LAW 2255 - IMPARTIALITY, INDEPENDENCE AND ADMINISTRATIVE
JUSTICE SYSTEM DESIGN

Fall 2014

Professor Philip Bryden

Class Times: Mondays, 5:00 p.m. – 6:50 p.m.
Room 406

Office Hours: Mondays from 8:00 a.m. – 4:00 p.m. or by appointment

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Links to additional material will be made available online on the course website on Blackboard.

Purpose of the Course:

This course is designed to explore the ways our ideas about impartiality and independence do and should influence the design of our administrative justice systems. It uses as its foundation Ron Ellis’s book *Unjust by Design: Canada’s Administrative Justice System*, in which the author claims that systems of administrative justice in most parts of Canada are fundamentally flawed because they do not incorporate the types of guarantees of independence and impartiality that our constitution requires in our judicial system.

The course is divided into three parts. The first explores Ellis’s concerns with Canada’s administrative justice system and his claim that, properly understood, the unwritten constitutional principle of judicial independence does require guarantees of independence for members of rights adjudication tribunals that are comparable to those afforded to judges. In order to evaluate this claim we will explore case law and academic literature concerning common law and constitutional guarantees of
impartiality and independence in both the judicial and administrative tribunal systems in Canada.

In the second part of the course we will consider impartiality and independence not as constitutional rights but as elements of administrative justice system design. We will draw selectively upon the body of literature on administrative justice reform in Canada to compare Ellis’s ideas about administrative justice to those found in other reform proposals. Our goals will be to identify how ideas about impartiality and independence fit into administrative justice reform, to develop a deeper understanding of where different types of administrative tribunals fit within systems of government, and to situate independence and impartiality within a broader set administrative justice reform goals.

In the third part of the course, students will give presentations of their own papers on themes that fall within the general ambit of the course. I will provide a list of suggested topics but students are encouraged to come up with their own topics in consultation with me.

**Evaluation:**

This is a major paper course, so course evaluation must be based primarily on the paper. However, having a complete and active discussion of all the topics covered is also a significant goal. Accordingly 70% of the marks for the course are allocated to the paper, which includes 5% for timely selection of the paper topic and 5% for timely submission of an outline of the paper. In addition, 20% of the marks for the course are allocated to the presentation of the paper and 10% to participation in class discussion.

The paper must be a minimum of 25 pages long, in accordance with the Faculty’s requirements for a major paper course. You should aim for a paper in the 25-40 page range. If you feel it is not possible to do justice to your topic within that range, you should speak to me well before handing it in to get permission to go over the 40 page limit. Generally speaking if you need more than 40 pages it is a sign that you have chosen a topic that is too broad. The paper will be evaluated according to the criteria for major papers, which are set out in the Law School Calendar and will be distributed in class.

I will expect you to meet with me to let me know your choice of a paper topic by 4:00 p.m. on Monday, September 29, and I will expect you to hand in an outline of the paper by 4:00 p.m. on Monday, October 27. I am also pleased to review and discuss drafts of your paper, provided they are submitted to me, at the latest, by December 1. The final version of your paper will be due by 4:00 p.m. on Monday, December 8. **Failure to meet any of these requirements without a legitimate excuse will result in a penalty in accordance with the Faculty’s late penalty policy.**

Major papers must be submitted in hard copy. Students should hand papers in to the reception desk and ensure that they are date and time stamped. **Please note that**
students are also required to provide an identical electronic copy of their paper to me at Philip.Bryden@dal.ca by the due date.

Each student will be required to make a 30 minute in class presentation of his or her paper. The presentation should include at least 10 minutes for questions and discussion by members of the class. You are encouraged to prepare a one page outline of your presentation for distribution to the other members of the class. The presentation is worth 20% of the final grade for the course.

Finally, 10% of the grade for the course will be allocated to participation. This includes attendance, evidence that you have read the assigned material and are prepared for class, and active involvement in class discussion. You will be evaluated on the quality of your participation rather than the quantity. Please note that effective participation in discussion requires a willingness to listen thoughtfully to the contributions of others as well as a willingness to contribute your own ideas.

Plagiarism:

All students in this course must read the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the http://academicintegrity.dal.ca/ website, and the Law School policy on plagiarism, available online at http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Students with Special Needs/Requests for Accommodation:

Requests for special accommodation for reasons such as illness, injury or personal circumstances will require an application to the Law School Studies Committee. Such requests must be made to Acting Associate Dean Diana Ginn or Assistant Dean Elizabeth Hughes as soon as possible, before a scheduled exam or a deadline for an assignment. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests. Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require academic accommodation for either classroom participation or the writing of tests and exams should make their request to the Advising and Access Services Center (AASC) prior to or at the outset of the regular academic year. Please visit www.dal.ca/access for more information and to obtain the Request for Accommodation – Form A. Students may also
contact the Advising and Access Services Centre directly at 494-2836, or they may contact Assistant Dean Elizabeth Hughes for more information.

**Summary of Course Dates:**

- **Due date for selection of paper topics:** Monday, September 29, 4:00 p.m.
- **Due date for paper outlines:** Monday, October 27, 4:00 p.m.
- **Last date for submission of draft papers for review and comment:** Monday, December 1, 4:00 p.m.
- **Due date for papers:** Monday, December 8, 4:00 p.m.

**Topics and Course Readings:**

**Week 1 (Sept. 8):** Introduction

- **Readings:** Ellis, *Unjust by Design*: Introduction (pp. 3-35)

**Week 2 (Sept. 15):** What's the Problem with Administrative Justice in Canada?

- **Readings:** Ellis, *Unjust by Design*: Chapters 1 and 3 (pp. 36-133 and 187-203)

**Week 3 (Sept. 22):** The Constitutional Arguments in *Unjust by Design*

- **Readings:** Ellis, *Unjust by Design*: Chapters 2 and 4 (pp. 134-186 and 204-230)

**Week 4 (Sept. 29):** Judicial and Tribunal Impartiality

- Wewaykum Indian Band v. Canada, 2003 SCC 45
- Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities) [1992] 1 S.C.R. 623
- 3174 Québec Inc. v. Quebec (Régie des permis d'alcool), [1996] 3 S.C.R. 919
Week 5 (Oct. 6): Judicial and Administrative Tribunal Independence in Canada

Review 3174 Québec Inc. v. Quebec (Régie des permis d’alcool), [1996] 3 S.C.R. 919
Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing), [2001] 2 S.C.R. 781
Bell Canada v. Canadian Telephone Employees Association, [2003] 2 S.C.R. 781
McKenzie v. British Columbia (Minister of Public Safety and Solicitor General), 2006 BCSC 1372
McKenzie v. British Columbia (Minister of Public Safety and Solicitor General), 2007 BCCA 507

NOTE: NO CLASS ON OCTOBER 13 BECAUSE OF THANKSGIVING

Week 6 (Oct. 20): Constitutional Rights to Tribunal Independence and Impartiality Revisited: Saskatchewan Federation of Labour

Readings: Review Ellis, Unjust by Design, Chapter 4 (pp. 204-230)
Saskatchewan Federation of Labour v. Saskatchewan (No. 1), 2010 SKCA 27
Saskatchewan Federation of Labour v. Saskatchewan (No. 2) 2010 SKQB 390 (Sask. Q.B.)
Saskatchewan Federation of Labour v. Saskatchewan (No. 2) 2013 SKCA 61 (Sask. C.A.)

Week 7 (Oct. 27): Administrative Justice Reform Arguments in Unjust by Design

Readings: Ellis, Unjust by Design: Chapters 5, 6 and 7 (pp. 231-290)

Week 8 (Nov. 3): Administrative Justice Reform in B.C. and Nova Scotia

B.C. Administrative Tribunals Act, S.B.C. 2004, c. 45

**NOTE: NO CLASS ON NOVEMBER 10 BECAUSE OF STUDY DAY PRIOR TO REMEMBRANCE DAY**

**Week 9 (Nov. 17): Administrative Justice Reform in Ontario and Quebec**

Ontario Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009, S.O. 2009, c. 33, sch. 5
Quebec Administrative Justice Act, S.Q. c. J-3

**Week 10 (Nov. 24): Independence and Impartiality as Elements of Administrative Justice Reform**

No New Readings

**Week 11 (Dec. 1): Student Presentations**

No New Readings Except for Handouts from Students Presenter(s)