

**CARLETON UNIVERSITY
DEPARTMENT OF LAW AND LEGAL STUDIES**

COURSE OUTLINE

**LAWS 4402A
Employment Dispute Resolution**

FALL 2016

PREREQUISITES

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

TERM

Fall 2016

Day & Time:

Tuesday: 8:30 A.M. – 11:30 A.M.

Room:

Please check Carleton Central for up to date Room Allocation

INSTRUCTOR:

Michael Mac Neil

D589 Loeb

613-520-2600 x 3684

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

OFFICE HOURS: Tuesday: 12:00 PM - 2:00 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 "LAWS4402" in the Subject line of the email. Unless one of these two conditions is met, there is a possibility that your email will end up in a junk folder, and may not be seen.

STUDENTS REQUIRING 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 see the [Student Guide](#)

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 see the [Student Guide](#)

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 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).

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 OUTCOMES

As a result of successfully completing this course, you will be able to

- Identify different types of workplace conflict
- Identify characteristics of a range of workplace disputes
- Understand your own preferences in resolving conflict
- Use a range of bargaining techniques to negotiate solutions to conflicts
- Use your knowledge of dispute resolution design to critique employment dispute resolution systems relating to both interpersonal and structural conflict
- Apply a variety of evaluative criteria in assessing the effectiveness and fairness of dispute resolution systems
- Understand the potential and limits of a range of dispute resolution techniques such as bargaining, litigation, arbitration and mediation
- Assess the role of law in structuring workplace dispute resolution processes
- Explain the various stages of a grievance arbitration process
- Present a grievance arbitration case by introducing evidence, researching relevant statutory rules and arbitral jurisprudence to frame the issues in dispute, and persuasively arguing how an arbitrator should resolve the issue
- Research the scholarly and legal literature on dispute resolution systems
- Effectively communicate your reflections, critiques and the outcome of your research orally and in writing
- Use collaborative techniques to learn and complete projects related to employment dispute resolution
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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 cuLearn.

You are responsible for the learning environment in this course. This is a seminar style course in which students prepare in advance for class, take the lead in discussions, and fully participate in group work and simulations. 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 helping to lead the discussion. 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.

cuLEARN

This course will make extensive use of the cuLearn course management system. cuLearn provides a facility whereby a course website is maintained, allowing me to provide you with links to relevant readings, to post course notes, commentary, and assignments, to facilitate the electronic submission of assignments, and to provide you with access to your grades. It is absolutely essential that you regularly check the cuLearn site for the course. cuLearn is accessible through the Internet from off-campus or through the University's computer labs, using compatible web browsers. The URL for cuLearn is <http://culearn.carleton.ca>.

cuLearn can be accessed using your MyCarletonOne account, with the same ID and password.

EVALUATION

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.

Participation	10%
Presentations (2 X10); (Group)	20%
Bargaining Simulation	
Group Work; Individual Evaluation	20%
Arbitration Simulation (Group)	20%
Evaluation of Dispute Resolution Process	30%
Total	100%

Participation (Throughout the Term)

The participation grade will be based on a combination of attendance and active contribution to classroom activities, including working in groups, classroom discussion and sharing reflections on the classroom activities.

Presentations (Throughout Term)

As a member of a group you will be required to present to the class on some aspect of employment dispute resolution. The first presentation will relate to key ideas about bargaining arising from your reading of *Getting to Yes*, probably on September 27th. The second presentation will be about one of the developing mechanisms of dispute resolution, such as mediation, ombudsperson, coaching, etc.) These presentations will probably be made in class on November 29th.

Bargaining Simulation (In class, October 11th; Critique/Reflection Due October 18th)

In class bargaining simulation in groups on October 11th; each student must submit a 1500 word critique of *Getting to Yes*, drawing on both scholarly literature about bargaining and on your own reflections based on the bargaining simulation. As part of the critique/reflection, you will be expected to provide a brief description of the challenges posed by the bargaining, and how you met them. It is important to comment on how the principles espoused in *Getting to Yes* may have helped or hindered you in the bargaining process. You should also consult at least three other scholarly sources on bargaining processes/theory (not including assigned readings) in order to assist in assessing the *Getting to Yes* approach to bargaining. Although you have worked as part of a group for the simulation, the assessment for this component of the course is based on your individual submission of the critique/reflection.

Arbitration Simulation (In class, group preparation and presentation, either November 8 or 15; submission of written briefs one week after in class simulation.)

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. More details of the assignment will be supplied later in the term.

Evaluation of Particular Dispute Resolution Processes (Due December 9th)

A study of specific dispute resolution processes used by an actual employer or statutory tribunal; you must describe and, more importantly, evaluate these particular processes used in a Canadian workplace or used by a Canadian statutory tribunal to resolve workplace related disputes. You are required to present the analysis in a traditional written essay of **about 3000 words**, due on the last day of term, December 9th. More details will be provided later.

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

Class 1	Sept 13	Introduction
Class 2	Sept 20	Strikes and Interest Arbitration
Class 3	Sept 27	Bargaining to Resolve Conflicts
Class 4	Oct 4	Critiques of Bargaining
Class 5	Oct 11	Bargaining Simulation
Class 6	Oct 18	Conceptualizing Conflicts and Dispute Resolution Systems
	Oct 25	No Class – Study Break
Class 7	Nov 1	Collective Agreement Arbitration
Class 8	Nov 8	Arbitration Simulation
Class 9	Nov 15	Arbitration Simulation
Class 10	Nov 22	Evaluating Arbitration
Class 11	Nov 29	Alternative Dispute Resolution
Class 12	Dec 6	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 cuLearn 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 (eg. B to B-, B- to C+, etc). See the departmental policy regarding assignment submission.

LAW DEPARTMENT POLICY AND PROCEDURES

The Law Department outlines its general policies regarding assignments in its [Policy and Procedure Statement](#) that is deemed to be part of 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://carleton.ca/senate/wp-content/uploads/Academic-Integrity-Policy1.pdf) at <http://carleton.ca/senate/wp-content/uploads/Academic-Integrity-Policy1.pdf> . Extensive guides to academic integrity are available at <http://carleton.ca/studentaffairs/academic-integrity/>