

JSGS 815 – STRATEGIC HUMAN RESOURCE MANAGEMENT

UNIVERSITY OF SASKATCHEWAN CAMPUS	
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OFFICE HOURS:	Tuesdays and Thursdays 1:00-2:00pm or by appointment
OFFICE LOCATION:	Law 244
TERM:	Term 1 (fall)
ROOM:	TBD
DATE AND TIME:	Wednesday 1:00-4:00pm

CALENDAR DESCRIPTION

The purpose of this course is to expose graduate students enrolled in the Masters of Public Administration program to the significant legal issues that have practical significance in the management and operations of public sector departments, agencies and initiatives. The course will focus on select aspects of public sector governance with particular emphasis on human resource management and employment. Students will be expected to apply the knowledge they learn from the course materials and lectures to problems and assignments that could typically arise in a public administration setting.

COURSE CONTENT AND APPROACH

The course will be delivered through a series of lectures and class discussion. It is anticipated that the lectures will be delivered by both the course instructor and guest speakers that are members of the public sector or other professionals providing professional services to various public sector stakeholders.

COURSE OUTLINE AND ASSIGNMENTS

Session 1: Organization of the Public Sector

- a. Introduction to Legal Issues in Public Administration
- b. Overview of the Organization of the Public Sector
- c. The Role of the Public Service Commission: Tensions between the Merit and Staffing mandates
- d. Priorities and Performance of the Saskatchewan Public Service Commission

REQUIRED READINGS

Luc Juillet and Ken Rasmussen, **Defending a Contested Ideal: Merit and the PSC of Canada, 1908 -2008** (selected chapters only)

The Saskatchewan Public Service Commission Annual Report 2010-2011

<http://www.psc.gov.sk.ca/reports/annualreport11-12.pdf?Anc=c22e9168-1b71-4c74-9d71-93849c8f2ef8&Pa=74138a35-19c8-4de3-988a-1f5acdc323a0>

The Saskatchewan Public Service Commission Ministry Plan 2012-2013

<http://www.finance.gov.sk.ca/Planningandreporting/2012-13/pscplan1213-print.pdf>

SUPPLEMENTARY READINGS

Statutes:

The Public Service Act, 1998, S.S. c. P-42.1 www.qp.gov.sk.ca

Session 2: The Employment Contract: Out of Scope and Private Contractors

- a. The Private Employment Contract
- b. Out of Scope Employees and Private Contractors
- c. Wrongful Dismissal
- d. Federal Jurisdiction Employers (Canada Labour Code)

REQUIRED READINGS

Howard A. Levitt, **The Law of Dismissal in Canada** (2nd)(Chapter 1: Applicability of the Law: Status of Employee, Crown Employees, Public Authorities, Statutory Office Holders; Chapter 2 Federal Jurisdiction Employers)

Eileen Libby, *Wrongful Dismissal* (2007)

Ellen E. Mole and Mario J. Stendon, **The Wrongful Dismissal Handbook (3rd Ed.)** (Chapter A-4 Dismissal Rights of Specific Types of Workers)

SUPPLEMENTARY READINGS

Statutes:

Canada Labour Code R.S. 1985, C.L-2. Part III, Division XIV <http://laws-lois.justice.gc.ca/eng/>

Session 3: The Employment Contract: Unionized Workplace

- a. Overview of the Unionized Workplace
- b. Collective Bargaining and the Collective Agreement
- c. Dispute Settlement and Role of the Labour Relations Boards
- d. Essential Services Legislation and the Right to Strike

REQUIRED READINGS

Wesley B. Raynor, **Canadian Collective Bargaining Law (2nd Ed.)** (Selected readings from: Chapter 2 “Basic Premises of Modern Labour Legislation”, Chapter 8 “Employees: Public sector and excluded Employees”, Chapter 9 “Employers” and Chapter 17 “The Collective Agreement”).

Pravel Peykov, *Labour Issues in the Provision of Essential Services* (SIPP)

http://www.uregina.ca/sipp/documents/pdf/PPP18_Labour%20Issues.pdf

Dan Cameron, *Essential Services Legislation: Will it Facilitate or Impair Industrial Relations?* CCPA Vol. 7(1) Feb. 2008

http://www.policyalternatives.ca/sites/default/files/uploads/publications/Saskatchewan_Pubs/2008/SaskNotes_Essential_Services_Legislation.pdf

Saskatchewan Federation of Labour v. Saskatchewan 2012 SKQB 62.

<http://www.lawsociety.sk.ca/media/32280/2012skqb62.pdf>

SUPPLEMENTARY READINGS

Statutes:

Canada Labour Code R.S.C. 1985, C. L-2, Part I <http://laws-lois.justice.gc.ca/eng/>

The Trade Union Act, R.S.S. 1978, C.T-17. www.qp.gov.sk.ca

The Public Service Essential Services Act, S.S. 2008, c.P-42.2 www.qp.gov.sk.ca

Assignment 1 (20% of final grade)

You will be drafting a discussion paper pertaining to Saskatchewan’s Essential Services legislation and the subsequent Court of Queen’s Bench decision overturning the legislation.

Your assignment should be no more than a maximum of 2500 words.

Session 4: Human Rights in the Workplace

- The Prevention of Discrimination in the Workplace and the Role of Human Rights Codes (Federal and Provincial)
- Prohibited Discrimination and Duties to Accommodate
- Employment Equity
- Role of Human Rights Commissions and the Courts in Dispute Resolution

REQUIRED READINGS

Milton Woodard, *An Introduction to the Duty to Accommodate* (2002)

Meghan McCreary, *Harassment: Considerations for Lawyers* (2007)

SHRC Equity Initiatives Employment Equity Best Practices

<http://www.shrc.gov.sk.ca/pdfs/news/Equity%20Initiatives%20-%20Best%20Practices%20July%202010.pdf>

SHRC Annual Report, 2010-2011 http://www.shrc.gov.sk.ca/pdfs/publications/SHRC_2010_Annual_Report.pdf

CHRC Frequently Asked Questions about Employment Equity http://www.chrc-ccdp.ca/publications/ee_faq_ee-eng.aspx

SUPPLEMENTARY READINGS

Denise Reaume, Of Pigeonholes and Principles: A Reconsideration of Discrimination Law (2002), 40(2) Osgoode Hall Law J. 113. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1137653

Statutes:

Canadian Human Rights Act R.S.C., 1985, c.H-6 <http://laws-lois.justice.gc.ca/eng/>

Employment Equity Act, S.C. 1995, c.44 <http://laws-lois.justice.gc.ca/eng/>

Occupational Health and Safety Act, 1993, S.S. 1993, c. O-1.1, Part II www.qp.gov.sk.ca

The Saskatchewan Human Rights Code, S.S. 1979, c. S-24.1 www.qp.gov.sk.ca

Session 5: The Regulatory Environment for Workers in Saskatchewan: Labour Standards and Occupational Health and Safety Part I

- a. Overview of Labour Standards Law (Hours of Work, Wages, Maternity and Parental Leaves and Holidays)
- b. Enforcement of Rights
- c. Proposed Regulatory Changes

REQUIRED READINGS

Peter Bergbusch, *Labour Standards in Saskatchewan* (2008)

Ministry of Labour Relations and Workplace Safety: Rights and Responsibilities: A Guide to Labour Standards in the Workplace <http://www.lrws.gov.sk.ca/rights-responsibilities>

SHRC Pregnancy, Parenting and the Workplace <http://www.shrc.gov.sk.ca/pdfs/publications/PPW-v2.pdf>

Ministry of Labour Relations and Workplace Safety, *A Consultation Paper on the Renewal of Labour Legislation in Saskatchewan*, May 2012 <http://lrws.gov.sk.ca/consultation-paper-renewal-labour-legislation>

SUPPLEMENTARY READINGS

Statutes:

Canada Labour Code, R.S. 1985, c. L-2, Parts II and III <http://laws-lois.justice.gc.ca/eng/>

The Labour Standards Act, R.S.S. 1978, c. L-1 www.qp.gov.sk.ca

The Occupational Health and Safety Act, 1993, S.S. 1993, c. O1-1 Part III and IV www.qp.gov.sk.ca

Assignment 2: (15% of the final grade)

You will be drafting an information paper critiquing a submission made in response to the Ministry of Labour Relations and Workplace Safety's Consultation Paper on a Proposed Renewal of Labour Legislation in Saskatchewan.

Please note – you will be provided with a copy of one of the submissions.

Your assignment should be no more than a maximum 2000 words.

Session 6: The Regulatory Environment for Workers in Saskatchewan: Labour Standards and Occupational Health and Safety Part II

- a. Overview of Occupational Health and Safety legislative framework (Committees, Complaints and Investigations)
- b. Enforcement of Rights
- c. Proposed Regulatory Changes

REQUIRED READINGS

Genevieve Leslie, *The Statutory Right to Refuse Unsafe Work* : A comparison of Saskatchewan, Ontario and the Federal Jurisdiction(1981-82),46 Sask. Law Rev. 235

http://heinonline.org/HOL/Page?handle=hein.journals/sasklr46&div=17&g_sent=1&collection=journals

OHS Discussion Paper, *Improving Saskatchewan's Standard of Occupational Health and Safety*, April 20, 2011

<http://www.lrws.gov.sk.ca/improving-sk-standards-ohs-discussion-paper>

SUPPLEMENTARY READINGS

Statutes:

The Occupational Health and Safety Act, 1993, S.S. 1993, c. O1-1 Part III and IV www.qp.gov.sk.ca

The Occupational Health and Safety Act, Chapter 25 Amendments. www.qp.gov.sk.ca

Session 7: Access to Information and Privacy Rights

- a. Overview of Privacy Laws in Saskatchewan
- b. Access to Information and Freedom of Information Requests

REQUIRED READINGS

K. Klien and D. Kratchanov: *Government Information and the Right to Information and the Protection of Privacy in Canada* (2009)

Barbara MacIssac, *Privacy Laws in Canada* (2000)

Gary Dickson, *Navigating the Privacy Jungle* (2004)

<http://lss.andornot.com/inmagicgenie/documentfolder/ac4249.pdf>

Evert Van Olst, *Privacy in the Health Sector* (2004)

<http://lss.andornot.com/inmagicgenie/documentfolder/ac4253.pdf>

SUPPLEMENTARY READINGS

Statutes:

The Freedom of Information and Protection of Privacy Act, S.S. 1990-91, c. F-22.01

The Local Authority and Freedom of Information and Protection of Privacy Act, S.S. 1990-91, c. L-27.1

The Health Information and Protection Act, S.S. 1999, c. H-0.021

The Privacy Act, R.S.S., 1978, C. P-24

Assignment 3 (15% of final grade)

You will be reviewing an access to information request and providing information to the Reeve of a Rural Municipality regarding the process and content of a response to the request.

Your assignment should be no more than a maximum of 2000 words.

Session 8: Government Liability

- a. Crown Immunity and Crown Liability
- b. Policy versus Operational decision-making
- c. Liability for Misfeasance in Public Office

REQUIRED READINGS

Allen Linden, **Canadian Tort Law (8th Ed.)** (2006): Chapter 17: Government Liability
David Mullan, **Administrative Law (5th Ed.)** (2003): Chapter 20: Immunities From Suit
G.L.D. Fridman, **Introduction to the Canadian Law of Torts (2003)**: Chapter 18: Misfeasance in Public Office
Irvine, **Misfeasance in Public Office: Reflections on Some Recent Developments** (2002)

SUPPLEMENTARY READINGS

Statutes:

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50 <http://laws-lois.justice.gc.ca/eng/>
The Proceedings Against the Crown Act, R.S.S. 1978, c. P-27 www.qp.gov.sk.ca

Session 9: Integrity, Transparency and Accountability in the Public Sector

- a. Accountability and Transparency
- b. Whistleblower Protection for Public Sector Employees
- c. Codes of Conduct and Ethics in the Workplace

REQUIRED READINGS

Christopher Hood and David Heald (eds.) **Transparency: The Key to Better Governance** (Chapter 1 Transparency in Historical Perspective; Chapter 7, Dashed Expectations: Governmental Adaption to Transparency Rules)
Jon Pierre and B. Guy Peters, **Governing Complex Societies: Trajectories and Scenarios** (Chapter 7, Governance, Accountability and Democratic Legitimacy)

The Gomery Commission Report – Phase 2 Overview

<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0560-e.htm>

Tara Gray, *The Public Servants Disclosure Protection Act and Proposed Amendments* (2006)

<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0556-e.htm>

M. Philip Tunley, *Whistleblower Protection Still in Its Infancy in Canada* (CJFE)

<http://www.cjfe.org/sites/default/files/Whistleblower%20Protection%20Still%20in%20Its%20Infancy%20in%20Canada.pdf>

What's Wrong with Canada's Federal Whistleblower Legislation? (FAIR)

http://fairwhistleblower.ca/files/fair/docs/psdpa/whats_wrong_with_the_psdpa.pdf

SUPPLEMENTARY READINGS

Kernaghan Webb, *Thumbs, Fingers, and Pushing on String: Legal Accountability in the Use of Federal Financial Incentives* (1993), 31 *Alberta Law Rev* 501.

http://heinonline.org/HOL/Page?handle=hein.journals/alblr31&div=29&g_sent=1&collection=journals

Statutes:

Federal Accountability Act, S.C. 2006, c.9 <http://laws-lois.justice.gc.ca/eng/>

Public Servants Disclosure Protection Act, S.C. 2005, c. 46 <http://laws-lois.justice.gc.ca/eng/>

Public Interest Disclosure Act, S.S. 1996, P-36.1. www.qp.gov.sk.ca

Assignment 4 (20% of final grade)

You will be asked to write a paper on one of two topics pertaining either to Whistleblower Protection legislation or accountability of Deputy Ministers.

Your assignment should be no more than a maximum of 2500 words.

Session 10: Crown Corporations and Government Agents

- a. Forms of Government ownership and control
- b. The governance relationship between the Crown and government agencies and crown corporations
- c. Saskatchewan Crown corporation governance: Crown Investment Corporation and the holding corporation structure

REQUIRED READINGS

Elaine Kirsch, Economic Council of Canada: *Crown Corporations as Instruments of Public Policy : A Legal and Institutional Perspective* (1985) Discussion Paper No. 295.

Crown Corporations in Canada: The Calculus of Instrument Choice / edited by J. Robert S. Prichard (1983) Selected Readings

Mapping a New Course: Reviewing Our Crown Corporations (2006)

SUPPLEMENTARY READINGS

Pat Rediger, *The Crowns: A History of Public Enterprise in Saskatchewan* (2004) Canadian Plains Research Centre.
John R. Allen (ed.) *Public Enterprise in an Era of Change* (1998) Canadian Plains Research Centre.

Statutes:

The Crown Corporations Act, 1993, S.S., c.50.101 www.qp.gov.sk.ca

The Crown Corporations and Public Ownership Act, S.S. 2004, c.50.102. www.qp.gov.sk.ca

Session 11: The Role of the Auditor

- a. The Role and Function of Federal and Provincial Auditors
- b. The relationship between the Provincial Auditor and Government Departments and Agencies
- c. The relationship between the Provincial Auditor and Private Firms

REQUIRED READINGS

Report on the Task Force on Roles, Responsibilities and Duties of Auditors (1994) http://www.auditor.sk.ca/wp-content/uploads/2012/05/report_roles-responsibilities.pdf

Legislative Audit: Serving the Public Interest (2000) Canadian Council of Legislative Auditors, <http://www.oag.mb.ca/wp-content/uploads/2011/06/Legislative-Audit.pdf>

A Guide to Policy Development, Manitoba Provincial Auditor (2006) <http://www.oag.mb.ca/wp-content/uploads/2011/06/PolicyDevelopmentGuide.pdf>

SUPPLEMENTARY READINGS

Statutes:

The Provincial Auditor Act, S.S. 1983, c. P-30.01 www.qp.gov.sk.ca

Session 12: Public Private Initiatives

- a. Introduction to Public Private Partnerships
- b. The Relationship between Government and First Nation Gaming

REQUIRED READINGS

Joan Price Boase, *Beyond government? The Appeal of Public-private Partnerships* (2000), 43 (1) Canadian Public Administration 75. (online through U of S library U-search)

Timothy Murphy, *The case for public-private partnerships in infrastructure* (2008), 51(1) Canadian Public Administration 99. (online through U of S library U-search)

Nolan Bederman & Michael Trebilock, *Unsolicited Bids for Government Functions* (1997), 35 Alberta Law Rev. 903.
http://heinonline.org.cyber.usask.ca/HOL/Page?handle=hein.journals/alblr35&div=43&collection=journals&set_as_cursor=1&men_tab=srchresults

2002 Gaming Framework Agreement (Saskatchewan)
<http://www.slga.gov.sk.ca/Prebuilt/Public/2002%20Gaming%20Framework%20Agreement.pdf>

SUPPLEMENTARY READINGS

Pamela Bloomfield, *The Challenging Business of Long-Term Public-Private Partnerships: Reflections on Local Experience* (2006)

Statutes:

The Saskatchewan Gaming Corporation Act, S.S. 1994, c.S-18.2 www.qp.gov.sk.ca

Session 13: Interprovincial Relationships: Trade, Investment and Labour Mobility

- a. The Agreement on Internal Trade, TILMA and NWTPA
- b. Labour Mobility: Opportunities and Concerns
- c. Dispute Resolution

REQUIRED READINGS

Daniel Schwanen, Happy Birthday AIT, (July-August 2000) Policy Options 51.
<http://www.irpp.org/po/archive/jul00/schwanen.pdf>

Bryan Schwartz, Lessons from Experience: Improving the Agreement on Internal Trade (2002) 2 Asper Rev of Int'l Bus and Trade Law 301-309.

http://heinonline.org/HOL/Page?handle=hein.journals/asperv2&div=30&g_sent=1&collection=journals

Katherine Swinton, Courting our Way to Economic Integration: Judicial Review and the Canadian Economic Integration, (1995) 25 Can Bus Law J. 280.

http://heinonline.org/HOL/Page?handle=hein.journals/canadbus25&div=21&g_sent=1&collection=journals

Kathleen MacMillan and Patrick Grady, A New Prescription: Can the BC-Alberta TILMA Resuscitate Internal Trade in Canada? Oct. 2007 CD Howe Background No. 106. <http://www.cdhowe.org/a-new-prescription-can-the-bc-alberta-tilma-resuscitate-internal-trade-in-canada/4777>

Robin Hansen and Heather Heavin, *What's New in the New West Partnership Trade Agreement* (2010), 73(2) Sask Law Rev. 197. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1839799

SUPPLEMENTARY READINGS

Agreement on Internal Trade located at www.ait-aci.ca

Trade, Investment and Labour Mobility Agreement (AB and BC) www.tilma.ca

New West Partnership Trade Agreement (SK, AB and BC) www.newwestpartnershiptrade.ca

REQUIRED READINGS

All required reading materials are available on reserve at the College of Law, University of Saskatchewan library. Access to all statutes is available: for Saskatchewan statutes through the Queen's Printer for Saskatchewan at www.qp.gov.sk.ca or for Federal statutes through the Department of Justice, Justice Laws Website at <http://laws-lois.justice.gc.ca/eng/>

Refer to the required readings for each section of the syllabus as set forth below.

SUPPLEMENTARY READINGS

Supplementary reading materials are available on reserve at the College of Law, University of Saskatchewan library.

Access to government statutes is available at Queen's Printer for Saskatchewan at www.qp.gov.sk.ca or for Federal statutes through the Department of Justice, Justice Laws Website at <http://laws-lois.justice.gc.ca/eng/>.

Refer to the supplementary readings for each section of the syllabus as set forth below.

EVALUATION

Students will be evaluated on the basis of four (4) written assignments worth a total of 70% and a take home final worth 30% of the final grade. The assignments are as follows:

Assignment 1 (20% of final grade)

You will be drafting a discussion paper pertaining to Saskatchewan's Essential Services legislation and the subsequent Court of Queen's Bench decision overturning the legislation.

Your assignment should be no more than a maximum of 2500 words.

Assignment 2: (15% of the final grade)

You will be drafting an information paper critiquing a submission made in response to the Ministry of Labour Relations and Workplace Safety's Consultation Paper on a Proposed Renewal of Labour Legislation in Saskatchewan.

Please note – you will be provided with a copy of one of the submissions.

Your assignment should be no more than a maximum 2000 words.

Assignment 3 (15% of final grade)

You will be reviewing an access to information request and providing information to the Reeve of a Rural Municipality regarding the process and content of a response to the request.

Your assignment should be no more than a maximum of 2000 words.

Assignment 4 (20% of final grade)

You will be asked to write a paper on one of two topics pertaining either to Whistleblower Protection legislation or accountability of Deputy Ministers.

Your assignment should be no more than a maximum of 2500 words.

Each of the assignments will be evaluated on the basis of form and substance. In terms of form, grammar, word usage, paragraph and sentence structure will be considered. In terms of substance, the quality of the analysis, and the relevant and appropriate use of sources will be considered.

You will have two weeks to complete each assignment. Assignments are to be handed in at the beginning of class on the date they are due. Any deadline extensions must be sought from the instructor prior to the due date.

LATE ASSIGNMENTS

Assignments that are handed in past the due date (without prior authorization from the instructor) will be assessed an academic penalty of 5% per day.

STUDENTS WITH SPECIAL NEEDS

U OF S: Students in this course who, because of a disability, may have a need for accommodations are encouraged to discuss this need with the instructor and to contact Disability Services for Students (DSS) at 966-7273.

ACADEMIC INTEGRITY AND CONDUCT

U OF S: Understanding and following the principles of academic integrity and conduct as laid out in the University of Saskatchewan's Guidelines for Academic Conduct is vital to your success in graduate school (available at http://www.usask.ca/university_secretary/council/reports_forms/reports/guide_conduct.php). Ensuring that your work is your own and reflects both your own ideas and those of others incorporated in your work is important: ensuring that you acknowledge the ideas, words, and phrases of others that you use is a vital part of the scholarly endeavour. If you have any questions at all about academic integrity in general or about specific issues, contact any faculty member and we can discuss your questions.