

Municipal Law I

Description of the course

Municipal Law I provides an introduction to the law affecting municipalities. The source and extent of municipal authority are examined, as well as the limits placed on municipal powers by the constitution and the common law. Topics addressed include the election and operation of council; drafting, enacting and enforcing bylaws; reasons for bylaw invalidity; municipal contracts and tendering; and municipal liability.

Learning Objectives

- Describe the sources of Canadian law and explain how they interrelate
- Outline the hierarchy of Canadian courts and how it affects the use of precedents
- Discuss the procedure for enacting legislation
- Define the two types of subordinate legislation and explain their function
- Identify the role of the Constitution in Canada's legal system
- Contrast the constitutional status of municipalities and other levels of government and describe the implications of this for municipalities
- Illustrate how municipal actions may infringe on federal jurisdiction
- List the provisions of the *Charter of Rights and Freedoms* that have played the greatest roles in challenges of municipal actions
- Propose strategies that municipalities can use to successfully defend against legal challenges to bylaws that limit *Charter* rights and freedoms
- Contrast and evaluate perspectives on the role and purpose of local government
- Identify and describe statutory provisions in your jurisdiction that govern classes of municipalities, how municipalities are created and can change, their corporate attributes and powers, the structure and operations of council, and the duties and responsibilities of councillors, municipal officers and employees
- List qualifications for nomination for council and grounds for disqualification
- Describe how members of council are chosen through the electoral process
- Illustrate circumstances that would constitute conflicts of interest and what steps should be taken when such conflicts arise
- Explain why it is important for municipal officers to give appropriate advice to council on financial and other affairs of the municipality
- Analyze the structure of the municipality and the appropriate roles of council, officers and employees
- Explain the difference between core and related municipal statutes and their functions
- Identify the three types of powers exercised by municipalities
- Describe the source of a municipality's power to pass bylaws

- Discuss how each ground of judicial review in municipal law limits municipal authority
- Analyze how recent Supreme Court of Canada decisions have made municipal bylaws less vulnerable to judicial review
- Explain the main features of reforms to core municipal statutes
- Describe the principles of natural justice
- Describe the standards of conduct and procedure applicable to a municipal official under administrative law
- Explain each of the most frequently used common law remedies
- Explain the difference between a bylaw and a resolution
- Illustrate the kinds of powers council may exercise by bylaw
- Name the parts of a typical bylaw, and explain the purpose of each
- Identify the statutory provisions in your jurisdiction that govern council's use of bylaws (and regulations or policies, as applicable) and resolutions
- Describe the procedures that may be required to pass a bylaw and identify the specific statutory requirements of your jurisdiction
- Define void and voidable bylaws
- Explain in what way the rules of natural justice are relevant to how public hearings should be held
- Describe the difference between bylaw amendments and revisions or consolidations of bylaws
- Analyze the unique challenges facing municipalities in enforcing their bylaws
- Describe the means by which bylaws may be enforced
- Identify the law governing bylaw prosecution procedures and applicable penalties
- Contrast the three main means of commencing a bylaw prosecution
- Describe the main steps in a trial of an offence
- Discuss why it is important that a municipality comply with all statutory requirements when it takes steps to remedy an infraction
- Discuss whether a municipality is obliged to enforce its bylaws
- Identify the principal elements of a contract and explain each one
- Identify provisions of legislation in your jurisdiction that grant a municipality the power to contract, and sections that impose restrictions on that power
- Explain why contracts to which a municipality is a party should be in writing
- Identify issues that a municipality should consider when contracting out services to individuals or businesses
- Locate provisions in the enabling legislation of your jurisdiction that impose restrictions on municipal expenditures and borrowing
- Define the two contracts that normally arise in the tendering process
- Describe the duties imposed on a party calling for tenders
- Explain the effect of a typical privilege clause
- Contrast a call for tenders with a request for proposals
- Discuss how municipalities purchase goods and services, and identify and discuss procedural requirements that may be imposed on them in this regard
- Illustrate the potential consequences of an unauthorized or *ultra vires* contract
- Identify situations where a *quantum meruit* or unjust enrichment claim might be available
- List four ways in which a contract can come to an end

- Explain the difference between a term that is a condition and a term that is a warranty
- Discuss the remedies that may be available to an innocent party when a breach of contract has occurred
- Explain the basis for a municipality's capacity to sue and be sued
- Describe the main elements necessary for liability in negligence
- Discuss how contributory negligence can increase a municipality's exposure to liability
- Identify situations in which a municipality may be found liable for negligent misrepresentation
- Analyze the risks associated with the enforcement of construction standards
- Describe situations that may lead to liability in nuisance, and identify possible defenses
- Discuss statutory exemptions from municipal liability
- Identify limitation periods and notice requirements, if any, applicable in your jurisdiction
- Describe the circumstances under which the councillors, officers, and employees of a municipality may be personally liable
- Propose strategies for managing a municipality's risk of liability

Course Outline

Module 1 This module begins with an introduction to the law, the sources of our laws, and how law changes. Judicial precedent is a critical feature of Canada's system of law, and knowledge of the structure of the Canadian court system is essential to understanding how precedents are applied. Since municipalities are *creatures of statute*, we will consider the importance of legislation as a source of law, as well as procedures for enacting legislation, features of different types of legislation, and the concept of subsidiary legislation.

The second half of this module discusses aspects of the Canadian constitution that are important to municipalities, beginning with the constitutional status of municipalities. The **division of powers** between parliament and the provinces is discussed from the point of view of how this division of powers limits the authority of municipalities in a number of areas relevant to their jurisdiction. Finally, we will study the *Canadian Charter of Rights and Freedoms* (the *Charter*), paying particular attention to those sections of the *Charter* that have been used most often to challenge municipal actions.

Module 2 This module begins with a discussion of the definition and purpose of local government. It then examines the **municipality** as a **corporation**. We will first discuss the statutory provisions that govern different classes of municipalities, how municipalities are created and dissolved, and how municipalities may change their status or boundaries. We will then examine the corporate attributes and powers of a municipality.

Finally, we will look at legislation governing the internal structure of the municipal corporation, including the structure, election, and operation of its council, and the duties of its officers and employees.

Module 3 This module provides an overview of the legislation that gives authority to municipalities. The module also examines how courts have interpreted that legislation and how they

have defined the scope of the powers conferred by the legislation. This module will examine how these principles have been applied to municipalities, municipal tribunals, and municipal officials. This module will examine this rapidly changing area of law and consider how those changes will affect municipalities.

Module 4 This module will examine the basic principles related to municipal bylaws and answers to some of the questions most often asked by municipal officials. It will begin by examining what a bylaw is, the difference between bylaws and resolutions, and which municipal actions require bylaws. It will then look at the process of enacting a bylaw, including guidelines for drafting bylaws and procedures for passing and amending them. Finally, we will examine methods and procedures related to bylaw enforcement.

Module 5 Contract law is a building block of our legal system, and an introduction to contract law will contribute to your understanding of how municipalities operate. This module will examine what a contract is, how it is formed, and what remedies may be available if a contract is breached.

In addition to introducing the essential elements of a valid contract, this module emphasizes aspects of contract law that are of particular interest to municipalities. We will review the need for statutory authority for municipal contracts, as well as the need for consideration of the consequences that could flow from an unauthorized or invalid contract. As municipalities frequently engage in tendering and, as contract law governs tendering, we will look closely at the tendering process.

Module 6 “Municipal Liability” explores what may cause a municipality to become liable for damages it causes to others. This module examines how the acts or omissions of a municipality may lead to municipal and/or individual liability, and to what extent municipal officers and employees may be protected from individual liability. It considers the scope of immunity offered to municipalities by the common law and statute. The module also offers some practical suggestions on how to manage risk and reduce the number and cost of claims.

Required Readings

Required Readings

Constitution Act, 1867, 30 & 31 Victoria, c. 3. (U.K.), ss. 91 and 92.

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11.

Vann Niagara Ltd. V. Oakville (Town) (2002), 214 D.L.R. (4th) 307, 60 O.R. (3d) 1. [2002] O.J. No. 2323 (QL), application for leave to appeal granted by the Supreme Court of Canada on January 30, 2003, [2002] S.C.C.A. No. 350 (QL).

D.J. Manderscheid, “The Alberta Municipality: The New Person on the Block” (1998) 36 Alberta L. Rev. 692.

T.J. Plunkett and Katherine Graham, “Whither Municipal Government?” *Canadian Public Administration*, Vol. 25 (Winter 1982), pp. 603–18.

114957 Canada Ltée (Spraytech, Société d'Arrosage) v. Hudson (Town), (2001) 2 S.C.R. 241, 2001 SCC 40.

City of Edmonton, Bylaw No. 7608, *Public Places Bylaw*.

Bell v. Sarnia (City) (1987), 59 O.R. (2d) 123, 37 D.L.R. (4th) 438 (H.C.J.).

Graded Assignments

Discussion Boards:

Grade Value: 10%

Students are required to participate in all 3 online discussions. Each online discussion will consist of an initial posting on the discussion topic and response postings (comments) either in response to a classmate's posting or as an augmentation of your initial posting. Students will have approximately one week to meet the requirements of each discussion board. Focused online discussions allow students to express their understanding of information that is covered in each of the modules, to discuss that information with classmates and their instructor, and to integrate the results of those discussions into their own learning.

Essay 1:

Grade Value: 30%

Requirements: 1500-2000 words, double spaced, 12 pt. font

Final Assignment:

The final assignment is cumulative. Students are given one week to complete the assignment.

Grade Value: 40%

Evaluation Criteria

Essays

Essays in all courses are evaluated according to the following criteria:

Thesis (Grade Weight = 20%)

Excellent (A: 86–100)	Good (B: 72–85)	Satisfactory (C: 60–71)	Poor (D–F: 0–59)
<ul style="list-style-type: none"> thesis is clearly stated, creative, original and insightful presents a Point of View (POV) based on a critical analysis of factual evidence and relevant theory 	<ul style="list-style-type: none"> thesis is clearly stated and insightful presents a POV based on an assessment of factual evidence and may refer to relevant theory 	<ul style="list-style-type: none"> thesis is lacking in clarity and precision presents a POV based on a limited assessment of factual evidence and on common knowledge, generalizations and some theory 	<ul style="list-style-type: none"> thesis is poorly stated, ambiguous or absent fails to present a POV or presents a POV that is not based on analysis of factual evidence relevant theory or any other viable form of support

Background and Course Content (Grade Weight = 20%)

Excellent (A: 86–100)	Good (B: 72–85)	Satisfactory (C: 60–71)	Poor (D–F: 0–59)
<ul style="list-style-type: none"> elaboration of the thesis is concise, focused explicitly situated (relevant to the community of learners and practitioners), contextualized (related to real life scenarios for practitioners) and draws on the student's personal experiences 	<ul style="list-style-type: none"> elaboration of the thesis is clear and somewhat situated and contextualized the essay contains some background information that is not central to the thesis so the focus on the thesis sometimes waivers 	<ul style="list-style-type: none"> elaboration of the thesis is somewhat clear, but too much time is given to contextualizing and situating the thesis the extra emphasis on the background and context tends to draw the focus of the essay away from the central thesis 	<ul style="list-style-type: none"> the thesis is neither situated nor contextualized in terms of practical professional experiences and/or situations focus on the thesis is poor or absent

Research, Supporting Data and Analysis (Grade Weight = 25%)

Excellent (A: 86–100)	Good (B: 72–85)	Satisfactory (C: 60–71)	Poor (D–F: 0–59)
<ul style="list-style-type: none"> demonstrates a clear grasp of the complexity of the issues arising from the thesis refers to a full range of relevant current resources (course materials, external sources), and contemporary research findings uses relevant data, analyses and conclusions to conduct a thoroughly and objective examination of the validity of the thesis includes a critical analysis of the sources used 	<ul style="list-style-type: none"> demonstrates an understanding of the central issues arising from the thesis refers to current sources, including contemporary research findings draws on related analyses and conclusions that support the thesis uses a somewhat uncritical analysis of this information to examine the validity of the thesis 	<ul style="list-style-type: none"> demonstrates an appreciation for some of the issues arising from the thesis refers to current sources, research, opinions, and observations that support the thesis the resources, evidence, and analyses used are somewhat limited in scope information is used in an uncritical way to examine the validity of the thesis 	<ul style="list-style-type: none"> fails to indicate an appreciation or understanding of issues that arise from the thesis makes limited or no reference to current sources, contemporary research or other forms of factual evidence, opinions or analyses to support the thesis does not use the information that is presented to assess the validity of the thesis

Conclusions (Grade Weight = 15%)

Excellent (A: 86–100)	Good (B: 72–85)	Satisfactory (C: 60–71)	Poor (D–F: 0–59)
<ul style="list-style-type: none"> conclusions are clear, creative and insightful contain a clear, cogent reiteration of and support for the central points of the thesis thorough careful analysis confirms the superiority of this POV over other POVs. the conclusions are based on arguments that are developed throughout the essay and offer a convincing defense of thesis and a compelling, insightful closure 	<ul style="list-style-type: none"> conclusions are clear and valid contain a cogent reiteration of the central points of the thesis a careful analysis tends to support the superiority of this POV over a competing POV the conclusions support the main hypothesis of the essay and provide a convincing sense of closure 	<ul style="list-style-type: none"> conclusions are offered but in a disorganized way the central points of the thesis are reiterated analysis supports the thesis but little consideration is given to other POVs. the thesis defense is somewhat successful but there is only a limited sense of closure 	<ul style="list-style-type: none"> conclusions are vague or absent there is little or no reiteration of the central points of the thesis analysis is weak and offers limited support for the thesis and does not consider alternative POVs fails to defend the thesis adequately and provides no sense of closure

Writing Style and Essay Structure (Grade Weight = 10%)

Excellent (A: 86–100)	Good (B: 72–85)	Satisfactory (C: 60–71)	Poor (D–F: 0–59)
<ul style="list-style-type: none"> essay is very well organized central ideas are presented very clearly, cogently and effectively thesis is insightful and creative and functions as a unifying factor throughout the paper there is a critical analysis and integration of ideas throughout the paper 	<ul style="list-style-type: none"> essay is well organized central ideas are presented clearly, and effectively thesis is sound and imaginative and is referred back to frequently throughout the paper paper is analytical and relationships between ideas are clearly developed 	<ul style="list-style-type: none"> some parts of the essay are less well organized central ideas are fairly clear, but could be presented more effectively and consistently thesis is generally sound but utilized inconsistently as a unifying factor in the paper paper presents some analysis and integration of ideas 	<ul style="list-style-type: none"> essay lacks organization central ideas are unclear and poorly presented thesis is unclear and lacking in insight, creativity and soundness paper is neither analytical nor integrative

Grammar and Mechanics (Grade Weight = 10%)

Excellent (A: 86–100)	Good (B: 72–85)	Satisfactory (C: 60–71)	Poor (D–F: 0–59)
<ul style="list-style-type: none">• all sources are cited accurately• minimal spelling, punctuation, and grammatical errors• essay submitted on time (or delayed, with instructor permission)	<ul style="list-style-type: none">• most sources are cited correctly• a few spelling, punctuation, and grammatical errors• essay submitted late (marks deducted at instructor's discretion)	<ul style="list-style-type: none">• some sources are cited incorrectly or inappropriately• some spelling, punctuation, and grammatical errors• essay submitted late (marks deducted at instructors discretion)	<ul style="list-style-type: none">• sources not cited or cited incorrectly or inappropriately• excessive spelling, punctuation, and grammatical errors• essay submitted very late

Thesis	(Grade Weight = 20%)
Background and Course Content	(Grade Weight = 20%)
Research, Supporting Data and Analysis	(Grade Weight = 25%)
Conclusions	(Grade Weight = 15%)
Writing Style and Essay Structure	(Grade Weight = 10%)
Grammar and Mechanics	(Grade Weight = 10%)

Discussion Boards

Discussion Postings (includes initial and response postings) in all courses are evaluated according to the following criteria:

1. Demonstrates an understanding of a course concept. This applies to your initial and response posts, and includes the following elements:

- a. Are your posts relevant to the assigned topic and question?
- b. Do your posts demonstrate accurate understanding of course material?
- c. Does the subject field convey the essence of your post (in less than 10 words)?

Important Note for Quality Posts: While your posts will often draw on past experiences and informed opinions, the most successful posts will support personal opinions with reference to the course material.

2. Advances the discussion by adding new knowledge. This applies to your response posts, in which you should try to broaden the perspective presented in another post by building on their ideas or pushing those ideas in a new direction. Some possible ways to do this are:

- a. Apply references to course material/theoretical concepts.
- b. Provide a comparable example from your own work experience thereby extending the original idea, but with a new 'twist'.
- c. Provide a counter-example based on personal experiences that refute or weaken the position taken by the initial author (e.g. I hear you say this..., but my experience suggests this...)
- d. Apply a related concept from the course that the initial post did not refer to.
- e. Apply a related example from current events or some other resource.

Basic Requirements for Course Assignments

File Types: assignments must be submitted on the Course Site in MS Word .doc, .docx, or in .rft format. (These file types can be opened in Blackboard Learn and receive comments; other formats such as .wpd cannot).

All assignments should be in 12 Times New Roman (TNR) font, double-spaced with a 1" margin on each side. Each assignment should be approximately 10 pages in length.

Each page should include the student's name and page numbers in the header or footer.

Each assignment should have a cover sheet as part of the document that has the following: course name, student's full name, instructor's name and essay title (ie. Essay Assignment #1).

Software and Technology Requirements

This course will use Blackboard Learn S-14 (BBLearn) learning management system for class communications, content distribution, and assessments.

Log on to www.dal.ca/bblearn

To access the course:

Username: Your College of Continuing Education username cXXXX.cce

Initial Password: Your College of Continuing Education password (it is recommended that you change this password and keep it in a safe place as we are unable to reset it at the College).

For this course, you will need a reliable and frequent access to a computer and to the Internet. You might also need a headset with a microphone or speakers and a microphone to be able to listen to online resources and conduct other activities in the course (not needed in all courses).

Blackboard supports the most common operating systems:

PC: Windows 8, Windows 7, Windows Vista

Mac: Mac OS X Mavericks

Note: computers using Windows XP, Windows 8 RT and OS X 10.6 or lower are no longer supported. Also please ensure that you have the most recent Adobe program downloaded to be able to access certain types of files on Blackboard.

To check browser and computer compatibility follow the link that can be found on the course site under 'Student Supports':

https://help.blackboard.com/en-us/Learn/9.1_SP_14/Administrator/030_Browser_Support/010_Browser_Support_SP14

Technology issues are not an excuse for missing a course requirement – make sure your computer is configured correctly and address issues well in advance of deadlines.

Help Desk Information

For technology or computer issues, you should contact the Help Desk at Dalhousie University.

Phone: 902-494-2376

Toll-free: 1-800-869-3931

Email: helpdesk@dal.ca

Operating Hours

Fall & Winter Hours

08:00am - 12:00am Monday - Friday

10:00am - 12:00am Saturday - Sunday

Summer Hours (May – Aug)

08:00am - 09:00pm Monday - Friday

08:00am - 06:00pm Friday

10:00am - 06:00pm Saturday – Sunday

You will find tutorials online under ‘Student Supports’ that will familiarize you with various aspects of BbLearn.

For issues related to course content and requirements, please contact your instructor.

Student-Instructor Interaction

Instructors are committed to providing a learning experience through thoughtful planning, implementation and assessment of course activities. They are committed to being readily available to students throughout the course by:

1. Replying to emails within 24-48 hours.
2. Returning graded course work with feedback within 7-10 days of each assignment due date.

Blackboard and Privacy

While connected to Dalhousie University’s Learning Management System (Blackboard), students may be tracked for their use of the features and tools. For the life of the online course/program, all administrators and instructors with access to the course can request full or partial reports of tracked data for any student(s). Instructors may use tracked information to help determine grades—specifically date stamps on discussion postings and assignment file uploads are used to determine if activities were completed by a specific deadline, and to calculate late penalties if applicable.

Aggregate class and data is used by administrators to study usability, access, and pedagogical issues in the online learning environment.

Blackboard tracks each student’s use of all course tools and features, including:

- entry time into each tool and feature
- exit time from each tool and feature
- time spent in each tool and feature per session
- time spent in each tool and feature during the entire course
- total time in Blackboard
- number of Blackboard sessions
- discussion messages read
- discussion messages posted

- mail messages read
- mail messages sent
- calendar entries viewed
- calendar entries added
- assignments read
- assignments submitted
- content files viewed
- web links viewed
- media Library collections viewed
- media Library entries viewed

Academic Integrity

The commitment of the College of Continuing Education is to graduate future leaders of business, government and society who manage and lead with integrity. So when you submit any work for evaluation in this course or any other, please ensure that you are familiar with your obligations under Dalhousie University's Academic Integrity Policies. Dalhousie offers many ways to learn about academic writing and presentations; so that all members of the University community may acknowledge the intellectual property of others. Knowing how to find, evaluate, select, synthesize and cite information for use in assignments is called being "information literate." Information literacy is taught by Dalhousie University Librarians in classes and through online tutorials. See guides and tutorials at http://www.dal.ca/dept/university_secretariat/academic-integrity/student-resources.html

Do not plagiarize any materials for this course. Further guidance on what constitutes plagiarism, how to avoid it, and proper methods for attributing sources, *please see* <http://plagiarism.dal.ca/Student%20Resources/>

Furthermore, the University's Senate has affirmed the right of any instructor to require that student papers be submitted in both written and computer readable format, and to submit any paper to a check such as that performed by Safe Assign anti-plagiarism software. As a student in this class, you are to keep an electronic copy of any paper you submit, and the course instructor may require you to submit that electronic copy on demand.

Diversity and Nondiscrimination

Dalhousie University is committed to maintaining a community that recognizes and values the worth and dignity of every person. The University recognizes the diversity of its students and is committed to providing a learning experience in which students are able to participate, without discrimination on grounds prohibited by the Nova Scotia Human Rights Act. In particular, the University is committed to facilitating students' access to the University's academic programs, activities, facilities and services.

The University seeks to develop and nurture diversity and encourages each individual to reach his or her own potential. Dalhousie University prohibits discrimination against any member of the university community on the basis of race, religion, color, age, gender, ethnic, national or aboriginal origin, marital status, parental status, disability, source of income, political belief and sexual orientation.

The University is obliged to make every reasonable effort short of undue hardship to take substantial, timely and meaningful measures to eliminate or reduce the discriminatory effects of the learning and community environment.

Course Evaluation

At the end of each course, you will be invited and encouraged to complete a formal course evaluation. Evaluations provide an opportunity to provide honest and anonymous feedback on course content and instruction quality. Your feedback contributes to continuous improvement of our courses. We would appreciate hearing your thoughts and opinions on the course/program. Thank you for engaging in this process. All responses will be held in strictest confidence.

Special Needs and Accommodation

It is the student's responsibility to self-identify and make a request for accommodation. The request for accommodation must be made reasonably in advance of the course or program in relation to which accommodation is being sought so that a decision can be made. The University will consider a request for accommodation made by a third party (physician, family member, caregiver, advocate or other representative) only where the student has provided prior written consent.

A request for accommodation must include the reasons for the accommodation, supporting documentation, the accommodation being requested and suggestions as to how the accommodation can be achieved, copies of medical reports (if applicable) to substantiate the request and where the request relates to a learning disability, a report describing the nature of the disability.

Disability Statement

In an effort to create a classroom environment that maximizes the success of all students, we encourage you to make us aware of any barriers that may inhibit your learning. Please feel free to ask any time about concerns or questions you may have about assignments, activities, or examinations.

The material in this syllabus and on the course site are fully copyrighted.

© Copyright 2015

Dalhousie University College of Continuing Education

1459 LeMarchant Street, Suite 2201

PO Box 15000

Halifax, Nova Scotia B3H 4R2

Tel: (902) 494-2526

Toll Free: 1-800-565-8867

Fax: (902) 494-3662

E-mail: continuinged@dal.ca

www.continuinged.dal.ca