

Faculty of Law – McGill University

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

Maître Allen Mendelsohn, B.A., MBA, B.C.L., LL.B., LL.M.

allen@allenmendelsohn.com

LAWG 536 Sections 001 and 009

Fall 2023

Mondays 2:30 P.M – 5:30 P.M.

Room 316 NCDH

GENERAL INFORMATION

Access to the instructor:

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

Office hours: Open office hours 2:00 PM to 2:30 PM Mondays, room 316 NCDH. Also, at 5:30 PM following class for as long as necessary. I am also happy to Zoom, Teams, Google Meet, etc. *any time*, just email me to set something up.

Preferred method of communication: allen@allenmendelsohn.com

Course content / description:

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, artificial intelligence, 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 👍 😊

Pedagogy

The course is an in-person great mix of lectures, presentations, and discussions. We'll have lectures including an illustrious line-up of guest speakers (who may occasionally appear via video), and various (fun!) exercises and (fun!) discussions that will happen during class time. And when I say "lecture" I mean "interactive lecture", as I consider this a seminar and I want to hear from you. Nay, I *need* to hear from you. Interrupt me any time.

I record lectures, but only audio. All my slides that I use in class will be made available.

Assignments & evaluation:**Summary:**

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

Method of Evaluation - details in required SAO format:

Participation	
Weight	10%

In-term Assignment	
Type/Name	Presentation and / or comment
Description	<ul style="list-style-type: none"> - A presentation and / or comment - See details below
Weight	20%
Due Date	Variable, see below
Submission Method (By Student Name)	Directly to Instructor, details below

Final Assignment	
Type/Name + Short Description	Final essay on a topic of your choice, 4000-5000 words
Writing Req.?	No
Weight	70%
Due Date	SAO-determined Final Paper Deadline (December 14, 3:00 P.M.)
Submission Method (By Student Name)	SAOassignments.law@mcgill.ca cc allen@allenmendelsohn.com

The actual details:**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 14th, 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. We'll talk more about it in detail in October, stop worrying about it while you read this now. Be creative with your topic! All essay topics must be approved in advance by the instructor. The suggested guideline 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 30) 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 10-15 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 3 PM on the Sunday of the week of the class according to the schedule (see next sub-section), as the comment may be used during class.

Schedule - A schedule for these presentations / comments will be 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. 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, I am everywhere); or (iv) find other creative ways to get my attention and make comments – all of this will count toward participation.

There may (ok, *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, obvs!); you are not penalized for getting them wrong or missing them.

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.

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, may be 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 11)

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

Guest speaker: – Steve Bissonnette, Managing Director, [Plank Multimedia Inc.](http://PlankMultimediaInc.com)

Readings: None

Supplemental readings:

“Freedom on the Net – Canada Country Report 2023”, Allen Mendelsohn for Freedom House (draft version)

Class 2: (September 18)

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>

Procureur général du Québec c. Association canadienne des télécommunications sans fil, 2021 QCCA 730

Class 3: (September 25; for any Jewish students, I recognize this is Yom Kippur, please note I will be teaching but I do not expect you to be there, we will discuss alternative arrangements)

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>

Rogers Media Inc. v. John Doe 1, 2022 FC 775

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 2)

Topic 1: Finishing classes 2-3 material because we will be behind, I guarantee it!

Topic 2: Intro to Privacy Law Part 1 from me

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)

NOTE NO CLASS MONDAY OCTOBER 9 (THANKSGIVING / FALL STUDY BREAK)

NOTE NO CLASS MONDAY OCTOBER 16 (FOCUS WEEK) GO FOCUS! (and maybe work on your essay topic)

Class 5: (October 23)

Topic: Introduction to Privacy and Data Protection Law in Canada

Guest speaker: [Laura Crestohl](#), Senior Advisor at the Office of the Privacy Commissioner of Canada

Readings: (same as class 4 Topic 2)

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 30)

Note: *Suggested guideline 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
***Caplan v. Atas*, 2021 ONSC 670

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 6)

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 13)

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=TXT&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 20)

Topic 1: Is Social Media regulated? Should it be?

Guest Speaker: [Frances Haugen](#), Senior-Fellow-in-Residence, McGill Centre for Media, Technology and Democracy, and Facebook whistleblower

Topic 2 – Catching up!

Class 10: (November 27)

Topic 1: Introduction to the substantive law of cybercrime in Canada

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

Topic 2: Is AI smarter than a law student? The legal, privacy and data protection issues relating to artificial intelligence

Guest speaker: Maître Danielle Miller Olofsson, Stikeman Elliott

Class 11: (November 30 **NOTE THURSDAY** class making up for all those missing Mondays)

Topic 1: 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)

Topic 2: Expression and Access to Justice in the Digital Age

Guest speaker: – [Prof. Karen Eltis](#), University of Ottawa

Readings:

** *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10007/index.do>

Karen Eltis, "Courts, Litigants, and the Digital Age", 2nd Ed., Intro, Chapters 1 and 3

Class 12: (December 4)

Topic 1: 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: In-class fun exercise! With fabulous prizes to be won!

Readings:

Lavallee v. Isak, 2021 ONSC 6661

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 use this webform to request approval: <https://www.mcgill.ca/law-studies/sao-forms/request-extension-exam-or-paper>. You may also contact the SAO directly via email SAO.law@mcgill.ca for more information.

Academic Accommodations

If you believe that you may require an academic accommodation during this course, please do not hesitate to discuss them with the Student Affairs Office via email SAO.law@mcgill.ca, and the [Student Accessibility and Achievement](#), 514-398-6009.