

# **ALTERNATIVE DISPUTE RESOLUTION**

## **Laws 2113**

### **Course Outline**

### **Winter Term 2019**

#### **1. Instructor Information**

Nayha Acharya, Weldon 436

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**Class time: Tuesdays 9:30 a.m. to 12:20 p.m.**

**Room: 411**

Office Hours: Wednesdays 10:00 am – 11:30 am

#### **2. ADR – What to Expect**

In this course, you will learn about, and critically evaluate, the theories and practices of alternative methods of resolving disputes including negotiation, mediation, arbitration and restorative justice models. You will also learn and practice various conflict resolution skills that are specific to each of the ADR processes that we will discuss. Classes will involve extensive use of in-class activities designed to help you develop your understanding of ADR as well as your skill set. These activities will include class discussions, small group exercises, and role-plays, which I will facilitate. This format requires that you engage with the readings and other materials prior to every class, and that you participate very actively during each class.

One of my aims in this course is to expose you to a broad variety of perspectives related to ADR. To this end, I have supplemented the textbook readings with a range of additional materials including articles, excerpts, and videos, which will be either distributed in class or posted on Brightspace. I have also invited a number of guest speakers, all from different ADR-related backgrounds. These guests have generously agreed to donate their time and we are fortunate to have access to their experiences and insights. Your attendance at all guest lectures is imperative, and you should come prepared with questions that you would like to ask them.

Additionally, I hope that this course will encourage you to discover and pursue your own ADR-related interests. This self-discovery will be facilitated by the critical reflection pieces (discussed below) and should be demonstrated in your class presentation and other contributions to the class.

Finally, in this course, you will be learning collectively, sharing and debating your unique perspectives, and working together to arrive at rich understandings of the multi-faceted

topics that we touch. In order to maintain a truly exploratory environment, we must be committed to embracing a diversity of opinions. Everyone is expected to contribute thoughtfully, and to carefully consider the ideas of other students and presenters.

### **3. Evaluation**

#### **1. Participation – 20%**

As noted above, your active participation is crucial in this course. Participation will be assessed on the basis of a demonstrated engagement with readings, enthusiastic collaboration with classmates during role-plays and other exercises, insightful comments and questions during classes, other meaningful and creative contributions to the classroom community. Please note that absences unrelated to matters dealt with through student accommodation (see below) will negatively impact your participation grade.

#### **2. Dispute Analysis – 20%**

**DUE: March 12, 2019 at the beginning of class (9:30 am).**

You will be provided with a complex scenario on February 19, 2019. The aim of this assignment is to critically examine a dispute and use the knowledge from class in order to suggest a process that is responsive to the context. Your paper should include (but is not limited to) commentary on issues central to the dispute, examination of the parties' perspectives, and explanation of the critical issues that may impact the resolution of the dispute. You should clearly explain what motivated your choice of process. You are expected to apply knowledge from class discussions and readings. I do not expect any additional research, but if you decide to do further research, please limit yourself to using a maximum of three additional resources, and cite them appropriately. The dispute analysis has a word limit of 1500 words (3-4 pages, single spaced). Please include the word count at the bottom of the page.

#### **3. Class presentation – 30%**

ADR has a particular focus on collaborative problem solving. In that spirit, presentations in this course must be done **in pairs**, unless otherwise approved. The final three classes will be reserved for class presentations. Each pair of students will be responsible for leading the class in relation to an ADR specific topic. Presentations should be engaging and interactive. Each group will have a maximum of 45 minutes, which includes all class discussions, questions, comments and activities. You should aim for your session to take 35-45 minutes. The schedule for presentations will be finalized in class on March 5, 2019. Feel free to discuss your proposed presentation with me in advance.

#### **4. Critical Reflection Pieces – 30%**

**DUE: April 8, 2019 at noon (12:00 pm) at reception**

There are two aspects to critical reflection: critical thinking and reflective thinking.

Reflective thinking involves getting in touch with your own thoughts, emotions, and experiences. Critical thinking involves critiquing, and defending your critique, of other people's ideas and theories. This may include agreeing with someone else's idea. The key idea is to explain why you agree or disagree. Critical reflection is a combination of both reflective and critical thinking.

In your critical reflection pieces, you can discuss your experiences during the class (for instance, your role in a role-play, or a comment in the class discussion that provoked you), or any out-of-class experiences that may relate to anything that comes up in the course (for instance, if you were engaged in a negotiation situation outside of class and attempted to apply a particular negotiation technique.) You can also discuss any experience you had while doing the class readings on your own, or while listening to any guest speaker or student presentation. Your entry should both describe and explain your experience – describe what you thought and felt, and explain *why* you found the experience provocative, challenging, moving, irritating, etc.

Some questions that may guide you are: What did you learn from the experience? Did the experience change the way thought about something? Did it reinforce your previously held ideas? Are you motivated to learn more about something as a result of your experience? Did the experience change your notion of what makes a legal system fair? Did it change your interpretation of your role as a lawyer? These questions are just here to give you a sense of the type of inquiries that help you to be critical and reflective. Do NOT simply answer all of these questions in your reflection pieces – think of your own and trust yourself!

You must submit FOUR critical reflection pieces. Each piece should be a maximum of 650 words. For those who are inclined, one of your four entries can take the form of an artistic or creative piece. For instance, if you want to write a poem, or make a sketch, you should feel free to express yourself in that way, but you will need to provide a brief explanation of your piece. If you choose to do that, please let me know in advance.

#### **4. Required Texts/Materials**

The required text for this course is:

Andrew J. Pirie, *Alternative Dispute Resolution: Skills, Science and the Law* (Toronto: Irwin Law Inc., 2000) [Pirie, *Alternative Dispute Resolution*]

Additional required readings will be posted on Brightspace at least one week in advance.

#### **5. Students with Special Needs/Requests for Accommodation**

Requests for special accommodation for reasons such as illness, injury or personal circumstances will require an application to the Law School Studies Committee. Such

requests must be made to Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes as soon as possible, before a scheduled exam or a deadline for an assignment. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require academic accommodation for either classroom participation or the writing of tests and exams should make their request to the Advising and Access Services Center (AASC) prior to or at the outset of the regular academic year. Please visit [www.dal.ca/access](http://www.dal.ca/access) for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at 494-2836, or they may contact Associate Dean Michael Deturbide for more information.

## **6. Plagiarism**

All students in this course must read the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the <http://academicintegrity.dal.ca/> website, and the Law School policy on plagiarism, available online at <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>.

Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

### Class Schedule with Reading List

**[Please note: this schedule is subject to change]**

#### **1. January 8, 2019: Introduction**

- In this class, I will explain how I approach this course and what you can and must expect from it. I will go over the assignments and grading for the course. There are no readings for this class, but your attendance is required and appreciated.

#### **2. January 15, 2019: Exploring and Expanding our Understanding of Conflict**

- Pirie, *Alternative Dispute Resolution*, Chapter 2.

#### **3. January 22, 2019: Negotiation I – The Theory**

- Pirie, *Alternative Dispute Resolution*, pgs. 92-136

#### **4. January 29, 2019: Negotiation II – Practicing the skills**

- Please have your negotiation plans ready prior to class, and be prepared for the negotiation simulation (materials will be distributed one week in advance.)
- Pirie, *Alternative Dispute Resolution*, 136-145
- Excerpt from Kleefeld et al *Dispute Resolution: Readings and Case Studies* (4<sup>th</sup> ed) pgs. 192-203

#### **5. February 5, 2018: Negotiation III**

- **GUEST LECTURE from 9:30-11:00:** Collaborative Family Law practitioners
- Excerpt from Nancy Cameron, *Collaborative Practice: Deepening the Dialogue*, pgs. 6-16
- Ronalda Murphy, “Is the Turn Towards Collaborative Law a Turn away from Justice?”

#### **6. February 12, 2018: Mediation I**

- Pirie, *Alternative Dispute Resolution*, pages 147-191
- Excerpt from Kleefeld et al *Dispute Resolution: Readings and Case Studies* (4<sup>th</sup> ed) 352-369

Before this class, students will be divided into four groups. Each member of the group will be assigned the readings listed below.

#### *Group A:*

- Excerpt from Kleefeld et al *Dispute Resolution: Readings and Case Studies* (4<sup>th</sup> ed) pgs. 298-299
- Carole Brown, “Facilitative Mediation: The Classic Approach Retains its Appeal”
- Kovach and Love, “Evaluative Mediation is an Oxymoron”

*Group B:*

- Excerpt from Kleefeld et al *Dispute Resolution: Readings and Case Studies* (4<sup>th</sup> ed) pgs 303-304
- Sempel, "Identifying Real Dichotomies Underlying the False Dichotomy: Twenty-First Century Mediation in an Eclectic Regime"

*Group C:*

- Excerpt from Kleefeld et al *Dispute Resolution: Readings and Case Studies* (4<sup>th</sup> ed) pgs. 306-309
- Winslade, Monk, and Cotter, "A Narrative Approach to the Practice of Mediation"

*Group D:*

- Bush and Pope, "Changing the Quality of Conflict Interaction: The Principles and Practice of Transformative Mediation"

**7. February 19, 2019: NO CLASSES – READING WEEK**

- **\*\* Dispute Resolution Assignment will be distributed (via Brightspace).**
- **Role play materials for February 26 class will be distributed (via email)**

**8. February 26, 2019: Mediation II**

- **Please familiarize yourself with the role-play materials to be distributed prior to this class.**
- Pirie, *Alternative Dispute Resolution*, pgs 212-246
- Mayer, Stulberg, Susskind, Lande, "Panel Discussion - Core Values of Dispute Resolution: Is Neutrality Necessary?" (pgs. 1-19)
- Noel Semple, Mandatory Family Mediation and the Settlement Mission: A Feminist Critique. (pgs. 5-19)
- Excerpt from Kleefeld et al *Dispute Resolution: Readings and Case Studies* (4<sup>th</sup> ed) pgs. 452-455

**9. March 5, 2019: Restorative Justice**

- **GUEST LECTURE:** Grace Campbell and Richard Derible
- Bruce Archibald and Jennifer Llewellyn, "Imagining Success for a Restorative Approach to Justice."
- Optional: Michelle Williams, "A Change has Got to Come"

**10. March 12, 2019: Arbitration**

**NOTE: \*\*Dispute Analysis due today at the beginning of class**

**Guest Panel:** Labour arbitration practitioners, Ms. Dale Darling, Ms. Kimberly Turner (Pink Larkin) and Professor Lorraine Lafferty.

- Pirie, *Alternative Dispute Resolution* pgs 282-306.

**11. March 19, 2018: Student Presentations**

**12. March 26, 2018: Student Presentations**

**13. April 2, 2018: Student Presentations**

**NOTE: \*\*Critical Reflection Pieces DUE: April 8, 2019 at 12:00 p.m. at reception.**