



Canadian Association of University Teachers  
Association canadienne des professeures et professeurs d'université

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February 14, 2014

## MEMORANDUM 14:07

**TO:** Presidents and Senior Administrative Officers  
CAUT Local and Federated Associations

**FROM:** James L. Turk, Executive Director

**RE:** **CAUT Arbitration Database**

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As you hopefully know, CAUT has had for many years a database, available only to member associations, of arbitration decisions relevant to post-secondary education. The database is searchable by key word, arbitrator, institution, and grievor's name. For each decision there is a summary and, if you want the text of the decision, CAUT sends it to you.

Last year, we began the process to revising the database so it would contain not only the summaries but also the complete decisions that would be fully searchable, and could be downloaded directly. Because of the number of decisions, that process will not be completed for a number of months. In the meantime, the current database continues to be available to all CAUT member associations on the member portion of our website.

To provide you access to the most recent decisions that will be in the new database but are not in the current one, our legal department has prepared the attached document that lists all of the 2013 decisions involving our member associations by key word. For each there is the date, the arbitrator, and the reference. The reference includes the citation and, for those that are publicly available, it includes where it may be obtained. Some are available on CanLii which is accessible to everyone and others are available only on subscription services like Quicklaw. For the latter and for any that are not publicly available, you can request a copy of the decision from Veronique Lacroix ([Lacroix@caut.ca](mailto:Lacroix@caut.ca)) in our legal department.

Finally, I would like to ask each of you to send us any arbitration decisions or judicial reviews in which your association has been involved in the past three years so we can be sure our database is inclusive. As well, please routinely send us arbitration awards each time one in which you have been involved is issued. These should be sent to [Lacroix@caut.ca](mailto:Lacroix@caut.ca).

Attachment



## ATTENTION – Arbitration Decisions 2013

For each decision, the selected keywords refer to the main subject matters analysed by the tribunal, not to the **conclusions** rendered by the tribunal.

The following document contains 27 decisions (grievance arbitration and judicial review). Half of these decisions have been sent to CAUT by the association involved in the grievance; the remaining half has been identified through our research through various databases.

If there are any decisions missing, please send an electronic copy to Véronique Lacroix: [lacroix@caut.ca](mailto:lacroix@caut.ca).

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Pour chacune des décisions, les mots-clefs indiquent les principaux sujets discutés par le tribunal et non pas les **conclusions** du tribunal.

Ce document contient 27 décisions (arbitrage de grief et révision judiciaire). La moitié de ces décisions ont été envoyées à l'ACPPU par l'association impliquée; l'autre moitié provient de nos recherches dans différentes banques de données.

Si vous avez d'autres décisions pour l'année 2013, pourriez-vous en faire parvenir une copie électronique à Véronique Lacroix: [lacroix@caut.ca](mailto:lacroix@caut.ca).

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**13-01      *University of Windsor v. University of Windsor Faculty Association* [EN]**

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**Appointment as a sessional lecturer / criteria to be considered.**

**Date:** January 15, 2013

**Before:** H. Snow, Arbitrator

**Total Pages:** 3

**Reference:** [2013] O.L.A.A. No. 27 (Quicklaw) or please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-02      *Avijit Chaudhuri c. Université McGill* [FR]**

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**Congédiement sans cause juste et suffisante / Article 124 : Loi sur les normes du travail.**

**Dismissal for a good and sufficient cause / Section 124: An Act Respecting Labour Standards.**

**Date:** March 1, 2013

**Before:** J. Paquette, juge administratif

**Total Pages:** 80

**Reference:** [2013 QCCRT 104 \(CanLII\)](#)

**Related Decision(s):** n/a

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**13-03**     ***York University v. York University Faculty Association*** [EN]

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Ability of the employer to negotiate aspects of the employment relationship directly with employees / rules of interpretation.

**Date:** March 19, 2013

**Before:** L. Steinberg, Arbitrator

**Total Pages:** 17

**Reference:** [2013 CanLII 13363 \(ON LA\)](#)

**Related Decision(s):** n/a

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**13-04**     ***Mount Saint Vincent University Board of Governors v. Mount Saint Vincent University Faculty Association*** [EN]

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Use of academic file and Student Rating of Instructions Questionnaires results / content of academic file.

**Issue(s):** Whether the content of the academic file and/or the SRIQ results can be used to support discipline against a faculty member.

**Date:** March 19, 2013

**Before:** S.M. Ashley, Arbitrator

**Total Pages:** 40

**Reference:** 2013 CLB 37076 (Labour Spectrum) or please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-05**      ***McMaster University v. McMaster University Academic Librarians' Association*** [EN]

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**Issue(s):** Whether bargaining unit members' activities on behalf of the association should be recognized by the university as 'professional service' for the purposes of determining merit pay under the collective agreement.

**Date:** April 3, 2013

**Before:** P. Knopf, Arbitrator

**Total Pages:** 15

**Reference:** [2013 CanLII 16648 \(ON LA\)](#)

**Related Decision(s):** n/a

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**13-06**      ***Mount Allison Faculty Association v. Mount Allison University*** [EN]

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**Employer's decision to postpone sabbatical leave already granted to grievor / rules of interpretation.**

**Date:** April 17, 2013

**Before:** G.P.L. Filliter, Arbitrator

**Total Pages:** 11

**Reference:** [2013 CanLII 19470 \(NB LA\)](#)

**Related Decision(s):** n/a

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**13-07**      ***Okanagan University College v. Okanagan University College Faculty Association*** [EN]

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Application under s. 99 of the *Labour Relations Code* seeking review of an arbitration award / denial of instructor credit for Teaching Load Units related to periods when the instructors were on maternity and/or parental leave.

**Date:** April 22, 2013

**Before:** J. Carwana, BC LRB

**Total Pages:** 6

**Reference:** [2013 CanLII 21912 \(BC LRB\)](#)

**Related Decision(s):** Arbitration Award, November 9, 2012 (please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca) ); Court of Appeal – Application under s. 100 of the *Labour Relations Code*, [2013 BCCA 561 \(CanLII\)](#), December 13, 2013 (“The accrual is necessary for conversion from 'term' to 'continuing' employees.”)

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**13-08**      ***University of Western Ontario v. University of Western Ontario Staff Association*** [EN]

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Appointments / librarian/archivist unit / provisions of the appointments article / ‘temporary term appointment’.

**Date:** June 20, 2013

**Before:** B. Etherington, Arbitrator

**Total Pages:** 24

**Reference:** 2013 CLB 18885 (Labour Spectrum) or please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-09      *University of Windsor v. University of Windsor Faculty Association* [EN]**

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Dispute related to the 'University of Windsor Retirement Plan for Faculty and Certain Employees' / disclosure of documents / condition set down for confidentiality protection / Summons: direction to produce listed documentation.

**Interim Direction # 2.**

**Date:** July 8, 2013

**Before:** P.C. Picher, Arbitrator

**Total Pages:** 30

**Reference:** [2013 CanLII 50445 \(ON LA\)](#) \*Note: April 11, 2013 date on CanLII should be July 8, 2013.

**Related Decision(s):** Interim Direction # 1, November 1, 2012 (please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca) )

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**13-10      *College of New Caledonia v. Faculty Association of the College of New Caledonia* [EN]**

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Lay-off notices on the basis of demonstrated shortage of funds / two applicable collective agreement documents: the common and the local agreements / employer commitments: "it is agreed that the institution will make every reasonable attempt to minimize the impact of funding shortfalls and reductions on the work force".

**Date:** July 24, 2013

**Before:** J. Nichols, Arbitrator

**Total Pages:** 33

**Reference:** [2013] B.C.C.A.A.A. No. 100 (Quicklaw) or please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-11**      ***Vancouver Island University v. Vancouver Island University Faculty Association*** [EN]

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Denial of payment of short term disability benefits / recourse against employer and/or insurer / jurisdiction of the arbitration board to hear and determine the issue.

**Date:** August 7, 2013

**Before:** J.L. McConchie, Arbitrator

**Total Pages:** 61

**Reference:** [2013 CanLII 51442 \(BC LA\)](#)

**Related Decision(s):** n/a

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**13-12**      ***University of Western Ontario v. University of Western Ontario Staff Association*** [EN]

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Denial of tenure and promotion / content of promotion and/or tenure file / missing information related to research performance.

**Date:** August 12, 2013

**Before:** R.D. Howe, Arbitrator

**Total Pages:** 26

**Reference:** [2013] O.L.A.A. No. 306 (Quicklaw) or please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-13**      ***Memorial University of Newfoundland v. Memorial University of Newfoundland Faculty Association*** [EN]

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Denial of tenure / peer review process / criteria for promotion / conflict of interest / options given to the promotion and tenure committee.

**Date:** August 26, 2013

**Before:** K.P. Swan, A. Comiter and G.S. Kealey, Arbitrators

**Total Pages:** 18

**Reference:** 2013 CLB 26941 (Labour Spectrum) or please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-14**      ***University of Western Ontario v. University of Western Ontario Staff Association*** [EN]

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Non-renewal of limited term or limited duty appointments / procedural irregularities / relevant provisions of the appointments articles.

**Date:** September 25, 2013

**Before:** B. Etherington, Arbitrator

**Total Pages:** 65

**Reference:** [2013] O.L.A.A. No. 394 (Quicklaw) or please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-15**      *Memorial University of Newfoundland v. Memorial University of Newfoundland Faculty Association* [EN]

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Settlement of grievance arbitration recorded in writing / additional issues / refusal of the arbitrator to issue his own award.

**Date:** September 17, 2013

**Before:** M. Teplitsky, Arbitrator

**Total Pages:** 3

**Reference:** please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-16**      *Association des professeur(e)s de l'Université Concordia c. Ut Université Concordia* [FR]

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Charge de travail pour cinq années académiques / prescription et prématurité / fardeau de la preuve / exercice du droit de gérance.

Workload for five academic years / time limits and prematurity / management rights / burden of proof.

**Date:** October 1, 2013

**Before:** D. Sabourin, Arbitrator

**Total Pages:** 63

**Reference:** [2013 CanLII 61842 \(QC SAT\)](#)

**Related Decision(s):** n/a

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**13-17**      ***University of Windsor v. Faculty Association of the University of Windsor*** [EN]

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Refusal of appointment of a sessional instructor for four appointments / 'sessional evaluation grid' / 'sessional grid scoring document' / management rights.

**Date:** October 2, 2013

**Before:** M.V. Watters, Arbitrator

**Total Pages:** 10

**Reference:** [2013] O.L.A.A. No. 398 (Quicklaw) or please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-18**      ***York University v. York University Faculty Association*** [EN]

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'Normal teaching load' / entitlement to course release.

**Date:** October 7, 2013

**Before:** W. Kaplan, Arbitrator

**Total Pages:** 8

**Reference:** [2013 CanLII 63104 \(ON LA\)](#)

**Related Decision(s):** n/a

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**13-19      *Laurentian University v. Laurentian University Faculty Association* [EN]**

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Appointment process / courses to be offered by a department that fall outside the normal course load of full-time faculty and permanent sessional lecturers of the department.

**Date:** October 7, 2013

**Before:** B. Sheehan, Arbitrator

**Total Pages:** 15

**Reference:** [2013] O.L.A.A. No. 416 (Quicklaw) or please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-20      *University of Prince Edward Island Board of Governors v. University of Prince Edward Island Faculty Association* [EN]**

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Denial of application for tenure.

**Issue(s):** Did the Dean's submission to the review committee prejudice the proper processing of the grievor's application for tenure / did the review committee consider all the appropriate criteria / was the review committee decision unreasonable / should the President have deferred the grievor's application / if there were errors made in process or on the merits, what is the most appropriate remedy.

**Date:** October 30, 2013

**Before:** B.D. Bruce, Arbitrator

**Total Pages:** 30

**Reference:** please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-21**      *University of Prince Edward Island Board of Governors v. University of Prince Edward Island Faculty Association* [EN]

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Denial of sabbatical leave / decision-making process / time limits.

**Date:** October 31, 2013

**Before:** D.C. Stanley, Arbitrator

**Total Pages:** 25

**Reference:** 2013 CLB 34473 (Labour Spectrum) or please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-22**      *Association des professeur (e) s de Bishop University c. Université Bishop* [FR]

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Suspension et terminaison d'emploi / demande préliminaire présentée par l'association / coûts d'arbitrage / liberté académique / requête pour précisions.

Dismissal and discipline / association's preliminary requests / costs of arbitration / academic freedom / motion for particulars.

**Interim Order.**

**Date:** November 8, 2013

**Before:** M. Flynn, Arbitrator

**Total Pages:** 23

**Reference:** [2013 CanLII 78262 \(QC SAT\)](#)

**Related Decision(s):** n/a

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**13-23      *University of Prince Edward Island Board of Governors v. University of Prince Edward Island Faculty Association* [EN]**

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Employer's conduct in investigating an allegation of a disciplinary nature made by another faculty member against the grievor respecting his work.

Issue(s): Was the Dean required to disclose the name of the complainant / did the Dean deal with the complaint in a discreet manner / did the Dean provide a clear statement of the allegations in his written notification to the grievor.

**Date:** November 15, 2013

**Before:** B.D. Bruce, Arbitrator

**Total Pages:** 15

**Reference:** 2013 CLB 39690 (Labour Spectrum) or please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-24      *York University v. York University Faculty Association* [EN]**

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Librarian / denial of promotion / definition: 'duration of final year of onsite employment' / production of documents.

**Date:** November 22, 2013

**Before:** R. Goodfellow, Arbitrator

**Total Pages:** 20

**Reference:** [2013 CanLII 74237 \(ON LA\)](#)

**Related Decision(s):** n/a

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**13-25**      ***University of Western Ontario v. University of Western Ontario Staff Association*** [EN]

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Union dues deduction / duty of the university to identify people and deduct dues in a timely manner / liability imposed on the university.

**Date:** November 22, 2013

**Before:** R.D. Howe, Arbitrator

**Total Pages:** 8

**Reference:** [2013] O.L.A.A. No. 447 (Quicklaw) or please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**13-26**      ***University of British Columbia v. Faculty Association of the University of British Columbia*** [EN]

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Claim that the university is not fully complying with its contribution obligations under the parties' pension agreement / objection to arbitrability / equitable doctrine of laches / fiduciary duty.

**Date:** December 9, 2013

**Before:** J.M. Gordon, Arbitrator

**Total Pages:** 53

**Reference:** [2013 CanLII 82543 \(BC LA\)](#)

**Related Decision(s):** n/a

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**13-27      *University of Prince Edward Island Board of Governors v. University of Prince Edward Island Faculty Association* [EN]**

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**Unilateral decision by the university to discontinue a committee.**

**Issue(s):** Whether the university had an obligation, under the collective agreement, to continue the committee and to allow for elections to it of Faculty Association members.

**Date:** December 31, 2013

**Before:** D.C. Stanley, Arbitrator

**Total Pages:** 9

**Reference:** please contact Véronique Lacroix to obtain an electronic copy: [lacroix@caut.ca](mailto:lacroix@caut.ca)

**Related Decision(s):** n/a

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**Academic Freedom (1)**

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