

PRIVACY LAW/ LAWS 2220

WINTER TERM – 2019

Privacy law is in many ways in its infancy. This seminar course will review significant and interesting cases and writings, and through discussion, analyse the fundamental principles and policy debates that inform the law's evolution in this area.

I. LOCATION:

Mondays 5pm-6:50pm
Room 411

II. INSTRUCTOR

Kevin A. Kindred
Solicitor, Nova Scotia Department of Justice
(902) 424-5214
kevin.a.kindred@gmail.com

The best way to reach me is via email. Please use my gmail address above, which I am more likely to check than my Dal email.

I do not maintain office hours at the law school. Students who wish to meet in person are encouraged to:

- take time after class on Monday nights, or
- contact me to arrange a meeting time at the law school.

III. COURSE MATERIALS

The course will be based around weekly readings posted on Brightspace as outlined below.

In addition to required readings, optional readings will be posted to Brightspace from time to time for the benefit of students with a particular interest in a specific subject. These readings are found in folders loosely grouped by subject.

IV. TEACHING METHOD

This is a seminar course based primarily on group discussion, on a set topic each week related to privacy. Students are expected to attend class having read the materials and must be prepared to contribute constructively to class discussions and exercises.

The primary learning method in this class will be through the readings, class discussion, and research. There is no lecture component, beyond my facilitation of the class discussion.

V. EVALUATION

Evaluation will be based on the following:

- (a) Class Participation/Discussion– 15%
- (b) Class Presentation - 15%
- (c) Major Paper due **April 15, 2018** - 70%

- Synopsis submitted for approval by **February 11, 2018 (Week 6)**

Any assignments due must be submitted to me via email **in a word processing format** (eg. .doc, and not .pdf).

Assignments will be considered “handed in” at the time received via email. Please follow up with me if I do not confirm receipt of the email with attachment.

VI. CLASS PARTICIPATION/DISCUSSION

This component of the mark is intended to encourage students to make the seminar format a success. While attendance is crucial, this component is awarded on the basis of active participation, not mere attendance.

Students who must miss an occasional class are strongly encouraged to let me know in advance. A student may mitigate the impact of an absence on their Class Participation/Discussion mark by sending me comments on the assigned readings for that class. Any such comments must be received before the beginning of the class which is being missed. However, the mark still measures active participation in class discussion; a student with poor attendance is unlikely to do well in this component.

VII. CLASS PRESENTATION

Each student will prepare and deliver a 20-minute (time limit subject to change) presentation to the class, including a one-page handout, on one of two topics:

- A case summary on a privacy-related case of the student’s choosing. (Case must not be one of the required readings for class, but may be an optional reading.)

OR

- A summary of the student's major paper research.

Students must indicate the subject of their presentation no later than **February 11, 2018** (Week 6). (This is the same deadline as the synopsis for approval of the major paper topic.)

This presentation will constitute 15% of the student's final grade. The presentation will be graded on:

- The quality of the presentation.
- The quality of the one-page handout.
- The student's ability to lead a class discussion on the topic.

VIII. MAJOR PAPERS:

A major paper on a thesis related to privacy law will form the bulk of the student's mark. Students are encouraged to discuss their ideas with me early in the semester, to help ensure their paper ideas:

- are sufficiently grounded in privacy law;
- incorporate a thesis, not simply a topic;
- are realistic in terms of scope and research potential.

A. APPROVAL OF PAPER TOPICS AND SYNOPSES

Students are encouraged to turn their minds early to possible major paper topics, and to discuss possibilities with the instructor. All students must obtain prior approval of a suitable topic no later than **February 11, 2018** (Week 6).

In order to obtain approval you must provide a synopsis of your paper topic (approximately 2-3 pages) outlining your thesis, an overview of arguments you will present or explore, and a list of sources consulted to date. A good synopsis will provide the instructor with confidence that the student has a well-considered topic and has completed preliminary research; a simple statement of the topic will not suffice.

Students who do not submit a synopsis for approval by the deadline will be subject to a penalty on their Major Paper mark.

B. DEADLINE AND PROCEDURE FOR SUBMISSION OF MAJOR PAPERS

The deadline for submission of papers is **noon on Monday, April 15, 2018**.

Papers **must be** submitted to the instructor via email. Papers **must be** submitted in a word processing format (eg. .doc, and not .pdf).

Please refer to the “Policy on late penalties” for JD students in the Academic Regulations:

<https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

C. FORMAT, LENGTH AND CONTENT OF MAJOR PAPERS

The length of your paper (excluding appendices and bibliography) should be not less than 25 pages. Although there is no formal upper page limit, the expectation is that papers in this course will be between 25 and 40 pages.

Please note that all papers must include both footnotes and a bibliography.

The guidelines for major papers can be reviewed at Section N of the Faculty Regulations:

<http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

D. MANDATORY SYLLABUS LANGUAGE REGARDING MAJOR PAPERS

*Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties:
<https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>*

Please note students may also be required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

- a) submit copies of multiple drafts demonstrating development of their work*
- b) submit copies of sources*
- c) submit an annotated bibliography*

Please take note of the following additional policies and procedures:

STUDENT REQUESTS FOR ACCOMMODATION

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean, Academic Michael Deturbide or the Director of Student Services and Engagement Dana-Lyn Mackenzie as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit www.dal.ca/access for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at (902) 494-2836.

PLAGIARISM

All students must read the University policies on plagiarism and academic honesty
<http://academicintegrity.dal.ca/>

and the Law School policy on plagiarism

<http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

OUTLINE / SCHEDULE

This is a proposed outline and may be subject to change depending on the direction taken by class discussions, availability of guest speakers and other such variables. If there are discrepancies between this Syllabus and the readings assigned for the week via Brightspace, assume that Brightspace is more up-to-date.

Course Schedule (based on 13 weeks)

#	DATE	TOPIC	READINGS
1	Week 1 (Jan 7)	Review syllabus	None
2	Week 2 (Jan 14)	What is the privacy interest? What is its value?	<p><i>R v Spencer</i>, 2014 SCC 43 (http://canlii.ca/t/g7dzn)</p> <ul style="list-style-type: none"> particularly paras 1-51 <p>Hunt, Chris DL, "From Right to Wrong: Grounding a "Right" to Privacy in the "Wrongs" of Tort," (2015) 52:3 Alta LR 635 https://www.albertalawreview.com/index.php/ALR/article/view/26/26</p> <p>"Summary of privacy laws in Canada," Office of the Privacy Commissioner of Canada</p> <ul style="list-style-type: none"> https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/02_05_d_15/
3	Week 3 (Jan 21)	What is "privacy law"? What are its fundamental concepts?	<p><i>Jones v Tsige</i>, 2012 ONCA 32 (http://canlii.ca/t/fpnld)</p> <ul style="list-style-type: none"> particularly paras 1-24 <p>Austin, Lisa, "Is Consent the Foundation of Fair Information Practices? Canada's Experience Under PIPEDA," (Spring 2006) 56 U. of T. L. J. 181</p> <p><i>R v Cole</i>, 2011 ONCA 218 (http://canlii.ca/t/fkmxr)</p> <ul style="list-style-type: none"> particularly paras 1-80
4	Week 4 (Jan 28)	Critical perspectives on the privacy interest	<p>Bessie Smith, "Tain't Nobody's Biz-ness If I Do," 1923 (https://www.youtube.com/watch?v=w3fjaH0w8Bk)</p> <p>Allen, Anita and Erin Mack, "How Privacy Got Its Gender," (1990) 10:3 N III UL Rev 441 http://scholarship.law.upenn.edu/cqi/viewcontent.cgi?ar</p>

#	DATE	TOPIC	READINGS
			<p>ticle=2309&context=faculty_scholarship)</p> <p>Etzioni, Amitai, "A Liberal Communitarian Conception of Privacy," (2012) 29 J. Marshall J. Computer & Info. L. 419</p>
5	Week 5 (Feb 4)	Regulation of privacy by statute	<p><i>Royal Bank of Canada v. Trang</i>, 2016 SCC 50 (http://canlii.ca/t/gvndv)</p> <p><i>Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401</i>, 2013 SCC 62 (http://canlii.ca/t/g1vf6)</p> <p><i>Personal Information Protection Amendment Act, 2014</i>, SA 2014 c14</p>
6	Week 6 (Feb 11)	Regulation of privacy by tort law	<p><i>Broutzas v. Rouge Valley Health System</i>, 2018 ONSC 6315 (http://canlii.ca/t/hvq71) PARAS 1-4, 124-174</p> <p><i>Doe 464533 v N.D.</i>, 2016 ONSC 541 (http://canlii.ca/t/gn23z)</p>
	(Feb 18)	STUDY BREAK	
7	Week 7 (Feb 25)	Charter s.8 and the defining the privacy interest	<p><i>R. v. Orlandis-Habsburgo</i>, 2017 ONCA 649 (http://canlii.ca/t/h59h9)</p> <p><i>R. v Marakah</i>, 2017 SCC 59 (http://canlii.ca/t/hp63v)</p>
8	Week 8 (March 4)	Charter s.8 and protecting the privacy interest	<p><i>R v Fearon</i>, 2014 SCC 77 (http://canlii.ca/t/gflcd)</p> <p><i>R v Tse</i>, 2012 SCC 16 (http://canlii.ca/t/fqxmc)</p> <p>Austin, Lisa, "Getting Past Privacy? Surveillance, the</p>

#	DATE	TOPIC	READINGS
			Charter, and the Rule of Law,” (2012) 27 Can. J.L. & Soc. 381
9	Week 9 (Mar 11)	Charter s.7 and privacy protection	<i>Cheskes v. Ontario (Attorney General)</i> , [2007] 87 OR (3d) 581 (ONSC) (http://canlii.ca/t/1sxx8) <i>Association of Justice Counsel v. Canada (Attorney General)</i> , 2017 SCC 55 (http://canlii.ca/t/hmvq2)
10	Week 10 (Mar 18)	Privacy issues in health care	<i>McInerney v. MacDonald</i> , [1992] 2 SCR 138 NS Personal Health Information Act FAQ <i>Regina Qu'Appelle Regional Health Authority (Re)</i> , 2013 CanLII 5640 (SK IPC) <ul style="list-style-type: none"> • esp. paras 1-80
11	Week 11 (March 25)	Privacy issues in employment law	<i>Order P2010-002 (LAFARGE CANADA INC.)</i> , 2010 CanLII 98631 (AB OIPC) Use of Employee Monitoring Software by the District of Saanich, 2015 BCIPC 15 PIPEDA Case Summary #2009-11
12	Week 12 (April 1)	Privacy vs. open government	<i>AB v Bragg Communications Inc</i> , 2012 SCC 46 (http://canlii.ca/t/fstvq) <i>Newfoundland and Labrador Teachers' Association v. Newfoundland and Labrador English School District</i> , 2016 CanLII 89960 (http://canlii.ca/t/gwl6r)
13	Week 13 (April 8)	Final student presentations	

The above-noted schedule may be adjusted periodically as the term progresses.