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<b>COURSE:</b>	<b>LAWS 4402B – Employment Dispute Resolution</b>
<b>TERM:</b>	<b>Winter 2016</b>
<b>PREREQUISITES:</b>	<b>Fourth-year Honours standing and one of LAWS 3006, LAWS 3401, LAWS 3405.</b>
<b>CLASS:</b>	<b>Day &amp; Time: Wednesdays, 14:35 – 17:25</b>
	<b>Room: Please check with Carleton Central for current room location</b>
<b>INSTRUCTOR: (CONTRACT)</b>	<b>Yavar Hameed</b>
<b>CONTACT:</b>	<b>Office: Contract Instructor’s Office, B442 Loeb Building</b>
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**Academic Accommodations:**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

**Pregnancy obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://carleton.ca/equity/>

**Religious obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://carleton.ca/equity/>

**Academic Accommodations for Students with Disabilities:** The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or [pmc@carleton.ca](mailto:pmc@carleton.ca) for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://carleton.ca/pmc/students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://carleton.ca/equity/>

**Plagiarism**

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at:  
<http://carleton.ca/studentaffairs/academic-integrity/>

**Department Policy**

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>

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**Course Synopsis**

There is an inherent tension within the employment relationship resulting from the weight of employer prerogative against the resistive force of worker rights. This course looks at the management of this tension, the mechanics of its inner workings and its limitations. Work and workplace disputes are considered in this course from three perspectives: the individual worker in an employment law context, the collectively organized worker in a unionized environment and the non-unionized informal or minimum standards exempt worker. Within each working environment, the dynamic between the employer and employee is affected by different rules and conventions that define the rights of workers and the prerogative of employers to administer the terms of their employment. The balance of power in each case is variously shaped by laws that define minimum standards of work, conventions and legislation that govern the process of collective bargaining and the economic and political interests that carve out exceptions to state regulated work standards. The ability of workers to resist the exploitation of their labour by employers is only as strong as the legal, social and conventional safeguards that protect them. This course provides a lens through which to analyze a varied landscape of work and responses that tend to obscure, manage or resolve workplace disputes with a focus upon the law and policies relating to employment in Ontario.

**Evaluation Scheme:**

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be

subject to revision. No grades are final until they have been approved by the Department and the Dean.

The first four classes will take the form of a lecture followed by open discussion within the class based on assigned readings. Students will be expected to hand in five questions pertaining to the readings that should be discussed during each seminar. These questions should be handed in every week at the end of class beginning in Week 2 until Week 12.

The remaining classes will consist of debates followed by general class discussion and/or a guest speaker.

### **Debate/ Simulation (40 % of Total Mark)**

The remaining eight weeks will be structured around simulations of employment dispute scenarios that are set out in the syllabus and may be supplemented by the instructor. The simulations will each require students to file submissions to an arbitrator, mediator, court or other body with a view to advocating the position of an employer, union or employee. The precise format for each submission will be covered by the instructor in class and over cuLearn.

Each simulation will be preceded by a short introduction by the instructor. Thereafter, the student simulations will continue from 1 to 1.5 hours (with intervening questions from judges/arbitrators/mediators and the class) depending upon the flow of discussion. A good simulation will not necessarily be cut off at a precise time, but will be moderated by the panel of judges.

### **Brief of Argument and External Readings**

At least one week prior to the scheduled simulation, the parties are to provide a brief of their position in relation to the employment dispute outlined for the assigned week. The brief will be approximately 10 to 15 pages in length (if done in pairs, the length should be proportionately longer). The brief should consist of arguments in support of the employee or employer position with appropriate footnotes and citations. The parties to the simulation are required to exchange their main resources to be used in the argument at least one week before the debate. The parties are also responsible at that time to post their arguments and list of resources to cuLearn for review by the class.

The brief should attempt to persuade the judge/mediator/arbitrator by drawing upon assigned and external readings and appropriate case law. Where external readings are relied upon by either party, they are to be exchanged with the party opposite and the instructor prior to the simulation. On the day of the debate, each group should have on hand an additional copy of its brief to submit to the instructor.

### **Participation in the Course (20% of total mark)**

#### **Discussion Questions and Participation 10%**

At the end of each class you will be required to hand in five questions relating to the week's seminar topic.

#### **Self-Assessed Participation in Debates and Class Discussion 10%**

In addition to participation in discussion as debaters, students will also be expected to contribute to class discussion as jury members, judges, mediators, etc. and in the plenary discussion/

seminar wherein active student participation is expected. The overall participation mark will be **self-assessed** by the students (i.e. you will determine your own participation mark out of 10) in consultation with the instructor at the end of the semester.

### **Take Home Examination (40% of total mark)**

A final take home examination will be handed out on **April 4, 2016**. At the discretion of the instructor, this date may be changed with three weeks' notice to all students. As the assignment of the examination precedes the formal examination period, which commences April 11, 2016, no conflict should arise in scheduling; however, students are invited to speak with the instructor three weeks prior to the examination date if they have questions regarding the scheduling of the take home examination.

Students will be permitted 48 hours to complete the examination on their own without consultation, discussion or communication with other students or persons outside the class. The examination will be open book meaning that students will have the right to consult any notes, materials or readings that are relevant to the course. The take home examination will consist of two questions: 1) a fact pattern requiring identification of issues and thorough discussion of responses to the employment scenario outlined; and 2) a long answer or essay question relating to a policy issue covered during the simulations, lectures and/or seminar discussion.

**COURSE PACK available at OCTOPUS BOOKS – 116 THIRD AVENUE** (Course assigned readings are outlined on cuLearn and available in the course pack)

**Please note: CLASSES SUSPENDED FOR WINTER BREAK FEBRUARY 15-20, 2016**

### **LIST OF SEMINARS (classes commence: Wednesday January 4, 2016)**

#### **Part 1: Landscape of Work and Diversity of Workplace Disputes**

1. Introduction to Workplace Conflicts and Dispute Resolution
2. Individual Employment: Minimum Standards, Wrongful Dismissal, Human Rights Protections, Occupational Health and Safety Standards
3. Collective Bargaining: History of Unionization in Canada, Statutory Basis of Collective Bargaining, Interest Arbitration, Rights Based Arbitration
4. Informal Sector and Undocumented Workers – Exploring Lacunae in the Edifice of Labour Protections

#### **PART 2: Regulating Minimum Standards**

5. **Employment Standards – Employment Insurance appeal to the Social Security Tribunal of Canada (SST)**

Bradley Cooper was working for ABC Storage Rentals (“ABC”) in Ottawa since September 2014. He received a dishonourable discharge from the Canadian Forces for assault on his commanding officer in August 2012. Cooper claims that his actions were in response to a hazing ritual that discriminated against him based on his First Nations background. He was charged criminally for

the same incident and received an absolute discharge on August 1, 2013. Cooper often worked up to 50 hours per week, but was always paid according to a salary of 35 hours. On November 12, 2015, Cooper complained to management about not being paid for extra hours worked. ABC initially promised Cooper that he could take time off in lieu of the hours worked, but then on November 15, 2015 Cooper was fired for breach of trust and misconduct for his failure to disclose his assault charge to ABC at the time he was hired. Cooper was not provided a Record of Employment. He subsequently made a claim for Employment Insurance pursuant to the *Employment Insurance Act*. His claim was denied by the Canada Employment Insurance Commission on December 1, 2015 on the ground that Cooper had been dismissed for misconduct. He is now seeking an appeal to General Division of the Social Security Tribunal more than 30 days from the date of his refusal.

## 6. Canadian Human Rights Commission Mediation

Page Talackova was hired as an intern for the Senate of Canada in August 2015. At the time of her hiring, she had not undergone sex reassignment surgery but presented and identified as a transgendered woman. While working in the Senate, she was exposed to memos and comments made in the Senate by Conservative Senator Don Plett who indicated that recognition of transgendered rights should not allow men to have access to women's public washrooms. As a result, Ms. Talackova began avoiding use of restrooms on Parliament Hill and has instead used washrooms at local restaurants near the Hill. In December 2015 Ms. Talackova had had enough and so she filed a human rights complaint against the Senate of Canada seeking among other things, \$20,000 in damages for pain and suffering and a public apology from the Senate to all transgendered persons.

## 7. Occupational Health and Safety Act complaint to the Ontario Labour Relations Board

Gwen Jenkins has been working as a health care aid at a Brockville long-term care home, Pleasantville on a part time basis since 2007. Recently due to budgetary cutbacks in the home, she has found that her workload has doubled. She is responsible for cleaning and attending to 24 residents on two floors for her morning shift of four hours, whereas previously she was responsible for 15 residents in the same 4 hour shift. She previously worked with a co-worker on her same floor who could assist with placing residents on the mechanical lifts for residents. Now she is responsible for shifting residents on her own. Fearing for her own health and the health of residents, Gwen informed the Ministry of Labour of the problems in her workload. She also divulged the fact that she would see nurses on a daily basis withhold or delay medication from residents if they were noisy or annoying. When Pleasantville management was questioned about these matters, Gwen was immediately suspended without pay pending an investigation and reprimanded for having disclosed confidential information. Gwen has filed a complaint to the Ontario Labour Relations Board pursuant to the *Occupational Health and Safety Act*.

## PART 3: Labour Law and Collective Management of Disputes

### 8. The Right to Strike and Essential Services

Debate Resolution: *Be it resolved that the Ontario Hospital Labour Dispute Arbitration Act in its prohibition of the right to strike for hospital employees constitutes a violation of section 2(d) of the Canadian Charter of Rights and Freedoms.* Students are required to take a position for or against the resolution question in view of *Mounted Police Association of Ontario v. Canada (Attorney General)*, [2015] 1 SCR 3, 2015 SCC 1 (CanLII), *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4, [2015] 1 S.C.R. 245 and the tenor of other relevant Canadian law

that contextualizes the scope of freedom of association in a labour context and the limits of constitutional protection of this freedom.

### **9. Rights Based Arbitration under a Collective Agreement**

Professor Dennis Rodman has been a tenured professor of kinesiology at Carleton University for the last 24 years. Two years ago, he changed his evaluation format and pedagogical approach for his upper year seminars in Applied Kinesiology awarding each student an A+ in the course provided that they engage with the course material throughout the semester. According to Rodman, he styled his evaluation method around an approach of critical pedagogy, which requires intensive and discussion and critical feedback to the student. Rodman was directed by the Chair of his department to evaluate according to a “standard” in-class or take home examination and to grade the resulting papers. Citing academic freedom, Rodman maintained his evaluation method. Last December his employment was terminated on the ground of insubordination. Rodman has filed a grievance against his firing through his union CUASA.

### **10. Interest Arbitration**

Carleton TAs, represented by CUPE 4600 (Unit 1), are to conclude their new collective agreement in the final days of August 2016. However, there are two major sticking points in the proposed agreement – salary and technological change. The employer is looking to keep salaries precisely at 2015 levels with a 0% interest over the life of the new agreement. The TAs are looking for a 4% increase over the next four years. Carleton is also intent on rolling out its new line of artificial intelligence TAs known as CUTA this fall. While CUPE is aware of this new technological development, it has no idea of the time horizon. The parties have agreed to make formal submissions (complete with rationale, comparators and arbitral principles) on salary and technological change to an interest arbitration panel.

## **Part 4: Beyond Regulation, Beyond Resolution?**

### **11. Information Picketing and Grassroots Resistance**

Randy lives in and out of shelters in Ottawa and does odd jobs for various businesses. For two months he has been shoveling snow for different businesses on Bank street. Dealawry Motors (DM) has failed to pay Randy for his work for the last month for shoveling their parking lot and has told him that they never even wanted his help although he clearly did his work with the authorization and supervision of DM's owner. He is owed approximately \$400 pursuant to his handshake deal with the owner. Randy has been approached by General Membership Branch Ottawa - Outaouais Region of the Industrial Workers of the World and has been signed on as a card carrying member. IWW has been holding information pickets in front of DM on the public sidewalk drawing attention to the fact that DM has failed to pay wages to their member. DM has applied to Superior Court for an injunction to ban the IWW on the grounds that they are holding an illegal picket.

### **12. Seasonal Farm Workers and the Disparity of Worker Rights Protection**

The economic precarity of seasonal workers is accentuated by their transient immigration status and susceptibility to deportation in the event of perceived non-compliance with their employers. At a covert meeting of seasonal farmworkers in Leamington, Ontario two factions have emerged

in the course of discussion. The first group advocates for filing a formal complaint regarding withholding of wages and unsafe conditions of work by the employer, Trump Canning Ltd. The second group urges caution and is categorically opposed to filing any formal complaint for fear of reprisal. The groups have reduced their positions formally to writing to present to the broader venue for a vote to determine the best course of action.