

**Employment Law
Laws 2048**

“Employment Law and Labour Market Regulation”

Introductory Memorandum

Calendar Course Description:

This course will review Canadian employment law. Areas to be covered may include: constitutional jurisdiction, the primary components of the employment relationship, employment contracts, implied rights and obligations in the employment relationship, the right to terminate the employment relationship, reasonable notice of dismissal, constructive dismissal, cause for summary dismissal, fiduciary obligations, and employee obligations express and implied. Additional topics may include current employment law problems, Occupational Health & Safety legislation, Human Rights legislation and Workers Compensation legislation.

Format: One two-hour seminar per week for one term – **Tuesdays 4:30 – 6:20, Room 411**

Evaluation: By Major Paper (60%) – (see Major Paper Guidelines from Law School Calendar below)

plus

Session Presentations (15%) – Based on *Employment Law and Labour Market Regulation* (This is a presentation based on sessions VII through XI—students will be marked based on content, presentation, and the ability to engage the class in discussion.)

Research Paper Materials and Presentation (15%) – Materials and Oral Presentation (This is a combination of the materials due on February 12, 2019, as noted below and a presentation based on the student’s paper, marked as the session presentation above.)

General Class Participation - (10%) – Attendance and Discussion

Deadlines: Paper Topic Outline (1-2 pages) and Initial Bibliography – Feb.12, 2019

Preparation of Seminar Presentation Materials – One week before your presentation

Papers Due April 23, 2019 - 4pm –Hard copy to reception and electronic copy to Professor by email

Topic Schedule: see *Employment Law and Labour Market Regulation: Cases and Materials 2015* (posted on Brightspace) & *Employment Law Syllabus 2019* (below)

Session I - Jan. 8- Course Introduction: Expectations & Approaches – Teaching & Evaluation - Substance

Session II - Jan. 15 - The Evolution of Employment Law and Labour Market Regulation

Session III - Jan. 22 – The Employment Relationship and Beyond: Players and Paradigms

Session IV - Jan. 29 – Employment Standards: Protections, Exemptions and Enforcement

Session V - Feb. 5 – Occupational Health and Safety: Prospective Regulation and Penalties

Session VI - Feb. 12 – Workers’ Compensation: Reactive and Proactive Regulation

Feb. 19 - **Study Break** (student presentations will commence after the Break)

Session VIII - Feb. 26 – Whistleblower Protections, Privacy and Rights Discourses

Session VIII - Mar. 5 – Protecting Employers: Good Faith, Loyalty & Non-Compete Clauses

Session IX – Mar. 12 – Employee Resignation/Quits and Constructive Dismissal

Session X – Mar. 19 – Employer Terminations: Notice, Cause and Compensation, .

Session XI – Mar. 26 – Labour Market Regulation & Globalization: New Approaches - TFW’s to Rana Plaza

Session XII – April 2 – Remaining Student Paper Presentations

**Reminder: Term Papers due by 4 pm. April 23, 2019 – Hard Copy at Reception Office
- 1 Electronic Copy to Professor**

See Attached Appendices:

- (1) Detailed Employment Law Syllabus 2019
- (2) Disability Policy
- (3) Plagiarism Policies
- (4) Late Penalty Policy, and
- (5) Major Paper Marking Guidelines

Appendix 1. Detailed Employment Law Syllabus

Note Chapter references are to *Employment Law and Labour Market Regulation: Cases and Materials 2019* (posted on Brightspace)

COURSE INTRODUCTION

- Week 1 – Course Introduction (January 8, 2019)
 - Employment Law and Labour Market Regulation (Ch. 1A)
 - The Common Law Model of Employment (Mummé)
 - Changing Boundaries in Employment (Fudge, Tucker, Vosko)
 - Labour Law after Labour (Arthurs)
 - Law Commission of Ontario Report on Precarious Work
 - David Weil, *The Fissured Workplace*
 - Constitutional Dimensions (Ch. 1B)
 - Canadian Employment Law Excerpt (Ball)
 - *Meredith* and *NS Public Services Sustainability Act*
 - International Dimensions and the ILO (Ch. 1C)
 - Declaration of Philadelphia
- Week 2 – The Evolution of Employment Law (January 15, 2019)
 - The Evolution of Employment Law (Ch. 2A)
 - Employment Law in Canada Excerpt (Barnacle)
 - Canadian Employment Law Excerpt (Ball)
 - Criticisms of the Contractual Model (Collins)
 - Implied Terms (Ch. 2B)
 - *Wallace*
 - *Stamos*
 - A Comprehensive Perspective on Labour Market Regulation (Ch. 2C)
 - Constituting and Regulating the Labour Market for Social and Economic Purposes (Howe, Johnstone and Mitchell)
 - Income Inequality, The Canadian Story (Green, Riddell and St. Hilaire)

THE EMPLOYMENT RELATIONSHIP

- Week 3 – The Employment Relationship (January 22, 2019)
 - The Employment Relationship in Broader Context (Ch. 3A)
 - Changing Perspectives Upon the Employment Relationship in British Labour Law (Davies and Freedland)
 - Beyond Employment: The Legal Regulation of Work Relations (Johnstone)
 - Who is an Employee? (Ch. 3B)
 - *Royal Winnipeg Ballet*
 - *Klingner*
 - *Egg Films*
 - The Problem of Unpaid Interns (Mandryk et al, and Canadian Press)
 - Who is an Employer? (Ch. 3C)
 - *Lian*
 - *Downtown Eatery*
 - *McCormick* (aka *Fasken Martineau*)

- *Pointe-Claire*
- *Prassl*
- *BFI*
- Vicarious Liability (Ch. 3D)
 - *E.B.*

PROTECTING THE EMPLOYEE AND STATUTORY OBLIGATIONS OF THE EMPLOYER

- Week 4 – Employment Standards (January 29, 2019)
 - Introduction to Employment Standards in N.S. (Ch. 4A)
 - Labour Standards Reform in Nova Scotia: Reversing the War against Workers (CCPA)
 - Labour Code Exemptions (Ch. 4B)
 - *Torre*
 - *Saskatoon Horses*
 - Foreign Workers (Ch. 4C)
 - *Marie-Lee*
 - Severance Pay (Ch. 4D)
 - *Rizzo Shoes*
 - Enforcement
 - A Model of Responsive Workplace Law (Doorey) (Ch. 4E)

- Week 5 – Occupational Health and Safety (February 5, 2019)
 - Introduction to OHS (Ch. 5A)
 - Individual Employment Law Excerpt (England)
 - The Right to Refuse Unsafe Work and Employer Discrimination (Ch. 5B)
 - *Kamyr*
 - *Martin-Ivie*
 - *Boivin*
 - Administrative Penalties (Ch. 5C)
 - *Lafarge*
 - (Plus Hand-Out-New N.S. Regulations)
 - Enforcement and New Regulatory Paradigms (Ch. 5D)
 - The Limits of Voice: Are Workers Afraid to Express their Health and Safety Rights? (Lewchuck)
 - Regoverning the Workplace Excerpt (Estlund)
 - International Perspectives (Ch. 5E)
 - EU-OHSA Multi-Annual Strategic Programme

- Week 6 – Workers’ Compensation (February 12, 2019)
 - Introduction to Workers’ Compensation (Ch. 6A)
 - Basic Description of Workers’ Compensation (Gunderson and Hyatt)
 - Causation (Ch. 6B)
 - *Durnford*
 - *Ross*
 - Exclusions (Ch. 6C)
 - *Martin*
 - *D.W. v. N.B.*
 - Criticisms of the Current Regime (Ch. 6D)
 - Should Work-Injury Compensation Continue to Imbibe at the Tort Bar (Hyatt and Law)
 - Comparative and International Materials (Ch. 6E)
 - Industrial Accidents and Occupational Diseases: Some Findings for the Netherlands, Belgium, Germany and Great Britain (Philipsen)

STUDY BREAK - February 19, 2019 – NO CLASS

- Week 7 – Other Forms of Protection (February 26, 2019)
 - Whistleblower Protections (Ch. 7A)
 - Speaking Truth to Power? The Search for Bureaucratic Independence in Canada (Sossin)

- *Merk*
- A Purposive Approach to Whistleblower Protection: A Comment on *Merk* (Doyle)
- Privacy (Ch. 7B)
 - Employee Privacy: The Need for Comprehensive Protection (deBeer)
 - *Irving Pulp & Paper*
 - *Colwell*
- Rights Discourses and Labour Market Regulation (Ch. 7C)
 - The New Disclosure of Labor Rights: From Social to Fundamental Rights? (Fudge)
 - Theories of Rights as Justifications for Labour Law (Collins)

PROTECTING THE EMPLOYER (March 5, 2019)

- Week 8 – Duties Owed by Employees and Non-Compete Clauses
 - Fiduciary Duties, Duty of Good Faith and Duty of Loyalty (Ch. 8A)
 - *Restauronics*
 - *RBC Dominion Securities*
 - *Bhasin v. Hrynew*
 - Non-Compete Clauses (Ch. 8B)
 - Widgets to Digits: Employment Regulation for the Changing Workplace (Stone)
 - The Firm Strikes Back: Non-compete Agreements and the Mobility of Technical Professionals (Marx)
 - *Lyons*
 - *Winnipeg Livestock Sales*

TERMINATING THE EMPLOYMENT RELATIONSHIP

- Week 9 – When the Employee Ends the Employment Relationship (March 12, 2019)
 - Resignation/Quitting (Ch. 9A)
 - *Kieran*
 - *Asphalte Desjardins Inc.*
 - Constructive Dismissal (Ch. 9B)
 - Quitting for Good Reason Excerpt (Echlin and Fantini)
 - *Farber*
 - *Boquist*
 - *Farquhar*
 - *Potter*
- Week 10 – When the Employer Ends the Employment Relationship (March 19, 2019)
 - Fairness at Work Excerpt (Arthurs) (Ch. 10A)
 - Termination with Notice (Ch. 10B)
 - *Bardal*
 - *Rubin*
 - *Howard*
 - Termination for Cause/Summary Dismissal (Ch. 10C)
 - *Day*
 - *Babcock*
 - *Wilson v. Atomic Energy of Canada*
 - Compensating the Terminated Employee (Ch. 10D)
 - *Honda v. Keyes*
 - International Dimensions (Ch. 10E)
 - ILO Termination of Employment Recommendations

GLOBALIZATION AND NEW TRENDS IN LABOUR MARKET REGULATION

- Week 11 – Globalization and New Trends in Labour Market Regulation (March 26, 2019)
 - New Approaches to Labour Market Regulation (Ch. 11A)
 - Re-Inventing Labour Law (Weiss)
 - Class Actions and TFWs (Ch. 11B)
 - *Dominguez*
 - Mandatory Employment Arbitration (Ch. 11C)
 - Mandatory Arbitration of Individual Employment Rights: The Yellow Dog Contracts of the 1990s (Stone)
 - *Huras*
 - *McLaughlin*
 - The Gig/Sharing Economy of “Cloud Capitalism” (Ch. 11D)

- Debating the Sharing Economy (Schor)
- Digital Matching Firms (US Dept of Commerce)
- *Aslam et al v. Uber* (UK Employment Tribunal) (Brightspace Handout)
- Global Dimensions (Ch. 11D)
 - Rana Plaza News Story (BBC)
 - Post Rana Plaza Arrangement with ILO
 - Rana Plaza 3 Years Later (Kasperkevich and Shahabuddin)

REMAINING PAPER PRESENTATIONS (April 2, 2019)

- Week 12 – See student prepared materials

Appendix 2. Students with Disabilities

The university policy of centralizing the process for certain requests for special accommodation continues in the 2018-19 academic year. (Requests for in-class note takers are now dealt with by the central university). Here is the relevant syllabus paragraph:

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 Director of Student Services Dana-Lyn MacKenzie 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 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 or Director of Student Services Dana-Lyn MacKenzie for more information.

Appendix 3. Plagiarism Policies

(a) Submission of Major Papers/New Policy on Use of Originality Checking Software

Students are required to submit major papers in hard copy. However, an instructor may require papers to be submitted in both hard copy and electronic form, and having a paper in electronic form is helpful if a faculty member wants to check for plagiarism.

****Please note the updated Senate policy on the use of originality-checking software (link provided):**

On July, 3, 2013 the following message was forwarded to all faculties from the Secretary of Senate: *“On November 26, 2012, Senate amended the Policy on Submission of Student Papers. The amended Policy is now called the Policy on Student Submission of Assignments & Use of Originality Checking Software, and is effective on September 1, 2013. The Policy states that “any instructor may require student assignments to be submitted in both written and electronic (computer-readable) form, e.g., a text file or as an email attachment, as defined by the instructor. Use of third-party originality checking software does not preclude instructor use of alternate means to identify lapses in originality and attribution. The results of such assessment may be used as evidence in any disciplinary action taken by the Senate.” Please review the complete Policy and determine whether you wish to note this in your academic syllabus.”*

Major papers in Employment Law must be submitted on hard copy. Students should hand papers in to the reception desk and ensure they are date and time stamped.

Please note students are also required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

- a) submit copies of multiple drafts demonstrating development of their work
- b) submit copies of sources
- c) submit an annotated bibliography

(b) Plagiarism Definitions and University and Law School Policies on 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, as set out in the law school regulations, available online at <http://www.dal.ca/faculty/law/current-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.

Appendix 4. Studies Committee Policy on Late Penalties

Introduction

These rules apply to JD students.

In order to ensure that all students are treated equally and that no student is allowed to profit from taking extra time to complete an exam, paper or assignment, late penalties will be imposed for work that is not completed on time. The quantum of penalty imposed will vary depending on the amount of time allowed for the student to complete the assignment, the degree of lateness, and the existence of any mitigating circumstances. Students are responsible for ensuring their assignments are time stamped by the receptionist when they hand them in.

1. The date for submission of major papers shall be announced orally and in writing by the instructor before the end of the course change period; the due date shall in no case be later than noon on the last regular day of exams.
2. The date for submission of other papers and assignments shall be announced in class with appropriate notice; the due date shall in no case be later than noon on the last regular day of exams.
3. The above stipulations apply equally in the case of optional course components, with the further proviso that the date for deciding whether to exercise the option shall be a time no later than the start of the final examination for that course. (In the event that the instructor sets an earlier date for deciding to exercise the option, it is within the instructor's discretion to allow a student who has opted to do a non-compulsory component to opt out of that component as long as the decision to opt out is made no later than the start of the final examination for that course.)
4. At any time during the course, it is within the discretion of the instructor to grant a general extension for papers and/or assignments, with appropriate notice to the class, as long as the revised deadline does not extend past noon on the last regular day of exams.
5. Faculty members do not have the authority to grant individual requests for an extension. Any request for an extension or to have a late penalty waived or moderated must be made to the Studies Committee, chaired by the Associate Dean, Academic.
6. Any request for an extension must be made as soon as the circumstances being relied upon arise, and in any event no later than the day on which the paper or assignment is due. Students must contact the Director of Studies or the Associate Dean, Academic, promptly, should they anticipate that they will not be able to meet a deadline and they plan to seek a waiver of penalty.
7. Students should be aware that not all circumstances will be accepted as justifying an extension. Where the Studies Committee is satisfied that an acceptable medical or other justification exists, the Committee will waive the late penalty for the period of time that, in the opinion of the Committee, was reasonably lost due to the factors outlined by the student and supported by documentation. It should be noted that making a request for an extension does not operate as a stay of late penalties.
8. Computer problems are not a justifiable excuse for lateness.

The current late penalties are as set out below.

Major papers:

The standard late penalty for a major paper is five points out of 100 per day of lateness or part thereof. Note that the penalty is out of 100. If the paper is worth less than 100 per cent of the grade in the course, the penalty should be adjusted accordingly. Thus, for a paper worth 75 per cent of the final grade, the late penalty would amount to 3.75 marks out of 75 per day of lateness. This calculation can be made either by marking the paper out of 100, subtracting the amount of the penalty and then converting the remaining number into a mark out of 75, or by calculating 75 per cent of the standard late penalty amount and applying it against the mark out of 75.

Examples:

(Note that these examples apply to major papers)

- a. Paper worth 100 per cent of the course is two days late: late penalty of 10 marks for the paper and the course
- b. Paper worth 100 per cent of the course is five days late; late penalty of 25 marks for the paper and the course.
- c. Paper worth 60 per cent of the course is five days late; late penalty of 25 percent for the paper, which results in a deduction of 15 marks from the final grade in the course
- d. Paper worth 100 per cent of the course is nine days late; late penalty of 45 marks for the paper and the course.
- e. Paper worth 75 per cent of the course is nine days late; late penalty of 45 percent for the paper, which results in a deduction of 33.75 marks from the final grade in the course.

Appendix 5. Major Paper Guidelines

A “major paper” is a writing requirement worth not less than 60% of the final mark awarded in a class. No method of evaluation in any class may require a major paper unless that requirement has received the approval of Faculty Council. While this constraint could be evaded by assigning papers worth only slightly less than 60%, assigning several papers, and so on, the wish of Faculty Council is that their spirit is to be respected.

1. Objective of Major Paper Requirement

The major paper requirement is intended to assist in the improvement of the legal research and writing skills the student already has. It is to be, in effect, an extension of the first year legal writing program. The topics upon which the written assignments are undertaken should be of a type suitable for in-depth research in a limited field of inquiry and substantial Faculty input is essential.

2. Performance Expectation

The aim should be writing of publishable quality. It is to be expected that most students will not achieve such a high level of quality, just as most students will be unable to achieve an A standing in other classes. Papers should exhibit at least some level of legal analysis and not consist of a mere recitation of decisions and facts. Supervision should be sufficient to make the writing requirement a real learning experience. This necessarily involves feedback to the student during the preparation of the paper and after its completion.

3. Curve Does Not Apply

The curve does not apply as a guideline in the marking of major papers, although a median grade range of 73-75 is enforced.

4. Criteria

The criteria of (a) Research; (b) Organization: Logic/Coherence; (c) Analysis-Insight-Synthesis; (d) Literary Style and (e) Originality are adopted explicitly as the ones relevant to evaluation of major papers. The definition of these criteria and the alphabetical grade equivalents and weights assigned to them as set out in the following table are adopted.

a) Research involves the ability to find, select and use effectively all primary materials (case, statutes, regulations) and secondary sources (books or articles) relevant to the topic. In many classes, a comparative analysis of material from other jurisdictions (e.g. Britain and the United States) is appropriate or even essential. Students should not rely exclusively on secondary sources, but should read the original text of major cases and statutes referred to in the literature. Research materials should include, where appropriate, non-legal sources. Empirical research by students ought to be encouraged.

The table (page 56) adopts the following descriptors for research (horizontal axis):

- i) Outstanding - as defined above
- ii) Thorough- no important area of research has been missed but there are a few loose ends or other

sources that ought to have been explored.

- iii) Not quite thorough - an important area of research has been missed or there are both loose ends and other sources to be explored.
- iv) Serious but Unsuccessful canvass of sources contains the failings of (iii) only more so.
- v) Mere attempt to consider sources - distinguishable from (iv) as being cursory rather than serious in considering main sources or there are clear errors in research, e.g. student fails to check for appeals of relevant decisions, and bases much of the analysis on a court of appeal case that has been reversed by the Supreme Court of Canada.
- vi) No serious research effort - self explanatory

b) Organization: Logic/Coherence relates to the logical and coherent presentation of the subject matter, so that it is readily intelligible to the reader.

The introduction should assist the reader by providing both a clear statement of the problem that the student has chosen to analyze, the goal she/he seeks to achieve and a brief overview of the subjects she/he intends to discuss. The conclusion should play a similar role at the end of the paper, except that it should also summarize the student's conclusions. Topics should appear in a logical sequence. Legal and factual material that provides the foundation for discussion of a particular issue should be set out before that issue is reached. The student should use headings to structure the paper and indicate when she/he is moving to a new topic or subtopic. There should also be transitional text to justify the shift to a new topic, explain its connection to issues previously discussed, and the like.

The table adopts the following descriptors for Organization (vertical axis):

- Excellent Organization
- Well organized: A few minor flaws, but generally good logical flow
- Moderate Disorganization throughout, but paper is generally intelligible
- Substantial Disorganization: paper hard to follow
- Incoherent: Disorganization is so great that paper is unintelligible

c) Analysis-Insight-Synthesis: These criteria relate to the evaluation of the student's ability to understand and utilize effectively the materials that she/he has found through research. They require an understanding of the subject matter that goes beyond the ability to merely recite the rationales of cases, the conclusions reached by other authorities or bare statistics.

Analysis relates to the student's detailed use of cases, statutes, and secondary sources within the paper to explore particular issues that she/he has identified. Good analysis will assist the reader to achieve a sophisticated understanding of the issues and relevant legal authorities without the need to read all the various sources that the student had identified through research. The student should provide a factual background adequate to permit the reader to understand the context in which legal problems arise. She/he should describe relevant legal material (cases/statutes) and important policy analysis (for example, Law Reform Commission materials) in sufficient detail to provide the reader with a clear view of any legal controversies that exist and reasoning that has been put forward to support the various positions. There are a wide variety of analytical weaknesses that may be displayed by students. Examples include missing a relevant issue or legal argument, identifying legal problems but not exploring available legal principles that may have a bearing on their solution, or stating the conclusions of cases significant to analysis of an issue without setting out the reasoning that the court used to justify its conclusions.

“Insight” involves an in-depth understanding of the fundamental issues. Good “Synthesis”, which usually demonstrates this understanding, reflects the ability of the student to integrate the diverse material that she/he has found into a conceptual framework that is clearly explained to the reader. Insight and synthesis would probably show up in a strong statement of thematic material at the outset, its use as an organizing device in the paper, and a serious attempt in the conclusion either to determine whether the initial hypothesis had been proven or to assess the conceptual apparatus for its explanatory power. Weak insight and synthesis may be demonstrated by a student's failure to integrate relevant authorities for some or all of the paper.

A better paper will draw inferences from the digested material as to the present state and future development of the law in the area researched, as well as formulating recommendations for legal changes that might improve the situation and serve appropriate policy goals. Good analysis without much insight or synthesis may be average depending on the complexity or the novelty of the topic or research method. For instance, good analysis of an original topic (see Originality *infra*) may be as much as can be expected and should be rewarded highly. The same quality of analysis of a topic on which there is already a body of published critical writing that provides a framework or platform for the student's paper would have to show its own insight and synthesis to rate equally highly. A paper that sets out numerous cases or articles or otherwise merely describes the results of the student's research efforts, however extensive, without attempting to extract common principles or create an analytical basis is likely to be judged as poor.

The table adopts the following descriptors for analysis-insight-synthesis (vertically within each box in the table):

- Excellent
- Very Good
- Average
- Weak
- Poor

d) Literary Style: This criterion relates to the linguistic style in which the paper is written. Most Dalhousie law students do a competent job with grammar and spelling and many have excellent literary style. The stylistic problems present in papers are of two sorts. Legal writing should be formal but clear and straightforward. Some students tend to be too colloquial, using slang or contractions such as “won’t”. Other students try too hard to be formal, producing convoluted sentences, making excessive use of the passive voice, and the like.

Because most students are competent in terms of literary style, this criterion is used to make adjustments in the grades produced by the table set out above only in extreme cases. The professor may increase or reduce the alphabetic grade result produced by the table set out above by one grade level for exceptionally strong or exceptionally weak literary style as described below:

Descriptors for literary style:

Excellent: Literary style is significantly above the norm for Dalhousie Law students. Raise table mark by one alphabetic grade level, e.g. B to B+

Average: Literary style is consistent with that demonstrated by the majority of Dalhousie law students, i.e. some stylistic weaknesses but basically competent
No change in table grade level as determined above

Weak: Student's literary style falls significantly below the norm for Dalhousie Law Students and demonstrates serious, persistent weaknesses in grammar, spelling, or style
Reduce table mark by one alphabetic grade level, e.g. B to C+

e.) Originality: A highly prized, all-too-rare quality that cannot be easily defined, is used in the Table to raise the alphabetic grade that would have been assigned otherwise by a maximum of two grade levels. A paper may demonstrate good “analysis-synthesis” but still be lacking in originality. There are two different kinds of originality: topic originality and substantive originality.

The first sort of originality relates to the topic itself. This kind of originality exists when the student selects a topic where no research has been previously undertaken in Canada (i.e. there are no Canadian secondary sources that deal with the issue that the student has selected). There may or may not be articles or books that have been published on the topic in foreign jurisdictions (e.g. the United States or Britain), but even when such foreign sources do exist, a significant degree of creativity and extrapolation is required on the part of a student who undertakes to write on a topic where no previous Canadian research is available to help with all or part of the topic. This kind of originality may exist in major papers that display weaknesses in other areas. Indeed, some kinds of analytical or organizational problems may be attributable precisely to the fact that the student is working in an area where no guidance is available from previous research carried out by more experienced scholars. The professor may recognize this kind of originality relating to topic by increasing the alphabetic grade produced by the table above by one level (e.g. from a B to a B+).

The second kind of originality may appear in the way the research is approached or in the understanding that the writer has gained of the topic and is able to convey to the reader, or in the form of new and convincing insights that are unique to the student author. This kind of originality, which is the hallmark of a paper of “publishable quality”, is not mere novelty although in other contexts the word may have that meaning: the new position advocated by the student must be credible, as well as novel. A major paper may demonstrate this kind of originality, even though the topic has been previously considered by other researchers in Canada. Originality of this kind will normally be associated with good “insight- synthesis- analysis”. The professor may recognize this kind of substantive originality by increasing the alphabetic grade produced by the table above by either one or two levels depending on the extent of the originality demonstrated by the paper (e.g. from a B+ to an A, or from a B+ to an A+ grade).

The cumulative effect of increases for originality is restricted to a jump of two grade levels. In other words, a professor cannot award a student an originality increase of three grade levels by accumulating an award of one grade level for topic originality, and two grade levels for substantive originality.

5. Guidelines for Major Paper Classes

- a. Normally the paper will not be shorter than 25 pages.
- b. Normally a paper of a general descriptive nature will not meet the standards.
- c. Normally the topic undertaken will be suitable for in-depth research with legal emphasis in a limited field of inquiry.
- d. Normally the supervisor should approve the topic and the outline or draft of the paper.
- e. Faculty members should make themselves available to meet with students to discuss the graded papers.
- f. At each stage of the supervision of major papers, both the supervising faculty member and the student should pay explicit attention to each of the criteria relevant to the evaluation of the paper.
- g. Copies of the major paper guidelines should be made available to students.

Major Paper Guidelines Table							
	Research						
Organization	Excellent	A	A-	B+	B	B-	F
Excellent	Very Good	A-	B+	B	B-	C+	F
Organization	Average	B+	B	B-	C+	C	F
	Weak	B	B-	C+	C	D+	F
	Poor	B-	C+	C	D+	D	F
	Excellent	A-	B+	B	B-	C+	F
	Very Good	B+	B	B-	C+	C	F
Well Organized	Average	B	B-	C+	C	D+	F
	Weak	B-	C+	C	D+	D	F
	Poor	C+	C	D+	D	F	F
	Excellent	B+	B	B-	C+	C	F
Moderate	Very Good	B	B-	C+	C	D+	F
Disorganization	Average	B-	C+	C	D+	D	F
	Weak	C+	C	D+	D	F	F
	Poor	C	D+	D	F	F	F
	Excellent	B	B-	C+	C	D+	F
Substantial	Very Good	B-	C+	C	D+	D	F
Disorganization	Average	C+	C	D+	D	F	F
	Weak	C	D+	D	F	F	F
	Poor	D+	D	F	F	F	F
	Excellent	B-	C+	C	D+	D	F
	Very Good	C+	C	D+	D	F	F
Incoherent	Average	C	D+	D	F	F	F
	Weak	D+	D	F	F	F	F
	Poor	D	F	F	F	F	F
Literary Style:							
Excellent:	Raise table mark by one alphabetic grade level, e.g. B to B+						
Average:	No change in table grade level as determined above						
Weak:	Reduce table mark by one alphabetic grade level, e.g. B to B-						
Originality:							
Raise table mark by one or two alphabetic grade levels e.g. B+ to A-, or A- or B+ to A.							