Appendix A

[Administrative Procedures and Jurisdiction Act \(of Alberta\), S.A. 2006 c. A-3 as amended](#)

Note: Some materials mentioned in the text are available online from the [AU Library](#). LawSource is a database available through the [AU Library](#).

#### Unit 2 Administrative Agencies and Tribunals

As we saw in Unit 1, in general terms administrative law consists of rules that govern and impose legal limits on the action of government officials, at all levels of government, and the remedies to deal with their errors, omissions, and excesses. The development of administrative agencies in Canada is a feature of the second half of the 20th 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 Objectives

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 and Appendix B

## Unit 3 The Legal Basis of Administrative Law

This unit explores the legal basis of administrative law. Because government agencies 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, jurisdiction, the exercising of discretion in a fair or reasonable manner, and procedural fairness.

## Learning Objectives

After completing this unit, you should be able to:

1. List the 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 *Charter of Rights and Freedoms* in administrative law.

## Reading Assignment

*Administrative Law: Principles and Advocacy*, Chapter 3

[\*Baker v. Canada \(Minister of Citizenship and Immigration\)\*, 14 Admin. L.R. \(3d\) 173 \(SCC\)](#)  
(Judgment of L'Heureux-Dubé J.)

## Unit 4 Fairness: The Right to be Heard

This unit examines the first of the two main components of the rules of procedural fairness: the right to be heard.

### Learning Objectives

After completing this unit, you should be able to:

1. Explain where the rules of procedural fairness come 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 4

[\*Baker v. Canada \(Minister of Citizenship and Immigration\)\*, 14 Admin. L.R. \(3d\) 173 \(SCC\)](#)  
(Judgment of L'Heureux-Dubé J.)

## 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 it does not have a right to have its case heard by an adjudicator who is impartial. An adjudicator must be not only unbiased for or against any of the parties, but should not be perceived as biased by a reasonable and well-informed observer.

### Learning Objectives

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 taken into account in determining whether a tribunal has an institutional bias.
5. Identify and explain the different kinds of interests that may lead a party to believe an adjudicator is biased.

### **Reading Assignment**

*Administrative Law: Principles and Advocacy*, Chapter 5

[\*Ocean Port Hotel Ltd. v. British Columbia \(General Manager, Liquor Control and Licensing Branch\)\* \[2001\] S.C.J. No. 17, 204 D.L.R. \(4th\) 33](#)

[\*Newfoundland Telephone Company Limited v. Newfoundland \(Board of Commissioners of Public Utilities\)\* \[1992\] 1 S.C.R. 623](#)

### **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 Objectives**

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 transparent.
3. Identify the steps to follow in preparing a case before a tribunal.
4. Describe how to be an effective advocate before a tribunal.

### **Reading Assignment**

*Administrative Law: Principles and Advocacy*, Chapter 6

## 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 address the issues without a hearing or to result in a shorter hearing.

### Learning Objectives

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 prior to and during hearings.

### Reading Assignment

*Administrative Law: Principles and Advocacy*, Chapter 7

*Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.* [1990] 74 O.R. (2d) 164 (LawSource citation: 1990 CarswellOnt 393)

## 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. The procedures within a tribunal may vary from case to case, depending on the complexity of the issues and the sophistication of the parties.

### Learning Objectives

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 8

[Prasad v. Canada \(Minister of Employment and Immigration\) 57 D.L.R. \(4th\) 663](#)

## 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. Information given to a tribunal is known as evidence, which may take a variety of forms. This unit examines the concept of evidence, the rules that govern its use before a court, and how those rules differ if at all before a tribunal. A tribunal must base its decisions on information that is relevant, reliable, necessary, and fair, and must assure all parties of fairness and consistency in their presentation of evidence at the hearing.

## Learning Objectives

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 9

## 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 Objectives

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 10

[West End Development Corp., Re \[1994\] 29 Admin. L.R. \(2d\) 71](#) (PDF)

## 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 may come before it.

## Learning Objectives

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 11

[Kane v. Board of Governors of the University of British Columbia \[1980\] 1 S.C.R. 1105](#)

## 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 Objectives

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 12

[\*Ellis-Don Ltd. v. Ontario \(Labour Relations Board\) 194 D.L.R. \(4th\) 385\*](#)

## 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 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 Objectives

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 13, omitting the section “Standard of Review” (pages 240 to 246), which has been made outdated and incorrect by the *Dunsmuir* decision below.

[\*Dunsmuir v. New Brunswick, 2008 SCC 9\*](#)

[\*Chandler v. Alberta Association of Architects \[1989\] 62 D.L.R. \(4th\) 577\*](#)

### **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 Objectives**

After completing this unit, you should be able to:

1. Describe the source of the authority to enforce tribunal decisions or orders.
2. Discuss the various methods of enforcing tribunal orders and the circumstances in which a particular enforcement mechanism may be used.
3. Explain 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 14