



**DALHOUSIE
UNIVERSITY**

SCHULICH SCHOOL OF LAW

**Alternative Dispute Resolution
Laws 2113
Fall 2018**

Instructor: Karen R. Hollett

Class hours/ Location, Monday 6 PM – 8:50 PM in Weldon RM. 308

Office Hours: By appointment – Please email me if you wish to meet and we can arrange a mutually convenient time and location.

Instructor Email: kr065798@dal.ca

Calendar Course Description

This seminar course will provide students with an opportunity to learn about and develop conflict management skills. The course will provide students with an opportunity to consider the theory and practice of various dispute resolution techniques, such as negotiation, mediation and arbitration. The course will involve skills development exercises and discussion of topical readings on the subject of dispute resolution processes.

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

BRIGHTSPACE INFORMATION

Additional information and materials for this course can be found on the Brightspace course site titled "[LAWS 2113-- Alternative Dispute Resolution](#)". Students are expected to check Brightspace regularly for updates to materials and announcements regarding the course.

EMAIL COMMUNICATION WITH STUDENTS:

Emails sent to students will be through their dal.ca address. [PLEASE CHECK YOUR EMAIL](#) You will be [deemed](#) to have read any emails sent by the Instructor to your dal.ca account.

COURSE EVALUATION AND GRADING ASSESSMENTS

I. Class Participation (25 %)

This is an interactive, discussion-oriented course. Students are expected to do the readings in advance, to attend and to be fully prepared to participate in the class. Both the quality and extent of your contributions are important.

II. Four Reflection Pieces (total 25 %)

A. Reflection paper # 1 (6%)

- Topic: Reflect on a, b, OR c.
 - a) an occasion when you have intentionally decided not to pursue a potential dispute; what were your reasons? How did/do you feel about that decision later?;
 - b) An occasion when a dispute over “resources” turned into a dispute over “principles”; how and why did this happen?; OR
 - c) Your reaction to and perspective on Len Riskin’s *“The Lawyer’s Standard Philosophical Map”*
- Due: Sept 21, 2018 at 4 PM
- Maximum 650 words

B. Reflection paper #2 (6%)

- Topic: Reflect on any aspect(s) (such as your experience during the exercise/negotiation, what style of negotiating you were using, what you observed in others, the strengths and weaknesses of various styles/approaches, any “surprise” insights or observations etc.) of the negotiation exercise you participated in during class OR any real-life negotiation you have been involved in.
- Due: September 28, 2018 at 4 PM
- Maximum 650 words

C. Reflection paper #3 (6%)

- Topic: Reflect on a OR b.
 - a) By this time in the semester, we will have read about and discussed various types of ADR processes. Critically reflect on one process (or aspect of the process) that you have had a strong reaction to (either positive or negative) and consider why you have responded in this way; OR

b) Critically reflect on Carrie Menkel-Meadow's views on the transformation of disputes by lawyers.

- Due: November 2, 2018 at 4 PM
- Maximum 650 words

D. Reflection paper #4 (7%)

- Topic: Critically reflect on any aspect of the November 5th panel discussion &/or the assigned readings
- Due: November 9, 2018 at 4 PM
- Maximum 650 words

E. Dispute Analysis (25%)

You will be provided with a complex scenario in class on November 5th. The purpose of this assignment is to critically examine a dispute. Using knowledge gained from class and the readings, you must – at a minimum- examine the issues central to the dispute; the drivers of the conflict; any impediments to resolution; and suggest a process to resolve the dispute. You must clearly explain why you chose this process and the pros and cons associated with such a process in terms of this dispute. You may (but do not have to) refer to no more than three additional resources outside of the class materials, properly cited.

- Due: November 19th, 2018 at 4 PM
- Maximum 2000 words

F. Class Presentation (25 %)

The final three classes in the semester are reserved for class presentations. Working cooperatively in pairs, students will give a presentation on a topic relevant to ADR. *All presentation topics must be approved by the Instructor.* Preliminary proposals will be discussed in class on October 15th and the schedule will be finalized in class on October 29th. Each member of the presenting team must be involved in the presentation and these must be interactive and engaging. There will be between 30-45 minutes maximum allotted for each presentation.

Please note: All written assignments for this course must be submitted in hard copy to Reception.

Class Schedule (subject to adjustments):

Class #1. Sept 10th:
Introductory Class
Why ADR?
Overview of the Course
Thinking About Conflict & Conflict Resolution
<i>Note: No assigned readings</i>
Class #2 Sept 17 th
Conflict & Negotiation
Readings:
Pirie, Ch. 2
Riskin, L. "Mediation and Lawyers" (1982) 43:1 Ohio State LJ 29. (pp. 41-43)
Abel, R, et al. "The Emergence and Transformation of Disputes: Naming, Blaming, and Claiming" (1980) 15:3 L & Soc Rev 631. (pp 632-44)
Gary Furlong, <i>The Conflict Resolution Toolbox</i> , Ch 1, 2, 3, 4 (pp 1-60)
Julie Macfarlane, "Why do People Settle?" (pp. 689-94)
<i>Important date: Reflection Piece # 1 due Friday, September 21st at 4 PM.</i>
Class #3 September 24 th
Negotiation (continued)
Complex Negotiation Simulation
Readings:

Pirie, Ch 3

Howard Raiffa, *The Art and Science of Negotiation* (Cambridge, MA: Harvard University Press, 1982) pp. 126-30 (On Reserve KB 252 R14)

R. J. Lewicki, *et al*, *Negotiation* 2nd ed. pp. 128-141

Important date: Reflection Piece # 1 due Friday, September 28st at 4 PM.

Class #4 October 1

Collaborative Legal Practice: The Process and the Skills

Guest Speaker: Jacinta Gallant, Waterstone Law

Readings:

Speaker materials - TBD

Cameron, Nancy J. *Collaborative Practice: Deepening the Dialogue* (Vancouver: CLE Society of BC, 2004). On Reserve KB 138 C18. (pp. 1-15)

Ronalda Murphy, Is the Turn Toward Collaborative Law a Turn Away from Justice? *Family Court Review* 42 (3):460 - 470 · March 2005

Class #5 October 15

Mediation Theory

Class discussion and mediation video

IMPORTANT NOTE: During this class, we will have preliminary discussions about the class presentations scheduled for the last three classes of the course.

Readings:

Pirie, Ch. 4

Class #6 October 22

Mediation Simulation – Preparation, Practice & Debrief

Students will prepare for, participate in and debrief mediation role plays (with the assistance of four guest mediators from the Department of Conciliation and Mediation Services, Labour and Advanced Education)

Note: No assigned readings for this class.

Class #7 October 29

Arbitration, Hybrid Processes and other ADR Processes

Video: *Interviewing and Counseling on ADR, Proposing ADR to an Opposing Counsel*

IMPORTANT NOTE: During this class, we will finalize the schedule for the class presentations during the last three classes of the course.

Readings:

Pirie, Ch. 5.

Menkel-Meadow, Carrie J. "The Transformation of Disputes by Lawyers: What the Dispute Paradigm Does and Does not Tell Us" (1985) *Missouri J of Dispute Resolution* 25. (pp 31-33)

Important date: Reflection Piece # 3 due Friday, November 2nd at 4 PM

Class #8 November 5th

Panel/Class Discussion: ADR – The Practice and Future of ADR

Jarrod M. Baboushkin, Chief Conciliation and Mediation Officer, Labour and Advanced Education

Richard Derible, Director, Restorative Justice Initiatives, Dept. of Justice

Kymberley Franklin, Senior Legal Counsel, Human Rights Commission

Lorraine Lafferty, QC, Arbitrator, Mediator, Vice-Chair, Labour Board

James Musgrave, QC, Chartered Mediator, Qualified Arbitrator and experienced corporate commercial lawyer

Readings:

Pirie, Ch. 6, 7

Julie MacFarlane, *The New Lawyer*, 2nd edition, Ch. 1

Fiss, Owen M. "Against Settlement" (1984) 93:6 Yale LJ 1073. (pp. 1085-87)

Video: Carrie Menkel-Meadow, Court vs. Mediation - Mediate.com Video

<https://www.youtube.com/watch?v=3ulhpr89wls>

Llewellyn, J. (2012). Restorative justice: Thinking relationally about justice. In J. Downie, & J. Llewellyn (Eds.), *Being Relational* (pp. 89-108). Vancouver: UBC Press.

Jennifer Llewellyn, *Realizing the Full Potential of Restorative Justice*, Policy Options May 2, 2018

Jennifer Llewellyn, *A Relational Vision of Justice* Corrections Canada 2011

Reflection Piece # 4 due Friday, November 9th at 4 PM.

Dispute Analysis due November 19th at 4 PM (Scenario for the dispute analysis will be handed out at this class).

Classes #9, #10, and #11 November 19th 26th and Dec 3rd

Class Presentations

Please note that all Students must adhere to the following Law specific policies and procedures:

1. Student Requests for Accommodation

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean, Academic Michael Deturbide or the Director of Student Services and Engagement Dana-Lyn Mackenzie as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit 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 (902) 494-2836.

2. Submission of Major Papers and Assignments

Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties:

<https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

3. Plagiarism

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <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.

* Grading Practices Policy at:

https://www.dal.ca/dept/university_secretariat/policies/academic/grading-practices-policy.html)

For reference:

* General Academic Support – Advising Halifax: https://www.dal.ca/campus_life/academic-support/advising.html

* Fair Dealing Guidelines <https://libraries.dal.ca/services/copyright-office/guidelines/fair-dealing-guidelines.html>