

GS/DMGM 5120 1.50

Fall 2023

Canadian Administrative Law and Public Sector Ethics

Wednesdays, 6:00 p.m. – 9:00 p.m.

Class will be at the IBM Learning Site, in Markham, Ontario.

Check eClass for asynchronous components.

Course Outline

Course Director:

Ian Stedman

Office: McLaughlin College 026

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Office Hours: Before and after class, or by appointment on Zoom

Land Acknowledgment

York University recognizes that many Indigenous Nations have longstanding relationships with the territories upon which York University campuses are located that precede the establishment of York University. York University acknowledges its presence on the traditional territory of many Indigenous Nations. The area known as Tkaronto has been care taken by the Anishinabek Nation, the Haudenosaunee Confederacy, and the Huron-Wendat. It is now home to many First Nation, Inuit, and Métis communities. We acknowledge the current treaty holders, the Mississaugas of the Credit First Nation. This territory is subject of the Dish with One Spoon Wampum Belt Covenant, an agreement to peaceably share and care for the Great Lakes region ([York Land Acknowledgment](#)).

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1. Prerequisite

Enrolment in the Graduate Diploma in Management (GDM) or permission from the GDM program director.

2. Course description

The purpose of this course is two-fold:

- 1) To introduce students to some of the fundamental principles of public law in Canada, including administrative law and court challenges to public policies and administration;
- 2) To provide students with an understanding of critical topics in public sector ethics and accountability.

Courts overturning public policy and administrative decisions can be very costly to governments and public sector organizations, while ethical mishaps can end individual careers in the public sector as well as damage the public reputation of entire organizations. Having this knowledge helps to better position participants for success as employees, and for management and leadership roles in the broader public sector. Private sector managers who regularly interact with the public sector and/or face significant regulatory compliance demands in their operations are also likely to find this course useful.

The course modules focus on core competency areas for public sector managers. Specifically:

- Key concepts in public law, including constitutional and administrative law, that allow participants to function effectively as managers in the public sector at all levels of government and in the context of multilevel governance;
- The impacts of judicial review, the rule of law, multiculturalism and diversity on public policy and administration;
- Key concepts related to the impact of the Charter of Rights and Freedoms to the public sector and management within the public sector;
- Basic principles of public sector ethics and values, including the roles of codes of conduct and ethics counsellors; the importance of integrity and ethical decision-making; and the complexity of accountability as a public sector value.
- Basic understanding of the role of independent officers of parliament and their scope of practice.

3. Learning Objectives

Upon completing this course, students are expected to be able to:

- Demonstrate basic knowledge of legal theory and concepts related to Canadian public law, including Constitutional law, administrative law, judicial review and public sector ethics and accountability laws; and
- Be able to identify unethical conduct in the broader public sector and to critically analyze that conduct using the rules and laws of public sector ethics and accountability.

4. Evaluation (further details at end of Course Outline)

Assignment:	Student attendance and participation	Value (%):	20
Assignment:	Four weekly quiz questions (weeks 2-5), using eClass quiz function – first 20 mins of class	Value (%):	60
Final Quiz	Last 1.5 hours of class time, using eClass quiz function	Value (%):	20
TOTAL:			100%

5. Technical Requirements for Taking the Course

Several platforms will be used in this course (e.g., eClass, possibly Zoom, etc.) through which students will be required to interact with the course materials, the course director, as well as with one another. Please review this syllabus to determine how the class meets, and how office hours will be conducted.

6. Participation

Attendance during weekly class sessions is mandatory. You will be expected to engage and ask (and answer) questions. Inappropriate or disrespectful language will not be tolerated and you may be removed from class until the matter has been addressed.

Your participation grade will be a reflection of your attendance and engagement in scheduled class sessions. That being said, do not hesitate to reach out to me (your instructor) if you have concerns about the scheduling of the sessions or if you need to make special arrangements with respect to your attendance on specific weeks. In the event that we do go online and use Zoom, you will be expected to enable your video so that we can all continue to engage together in thoughtful conversations about the course content.

7. Student Conduct

Students, course instructors and staff have a joint responsibility to create and maintain a welcoming and inclusive learning environment. All students are expected to conduct themselves in accordance with the [Code of Student Rights and Responsibilities](#). Whether online or in-person, students and course instructors are expected to cultivate and sustain a professional relationship characterized by mutual respect and courtesy. In all classrooms, any disruptive and/or harassing behaviour will not be tolerated. To ensure that you adhere to the rules of the virtual classroom (if applicable), please review what counts as proper ‘netiquette’ (the basic rules for communicating with others in online spaces) by consulting the [student guide to e-learning](#). **If**

you experience an inappropriate incident that makes you feel unsafe or uncomfortable, please contact me immediately so I can work to resolve the issue.

Please respect the privacy of your peers and instructors. Never share private information about your peers and instructors without their permission. Remember, no aspect of your courses should be recorded or distributed without everyone's consent.

8. Academic Integrity

In this course, we strive to maintain academic honesty to the highest extent possible. Please familiarize yourself with the meaning of academic integrity by completing [SPARK's Academic Integrity module](#) at the beginning of the course. Breaches of academic honesty range from cheating to plagiarism (i.e., the improper crediting of another's work, the representation of another's ideas as your own, etc.). All instances of academic dishonesty in this course will be reported to the appropriate University authorities and can be punishable according to the [Senate Policy on Academic Honesty](#).

Using Generative Artificial Intelligence in this course

Students are not permitted to use generative artificial intelligence (AI) in this course. Submitting any work created through the use of generative AI tools will be considered a violation of York University's [Senate Policy on Academic Honesty](#). If you do not know whether an online resource or tool can be used in this course, please contact your instructor for guidance. For more information, please review [AI Technology & Academic Integrity: Information for Students](#).

9. Textbooks

All required materials will be uploaded to the eClass website or emailed to you. You will not need to purchase a textbook for this course.

10. Weekly Topics and Readings

Please go through the REQUIRED readings (which may include asynchronous video and audio recordings) for the lecture prior to the class. After the class, go through the assigned materials again more carefully. The quantity of assigned materials is quite reasonable; you should have no difficulty keeping up. Suggested readings may also be posted.

October 25: INTRODUCTION TO COURSE

- *Syllabus, student intros, course expectations*
- *Introduction to the Constitution (division of powers, Peace, Order & Good Government, Charter) and the three branches of government;*

- *The Rule of Law; Principles of Natural Justice*
- *The legislative process*
- *The role of the Canadian courts and Judicial Independence*

Required Readings:

- John Fairlie and Philip Sworden, “Introduction to Law in Canada, Second Edition” (2019) Emond Publishing, only pages 92-116, 156-173, 178-180.
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November 1: PUBLIC LAW

- *Federalism and Division of Powers (continued)*
- *References; Judicial review; the role of intervenors*
- *The Canadian Charter of Rights and Freedoms (civil rights, democratic rights, equality, multiculturalism, Aboriginal rights, etc.); the reasonable limits clause; the notwithstanding clause*

Required Readings:

- Ian Greene, *The Charter of Rights and Freedoms: 30+ Years of the Decisions that Shape Canadian Life* (2014), Chapter 2, “The Charter”.
 - Craig Forcese et al, Chapter 3: “Indigenous Peoples and Public Law” in *Public Law: Cases, Commentary, and Analysis*.
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November 8: THE ADMINISTRATIVE STATE AND ADMINISTRATIVE LAW

- *Introduction to the administrative/regulatory state & administrative law landscape*
- *The role of administrative agencies in society*
- *Statutory tribunals*
- *Challenging administrative decisions and the jurisdiction of the courts*
- *Discretion and the standard of review (history and present day)*

Required Readings:

- John Fairlie and Philip Sworden, “Introduction to Law in Canada, Second Edition” (2019) Emond Publishing, Chapter 11, “Administrative Law”, only pages 317-325.
- *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (this is a very long case, please read at least the first 31 pages of the pdf): <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/18078/index.do>.
- Daly, Paul, Big Bang Theory: Vavilov's New Framework for Substantive Review (November 18, 2021). Forthcoming in Flood and Daly eds., *Administrative Law in Context* (4th ed., Emond Montgomery, 2021), Available at SSRN: <https://ssrn.com/abstract=3966402>.

November 15: *INTRODUCTION TO PUBLIC SECTOR ETHICS*

- *The public service landscape (Federal, Provincial, Municipal)*
- *Public service values and codes of conduct*
- *Political acuity*
- *Recognizing ethical dilemmas*
- *Making considered, well-informed and defensible decisions when confronted with an ethical dilemma*

Required Readings:

- Kernaghan and Langford, Chapter 3, “Acting in the Public Interest” & Chapter 4, “The Politically Neutral Public Servant”.
- ~~Laura P Hartman, Joseph DesJardins & Chris MacDonald, *Business Ethics: Decision Making for Personal Integrity & Social Responsibility*, Chapter 2: “Ethical Decision Making: Personal and Professional Contexts”.~~
- ~~Peter Constantinou, “Political Acuity and Staff Council Relations”.~~

November 22: *RECOGNIZING ETHICAL ISSUES; THE CHALLENGE OF ACCOUNTABILITY*

- *Money in politics (incl. party and campaign finance)*
- *Officers and agents of Parliament*
- *Parliamentary accountability (e.g., committees, inquiries, reports)*
- *Patronage and undue influence; conflicts of interest; lobbying; whistleblowing*
- *The role of the criminal law*

Required Readings:

- Ian Greene and David P. Shugarman, eds, *Honest Politics Now: What Ethical Conduct Means in Canadian Public Life* (Toronto: Lorimer, 2017), **Chapter 3:** “Ethical Problems in Public Life”; **Chapter 6:** “Money in Politics: The Ethics of Election Finance Regulation and Expense Claim Oversight” (only pages 154-163).
- Susan Dimock, Mohamad Al-Hakim, Garrett MacSweeney, Alessandro Manduca-Barone and Anthony Antonacci, *Ethics and the Public Service: Trust, Integrity, and Democracy* (Nelson: 2013), Chapter 8: “Disclosure of Wrongdoing”.
- Part 5.3 of my dissertation ([link here](#)): “Complementary Domestic Ethical and Legal Regimes” (pages 162-173).

November 29 (last class): THE CHALLENGE OF ACCOUNTABILITY (cont.)

- *The emergence of artificial intelligence and automated decision making in the public sector*
- *Wrap-up short quiz*

Required Readings:

- Raso, Jennifer, AI and Administrative Law (February 1, 2021). in Florian Martin-Bariteau & Teresa Scassa, eds., *Artificial Intelligence and the Law in Canada* (Toronto: LexisNexis Canada, 2021), Available at SSRN: <https://ssrn.com/abstract=3734656>.
- Treasury Board of Canada, Directive on Automated Decision Making, online: <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32592>.

*****Argumentative essay on subject of student's choosing, due by 9pm on December 7 (one week after our last class ends)*****

11. Detailed Information about Assignments

Assignment:	Student attendance and participation	Value (%):	20
Assignment:	Four weekly quiz questions (weeks 2-5), using eClass quiz function – first 20 mins of class	Value (%):	60
Final Quiz	Last 1.5 hours of class time, using eClass quiz function	Value (%):	20
TOTAL:			100%

1. Attendance and Participation: 20%

The course director will make notes during each class about individual student contributions. Every student should have plenty of opportunity to participate in and contribute to class discussions, both in class and, where applicable, on eClass.

→ If there are extenuating circumstances that limit a student's ability to participate in class, then arrangements can be made with the course director for the student to give a presentation on a course-related topic instead. Please contact the course director if this is an option you would like to avail yourself of.

2. Weekly quiz questions (Weeks 2-5): 15% each, totaling 60%

The question will be about last week's materials. You will your computer in order to access to eClass.

3. Final Quiz (during class time on November 29): 20%

This 1-hour quiz will consist of essay questions. The quiz will test your foundational knowledge and understanding of the impact of the laws, policies and theories you have been learning about throughout the course. It will consist of no more than three (3) questions.

12. Late Work Policy

Assignments received later than the due date will be penalized (one-half letter grade per day that assignment is late). Exceptions to the lateness penalty for valid reasons such as illness, compassionate grounds, etc., may be considered by the course instructor but will require supporting documentation (e.g., a doctor's letter). Students are encouraged to speak with the instructor if they encounter difficulties with meeting course requirements.