

Administrative Law
for State Functionaries

Course

1 – 3 December 2021



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STELLENBOSCH
UNIVERSITY

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Subject area:

Administrative and State Regulatory Law

NQF level: 6

The duration of the course:

A 3-day course

During this course you will gain insights and be equipped with the necessary tools to understand the administrative law implications for public decisionmakers. Upon completion, you will be able to confidently navigate everyday governance and related administrative decisions in state affairs. This carefully designed short but rigorous legal education programme for government executives and legal advisors will guide you to ultimately review-proof your everyday administrative decisions.

THE PURPOSE OF THE COURSE:

Administrative Law for State Functionaries is a three (3) day blended short course, offering participants an opportunity to understand administrative-law considerations that courts expect them and their principals to comply with and help them gain administrative-law insights from court jurisprudence, Public Protector and Auditor General reports with a view to minimising the possibility of having their decisions or those of principals they advise successfully reviewed by courts and administrative oversight bodies.

The short course will analyse a range of case studies in the typical areas within which public decision-makers function and illustrate what the law requires in each instance. The training will develop participants' competence in identifying the relevant administrative-law issues that may emerge in typical areas of public administration, how to address those issues, how a court or other oversight structure such as the Public Protector or Auditor General, may assess such conduct and how to design approaches to decision-making that will manage the legal risk in such instances.

The programme also provides basic leadership insights, including the understanding of lawyering as leadership, further aimed at improving good governance and minimising unproductive encounters with oversight bodies or personnel that leads to case hardening and related adverse outcomes.

The course objectives

- Strengthen your good governance acumen, team compliance with good governance requirements in the Constitution, law and policies while reducing personal and institutional vulnerability to judicial reviews that cost money and time, thus, sabotaging efficient and effective service delivery.
- Enhance participants' understanding of key constitutional and legal requirements that must be complied with when making administrative decisions in state affairs.
- Familiarise participants with core administrative justice principles from case law to be complied with in everyday decision-making in state affairs.
- Acquire greater awareness of typical mistakes and systems fault lines in personal, team and organisational decision-making processes that could lead to successful judicial review.
- Understanding of typical judicial considerations in the interpretation of concepts such as rational, reasonable, lawful and fair.
- Basic leadership and communication skills to fortify their system against potential litigation that can derail the implementation of service delivery and social justice initiatives.

Outcomes:

At the end of the course the participants should be able to:

1. Demonstrate understanding of basic administrative-law principles such as lawfulness, legality, reasonableness, procedural fairness, accountability, separation of powers, cooperative governance and judicial deference.
2. Apply these administrative justice-related principles and jurisprudence to analyse laws, policies, programmes and litigation problems and align their decisions or advise any competent authority accordingly.
3. Demonstrate skills gained to conduct research, identify and apply relevant administrative-law research and legal analysis to everyday decision-making and justice challenges.
4. Show ability to review-proof their organisation or client organisation by conducting an audit of administrative law fault lines and to redesign their systems and procedures to minimise administrative justice and related mistakes.

Methods of presentation:

The course will take place at Stellenbosch University and it will be blended, if circumstances allow. If circumstances do not allow, the course will be conducted entirely online. The course will be conducted through lectures and group discussions.

Uncertainty of Lockdown: Online

Assessments:

1. Reports on group projects
2. Tasks either daily or weekly
3. Completes individual assessment/task

- On day one, they each present on the case study, their own thoughts
- Example for evaluative assessments from Global Leadership Course:

1. Reporting on group project for local company 50%
2. Final summative assessment is where they do an administrative culture analysis on administrative justice. Look at cases given and analyse how things are done that end up being reviewed under the Promotion of Administrative Justice Act (PAJA)

1. Pre-course Attendance Assignment (Writing 20%, Presentation 10%)

2. Daily Individual and Group Tasks for formative assessment and ensure group members are collaborating (Individual 15%, Group 15%)

3. Final Assessment presented on Last day of Course (Writing 25% Presentation 15%)

PRESENTERS



Prof Thuli Madonsela

is the former Public Protector of South Africa, former full-time law commissioner and the current Chair of Social Justice and founder of the Thuma Foundation for Democracy Leadership and Literacy. She has an extensive background in applied administrative-law principles mainly based on her public service years and investigating improper conduct in state affairs. She was one of the drafters of the Constitution and a key participant in the conceptualisation and drafting of several laws, including the Promotion of Administrative Justice Act. She also helped draft a number of international human rights instruments and country reports. Prof Madonsela currently teaches constitutional law, administrative law, social justice law and democracy and has written and published extensively on these matters.



Prof Sope Williams-Elegbe

is a professor of Law and head of the department of Mercantile Law as well as the deputy director of the African Procurement Law Unit, Stellenbosch University. She specialises in public procurement, anti-corruption law, development law and legal issues pertaining to blockchain and artificial intelligence in the public sector. Prof Williams-Elegbe is the writer of four books and is a Vice-Chair of the Department and Exclusion Sub-committee of the International Bar Association and a member of Transparency International's Working Group on Debarment and Exclusion. She was a member of the World Bank's International Advisory Group on Procurement (IAGP) from 2008-2011. She co-runs the LLM and PG Diploma in Public Procurement Policy and Regulation in Stellenbosch University, the only program of its kind in Africa. Prof Williams-Elegbe holds an LLM (with distinction) from the London School of Economics and a PhD in public procurement and anti-corruption law from the University of Nottingham. She has taught at the universities of Stirling, Nottingham and Lagos.



Prof Geo Quinot

is trained in law, public administration and higher education. He is currently a professor of law in the Department of Public Law and the School of Public Leadership at Stellenbosch University as well as founding director of the African Procurement Law Unit (APLU). He is also admitted as an Advocate of the High Court of South Africa. Prof Quinot's research focuses on general administrative law, including a particular focus on the regulation of state commercial activity such as public procurement as well as on legal education. He has published widely in these areas. He is the author, co-author and/or editor of seven book publications, the most recent of which are *Public Procurement Regulation in Africa: Development in Uncertain Times*, published by LexisNexis in 2020 and *Administrative Justice in South Africa: An Introduction*, the second edition of which was published by Oxford University Press in 2020.

Type of certificate to be provided:

Certificate of competence

Modules being presented:

Unit 1: *Introduction to Administrative Law*

- What is administrative law?
- The Constitution and other sources of administrative law
- Where do you find administrative law?

Unit 2: *Administrative Justice*

- Introduction to the PAJA
- The meaning of administrative action
- The requirements of just administrative action
- Legality beyond PAJA
- Enforcement

Unit 3: *Everyday Areas of Administrative Action*

- National
- Provincial
- Local government
- Regulatory authorities
- Administrative investigations

Unit 4: *Understanding Common Administrative Law Transgressions through the Cases*

- Procurement
- Board appointments
- Licenses
- Grants
- Subsidies
- Registration
- Certification
- Social welfare benefits
- Failure to act

Unit 5: *Leadership Tips for Fruitful Interaction with Accountability Authorities*

- The South African Public Accountability Architecture
- Dealing with the Auditor General
- Dealing with the Public Protector, Public Service Commission and other administrative oversight bodies
- Dealing with Parliament
- Dealing with the courts
- Dealing with the media and the public

Unit 6: *Review-proof Your Administrative Decisions and Organisational Culture*

- Identify common or previous administrative-law mistakes in your team
- Identify systems fault lines that enable transgressions
- Design an intervention to minimise transgressions and successful review

Budget: R 10 599 per person
(Limited to 50 people)

Contact details for any enquiries:

Ms Diane Gahiza

Project Coordinator: Law Faculty Trust Chair in Social Justice

Email: gahiza@sun.ac.za | **Tel:** 021 808 3186

Contact details:

socialjustice@sun.ac.za | +27 (21) 808 3186

 Social Justice Chair @CFSJ_MPlan

 Social Justice M-Plan