

**Energy Law - Fall Term 2018
Laws 2214.01 (Paper)**

**Faculty of Law, Dalhousie University
Course Syllabus**

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Office hours: By appointment

Class: Wednesday 6:30 to 8:20 PM, Room 309
Credit Value: 3 Credits (Paper)

Note: Communications will be by email to the students' official dal.ca accounts, and students will be deemed to have received anything sent to their dal.ca accounts.

COURSE DESCRIPTION

The course offers a general introduction of local and national energy issues, including energy security, energy demand and supply, the range of energy sources available, and the social, economic and environmental consequences of the choices. Following this broad introduction, the course focuses on the production, distribution, sale and consumption of electricity. It considers a range of law and policy issues dealing with electricity, including the regulatory process and implications for environmental law.

REQUIRED READING MATERIALS

The required reading materials for each class are set out in the course outline below. The outline provides links to the (brief) materials to be covered in each class (along with links to other materials for reference), and is a tentative class and assignment schedule only. It may be necessary to amend, supplement or otherwise revise this tentative schedule as the term progresses. If this occurs, students will be informed in class and by email of any such amendments or revisions, and the course syllabus will be updated accordingly. If a student must be absent from class, it is that student's responsibility to determine if any changes to the schedule have been announced.

EVALUATION

Evaluation will be by class participation (including one 15 minute presentation led by each student) worth 20% and a major paper worth 80%.

The major paper will be due on the last day of classes – **Tuesday, December 4, 2018 by 3pm**. Late penalties will be imposed for papers submitted after this date and time. Major papers must be submitted in 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. The length of the paper should be between 25 and 40 pages. Major Paper Guidelines are included as an attachment to this syllabus.

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 Michael Deturbide or the Director of Student Services 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 494-2836.

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>

Please note students may also be 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

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.

ENERGY LAW COURSE OUTLINE – FALL 2018

Class 1: September 5	Introduction: Overview of Course Topics and Key Concepts
Class 2: September 12	Global and Regional Energy Issues, Energy and the Constitution and the National Energy Board
Class 3: September 19	<p>Regulation of Public Utilities I Nova Scotia Utility and Review Board</p> <ul style="list-style-type: none"> - Statutory Framework - Composition, Mandate, Authority, and Role - Practice and Procedure <p>Provincial Electricity Regulation in Canada</p>
Class 4: September 26	<p>Regulation of Public Utilities II Selected Jurisdictional and Administrative Issues</p> <ul style="list-style-type: none"> - Jurisdiction - Prudence of Utilities, Deference to Boards - Duty of Fairness of Board Members <p>Role of Government in Setting Energy Plans and Policy</p>
Class 5: October 3	<p>Energy Developments and the Role of the Community</p> <ul style="list-style-type: none"> - Social License - Land Use Planning - Community Objections
Class 6: October 10	<p>Renewable Energy and Independent Power Producers</p> <ul style="list-style-type: none"> - Requests for Proposals - Power Purchase Agreements - Developmental Tidal and Marine Renewables Issues
Class 7: October 17	Wholesale Electricity Markets – Alberta Example – and Electricity Transmission and Interconnection Issues

Class 8: October 24	Aboriginal Rights and Energy Developments Student Presentations
October 31	Halloween – No Class
Class 9: November 7	Climate Change and Emissions Reductions in Energy Sector Student Presentations
November 12-16	Study Break – No Class
Class 10: November 22	Student Presentations
Class 11: November 29	Student Presentations

ENERGY LAW — FALL 2018
Course Reading List

CLASS 1 — INTRODUCTION: OVERVIEW OF COURSE TOPICS AND KEY CONCEPTS

CLASS 2 — GLOBAL AND REGIONAL ENERGY ISSUES, ENERGY AND THE CONSTITUTION, AND THE NATIONAL ENERGY BOARD

I. Required Reading:

Global and Regional Energy Issues:

David B. Raskin, “From Blackout to Shock and Awe: Renewable Energy and the Shared Canada-United States Electricity Grid: Remarks of David B. Raskin”. United States Law Journal (2012) 36 Can.-U.S. L.J. 143 to 151 (QL)

<https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1044&context=cuslj>

ScottMadden, Inc., “Potential Trump Administration Policy Changes: What do they Mean for Energy?”, The ScottMadden Energy Industry Update, Volume 17, Issue 1, **pages 35-38 only**

https://www.scottmadden.com/reports/V17_I1/EIU_V17_I1_2017_Digital.pdf#page=35

II. Optional Reference Reading:

EUCI, “Cities push for 100 percent renewable electricity—whether the goal can be met still debatable” Energize Weekly, August 30, 2017 online:

<https://www.euci.com/cities-push-for-100-percent-renewable-electricity-whether-the-goal-can-be-met-still-debatable/>

Energy and the Constitution:

The Constitution Act, 1867 (UK), 30 & 31 Victoria, c. 3, Sections 91, 92, and 92A.

<http://canlii.ca/t/8q7k>

Ontario Hydro v. Ontario (Labour Relations Board), [1993] 3 S.C.R. 327 (CanLII)

<http://canlii.ca/t/1fs10>

Westcoast Energy Inc. v Canada (National Energy Board), [1998] 1 SCR 322 (CanLII)

<http://canlii.ca/t/1fgsz>

Sawyer v. Transcanada Pipeline Limited, 2017 FCA 159 (CanLII)

<http://canlii.ca/t/h4xrz>

Role of the National Energy Board:

National Energy Board Fact Sheet

<https://www.neb-one.gc.ca/bts/whwr/nbfcstht-eng.pdf>

CLASS 3 — REGULATION OF PUBLIC UTILITIES I

I. **Required Reading:**

Harrison, Rowland, Nova Scotia Maritime Link Decision, Energy Regulation Quarterly, Vol 1, Fall 2013

<http://www.energyregulationquarterly.ca/case-comments/nova-scotia-maritime-link-decision#sthash.Vb16oEvh.dpbs>

Lahey, William, The Contributions of Utilities Regulation to Electricity Systems Transformation: the Case of Nova Scotia, Energy Regulation Quarterly, Vol 2, Fall 2014

<http://www.energyregulationquarterly.ca/articles/the-contributions-of-utilities-regulation-to-electricity-system-transformation-the-case-of-nova-scotia#sthash.mYjJCXXd.dpbs>

II. **Optional Reference Reading:**

Legislation for Reference:

Utility and Review Board Act, S.N.S. 1992, c. 11

<http://canlii.ca/t/87nw>

Board Regulatory Rules, N.S. Reg. 235/2005

<http://canlii.ca/t/862j>

Public Utilities Act, R.S.N.S. 1989, c. 380

<http://canlii.ca/t/87s4>

CLASS 4 — REGULATION OF PUBLIC UTILITIES II

I. **Required Reading:**

Board of Commissioners of Public Utilities v. Nova Scotia Power Corporation et al [1976] N.S.J. No. 505; 18 N.S.R. (2d) 692 (QL)

Dalhousie Legal Aid Service v. Nova Scotia Power Inc., 2006 NSCA 74 (CanLII)

<http://canlii.ca/t/1nx33>

Boulter v. Nova Scotia Power Incorporation, 2009 NSCA 17

<http://canlii.ca/t/22h4b>

II. **Optional Reference Reading:**

Select Cases re: Jurisdiction and Administrative Issues:

Jurisdiction

ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140 (CanLII) – **Headnote only**

<http://canlii.ca/t/1mj7l>

Re Nova Scotia Power Incorporated, 2009 NSUARB 111 (CanLII)
<http://canlii.ca/t/24rmm>

Antigonish (Town) (Re), 2017 NSUARB 74
<http://canlii.ca/t/h3s3w>

Prudence of Utilities, Deference to Boards

Ontario (Energy Board) v Ontario Power Generation Inc., 2015 SCC 44 (CanLII)
<http://canlii.ca/t/glb07>

ATCO Gas and Pipelines Ltd. v Alberta (Utilities Commission), 2015 SCC 45 (CanLII)
<http://canlii.ca/t/glb0g>

Duty of Fairness of Board Members

Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities), [1992] 1 S.C.R. 623
<http://canlii.ca/t/1fsf0>

Role of Government in Energy Plans and Policy:

Our Electricity Future: Nova Scotia's Electricity Plan 2015-2040
<http://energy.novascotia.ca/sites/default/files/Our-Electricity-Future.pdf>

Electricity Plan Implementation (2015) Act, SNS 2015, c 31
http://nslegislature.ca/legc/bills/62nd_2nd/3rd_read/b141.htm

Electricity Review Report
http://energy.novascotia.ca/sites/default/files/Electricity%20System%20Review_Report.pdf

Electricity Act, SNS 2004, c 25
<http://canlii.ca/t/87xh>

Electricity Reform (2013) Act
http://nslegislature.ca/legc/bills/62nd_1st/3rd_read/b001.htm

CLASS 5 – ENERGY DEVELOPMENTS AND THE ROLE OF THE COMMUNITY

I. Required Reading:

Cleland, Michael, The Social License to Regulate: Energy and the Decline of Confidence in Public Authorities, Energy Regulation Quarterly, Vol 3, Issue 3, September, 2015
<http://www.energyregulationquarterly.ca/articles/the-social-licence-to-regulate-energy-and-the-decline-of-confidence-in-public-authorities#sthash.yEkdPr76.dpbs>

Social License: How to Get it, and How to Keep it
http://www.nbr.org/downloads/pdfs/eta/PES_2013_summitpaper_Yates_Horvath.pdf

II. **Optional Reference Reading:**

Eco Awareness Society (Re), 2010 NSUARB 102

<http://canlii.ca/t/29scp>

Erickson v. Director, Ministry of the Environment, Ontario Environmental Review Tribunal (2010 case nos. 10-121/10-122) – **pages 1-8 and 207**

<http://www.ert.gov.on.ca/files/201107/00000300-AKT5757C7CO026-BGI54ED19RO026.pdf>

UNSM's Model Wind Turbine By-Laws & Best Practices Report

http://www.unsm.ca/doc_download/1569-unsm-wind-by-laws-best-practices.html

Friends of Harmony, Camden, Greenfield and Surrounding Areas (Re), 2015 NSUARB 273 (CanLII)

<http://canlii.ca/t/gmq57>

Friends of River Road (Re), 2013 NSUARB 236

<http://canlii.ca/t/q1z89>

Friends of River Road (Re), 2016 NSUARB 36

<http://canlii.ca/t/gp3jm>

Bay of Fundy Inshore Fisherman's Association v. Nova Scotia (Environment), 2017 NSSC 96 <http://canlii.ca/t/h340h>

Rayman, Shane and Lunau, Janet, Navigating the Jungle: Private Nuisance and Renewable Energy Projects, 27 J. Env. L & Prac. 253, July 2015 (WL)

CLASS 6 — RENEWABLE ENERGY & INDEPENDENT POWER PRODUCERS

I. **Required Reading:**

Independent Power Producers and Requests for Proposals:

Cape Breton Explorations Ltd. v. Nova Scotia (Attorney General), 2015 NSCA 35

http://www.courts.ns.ca/Decisions_Of_Courts/documents/2015nsca35.pdf

II. **Optional Reference Reading:**

Power Purchase Agreements:

Power Purchase Agreement for Renewable Energy Approved Form

<http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10653478.pdf>

Feed in Tariff Programs:

COMFIT Decision

Renewable Energy Community Based Feed-in Tariffs (Re), 2011 NSUARB 100

<http://canlii.ca/t/fm3jq>

Tidal Energy Feed-in Tariff

<http://canlii.ca/t/g1t1q>**CLASS 7 — WHOLESALE ELECTRICITY MARKETS – ALBERTA EXAMPLE – AND ELECTRICITY TRANSMISSION AND INTERCONNECTION ISSUES****I. Required Reading:****Deregulation – Canadian Experience:**Ian Blue, “Off the Grid: Jurisdiction and the Canadian Electricity Sector” (v.32, 2009), *Dalhousie Law Journal* (QL)**II. Optional Reference Reading:****Canadian Competitive Wholesale Electricity Markets – Case Study – Alberta:**

Alberta Utilities Commission, “Alberta’s Electricity Market Deregulated Since 1996”

<http://www.auc.ab.ca/market-oversight/albertas-energy-market/Pages/default.aspx#energymarket>**Nova Scotia’s Open Access Transmission Tariff:**

Nova Scotia Power Inc. Re. 2005 NSUARB 50

<http://canlii.ca/t/1kwpr>**CLASS 8 — ABORIGINAL RIGHTS AND ENERGY DEVELOPMENTS****I. Required Reading:**

Mascher, Sharon, Note to Canada on the Northern Gateway Project: This is NOT What Deep Consultation With Aboriginal People Looks Like

http://ablawg.ca/wp-content/uploads/2016/08/Blog_SM_Gitxaala_Aug2016.pdf**II. Optional Reference Reading:****Legislation for Reference:**

The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, Section 35 (CanLII)

<http://canlii.ca/t/8q7l>

Energy Regulators and the Duty to Consult:

Clyde River (Hamlet) v. Petroleum Geo- Services Inc., 2017 SCC 40
<http://canlii.ca/t/h51gv>

Chippewas of the Thames First Nation v. Enbridge Pipelines Inc., 2017 SCC 41
<http://canlii.ca/t/h51gx>

Re Hydro One Networks Inc. (September 15, 2008), Doc. EB-2007-0050 (Ont. Energy Bd.) – pages 1-9, 62-72
http://www.ontarioenergyboard.ca/oeb/ Documents/EB-2007-0050/dec_HONI_BruceMilton_20080915.pdf

Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council, 2010 SCC 43, [2010] 2 SCR 650 (CanLII)
<http://canlii.ca/t/2d37g>

CLASS 9 — CLIMATE CHANGE, EMISSION REDUCTIONS, AND THE ELECTRICITY SECTOR**I. Required Reading:**

Climate Change and Energy Generation – Climate Change and the Coal Challenge (Handout)

Nova Scotia Cap and Trade Program Design Options - What We Heard Report
https://climatechange.novascotia.ca/sites/default/files/Cap-and-Trade_What-We-Heard-Report.pdf

II. Optional Reference Reading:

Ecofiscal Commission, Comparing Stringency of Carbon Pricing Policies, July, 2016
<http://ecofiscal.ca/wp-content/uploads/2016/07/Ecofiscal-Commission-Comparing-Stringency-Carbon-Pricing-Report-July-2016.pdf>

Carbon Capture and Storage – The Legal Framework for Carbon Capture and Storage in Alberta, (2008) 45 Alta. L. Rev. 585 – 630 (QL)

Legislation for Reference:

Air Quality Regulations, N.S. Reg. 28/2005
<http://canlii.ca/t/869l>

Regulations Respecting Greenhouse Gas Emissions, NS Reg 260/2009
<http://canlii.ca/t/8l96>

Environmental Goals and Sustainable Prosperity Act, S.N.S. 2007, c. 7
<http://canlii.ca/t/87p3>

Reduction of Carbon Dioxide Emissions from Coal-Fired Generation of Electricity
Regulations (draft) – executive summary and proposed regulatory text
<http://www.gazette.gc.ca/rp-pr/p1/2011/2011-08-27/html/reg1-eng.html>

CLASS 10 – STUDENT PRESENTATIONS

CLASS 11 – STUDENT PRESENTATIONS

MAJOR PAPER GUIDELINES

A "major paper" is a writing requirement worth not less than 60% of the final mark awarded in a class (i.e between 60% and 100%).

Faculty Council designates which courses are to be taught as paper courses.

Guidelines for Major Paper Classes

- a) Normally the paper will not be shorter than 25 pages.
- b) At the beginning of the course, the professor should give the class an indication of the expectations regarding length. The professor might say "the minimum page length is 25 pages; while there is no maximum length, my expectation is that most papers will be between 25 and 40 pages long."
- c) Normally a paper of a general descriptive nature will not meet the standards.
- d) Normally the topic undertaken will be suitable for in-depth research with legal emphasis in a limited field of inquiry.
- e) Normally the supervisor should approve the topic and the outline or draft of the paper.
- f) Faculty members should make themselves available to meet with students to discuss the graded papers.
- g) 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.
- h) Copies of the major paper guidelines should be made available to students.

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.

Please see Major Paper Guidelines Table in the calendar

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 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.
- iv) 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 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.

Major Paper Guidelines Table							
Research:>		Outstanding	Thorough	Not quite thorough	Serious but Unsuccessful canvass of sources	Mere attempt to consider sources	No serious research effort
Organization/ Logical Flow	Analysis Insight-Synthesis-						
	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
Organization	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:							

Major Paper Guidelines Table							
Research:>		Outstanding	Thorough	Not quite thorough	Serious but Unsuccessful canvass of sources	Mere attempt to consider sources	No serious research effort
Raise table mark by one or two alphabetic grade levels e.g. B+ to A-, or A- or B+ to A.							