

Collective Agreements and Dispute Resolution

Fall 2022

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LECTURE: Tuesdays 7-10 pm in PGCLL M22

OFFICE: KTH 718

OFFICE HOURS: Fridays, 5:00 to 6 pm on Zoom

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Course Description

- There are roughly 5 million Canadians covered by a collective agreement in their employment relationships with their employers, but just how collective agreement rights are enforced at work remains a mystery to many. Grievance arbitration is the mechanism that provides for the enforcement of the collective agreement in unionized workplaces. It is the collective agreement that governs the ongoing relationship between the employer and the union, and the grievance arbitrator ultimately resolves legal disputes concerning the proper interpretation, application, or administration of the “labour contract” in the workplace.
- This course examines many important areas of arbitral jurisprudence and the main areas of interface between the arbitral and the general legal systems. It critically evaluates the way the law comes to grips with recurrent problems arising from the enforcement of collective agreements at grievance arbitration. Topics include discharge and discipline, seniority, management rights and human rights, remedial powers of arbitrators, evidentiary issues, and the impact of employment-related statutes on unionized workplaces.
- Each seminar the class, with the instructor’s assistance, will examine a hypothetical workplace conflict or engage in an exercise together in groups (students will be able to join union or management groups and each group will collaborate and share research) and answer a series of questions concerning the dispute or discuss the exercise. Each class will close with the entire class sharing its approaches to the problem while the instructor explains the answer to each question.
- In this way, students will study real-life problems in unionized settings and evaluate the adequacy of the law’s response to the challenges facing unions, their members, and their employers in the organized workplace. Students will be required to regularly participate in class discussion, work amicably in groups, complete assignments and help present a mock arbitration hearing to an actual grievance arbitrator and have that person issue a final and binding decision on the matter.

Course Learning Objectives **NEW

- This course is designed to teach key concepts in arbitral law and promote critical skills involved in navigating the unionized workplace. At the end of this course students should be knowledgeable about various arbitral approaches to disputes, identify legal issues, be able to locate legal sources to help decipher real-world problems, analyse conflict based upon the law by identifying legal issues that

arise from complex fact situations and apply those facts to the law, research relevant caselaw to address disputes and then chart the best path toward resolving a dispute in an organized workplace.

Required Materials and Texts

- There are no required texts in this course or assigned readings in a traditional sense.
- The instructor will post hypothetical problems on Avenue to Learn each Monday before class and students will be required to read the question and begin to answer the relevant questions by initiating research relevant to the questions posed to prepare for the upcoming discussion of the topics each week in class. Students may access computers provided on campus for this research or may use their own devices. Students are strongly encouraged to bring their laptops or smartphones to class, if they have one, as they will be asked to further research questions in class and collaborate with their group to provide a reasoned and informed answer to each question. If a student does not have their own laptop or smartphone, group members will work together to research the problems on any available laptops or smartphones in class.
- The instructor has arranged free access for each student to the online resources of Lancaster House, which is a leading-edge publication house on workplace law, which includes, among other things, an online legal research tool, known as First Resort™, to enable quick, accurate in-class research for each problem. This resource is widely used in the practice of labour law, easy to use and extremely current. The on-line resources will be invaluable in assisting students with their classroom problems, assignments, or exercises.
- Despite the foregoing, the instructor reserves the right to assign additional mandatory readings in this course which will be placed on the reserve reading list of the library and/or posted on Avenue to Learn.

Course Evaluation Breakdown

- Written assignments will require students to resolve a problem connected to a workplace dispute and a mock arbitration will oblige students to work in groups to present a case in a simulated hearing before an “arbitrator”. The details of these assignments and the mock arbitration will be announced in class.
- 1. Assignment 1 worth 20%, **due Oct. 18**
- 2. Assignment 2 worth 20%, **due Nov. 15**
- 3. Mock Arbitration worth 30%, **due Nov. 29**
- 4. Participation worth 30%, **ongoing**

Weekly Course Schedule and Required Readings

Week 1

Sept. 6 – Introduction

Readings: None

Note: This class is an introduction that covers the topics, operation, and assessment of this course.

Week 2

Sept. 13 – Procedural Issues (Discharge & Discipline)

Readings: See Avenue to Learn for Grievance A, Questions 1 to 4

Week 3

Sept. 20 – Procedural Issues (Discharge & Discipline)

Readings: See Avenue to Learn for Grievance B, Questions 5, 6 & Grievance C, Questions 7- 13

Week 4

Sept. 27 – Procedural Issues (Discipline & Discharge)

Readings: See Avenue to Learn for Grievance D, Question 14 to 18

Week 5

Oct. 4 – Procedural Issues (Seniority Issues)

Readings: See Avenue to Learn for Grievance A, Questions 1 to 9

Notes: Fall Reading Week October 10-16, 2022 – No classes

Week 6

Oct. 18 – Seniority and Human Rights - Exercise

Readings: None

Notes: **ASSIGNMENT #1 DUE TODAY BEFORE CLASS (submit via Avenue to Learn)**

Week 7

Oct. 25 – Mock Arbitration & Pre-Arbitration Work Groups

Readings: None

Week 8

Nov. 1– Use of Extrinsic Evidence, Estoppel and Mistake

Readings: See Avenue to Learn for Questions 1(a), (b), (c), (d), (e), 2(a), (b), (c)

Week 9

Nov.8 – Discharge and Discipline Case Studies – Exercise

Readings: None

Week 10

Nov. 15 – Seniority Case Studies – Exercise

Readings: None

Notes: **ASSIGNMENT #2 DUE TODAY BEFORE CLASS** (submit via Avenue to Learn)

Week 11

Nov. 22 – Pre-Arbitration Assignment Meeting #1,2,3

Readings: None

Week 12

Nov. 29– Mock Arbitration Assignment Presentation #1, 2 & 3

Readings: None

Notes: Attendance at the Mock Arbitration is mandatory and students who fail to attend and participate (without valid excuse i.e. A death in the family, etc.) will not receive their group's mark and instead obtain a zero for the presentation. In addition to the mock arbitration simulation groups will hand in their written legal submissions to the arbitrator for grading by the instructor. The simulation is worth 20% and the written legal submissions are worth 10 %.

Week 13

Dec. 6 – Review, Recap & Debrief of Mock Arbitration

Readings: None

Notes: Students will evaluate the participation of their own group members for the mock arbitration and be awarded a bonus mark for submitting an evaluation for all their members of their group. Participation marks for students will be based upon the quality of their contribution in all classes, as well as within their group.

Course Policies

Submission of Assignment

In this course we will be using Avenue to Learn for written assignments. In this course, we will be using a software package designed to reveal plagiarism. Students will be required to submit their work electronically and in hard copy for this purpose.

Grades

Grades will be based on the McMaster University grading scale:

MARK	GRADE
90-100	A+
85-90	A
80-84	A-
77-79	B+
73-76	B
70-72	B-
67-69	C+
63-66	C
60-62	C-
57-59	D+
53-56	D
50-52	D-
0-49	F

Late Assignments

The granting of extensions is determined by the instructor, who will confirm whether an extension is granted and the length of the extension. **Late penalties are 4% per day up to a maximum of 7 days without extension.** Beyond that period without the permission of the instructor the student will receive zero on the assignment.

Absences, Missed Work, Illness

This course is heavily geared toward participation. While missing a class will not normally result in large penalty students are strongly encouraged to attend all classes and participate to their fullest to obtain the maximum educational benefit offered through this course. Please see the policy on reporting absences below.

Extensions for longer than 7 days will normally not be granted. In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide relevant information to justify the longer extension (up to a maximum of 14 days). Beyond 14 days without the written permission of the instructor the student will receive zero on the assignment. In other words, missed work without valid excuse will receive no mark.

Avenue to Learn

In this course we will be using Avenue to Learn. Students should be aware that, when they access the electronic components of this course, private information such as first and last names, user names for the McMaster e-mail accounts, and program affiliation may become apparent to all other students in the same course. The available information is dependent on the technology used. Continuation in this course will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

Turnitin.com

In this course we will be using a web-based service (Turnitin.com) to reveal plagiarism. Students will be expected to submit their work electronically to Turnitin.com and in hard copy so that it can be checked for academic dishonesty. Students who do not wish to submit their work to Turnitin.com must still submit a copy to the instructor. No penalty will be assigned to a student who does not submit work to Turnitin.com. All submitted work is subject to normal verification that standards of academic integrity have been upheld (e.g., on-line search, etc.). To see the Turnitin.com Policy, please to go www.mcmaster.ca/academicintegrity.

Academic Dishonesty:

<http://www.mcmaster.ca/academicintegrity/students/index.html>

Academic dishonesty consists of misrepresentation by deception or by other fraudulent means and can result in serious consequences, e.g. the grade of zero on an assignment, loss of credit with a notation on the transcript (notation reads: "Grade of F assigned for academic dishonesty"), and/or suspension or expulsion from the university.

It is your responsibility to understand what constitutes academic dishonesty. For information on the various kinds of academic dishonesty please refer to the Academic Integrity Policy, specifically Appendix 3, located at <http://www.mcmaster.ca/policy/Students-AcademicStudies/AcademicIntegrity.pdf>

The following illustrates only three forms of academic dishonesty:

1. Plagiarism, e.g. the submission of work that is not one's own or for which other credit has been obtained.
2. Improper collaboration in group work.
3. Copying or using unauthorized aids in tests and examinations.

Department/University Policies:

Labour Studies staff does not date-stamp assignments, nor do they monitor the submission or return of student papers. All papers should be submitted/returned in-class, in tutorials or during Professor/TA office hours. Instructors who utilize Avenue to Learn will provide instructions on that preference.

Absence Reporting:

<http://www.mcmaster.ca/msaf/> On-line self-reporting tool for Undergrad students only – illness lasting **less than 3 days**. Can only be used once per term. Instructors are not allowed to accept medical notes! These must be submitted to your Faculty office. In the event of an absence for medical or other reasons, students should review and follow the Academic Regulation in the Undergraduate Calendar “Requests for Relief for Missed Academic Term Work”. Please also communicate with the course instructor.

Code of Conduct:

<http://studentaffairs.mcmaster.ca>

“McMaster University is a community dedicated to furthering learning, intellectual inquiry, the dissemination of knowledge and personal and professional development. Membership in this community implies acceptance of the principle of mutual respect for the rights, responsibilities, dignity and well-being of others and a readiness to support an environment conducive to the intellectual and personal growth of all who study work and live within it.”

Computer Use:

Computer use in the classroom is intended to facilitate learning in that particular lecture or tutorial. At the discretion of the instructor, students using a computer for any other purpose may be required to turn the computer off for the remainder of the lecture or tutorial.

Course Modifications:

The instructor and university reserve the right to modify elements of the course during the term. The university may change the dates and deadlines for any or all courses in extreme circumstances. If either type of modification becomes necessary, reasonable notice and communication with the students will be given with explanation and the opportunity to comment on changes. It is the responsibility of the student to check their McMaster email AND Avenue to Learn (if used by instructor) regularly during the term to note any changes.

Email Communication Policy of the Faculty of Social Sciences:

All e-mail communication sent from students to instructors (including TAs), and from students to staff, must originate from the student’s own **McMaster University e-mail account**. This policy protects confidentiality and confirms the identity of the student. It is the student’s responsibility to ensure that communication is sent to the university from a McMaster account. If an instructor/TA receives a communication from an alternate address, the instructor may not reply at his or her discretion. **Please always include student name, ID, course # and TA name (if applicable) in messages.**

Evaluations (Online):

<http://evals.mcmaster.ca>, and log in via MACID – undergraduate only.

These help faculty and the School of Labour Studies to meet our goal of continually

improving teaching effectiveness. All students in the course are invited and encouraged to complete the evaluation.

Student Accessibility Services:

<http://sas.mcmaster.ca/>

Location: MUSC – B107

Contact: 905-525-9140 extension: 28652

NOTE: Disclosure of disability-related information is personal and confidential.

Student Accessibility Services offers various supports for students with disabilities. We work with full time and part time students. SAS provides or assists students with their academic and disability-related needs, including: Learning Strategies, Assistive Technologies, Test & Exam Administration, Note-Taking Programs, and Classroom Accommodations. *Please inform the instructor if there are disability needs that are not being met.

McMaster University Policy on Academic Accommodation of Students with Disabilities & McMaster University Anti-Discrimination Policy

- <http://www.mcmaster.ca/policy/Students-AcademicStudies/AcademicAccommodation-StudentsWithDisabilities.pdf>

Student Success Centre: <http://studentsuccess.mcmaster.ca/>

GH-110 905-525-9140 x24254

Some services include: student orientation, academic skills, volunteerism, educational planning, employment and career transition. Writing Support:

<http://studentsuccess.mcmaster.ca/students/academic-skills/writing-support-services.html>

Student Wellness Centre: <http://wellness.mcmaster.ca/>

PGCLL-201 905-525-9140 x27700

Provides services in: Personal and Psychological Counselling, Mental Health Support, Medical and Health Services