

Faculty of Law – McGill University

Specialized Topics in Law 17: Internet Law (3 credits)

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LAWG 536 Sections 001 and 009
Fall 2021
Mondays 4:00 P.M – 7:00 P.M.
Room 202 NCDH

GENERAL INFORMATION

Course description(s):

Here's the official course description:

Internet legal issues are some of the most important and complex problems facing lawyers and scholars alike in the 21st century. The course will consist of a broad introduction to a number of legal issues facing the internet. These include privacy, defamation, jurisdiction, cybersecurity, intellectual property online, cybercrime, and more. We will pay close attention to comparing the legal regimes of Canada, the United States and Europe, and how the regimes interact in the internet's world without borders.

Throughout the course we will take a practical approach to many of these questions, learning how the courts and the attorneys who practice in this area deal with these issues on a day to day basis.

Here's the unofficial course description:

We're gonna talk about legal implications of the internet and it's gonna be awesome 👍 😊

Pedagogical Methodology

The course will proceed with a mixture of live (LIVE!!!! LIVE!!!!!!!) lectures including an illustrious line-up of guest speakers (who may appear via video), and various exercises and discussions that will happen during class time. Hopefully the situation will allow the live lectures to continue all semester.

Pandemic or not, this course is participatory. But I promise to be taking into account the fact you are wearing a mask when speaking. Also, there are other ways to "participate" besides talking, see that section further below in this syllabus.

I promise to never use the term pedagogical methodology ever again.

Assignments & evaluation:

1. Final Essay: 70% of final grade
2. Presentation and / or comment: 20%
3. General participation: 10%

1. Final Essay (70%)

An essay of 4000-5000 words properly sourced and footnoted according to the McGill style guide, to be submitted via email to the SAO at SAOAssignments.law@mcgill.ca with cc to the instructor at allen@allenmendelsohn.com during the final exam period, no later than **December 15th, at 3:00 PM**. Essays should be double-spaced in some standard font of 10-12 point size, you go right ahead and choose one. Comic sans is not acceptable and will result in your immediate epic fail.

The final essay will be on a topic of your choice that relates to the course materials, or literally any other topic related to legal aspects of the internet. Be creative with your topic! All essay topics must be approved in advance by the instructor. The deadline for submitting your topic (along with a one paragraph description of the topic and / or table of contents, along with 3 bibliographic references) is indicated in the week by week outline below (spoiler alert, October 25) and should be submitted by email to allen@allenmendelsohn.com. Essay topics may be adjusted after submission, following discussions with, and / or suggestions from, the instructor, or even if you just change your mind (but a new topic will have to be approved anew).

2. Presentation and / or comment (20% total)

There are two options for this portion of the grading:

I. Presentation and two-page comment (10% each) - Each class, one student (or two) will present / summarize the most important case(s) of the day (marked with a ** in the outline below). One student in each class (or two, depending on the numbers registered in the course) will present a newsworthy item relating to the internet and the potential legal implications thereof. Students are not expected to do any research into “the legal implications thereof”, but only to offer their instinctual reactions (though they are welcome to research). Presentations should be no more than 10 minutes in length, but I’m flexible. To a point.

In conjunction with the presentation, students will comment on the case or newsworthy item (as applicable) in a two-page maximum (double-spaced, maximum 12-point font) document. The comment shall be submitted by email to allen@allenmendelsohn.com no later than 3 P.M. on the Friday at the end of the week of your presentation. The comment should briefly summarize your case or news item, but should focus on your original thoughts about same.

II. Five-page comment (20%) - If a student is not comfortable making a presentation, or they just really want to, they may choose instead to write a five-page maximum (double-spaced, maximum 12-point font) comment on a news item or case. If the student chooses this option, they must submit the comment no later than 9 AM on the Monday of the week of the class according to the schedule (see next sub-section), as the comment may be used during class. If this option is chosen, the student will be invited to make a few comments to introduce the case or news item in class, or to comment after I present it, in the case of jurisprudence.

Schedule - A schedule for these presentations / comments is available at a link from <http://allenmendelsohn.com/mcgill> for students to sign up.

Topics for news – Students who choose to do this assignment on a “newsworthy item relating to the internet and the potential legal implications thereof” should seek approval of the instructor on the topic in advance (just shoot him an email). I promise he will say yes, he’s very reasonable, but you should check anyway.

3. General class participation (10%)

The instructor wants to hear your thoughts in class. This is a seminar, dammit, and I don't care that it is happening in a crappy room and that you will be masked. Students who are less comfortable speaking in class are invited to: (i) submit comments about the assigned readings in advance of class, or during, or after to allen@allenmendelsohn.com; (ii) tweet @almendelsohn at any time; (iii) text me (text, FB Messenger, WhatsApp, Insta, I am everywhere); or (iv) find other creative ways to get my attention and make comments – all of this will count toward participation. There will also be random, out of nowhere questions / quizzes (like, one question, one sentence answer quizzes) during class time that will automatically get you big chunks of that 10% (if you get them right, obv!); you are not penalized for getting them wrong or missing them.

Access to the instructor:

Coordinates: 514-931-0702, allen@allenmendelsohn.com, @almendelsohn

Office hours: By appointment if necessary, just email me. But I will be at the Faculty for a half hour (3:30-4) before each class, that will be the best time, please let me know in advance if you would like to meet, I'll be at Thomson House most likely or I will meet you on the 3rd floor of NCDH.

Preferred method of communication: allen@allenmendelsohn.com

Course materials:

Please note that all the materials listed in the week by week outline below will be posted at <http://allenmendelsohn.com/mcgill>, as well as this outline and any other necessary materials, including presentations slides and audio recordings. Certain materials may be copyrighted, so please do not share them with third parties.

Note re MyCourses – MyCourses sucks. To quote a student of mine from 2019 – “MyCourses sucks”. I don't use it. See link above for everything you need.

Suggested Online Resources:

To keep abreast of developments in this field, I strongly suggest regular visits to the following blogs, written by the leading Canadian experts in internet and technology law, privacy, and cybersecurity:

<http://www.barrysookman.com/>

<http://www.michaelgeist.ca/>

<http://www.eloisegratton.com/>

<https://cybersecuritylaw.ca/>

<http://www.teresascassa.ca/>

<http://allenmendelsohn.com/> (though I question that guy's expertise ;-p)

WEEK BY WEEK OUTLINE AND READINGS

Please note that the following schedule is subject to change, depending on the availability of certain guest speakers. (The guest speakers themselves are generally confirmed; certain dates, thus the order of topics, is subject to change. And it will change, happens every year. Some years I get to v7 or v8 of this outline.)

Note re “required” readings – I am not a f*ing idiot. I have 5 degrees from McGill, including 3 law degrees. Doing readings for a course that has no final exam is so far down your list of priorities it’s right below cleaning under your fridge. You should clean under your fridge every once in a while, though, it’s really gross under there. But I digress. My point is I KNOW you are unlikely to do all the required readings, and I don’t expect it. So let’s make a deal. Maybe pick one or two? Maybe read some headnotes? Maybe Google and read a summary? Remember you do have participation grades, so knowing *something* will allow you to ask a semi-decent question to help you with that. Also, the material is pretty good and interesting! This is not Obs II. You may actually like reading some of it! Thanks.

Class 1: (September 13)

Topic: “A Series of Tubes” – introduction to the internet and the technology behind it.

Readings: None

Supplemental readings:

“Freedom on the Net – Canada Country Report 2021”, Allen Mendelsohn for Freedom House (draft version)

Class 2: (September 20)

Topic: Does Anyone Govern the Internet? A look at internet subject matter jurisdiction and net neutrality

Readings:

Broadcasting Act, S.C. c. 11, ss. 2-9,

Telecommunications Act, S.C. 1993, c. 38, ss. 2-7, 27

Section 230 of the *Communications Decency Act of 1996*, 47 U.S.C. § 230

CRTC *Public Notice CRTC 1999-197*, <http://crtc.gc.ca/eng/archive/1999/PB99-197.HTM>

CRTC *Telecom Regulatory Policy CRTC 2017-104*, <http://crtc.gc.ca/eng/archive/2017/2017-104.htm>

**CRTC *Telecom Decision CRTC 2017-105*, <http://crtc.gc.ca/eng/archive/2017/2017-105.htm>

** *Reference re Broadcasting Act*, 2012 SCC 4, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7989/index.do>

Class 3: (September 27)

Topic: Hands Off My Stuff – Copyright (and other IP) on the Internet, and territorial jurisdiction and other preliminary matters

Readings:

Copyright Act, R.S.C., 1985, c. C-42, ss. 2,3, 27 [esp. subsections (2.3) and (2.4)], 29, 29.21, 29.22, 29.23, 41.1, 41.25, 41.26, 41.27

Digital Millennium Copyright Act - 17 U.S. Code § 512

***Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, (aka the “Tariff-22 Case”) [2004] 2 S.C.R. 427, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2159/index.do>

** *Voltage Pictures LLC v. John Doe*, 2014 FC 161, <http://bit.ly/2w5O0oS>

ESA v. SOCAN, 2012 SCC 34, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9994/index.do>

Douez v. Facebook, 2017 SCC 33

Haaretz.com v. Goldhar, 2018 SCC 28

** *Bell Media Inc. v. GoldTV.Biz*, 2019 FC 1432, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/424753/index.do>

Supplemental readings:

Wesley dba MTLFREETV.com v Bell Canada et al, 2017 FCA 55, <http://bit.ly/2nvkTod> and 2016 FC 612 <https://www.canlii.org/en/ca/fct/doc/2016/2016fc612/2016fc612.html>

Norwich Pharmacal Company & Ors v. Commissioners of Customs and Excise, [1974] AC 133 (HL) (Judgment of Lord Reid only)

ICANN Uniform Domain Name Dispute Resolution Policy, <https://www.icann.org/resources/pages/policy-2012-02-25-en>

Boaden Catering v Real Food, 2016 ONSC 4098

Class 4: (October 4)

Finishing previous classes

Class 5: (October 14 – **NOTE THIS IS A THURSDAY CLASS WTF BUT I DON’T MAKE THE RULES**)

Topic: Introduction to Privacy and Data Protection Law in Canada

Readings:

Personal Information Protection and Electronic Documents Act (“PIPEDA”) S.C. 2000, c. 5, ss. 2-7
PIPEDA Schedule 1 (the “10 Principles”)

Guidelines for obtaining meaningful consent, OPC, https://www.priv.gc.ca/en/privacy-topics/collecting-personal-information/consent/gl_omc_201805/

Privacy Act, R.S.C., 1985, c. P-21, ss. 2-8, 12, 13

Act Respecting the Protection of Personal Information in the Private Sector, S.Q. chapter P-39.1, ss. 1-17

** *R. v. Spencer*, [2014] 2 SCR 212

<https://www.canlii.org/en/ca/scc/doc/2014/2014scc43/2014scc43.html>

Sample Website Privacy Policy (instructor drafted)

Class 6: (October 25)

Note: Deadline for submitting essay topics, with one paragraph description of the topic and / or table of contents, along with 3 bibliographic references.

Topic: Surviving the Mean Tweets of Montreal – Defamation in the internet Age

Readings:

Warman v. Wilkins Fournier, 2011 ONSC 3023

Olsen v. Facebook Inc., 2016 NSSC 155
** *Grant v. Torstar Corp.*, 2009 SCC 61
** *Canoë inc. c. Corriveau*, 2012 QCCA 109
Haaretz.com v. Goldhar, 2018 SCC 28

Supplemental Readings:

Prud'homme v. Prud'homme, 2002 SCC 85
Zeran v. AOL, 129 F.3d 327 (4th Cir. 1997)
R. v. Elliott, 2016 ONCJ 35

Class 7: (November 1)

Topic: My Image is My Own – Rights to your image and reputation online and “revenge porn”

Readings:

“Online Reputation – What are they saying about me?” Discussion Paper prepared by the Policy and Research Group of the Office of the Privacy Commissioner of Canada

https://www.priv.gc.ca/media/1810/or_201601_e.pdf

** *Doe 464533 v. N.D.*, 2016 ONSC 541, <http://canlii.ca/t/gn23z>

Doe v. N.D., 2016 ONSC 4920 (CanLII), <http://bit.ly/2oCQxj5>

R. v. A.C., 2017 ONCJ 317, <http://canlii.ca/t/h42q9>

Supplemental Readings

Aubry v Éditions Vice-Versa Inc [1998] 1 S.C.R. 591

Vanderveen v Waterbridge Media Inc., 2017 CanLII 77435 (ON SCSM) <http://bit.ly/2EGzKrJ>

Class 8: (November 8)

Topic: Forget Me Not? – the Right to Be Forgotten in Europe (and Canada?) and Introduction to European Data Protection

Readings:

Draft OPC Position on Online Reputation, January 28, 2018, <http://bit.ly/2Hu0M39>

***Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González*, CJEU, at <http://curia.europa.eu/juris/celex.jsf?celex=62012CJ0131&lang1=en&type=TEXT&ancre=>

***Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do>

General Data Protection Regulation (“GDPR”) (Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC), <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=en>

Schrems v. Data Protection Commissioner, ECLI:EU:C:2015:650, <http://bit.ly/2w8MfaB>

Google LLC, v Commission nationale de l’informatique et des libertés (CNIL), ECLI:EU:C:2019:772, <https://bit.ly/3kVvi5N>

** *Data Protection Commissioner v. Facebook Ireland Ltd, Maximillian Schrems* (“Schrems II”), ECLI:EU:C:2020:559, <https://bit.ly/321ZbNi>

Supplemental Readings:

A.T. v. Globe24h.com, 2017 FC 114 (CanLii), <http://bit.ly/2oalk9l>.
Google Inc. v. Equustek Solutions Inc., U.S. District Court, Northern District of California, 5:17-cv-04207-EJD, <https://www.scribd.com/document/363385175/Equustek-CA>
Directive 95/46/EC of The European Parliament and Of The Council
Eloïse Gratton and Jules Polonetsky, “Droit à l’oubli: Canadian Perspective on the Global ‘Right to be Forgotten’ Debate”, *Colorado Technology Law Journal*, Spring 2017

Class 9: (November 15)

Topic 1: Europe and RTBF continued

Topic 2: Introduction to the substantive law of cybercrime in Canada (fingers crossed!)

Readings:

Treaty Number 185 of the Council of Europe (“Budapest Convention”), <http://bit.ly/2Cy9I3S>
Criminal Code ss. 342.1, 430(1.1)
** *R. c. Parent*, 2012 QCCA 1653, <http://canlii.ca/t/fsrp3>
Mr. Robot, Season 1 Episode 1 (pre-credits sequence) https://youtu.be/NLb6h_7NAW0

Class 10: (November 22)

SPAM SPAM SPAM EGGS SAUSAGE AND SPAM – When selling you stuff online clashes with your privacy rights

Readings:

Eloïse Gratton, “Personalization, Analytics, and Sponsored Services: The Challenges of Applying PIPEDA to Online Tracking and Profiling Activities”, *Canadian Journal of Law and Technology*, Vol 8, No 2 (2010) “Canada’s Anti-Spam Law” or “CASL”, S.C. 2010, c. 23, ss. 1-13, 20 at <http://laws-lois.justice.gc.ca/eng/acts/E-1.6/FullText.html>
CASL Regulations <http://fightspam.gc.ca/eic/site/030.nsf/eng/00273.html>
Compliance and Enforcement Decision CRTC 2017-65, <http://www.crtc.gc.ca/eng/archive/2017/2017-65.htm>
** *3510395 Canada Inc. v. Canada (Attorney General)*, 2020 FCA 103, <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/480093/index.do>

Supplemental Readings:

Samuel E. Trosow, “The Internet of Things: Implications for Consumer Privacy under Canadian Law” (working paper)

Class 11: (November 29)

Topic 1: (time permitting) Totally random practical internet, privacy, and technology law topics that I have dealt with over the years that we haven’t covered in class so far, but I figured you should know the basics of or at least know of their existence.

Readings:

Meh, whatever

Topic 2: AI Decision Making and Discrimination - A Comparative Perspective

Guest Speaker: [Professor Karen Eltis](#), University of Ottawa

Class 12: (December 6)

Online essay discussions!

<https://us02web.zoom.us/j/81925964801?pwd=RUIPQlBBSzIzMmU0eUZYS2NCMjNrZz09>

MCGILL POLICY STATEMENTS

Please note the following important statements of policy from the University (which the instructor agrees with 100%!):

Academic Integrity:

McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures (see www.mcgill.ca/students/srr/honest/ for more information).

Language of Submitted Work

In accord with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded.

In addition, please note the following:

Student Support

If, during the course of the year, you encounter any problem (academic or personal) that affects your studies, please do not hesitate to contact the Student Affairs Office (SAO.Law@mcgill.ca) and request an appointment with a Student Advisor.

Extensions

Assignments and papers must be submitted by the deadlines indicated. An extension may be granted for written work if you are unable to submit by the assigned deadline due to medical or analogous circumstances. Please contact the SAO directly via email SAO.law@mcgill.ca to request approval.

Academic Accommodations

If you believe that you may require an academic accommodation during this course, please do not hesitate to discuss them with Giosi Rota (giosina.rota@mcgill.ca), and the Office for Students with Disabilities, 514-398-6009.