

CARLETON UNIVERSITY

DEPARTMENT OF LAW

COURSE OUTLINE

LAWS 4402A
Employment Dispute Resolution

Winter 2012

PREREQUISITES

Prerequisites: fourth-year Honours standing and one of LAWS 3006, LAWS 3401, LAWS 3405.

TERM

Winter 2012

Day & Time:

Tuesday: 8:35 A.M. – 11:25 A.M.

Room:

Please check Carleton Central for up to date Room Allocation

INSTRUCTOR:

Michael Mac Neil

D598 Loeb

613-520-2600 x 3684

michael_macneil@carleton.ca (best way to contact me!)

OFFICE HOURS: Tuesday: 12:00 PM -1:00 PM;
Wednesday: 12:00 PM -1:00 PM.

Or by appointment. Many issues can be dealt with before or after class, but if you want to set up a more formal appointment, contact me by email or by phone.

EMAIL

Because of the spam filtering tools I use, I would greatly prefer if any email communication with me (michael_macneil@carleton.ca) either comes from your Carleton Connect email address or has "4402" in the Subject line of the email. Unless one of these two conditions is met, there is a high likelihood that your email will end up in a junk folder, and may not be seen.

ACADEMIC ACCOMMODATION

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://www2.carleton.ca/equity/accommodation/>

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://www2.carleton.ca/equity/accommodation/>

Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (PMC) for a formal evaluation of disability-related needs. Documented disabilities could include but are not limited to mobility/physical impairments, specific Learning Disabilities (LD), psychiatric/psychological disabilities, sensory disabilities, Attention Deficit Hyperactivity Disorder (ADHD), and chronic medical conditions. Registered PMC students are required to contact the PMC, 613-520-6608, every term to ensure that I receive your Letter of Accommodation, no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you only require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by the deadlines published on the PMC website: <http://www2.carleton.ca/pmc/newand-current-students/dates-and-deadlines/>

COURSE DESCRIPTION (from University Undergraduate Calendar)

Theory and practice of dispute resolution in employment relations; analysis of such techniques as negotiation, grievance and interest arbitration, mediation, investigation and litigation applied to a range of employment disputes such as collective agreements, termination of employment, discrimination, harassment, occupational health and safety.

COURSE OVERVIEW

Employment is a social, economic and legal institution in which workers are subordinated to the will of employers, who seek to transform the labour power of workers into useful products and services. The relationship is extremely important to workers, providing not only economic benefits, but also fulfilling social and psychological needs. It is also a place with significant potential for conflict, whether it is over the terms and conditions of the employment relationship, the exercise of managerial power, interpersonal conflicts among workers or conflicts with outsiders such as customers or suppliers of goods and services to the employer. The resolution of these conflicts is of vital interest to workers, to employers and to the public interest. This course will explore a variety of themes related to workplace conflict, both on an individual and collective level. It will examine how we understand conflict, how we bargain to resolve it, and how we try to reduce some of the worst consequences of conflict. We will look at how individual and collective grievances are resolved, some of the problems with collective bargaining, the trade-offs between strikes and interest arbitration, the use of grievance arbitration the channeling of disputes through statutory tribunals. Several approaches are used as we study these issues including extensive reviews of research literature on employment dispute resolution and the use of simulations to help us understand the complexity of workplace conflict.

COURSE OBJECTIVES

- Studying the nature of workplace conflict
- Identifying characteristics of workplace disputes
- Understanding different approaches to workplace bargaining
- Analyzing formal and informal grievance resolution processes, both at the individual and collective bargaining levels
- Studying the use of grievance arbitration as a dispute resolution process
- Assessing the role of law in structuring workplace dispute resolution processes
- Developing measures for the effectiveness of dispute resolution processes
- Assessing alternative dispute resolution processes such as the use of mediation
- Enhance communicative skills through classroom participation, group work, and in class presentations
- Refine research skills
- Facilitate collaborative learning and teamwork through classroom participation, group projects and online discussion groups

REQUIRED READINGS

Required Text: Roger Fisher, William L. Ury, Bruce Patton, *Getting to Yes* (Available in Carleton University Bookstore)

Other assigned readings with hypertext links will be posted on WebCT.

You are responsible for the learning environment in this course. This is a seminar style course in which students take the lead in discussions. I, as your instructor, play the role of facilitator, setting out some learning goals and helping you, through structured questions and occasionally filling in gaps. You are expected to read assigned material before coming to class. You will take turns in playing the role of discussion leader. You will be actively engaged in simulations, and a key part of your learning will be through your reflection on what is happening in class, and relating the class discussions and simulations to assigned readings. Everyone is expected to participate on a regular basis, and attendance in class is very important. Only by participation in class discussions combined with advanced preparation can you expect to obtain maximum benefits from the course.

WEBCT

This course will make extensive use of WebCT. It is absolutely essential that you regularly check the WebCT site for the course.

EVALUATION

Activity	Mark	Due Date and Description
Participation	10%	Regular attendance and participation demonstrating that you have read assigned material in advance.
Lead Discussant	15%	Due Date varies – to be determined Each student will be assigned, once during the term, to be responsible (sometimes jointly with another student) to lead discussion on an assigned reading. One week after the class discussion each assigned student must submit a 500 word reflection on the reading and discussion. This should explore some issue arising from the reading and/or discussion; it should not be a summary of the reading. Due one week after class discussion.
Bargaining Simulation	15%	Feb. 14 In class bargaining simulation in groups on Feb 7; each student must submit a 500 word reflection paper on simulation by the following class on Feb 14.

Arbitration Simulation	20%	Dates vary – March 13 - March 27 Groups assigned to present an arbitration simulation acting either as representative of union, employer or playing the role of arbitration panel. Groups must submit written briefs or final decisions as appropriate.
Evaluation of a Particular Dispute Resolution Process	40%	April 3 A study of a particular employment dispute resolution process; you must describe <u>and, more importantly, evaluate</u> a particular process used in a Canadian workplace or used by a Canadian statutory tribunal. Suggested length: 3000 words

CLASS SCHEDULE (Subject to Change – List of required readings will be posted in WebCT)

Class 1	Jan10	Introduction
Class 2	Jan17	Conceptualizing Conflicts
Class 3	Jan 24	Grievance/Claiming Process
Class 4	Jan 31	Bargaining to Resolve Conflicts
Class 5	Feb 7	Bargaining Simulation
Class 6	Feb 14	Strikes and Interest Arbitration
	Feb 21	No Class – Study Break
Class 7	Feb 28	Collective Agreement Arbitration
Class 8	Mar 6	Arbitration Simulation
Class 9	Mar 13	Arbitration Simulation
Class 10	Mar 20	Evaluating Arbitration
Class 11	Mar 27	Alternative Dispute Resolution
Class 12	Apr 3	Dispute Settlement and Human Rights

GENERAL GUIDELINES ON ASSIGNMENTS FOR THIS COURSE

Late Policy

Assignments that are due in-class are deemed late if not submitted at the start of the class. Assignments that are required to be posted to WebCT or to other sites are deemed late if not submitted by the time stipulated. Late assignments will be penalized **one grade point per day** that they are late (i.e. B to B-, B- to C+, etc). See the departmental policy regarding assignment submission on the last page.

The Law Department outlines its general policies regarding assignments in its [Policy and Procedure Statement](#) that is attached to this syllabus. You should be familiar with these regulations. If you require any clarification please ask me.

ACADEMIC INTEGRITY

The University Senate defines plagiarism as “presenting, whether intentional or not, the ideas, expression of ideas or work of others as one’s own.” This can include:

- 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;
- submitting a take-home examination, essay, laboratory report or other assignment written, in whole or in part, by someone else;
- using ideas or direct, verbatim quotations, or paraphrased material, concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another’s data or research findings;
- failing to acknowledge sources through the use of proper citations when using another’s works and/or failing to use quotation marks;
- handing in "substantially the same piece of work for academic credit more than once without prior written permission of the course instructor in which the submission occurs."

Plagiarism is a serious offence which cannot be resolved directly with the course instructor. The Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of "F" for the course.

Please consult the complete [Academic Integrity Policy](http://www2.carleton.ca/studentaffairs/ccms/wp-content/ccms-files/academic_integrity_policy.pdf) at http://www2.carleton.ca/studentaffairs/ccms/wp-content/ccms-files/academic_integrity_policy.pdf.

**DEPARTMENT OF LAW
POLICY AND PROCEDURE STATEMENT**

REGISTRATION AND COURSE SECTION: The responsibility rests entirely with the student to ensure that they have registered properly in their courses. You must attend the course section in which you registered. Double-check the timetable and your registration on Carleton Central (<https://central.carleton.ca/>). Your name must appear on the class list. You will not get credit for a course section in which you are not registered.

NOTE: On Carleton Central, students registering for full-credit courses must ensure that they have registered themselves in the same section in both the Fall Session and the Winter Session of the course.

PREREQUISITES: Students are expected to have obtained the published course prerequisites at the time of registration in law courses. Failure to meet these requirements may result in deregistration from the course in question.

MyCarleton EMAIL ACCOUNTS: The Department of Law will only communicate with students via their connect e-mail account. Important course information may be distributed using connect e-mail accounts, via the MyCarleton system. See <https://portal.carleton.ca/> for instructions on how to set up your account.

ESSAYS / ASSIGNMENTS: Note that due dates published in course outlines are enforced.

Students must keep a **BACK-UP COPY** of all essays, assignments or take home examinations, until the final grade in the course has been released.

1. **Submit essays/assignments IN CLASS to the Instructor, Tutorial Group or Teaching Assistant**, if applicable. Students who submit essays/assignments BY ANY OTHER MEANS and who wish to confirm that the essay/assignment has been received should contact the Instructor. The Department of Law assumes no responsibility for essays or assignments submitted other than to the Instructor.
2. The Department of Law drop box beside C462 LA is NOT the primary method for students to submit their papers/assignments. Students should be instructed to hand in their papers/assignments directly to their instructor or their Teaching Assistant in class, in the tutorial group or during office hours. Papers not submitted directly to the instructor or the TA may be considered late (at the instructor's discretion), even if they are submitted to the drop box on the same day and receive that day's date stamp. Exceptionally, students registered in Carleton University OnLine (CUOL) sections may submit their assignments to the drop box on the day the assignment is due.

Additionally, papers placed in the drop box by 4:00 pm will be date stamped the same day they are submitted. Papers received after 4:00 pm will be date stamped with the following day's date.
3. Assignments mailed from out of town should be clearly postmarked to show the date sent. For those assignments sent by courier or registered mail, students should maintain a receipt as proof of date mailed, in case of loss. The Department will NOT accept essays and assignments that are submitted via fax or e-mail.
4. Marked papers are handed back by Instructors in class or during office hours. Students who submit a stamped, self-addressed envelope (9 x 12 with sufficient postage) will have their essay returned by mail.
5. The Legal Style Sheet for Term Papers can be accessed on the Department of Law Web Page at the following address:
http://www.library.carleton.ca/sites/default/files/help/writing-citing/uniform_legal_style.pdf

INSTRUCTIONAL OFFENSES: ASSIGNMENTS MUST BE FULLY ORIGINAL. Faculty regulations require that all cases of suspected plagiarism be referred to the Dean. This matter is taken very seriously within the University and punishment in past cases has been severe. The Carleton University Calendar states that instructional offences, including plagiarism, may result in failure in the course, expulsion from the degree program, or expulsion from the University.

It may constitute plagiarism if students quote or adopt ideas from any source, without appropriate attribution (by the use of endnotes or footnotes). Similarly, direct quotes must be attributed and indicated by quotation marks. Students must obtain prior approval of the instructor if they intend to submit work which has been previously or is being concurrently submitted for credit in this and/or another course.

WRITTEN SKILLS & USE OF LANGUAGE: Students are expected to express themselves clearly in the English language. For assistance, talk with your Instructor, or contact the [Writing Tutorial Service](#) (613-520-2600 ext. 1125.) or [Student Academic Success Centre](#) (613-520-7850) for information on writing tutorials and improving academic skills.

It is the policy of the Department of Law to require that gender appropriate, inclusive and non-sexist language be used in all course work. This includes attention to the use of female and male pronouns and the use of language which is free of stereotypic, pejorative, and derogatory terms about either sex or members of minority groups. For further reference, see Margrit Eichler and Jeanne Lapointe, *On the Treatment of the Sexes in Research* (Ottawa: Social Sciences and Humanities Research of Canada) and *"Fallen Into Any 'Personholes' Lately? Guidelines for Avoiding Sex Stereotyping in Carleton University Communications,"* available from [Equity Services](#), 503 Robertson Hall, 613-520-5622.

EXAMINATIONS: Final Examinations are NOT returned to students. This applies to both take-home and scheduled examinations. These are retained by the Instructor, and may be reviewed upon written request by email to law@carleton.ca at least 3 days before.

Mid-term Examinations are returned to students. However, LAWS 1000 multiple-choice mid-term examinations are not returned to students but may be reviewed upon written request by email to law@carleton.ca at least 3 days before.

Final grades are released by letter grade only. Standing in a course is determined by the course instructor subject to the approval of the Faculty Dean. This means that grades submitted by an instructor may be subject to revision. No grades are final until they have been approved by the Dean. The only official way to receive your final grade is through Carleton Central (<https://central.carleton.ca/>).

DEFERRED EXAMINATIONS: Students must fulfill all course requirements in order to achieve a passing grade. Failure to hand in any assignment will result in a grade of F. Failure to write the final exam will result in a grade of ABS. FND (Failure No Deferred) is assigned when a student's performance is so poor during the term that they cannot pass the course even with 100% on the final examination. In such cases, instructors may use this notation when submitting them through the E-Grades system to indicate that a student has already failed the course due to inadequate term work and should not be permitted access to a deferral of the examination. Deferred final exams are available from the Registrar's Office ONLY if the student is in good standing in the course. For further explanation of regulations, please see p. 40-41 of the [2011-12 Undergraduate Calendar](#).

REVIEW OF GRADES: A review of a grade may raise or lower a grade, or leave it unchanged. A review may only be requested when reasonable grounds exist to believe that the grade received is incorrect.

A request for **Review of Term Work** is made to the instructor assigned to the course and the request can apply to any or all assignments, tests and other evaluations for which grades are available before the last day of classes. The request must be made **within 14 days** of the return of the graded work and in any case, before the last day of classes.

A **Review of Final Grade** is limited to review, by the instructor, of final examinations and final term papers returned after the last day of classes. Whenever possible, concerns about the grading of final work should be settled informally between the student and the instructor. When this informal process cannot be followed, students may apply for a formal Review of Grade at the Registrar's Office **within the deadlines specified** in the [2011-2012 Carleton University Calendar](#) (p. 7). A fee is charged; the fee is refunded if the grade is raised.

If the process of Review has not resolved the concerns or if Review is not appropriate, and where reasonable grounds exist which suggest uncorrected error in the grade assigned by an instructor, then an appeal of a grade may be made to a Chair/Director or to the Dean. An appeal must normally be submitted within 14 days of the return of the graded work. An appeal is specific to the grade on a given piece of work, and more than one such grade may be appealed. Reconsideration of written work in the course will be assigned by the Chair/Director or Dean to at least one qualified reader other than the instructor. For further explanation of regulations, please see p. 41 of the [2011-2012 Undergraduate Calendar](#).

LEXIS-NEXIS: At Carleton University, we recognize and respect the importance of privacy. Personal information is gathered and used only in accordance with current privacy legislation under the *Freedom of Information and Protection of Privacy Act* (FIPPA). LexisNexis requires proof of your student status in order to offer you their service without cost. Carleton has signed an agreement with LexisNexis protecting the personal information provided by the University. Should you choose to subscribe to their service, please review the LexisNexis privacy policy at: <http://www.lexisnexis.ca/corporate/privacy.php>

If you have any questions regarding the collection or use of your personal information by Carleton University please contact:

Nadine Plummer

FIPPA Coordinator & Executive Assistant
607 Robertson Hall
1125 Colonel By Drive
Ottawa, ON Canada K1S 5B6
Tel: 1 613 520 2600 ext. 2047
Fax: 1 613 520-2391
E-mail: nadine_plummer@carleton.ca

Cell phone usage during class is very distracting to the learning environment. Students are asked to turn off their cell phones in the classroom.