

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 2024

Mondays 2:30 P.M – 5:30 P.M.

Room 200 NCDH

GENERAL INFORMATION

1. Access to the instructor:

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

Office hours: Open office hours 1:30 PM to 2:30 PM Mondays, room 307 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

Students can request feedback via the email address above.

2. 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 👍 😊

3. Pedagogy

The course is an in-person mix of lectures, presentations, and discussions, focused on the issues outlined in the Course content section above. 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 sort-of seminar (class size notwithstanding) 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.

4. Assignments & Evaluation

Summary:

1. Final Assignment (3 hour at-home exam): 50% of final grade
2. Presentation (group of 2 students): 20%
3. Case(-ish) comment: 30%

5. Method of Evaluation

In-term Assignment #1	
Type/Name	Group (duo) Presentation
Description	- A presentation - See details below
Weight	20%
Due Date	Variable, see below
Submission Method (By Student Name)	In-class

In-term Assignment #2	
Type/Name	Case(-ish) comment
Description	- A case comment or related comment - See details below
Weight	30%
Due Date	Variable, see below
Submission Method (By Student Name)	myCourses

Final Exam	
Type/Name + Short Description	3 hour take-home, fixed-date
Weight	50%
Due Date	TBD
Submission Method (By Exam Code)	By Exam Code and Exam software TBD

The actual details:

1. Final Exam (50%)

A 3-hour, fixed date take home exam, open book. The exam will present certain fact patterns and students shall argue for a solution (or not), based on the materials discussed in class. Exam grades will

be determined based on clarity of argument, originality of argument, and knowledge and understanding of the class materials.

2. In-term Assignment #1 - Group (duo) Presentation (20%)

Each class, one or more groups of two students (hereinafter each a “duo”) will present / summarize the most important case(s) of the day, or other material (like important laws), that are marked with a ** in the outline below. Presentations should be no more than 20-25 minutes in length, but I’m flexible. To a point. Students shall choose their own duos. The duo shall decide between them how to present the case / material, but the grade for each student of the duo shall be the same. The grading is not dependant on style or ease of presentation, but on the content, so don’t panic!

Schedule for presentations - A schedule for these presentations will be available at a link from <http://allenmendelsohn.com/mcgill> for students to sign up. Not right now, but soon! It will be available as of the first class (September 9).

3. In-term Assignment #2 – Case(-ish) comment (30%)

In conjunction with the presentation, students will comment on the case or other material. The comment should only briefly summarize the case or material, focusing on your original thoughts about the case, or an interesting legal angle, or follow-up cases, or anything a traditional case comment might be. If your comment is about a law or treaty, you have free reign to write anything related to that law or treaty. Grading is based on understanding of the case or other material and creativity and original thought. Does it make me go “hmmm”?

The comment should be 5 pages, double spaced in any 10 to 12 point font, + or – a page. The case comment should be properly footnoted according to the McGill style guide (red book) but a bibliography is not necessary. Each student in the duo will write their own comment and receive a separate grade.

Due date for comment – 15h00 on the **Monday following the presentation** (i.e. 7 days later), or if said Monday falls on Thanksgiving or Focus Week, the **Friday following the presentation** (*cough*).

6. 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.

Course materials are not on MyCourses. They are at the link above. They are also widely available everywhere.

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.)

Class 1: (September 9)

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 2024”, Allen Mendelsohn for Freedom House (draft version)

Class 2: (September 16)

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, and especially as amended by the *Online Streaming Act*, S.C. 2023, c. 8

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

** *Online News Act*, S.C. 2023, c. 23

Class 3: (September 23)

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: (September 30)

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, selected sections, notably as amended by Law 25

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

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

** *R. v. Bykovets*, 2024 SCC 6 <https://www.canlii.org/en/ca/scc/doc/2024/2024scc6/2024scc6.html>

Sample Website Privacy Policy (instructor drafted)

** *Canada (Privacy Commissioner) v. Facebook, Inc.*, 2024 FCA 140

Class 5: (October 7)

Topic: Finishing classes 2-4 material, and presentations

NOTE NO CLASS MONDAY OCTOBER 14 (THANKSGIVING / FALL STUDY BREAK)

NOTE NO CLASS MONDAY OCTOBER 21 (FOCUS WEEK) GO FOCUS!

Class 6: (October 28)

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

***Prud'homme v. Prud'homme*, 2002 SCC 85

Supplemental Readings:

Zeran v. AOL, 129 F.3d 327 (4th Cir. 1997)

R. v. Elliott, 2016 ONCJ 35

Class 7: (November 4)

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> and *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 11)

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/3kVv15N>

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

** *A.T. v. Globe24h.com*, 2017 FC 114 (CanLii), <http://bit.ly/2oalk9l>.

** *Google LLC v. Canada (Privacy Commissioner)*, 2023 FCA 200,

Supplemental Readings:

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 18)

Topic 1: Forget Me Not? – the Right to Be Forgotten in Europe (and Canada?) and Introduction to European Data Protection (continued)

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>

Class 10: (November 25)

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: 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-](http://laws-lois.justice.gc.ca/eng/acts/E-1.6/FullText.html)

[lois.justice.gc.ca/eng/acts/E-1.6/FullText.html](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>

Class 11: (December 2)

Topic 1: 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

Topic 2: In-class fun exercise!

Readings:

Lavallee v. Isak, 2021 ONSC 6661

Class 12: (December 4) NOTE WEDNESDAY CLASS TO MAKE UP FOR MISSED MONDAYS

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: Student's Choice lecture! (to be discussed)

Readings:

BWAHAHAHAHAHA

7. 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.

8. 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.

9. 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.

10. 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.