

Professor Bruce P. Archibald

January, 2010

Schulich School of Law

Labour Law Problems

Laws 2066.03

Introductory Memorandum

Course Description:

This class offers students an opportunity to examine in a seminar setting major issues of theory and practice in labour relations not fully explored in Labour Law I. Matters discussed will include: public sector labour relations regimes, specialized regimes for regulating labour relations in the construction and film industries as alternatives to the standard industrial regime of labour relations, and the impact of supra-national labour relations regimes such as International Labour Organization standards and the "NAFTA Labour Side Agreement" (NAALC). Other issues studied may include contracting out, problems of first collective agreement negotiation, constitutions of unions and other human capital organizations, inter-union jurisdictional disputes, alternate forms of dispute resolution for both interest and rights disputes in the labour context, and problems related to the exclusive position of unions as certified bargaining agents, including a union's duty of fair representation in that situation. In addition, the potential reform of labour law to protect vulnerable workers in non-standard employment contexts (part-time employment, home employment, dependent self-employment, frequent career changes, etc.), and to enhance human capital investment in a globally competitive economy, will likely be addressed. The teaching method will involve presentation of key sessions by the instructor and possibly invited experts in the first part of the course, followed by presentation of seminar sessions by students based on their research for their major papers related to topics of their own choosing (as approved by the instructor). This class will be offered in alternating years.

Format: One two-hour seminar per week for one term – **Tuesdays 4:30 – 6:30, Room 429**

Prerequisite: **Labour Law I** (exceptions based on other experience may be made by the professor)

Evaluation: **By Major Paper (60%)** – see Major Paper Guidelines in Law School Calendar, plus
Class Presentation (20%) – Materials and Oral Presentation, and
General Class Participation - (20%) – Attendance and Discussion

Deadlines: **Selection of Paper Topic – February 8, 2010 (after consultation with professor)**
Preparation of Seminar Presentation Materials – March 11, 2010
Papers Due - April 19, 2010 – Note – late papers incur Studies Committee penalties

Discussion Topic Schedule (Subject to Adjustment):

Session I - Jan. 5 - Comparative Overview of Contemporary Labour Problems
 Session II - Jan. 12 - Public Sector Labour Relations: Structure, Privatization etc
 Session III - Jan. 19 - Public Sector (cont'd) – Disputes and Resolution Processes
 Session IV - Jan. 26 - Construction Industry Labour Relations: Unions/Employers
 Session V - Feb. 2 - Construction (cont'd) - Employees, Work & Jurisdictionals
 Session VI - Feb. 9 - Vulnerability, Falling Union Density & New U.S. Initiatives
 Session VII - Feb. 16 - New Paradigms to Structure Labour Relations
 Study Break - Feb. 22 to Feb. 26
 Session VIII - Mar. 2 - International Dimensions of Labour Relations
 Session IX - Mar. 9 - Issues in Dispute Resolution: Med.Arb./Strikes & Constitution
 Session X - Paper Preparation Break – Mar. 16 – no class – prof.- consultation
 Session XI – Mar. 23 - Student Paper Presentations
 Session XII – Mar. 30 - Student Paper Presentations

Contact Information: Office – 422; Phone – 494-1015; e-mail – bruce.archibald@dal.ca

Reminder: Term Papers due by 4 pm. April 19, 2010 – Hard Copy at Reception Office

See Major Paper Guidelines, Late Penalty Policy and Plagiarism Rules Attached

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 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.
- 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.

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:	Raise table mark by one or two alphabetic grade levels e.g. B+ to A-, or A- or B+ to A.						

Plagiarism Policy – Taken from Law School Regulations Handbook

1. Plagiarism or self-plagiarism

Dalhousie University defines plagiarism as the presentation of the work of another author in such a way as to give one's reader reason to think it to be one's own. Plagiarism is a form of academic fraud.

Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the University, or even the revocation of a degree.

In its grossest form plagiarism includes the use of a paper purchased from a commercial research corporation, or prepared by any person other than the individual claiming to be the author.

While this is considered plagiarism in its grossest form, this is not the only form of plagiarism which is covered by these regulations. Other forms of plagiarism include the transcribing of passages from the work of another without proper attribution. (See below.)

Self-plagiarism is the submission of work by a person which is the same or substantially the same as work for which he or she has already received academic credit.

The definition of self plagiarism would cover the submission of a paper for which a grade has been received in another course at the law school, in another course at Dalhousie University, or in a course at some other university or law school. Self-plagiarism also includes submitting the same paper for credit in two courses during the same term. It is simply not acceptable to use the same paper more than once for academic credit.

If you have written a paper for a course and would like to expand, build on or further develop those ideas in another course, you should give the instructor a copy of your previous work, and discuss with them how you can build on those ideas without falling foul of the rule against self-plagiarism. This is particularly important for graduate students who may complete papers for courses which they intend to use as foundation work for their thesis. Discussing the issues in an upfront manner with the instructor is the best way to avoid misunderstandings or accusations of self-plagiarism.

The university attaches great importance to the contribution of original thought to scholarship. It attaches equal importance to the correct attribution of authorities from which facts and opinions have been derived. The proper use of footnotes and other methods of attribution varies from discipline to discipline. Failure to abide by the appropriate standards of the discipline concerned in the preparation of essays, term papers and dissertations or theses may, in some cases, constitute plagiarism.

Students at the law school have a responsibility to ensure that they meet the requirements for accurate and adequate attribution of authorities. Students should take care to ensure that they use the proper form of citation as taught in Legal Research and Writing. In addition, students should be aware that the following acts are considered plagiarism:

- *the reproduction, verbatim, of parts of the work of another, where these parts are not contained in quotation marks and cited to the appropriate source. It is not sufficient to place a footnote at the end of a transcribed sentence or passage. Verbatim sentences or passages MUST be placed in quotation marks or if they are longer passages indented and single spaced within the body of the paper.*
- *excessive paraphrasing of sources is also plagiarism. It is inappropriate to present the work of another as one's own simply by paraphrasing in such a way as to change the precise words used by the original author. Where students are paraphrasing the words and ideas of others for the purpose of criticism or analysis in a paper, the fact that a work is being paraphrased should be clearly indicated. Students should also be aware that it is plagiarism to reproduce the structure and incidents of another work, even if different words are used. Thus, for example, it is inappropriate to adopt the structure, outline, and research sources of another author in order to produce a course paper.*

Students who are in any doubt about the proper forms of citation and attribution of authorities and sources should discuss the matter in advance with the faculty member for whom they are preparing assignments. In many academic departments, written statements on matters of this kind are made available as a matter of routine or can be obtained on request.

2. Irregularities in data from experiments, field studies, etc.

Academic research is predicated on the presentation of accurate and honestly derived data. The falsification of data in reports, theses, dissertations and other presentations is a serious academic offence, equivalent in degree to plagiarism, for which the penalties may include revocation of degrees, loss of credits or suspension or expulsion from the university.

University regulations, as well as penalties and procedures are contained in the law school academic calendar.

Read the following excerpt from William L Hayhurst and the examples which follow it. In your view, which of them constitute plagiarism or inappropriate or inadequate attribution? You can check your answer against the commentary which follows each sample.

(From William L. "Copyright Subject-Matter", in Gordon F. Henderson, ed., *Copyright and Confidential Information Law of Canada*. (Toronto: Carswell, 1994), pp. 29-98, at 67-68).

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I have referred earlier to the origins of copyright as having, as at least one of its justifications, the advancement of knowledge or learning. Clearly that is no longer regarded as an essential goal, because copyright may subsist in the absurd, the trashy and the titillating¹, subject to the court's discretion as to remedies.² Reference has been made to the *Exxon* case,³ in which the English Court of Appeal used the test of whether an alleged literary work is intended to afford information, instruction or pleasure in the form of literary enjoyment. This test was considered in an Australian case, *Kalamazoo (Australia) Pty. Ltd. v. Compact Business Systems Pty. Ltd.*, wherein the plaintiff claimed copyright in a compilation of blank accounting forms, viewed as a totality or single work. The Australian Act had this definition: "'literary work" includes a written table or compilation". Of the plaintiff's forms, Thomas J. stated:

Mr. Cooper Q.C. for the defendants, submitted that a "literary work" requires, as a minimum, that information, instruction or pleasure in the form of literary enjoyment be conveyed. Reliance was placed upon *Exxon Corporation v. Exxon Insurance Ltd.* [1982] 3 All. E.R. 241; 1 Ch. 119 at 142-3, 144. Courts have refrained from spelling out any particular degree of skill perceivable from the words of the publication, and it is clear that literary merit is irrelevant. The formulation in the *Exxon* case was not treated as definitive or exhaustive by the members of the Full Court of the Federal Court in *Apple Computer Inc. v. Computer Edge Pty. Ltd.* (1984) 53 A.L.R. 225 at 234-5, 258-9. The approach taken in *Mirror Newspapers Ltd. v. Queensland Newspapers Pty. Ltd.* [1982] Qd. R. 305 at 307 and *Ladbroke (Football) Ltd. v. William Hill (Football) Ltd.* [1964] 1 All. E.R. 465; 1 W.L.R. 273 at 285, seems to be inconsistent with the proposition derived from the *Exxon* case. In his valuable work *The Law of Intellectual Property*, Mr. Ricketson considers the denial of copyright on such a ground to be an aspect of "insubstantiality", a problem which commonly arises in relation to titles of works, slogans, phrases and, sometimes advertisements (paras 5.61 to 5.63). This is, I think, the true basis of the rejection of copyright for some works that obviously fail to provide information, instruction or pleasure.⁴

An earlier South African decision, also involving *Kalamazoo* business forms, was cited with approval by Collier J. in *Bulman Group Ltd. v. "One Write" Accounting Systems Ltd.* in making the following point:

Even if the imparting of information of some kind is necessary to bring a compilation into the ambit of a "literary work" then, in my view, that has been done here. The various headings on these forms convey information to the user as to what he ought to record, where he ought to record it, and the manner, in many instances, in which it ought to be recorded.

Notes:

1. Or, as put by Muldoon J., the "noble, sober and serious" and also the "vulgar, humorous or even gross": *Baron v. Hooda* (1987), 17 C.P.R. (3d) 161 at 166 (Fed.T.D.).
2. *Aldrich v. One Stop Video Ltd* (1987) , 17 C.P. R. (3d) 27 (B .C.S .C .).
3. See text, supra note 46.
4. (1985), 5 I.P.R. 213 at 232 (S.C. Queensland).
5. (1982), 62 C.P.R. (2d) 149 at 154 (Fed. T.D.). In an earlier decision, *Bulman Group Ltd. v. Alpha One-Write Systems B.C. Ltd.* (1981), 54 C.P.R. (2d) 179 (Fed. C.A.), Le Dain J.A. at p. 183 expressed the opinion that it was "at the very least doubtful" that a work must & informative in order to be a literary work.

Writing Sample #1

Copyright has, as at least one of its justifications, the advancement of knowledge or learning.¹ This rationale is no longer the only one, because it has been determined that copyright may subsist in the absurd, the trashy and the titillating.

Notes

1. William L. Hayhurst, Q.C., "Copyright Subject-Matter", in Gordon F. Henderson, ed., *Copyright and Confidential Information Law of Canada.* (Toronto: Carswell, 1994), pp. 29-98, at 67.

Commentary

This is plagiarism. Even though some words in each of the sentence have been changed, there are long strings of words which are taken verbatim from the original. In addition, the sentences map the structure of the original text. It is not sufficient that the author has footnoted the first sentence to the original source. Where words are taken verbatim from another text, they must be quoted.

Writing Sample #2

Originally, one of the justifications for copyright was to advance human knowledge. This is no longer considered essential.¹ A number of cases have found that copyright can subsist in all kinds of works, whether they are absurd or vulgar, noble or serious.² The court, of course, retains discretion as to remedies.³

Notes:

1. William L. Hayhurst, Q.C., "Copyright Subject-Matter", in Gordon F. Henderson, ed., *Copyright and Confidential Information Law of Canada.* (Toronto: Carswell, 1994), pp. 29-98, at 67.
2. *Muldoon J.*, in *Baron v. Hooda* (1987), 17 C.P.R. (3d) 161 at 166 (Fed. T.D.).
3. *Aldrich v. One Stop Video Ltd.* (1987), 17 C.P.R. (3d) 27 (B.C.S.C.)

Commentary

This is plagiarism, since it is essentially a loose paraphrase of the opening 2 sentences of the passage by Hayhurst quoted above. Although many of the words have been changed, the ideas are the same, and are presented in the same order, and with the same authorities as Hayhurst. It is plagiarism even though Hayhurst is cited as authority for the first sentence. (Note that even that cite is not a particularly good one, as Hayhurst himself refers for authority for this proposition to a point earlier in his article.)

Writing Sample #3

Although they do not appear to be the kind of thing which copyright law was originally intended to cover, blank accounting forms may well receive protection under the Copyright Act. The Supreme Court of Queensland has held this to be the case, so long as the forms provide "information, instruction or pleasure."¹

Notes:

1. (1985), S I.P.R. 213 at 232 (S.C. Queensland).

Commentary

As the library does not carry the reporter series from which the cite is made, the author might face a serious question as to where they accessed the case from which they are ostensibly quoting. If the source is indeed Hayhurst's excerpt from the case, then the author must indicate this along with information about the case. Of course, it is always preferable to cite directly from the primary source, unless it is unavailable.

You should note as well that the cite, which is the same as Hayhurst's for this case, is incomplete. The name of the case is not mentioned in the excerpt, and should be present in the footnote.

Writing Sample #4

Copyright law can extend to cover many things which might not be considered worthy of copyright protection by the average person. For example, the courts have considered blank accounting forms to be protected under copyright law, although they have drawn the line at recognizing copyright in a made-up name.

Commentary

No authority is provided for these statements, when clearly they are not matters of common knowledge. The author must indicate the source(s) from which s/he derives his or her knowledge. Again, the citation of primary sources is preferable where possible.

Writing Sample #5

It has been argued that the advancement of knowledge or learning is no longer required for something to be covered by copyright law.¹

Notes:

1. Gordon F. Henderson, ed., Copyright and Confidential Information Law of Canada. (Toronto: Carswell, 1994), pp. 29-98, at 67-68).

Commentary

Although this sentence clearly indicates that the argument of another person is being considered, you should note that the citation does not give credit to the appropriate source. Although this is from Henderson's book on Copyright Law, each of the chapters in that book is authored by someone different. The authority for this statement is Hayhurst, and not Henderson. This is not plagiarism per se but it is sloppy citation.



Studies Committee policy on late penalties

Introduction

These rules apply to LL.B. 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.

Assignments:

The major paper late penalty is calculated based on the assumption that all students were given the whole term in which to write the paper. In this context, lateness of a day or two is less significant. However, where an assignment is given with a shorter time frame for completion (such as, for example, two or three weeks), then a day or two of lateness is a much more significant extension of the time allowed for the work to be completed. The late penalty will therefore be more severe. As a benchmark, the late penalty for an assignment which students were given three weeks to complete, and which was late, would be 10 points out of 100 per day. Thus, an assignment worth 20 points would suffer a penalty of two marks per day. The penalties would be more severe for an assignment for which students were given less time to complete. As these penalties are more complex to calculate, it is suggested that faculty members either submit information regarding late assignments to Studies Committee for calculation of penalties, or request in advance a schedule of penalties to impose on the late submission of a particular assignment.

Take home exams:

Because take home exams are often written within a very limited time frame (such as 24 or 48 hours), a student who submits such an exam late may be gaining a very significant advantage over his or her classmates who submit their work on time. The penalties in these cases are generally calculated by the hour. For example, a 24 or 48 hour take home exam would be subject to late penalties of five points out of 100 per hour to a maximum of 50 points out of 100 for one day (based on 24 hours). This is a very significant penalty; however, given that a student who submits a take home exam 24 hours late has doubled the time that was available to other students to write the exam, it is felt that this penalty is appropriate. Again, as these penalties are more complex to calculate, it is suggested that faculty members either submit information regarding late take home exams to Studies Committee for calculation of penalties, or request in advance a schedule of penalties to impose on late take home exams.

ACCOMMODATION

Students with Special Needs/Requests for Accommodation

Professor Pothier is the faculty advisor to students with disabilities. Students wishing to discuss in-class accommodation or in-class study assistance needs should see Professor Pothier.

Students seeking special accommodation with regard to any aspect of course evaluation (including exam deferrals and extensions to deadlines) must make an application to the Studies Committee. Academic regulations require such requests to be made as soon possible and, in any event, no later than the date on which the exam is to be written or the paper or other assignment is to be submitted. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information about requests for accommodation and about the Studies Committee process.

Pandemic H1N1 Influenza Advisory in relation to Academic Continuity

In the event of an escalation of the pandemic H1N1 influenza virus, the University may need to authorize Academic Units to change elements of class schedules and/or evaluation plans as outlined in course syllabi. Any change is intended to support the primary goal of reducing the risk of spreading a pandemic influenza among students, faculty and staff.

Although it is difficult to predict the severity of the pandemic, the University is committed to minimizing the impact on student's academic progress. Therefore, every effort will be made to provide students with options for continued learning and for continued fair evaluations.

Changes may include but are not limited to:

- Adjustments to course assignments;
- Changes to the dates of exams;
- Arrangements for alternative evaluations for students affected by H1N1 influenza virus;
- Adjustments to work terms;
- Modification of marks awarded for participation;
- Adjustments to attendance policies.

Any alternative plan made in individual courses may be superseded by University-wide or Government measures to reduce the spread of the pandemic H1N1 influenza virus.