



We acknowledge that we are on the traditional, ancestral and unceded territory of the hən̓q̓əmiñəm speaking Musqueam people.

iSchool Mission: Through innovative research, education and design, our mission is to enhance humanity's capacity to engage information in effective, creative, and diverse ways.

Course Number and Name - ARST 580 2022 – 2023 W Term I (3)

Program:	Master of Archival Studies
Year:	2021-2022, Term 1 (Friday, Sept. 9 – Wednesday, Dec. 7)
Course Schedule:	Fridays, 9:00am-11:50am
Location:	Geography 214
Instructor:	Elissa How
Office location:	TBA
Office phone:	TBA
Office hours:	TBA
E-mail address:	TBA
Learning Management Site:	http://lthub.ubc.ca/guides/canvas/

Course Goal: Following the life cycle of the record, to provide an understanding of the relationship between archives and the law.

FNCC specialization: The assignments in this course can serve the requirements of the First Nations Curriculum Concentration (FNCC). If students would like to take this course for FNCC credit, they are invited to contact me to discuss this option.

Learning Outcomes:

Upon completion of this course students will be able to:

1. Understand the roles and responsibilities of archives in the Canadian legal system. [1.4]
2. Identify and understand legislation and case law relevant to individual records and to archives. [1.2]
3. Recognize legal risks from criminal, tort, and contract law affecting archives and how to manage these risks. [1.3, 3.2]
4. Understand the relationship between archives and copyright and intellectual property law. [1.2, 1.3]
5. Apply the principles of evidence law to records. [1.2, 1.3, 4.1]
6. Understand the current trends in electronic discovery, including the use of *The Sedona Canada Principles Addressing Electronic Discovery*. [1.2, 1.3]
7. Understand the relationship between records professionals and the law regarding records retention and the improper destruction of evidence. [1.2, 1.3]
8. Analyze and communicate effectively using various communications tools used in professional practice by working with real-world scenarios based on case law, legislation, policy, and practice matters experienced by records professionals. [1.4, 2.1, 2.2]

Course Topics:



- Overview of the Canadian legal system
- Legislation and case law affecting archival institutions, programs, or records
- Legislation and case law relevant to records
- Legal risks and liability in contract, tort, and criminal law relevant to records professionals
- Managing legal risks and available legal defences
- Copyright and intellectual property law
- Principles of evidence law applied to records
- Current trends in electronic discovery and *The Sedona Canada Principles Addressing Electronic Discovery*
- Records retention and improper destruction (spoliation) of evidence

Prerequisites: MAS and Dual Students: completion of the MAS core plus 12 credits of which 6 credits must be ARST courses.

MLIS students: completion of the MLIS core courses, plus permission of the iSchool Graduate Advisor

Format of the course: We will meet in person each Friday morning from 9:00 am-11:50 am. Each week will include a lecture (PowerPoints and detailed notes will be made available to students in advance) as well as some combination of in-class exercises, discussion groups, and the opportunity for questions. The course is set up as a synchronous in-person class; however, given the ongoing need for flexibility, there will be options to view the PowerPoints with audio from home and participate in asynchronous Discussions via Canvas when the need arises. Please be in touch with the instructor if you would find this option to be helpful for a particular week (see below for more on attendance requirements).

Estimated number of weekly hours students should dedicate to this class (preparation activities + class activities): 10 hours.

Required and Recommended Reading:

There is no recommended textbook or other materials required for this class. Background readings will be assigned and available online. There is no required reading for the first class.

Required:

- *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act*, 1982 (United Kingdom), 1982, c. 11. <https://www.justice.gc.ca/eng/csi-sjc/rfc-dlc/ccrf-ccd/pdf/charter-poster.pdf>
- Sullivan, Ruth. "Introduction to Statute Law," in *Statutory Interpretation, Third Edition*. Toronto: Irwin Law, 2016, pp. 3-28.
- *Jones v. Tsige*, 2012 ONCA 32 (CanLII), <<http://canlii.ca/t/fpnlld>
- *Library and Archives of Canada Act*, SC 2004, c 11, <http://canlii.ca/t/52f15>
- *Canada (Attorney General) v. Fontaine*, 2017 SCC 47 (CanLII), [2017] 2 SCR 205, <http://canlii.ca/t/h6jgp>
- Craig, Carys J., "Meanwhile, in Canada... A Surprisingly Sensible Copyright Review (November 1, 2019)." *European Intellectual Property Review (Forthcoming)*, Osgoode Legal Studies Research Paper, Available at SSRN: <https://ssrn.com/abstract=3494363>



- Canadian Council of Archives/Conseil canadien des archives. "Archival Community Response to "A Consultation on How to Implement an Extended General Term of Copyright Protection in Canada," http://www.archivescanada.ca/uploads/files/News/CUSMAresponse_March28-2021.pdf
- Callison, Camille, Ann Ludbrook, Victoria Owen, and Kim Nayyer. 2021. "Engaging Respectfully With Indigenous Knowledges: Copyright, Customary Law, and Cultural Memory Institutions in Canada". KULA: Knowledge Creation, Dissemination, and Preservation Studies 5 (1). <https://doi.org/10.18357/kula.146>, <https://kula.uvic.ca/index.php/kula/article/view/146>
- *York University v. Canadian Copyright Licensing Agency (Access Copyright)*, 2021 SCC 32 (CanLII), <https://canlii.ca/t/jh8bc>
- Force, Donald C. "The Admissibility of Business Records as Legal Evidence: A Review of the Business Records Exception to the Hearsay Rule in Canada". *Archivaria* 78 (November 27, 2014): 25-51. <https://archivaria.ca/index.php/archivaria/article/view/13491/14861>
- Rennie, Stuart. "Dispelling Myths About Records Retention in Canada." *Sagesse: Journal of Canadian Records and Information Management an ARMA Canada Publication*. 2016 Volume 1, Issue 1, <http://armacanada.org/portfolio/2016-edition/#DISPELLING-MYTHS-RECORDS-RETENTION-CANADA>
- The Sedona Canada Principles (2015), Sedona Conference Working Group 7, 2008 CanLIIDocs 1, <http://canlii.ca/t/nf>
- Rogers, Simon Patrick, and Curtis Sassur. 2020. "On Walden's Fonds: Life on the Frontier of Monetary Appraisal in the Canadian Archival Landscape". *Archivaria* 90 (November), 112-45. <https://archivaria.ca/index.php/archivaria/article/view/13761>

Recommended:

- Borrows, John. *Canada's Indigenous Constitution*. Toronto: University of Toronto Press, 2010. You can choose to read as many chapters as you find interesting; however, the first chapter – Living Legal Traditions (pp. 6-22) would be a good place to begin.
- *The Constitution of the United States of America, As Amended* (PDF), July 25, 2007. <https://www.govinfo.gov/content/pkg/CDOC-110hdoc50/pdf/CDOC-110hdoc50.pdf>
- Dodek, Adam. *The Canadian Constitution, 2nd Edition*. Toronto, Dundurn Press, 2016.
- For general introduction to Canadian law: Yates, Richard A., Teresa Bereznicki-Korol, Trevor Clarke, and Dean A. Palmer, *Business Law in Canada: Twelfth Edition*. North York, Ontario: Pearson Canada Inc., 2020.
- For tort law: Linden, Allen M., Lewis Klar, Bruce Feldthusen, Margaret Isabel Hall, Erik S. Knutsen, Hilary A.N. Young. *Canadian Tort Law: Eleventh Edition*. Toronto: LexisNexis Canada, 2018.
- For contract law: Waddams, S. M. *The Law of Contracts*. Toronto: Thompson Reuters Inc., 2017.
- For criminal law: Roach, Kent, Benjamin L. Berger, Emma Cunliffe, and Asad G. Kiyani. *Criminal Law and Procedure: Cases and Materials*. Toronto: Emond Montgomery Publications, 2020.
- For legal research: Bueckert, Melanie R. et al, The Canadian Legal Research and Writing Guide, Canadian Legal Information Institute, 2018 CanLIIDocs 161, <http://canlii.ca/t/2bm3>
- *Donoghue v. Stevenson* [1932] UKHL 100
- Archives Association of British Columbia (AABC). "Appraisal and Accessioning / Acquisition Policies and Documentation," <https://www.aabc.ca/Acquisition-Appraisal-and-Accessioning>
- Ontario Justice Education Network. Legal Reasoning Tool: How to Write a Case Brief. 2013. http://ojen.ca/wp-content/uploads/LRT_Case-Brief.pdf



- Geist, Michael. "The Canadian Copyright Story." In *Copyright Law in an Age of Limitations and Exceptions*, edited by Ruth L. Okediji, 169-205. Cambridge: Cambridge University Press, 2017. doi:10.1017/9781316450901.008 .
- Dryden, Jean. 2021. "Copyright in Fire Insurance Plans". *Archivaria* 91 (June), 150-73. <https://archivaria.ca/index.php/archivaria/article/view/13793>
- Dryden, Jean. "The Meaning of Publication in Canadian Copyright Law: An Archival Perspective". *Archivaria* 83 (June 13, 2017): 1-34, <https://archivaria.ca/index.php/archivaria/article/view/13598>
- Dryden, Jean. *Demystifying Copyright: A Researcher's Guide to Copyright in Canadian Libraries and Archives, 2nd ed.* Ottawa: Canadian Library Association, 2014. 84 pp. ISBN 978-0-88802-340-7
- Geist, Michael. "Copyright Vindication: Supreme Court Confirms Access Copyright Tariff Not Mandatory, Lower Court Fair Dealing Analysis Was "Tainted" on Michael Geist's Blog dated August 3, 2021. <https://www.michaelgeist.ca/2021/08/copyright-vindication-supreme-court-confirms-access-copyright-tariff-not-mandatory-lower-court-fair-dealing-analysis-was-tainted/>
- Hagen, Greg, Cameron Hutchinson, David Lametti, Graham Reynolds, Teresa Scassa, and Margaret Ann Wilkinson. *Canadian Intellectual Property Law: Cases and Materials, Second Edition.* Toronto: Emond Montgomery Publications Limited, 2018 (pp. 1-285).
- Canada, Parliament, House of Commons, Statutory Review of the Copyright Act: Report of the Standing Committee on Industry, Science and Technology, 42nd Parliament, 1st Session (June 2019), <https://www.ourcommons.ca/Content/Committee/421/INDU/Reports/RP10537003/indurp16/indurp16-e.pdf>
- Mills, Allison. "Learning to Listen: Archival Sound Recordings and Indigenous Cultural and Intellectual Property". *Archivaria* 83 (June 13, 2017): 109-124
- Paciocco, David M. and Lee Stuesser. *The Law of Evidence: Seventh Edition.* Toronto: Irwin Law, 2015 (see, in particular, Chapter 1 – "The Role of the Law of Evidence")
- Currie, Robert J. and Steve Coughlan. "Canada," Chapter 9, pages 283-325 in Mason, Stephen, and Daniel Seng eds. *Electronic evidence.* London: University of London Press, 2017.
- Mason, Stephen, and Daniel Seng. "Electronic Evidence and Electronic Signatures." London: University of London Press, 2021. (See Chapter 6 in particular - Authenticating electronic evidence by Luciana Duranti and Allison Stanfield).
- Duranti, Luciana, Corinne M. Rogers, and Anthony F. Sheppard. "Electronic records and the law of evidence in Canada: the uniform electronic evidence act twelve years later." *Archivaria* 70 (2010): 95-124. <https://archivaria.ca/index.php/archivaria/article/view/13296>.
- Provincial Court of British Columbia. "The first rule about evidence – it must be relevant," News & Reports, Provincial Court of British Columbia Website. <https://www.provincialcourt.bc.ca/enews/enews-08-09-2015>
- Byrch, Sharon, Stuart Rennie and Uta Fox, "CAN/CGSB 72.34-2017 Electronic Records as Documentary Evidence," *Sagesse: Journal of Canadian Records and Information Management an ARMA Canada Publication*, Winter, 2019 Volume 3, Issue 1, <https://armacanada.org/home/portfolio/2018-edition/#electronic-records-documentary-evidence>
- *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, SC 2010, c 23, <http://canlii.ca/t/52mg5>
- Canada. House of Commons. Standing Committee on Industry, Science and Technology. *Canada's Anti-Spam Legislation: Clarifications are in order*, 2017. <https://www.ourcommons.ca/Content/Committee/421/INDU/Reports/RP9330839/indurp10/indurp10-e.pdf>



- *Cultural Property Export and Import Act*, RSC 1985, c C-51, <<http://canlii.ca/t/53z6m>>
- Home, Heather. "Monetary Archival and Tax Receipting in Canada: An Update," *The Bulletin-Association of Canadian Archivists*, Vol 24, no. 2 (April 2010) 8-16. https://archivists.ca/resources/Documents/ACA-Publications/ACA-Bulletins-and-Annual-Reports/2010_04%20ACA%20Bulletin_Spring.pdf and can also be found at <https://qspace.library.queensu.ca/handle/1974/5569>.
- Warren and Brandeis, "The Right to Privacy," *Harvard Law Review*, Volume 4, no. 5, 1890n https://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html

Course Assignments:

Assignment Name	Due Date	Weight	Graduate Competencies
Secondary Source Annotated Bibliography	Monday October 3, 2022 (midnight)	20%	2.1, 4.1
Legislation Analysis	Monday October 17, 2022 (midnight)	20%	1.3, 2.1, 4.1
Case Brief	Monday November 7, 2022 (midnight)	20%	4.1, 2.1, 4.1
Advocacy Assignment	Friday November 25, 2022 or Dec 2, 2022 (in-class)	30%	1.4, 2.2, 3.2, 4.1, 5.2
Participation	Ongoing	10%	2.1, 5.1

Course Schedule [week-by-week]:

Topic	Date
<p>Module 1 - Overview of course and introduction to the Canadian legal system</p> <p>In this module we will:</p> <ul style="list-style-type: none"> • Discuss the course, its structures and goals, the assignments, and review what to expect in each of the modules • Discuss why we study the law and the potential ways the law might impact you as an information professional • Reflect on the history, development, and ongoing relevance of the documents that comprise the Canadian Constitution, including a consideration of how other jurisdictions and other legal approaches such as of Indigenous law differ from the current Canadian legal approach • Discuss a selection of Charter cases with potential relevance for information professionals • Discuss what is meant by the common law system and compare it with the civil law system in Quebec and other areas of the world • Discuss the principle of <i>stare decisis</i>, the hierarchical nature of courts in Canada, and how these principles affect our interpretation of legal instruments 	Week 1- Friday September 9
Module 2 – An Introduction to tort law, criminal law, and contract law for information professionals	Weeks 2-3 – (Friday September 16 and 23)



<p>In this module we will:</p> <ul style="list-style-type: none"> • Discuss the general development of tort law and compare some of the most common intentional torts with negligence • Consider the principle of vicarious liability, the ways that tort law are most likely to intersect with the role of an information professional, and ways to defend or reduce potential liability for tortious actions • Reflect upon how specific cases in tort law have contributed to the development of tort law and what they might mean for information professionals • Discuss the main elements of criminal law, what elements are required for a crime to occur, differences between tort law and criminal law, defences in criminal law, and what approaches could be taken if you are involved in a potential criminal action • Discuss the formation of contracts, the main elements that must be present to form a contract, and what is required to prove breach of contract • Locate examples of draft donor contracts that are currently used in existing museums or archives, consider the purpose for each part of the contract, contrast the effectiveness of these examples, and role play ways that an archivist could approach explaining a contract to a potential donor 	
<p>NO CLASS FOR NATIONAL DAY FOR TRUTH AND RECONCILIATION</p>	<p>Friday September 30</p>
<p>Module 3 – Researching and analyzing legislation and case law for information professionals</p> <p>In this module we will:</p> <ul style="list-style-type: none"> • Discuss the theoretical underpinnings of statutory interpretation, the types, elements, and temporal operation of legislation • Consider different elements of legislative style • Examine in detail the <i>Library and Archives of Canada Act</i> and analyze the main obligations and powers that it enables • Understand how to use CanLII to find case law that shows how the courts interpret legislation • Using <i>Canada (A.G.) v. Fontaine</i> as a case study, consider how the court’s interpretation of specific sections of the <i>Library and Archives of Canada Act</i> can assist archivists to interpret relevant legislation • Class time to work on Legislation Analysis Assignment on Friday October 14 (you need to have chosen and read the provision you’re interested in before coming to class) • Understand how courts can create new laws by discussing the development, history, and legal relevance and particular importance of <i>Jones v. Tsige</i> for information professionals • Consider the traditional manner in which lawyers approach case research and how to write a case brief 	<p>Weeks 4-5 (Friday October 7, 2022 and Friday October 14, 2022)</p>
<p>Module 4 - Copyright and intellectual property law for archivists</p> <p>In this module we will:</p> <ul style="list-style-type: none"> • Discuss the development of copyright law from Britain, US and France, the key changes to the Copyright Act and key decisions by the Supreme Court of Canada, and the strengths and weakness of the approach to copyright law in Canada • Consider the nature of copyright law as a creature of statute and how that influences its development and impact on information professionals 	<p>Weeks 6-7 (Friday October 21, 2022 and Friday October 28, 2022)</p>



<ul style="list-style-type: none">• Discuss ways in which current copyright laws provide challenges for archives today• Analyze advocacy approaches to copyright, including those that aim to broaden copyright law to better reflect Indigenous Knowledges as well as examples of advocacy for resisting changing Canada's copyright term to 70 years• Using JRR Tolkien's international copyright battles in the 1960s as well as cases involving moral copyright in Canada, consider the ethics of copyright law• Explore together sources that can be consulted on how to further your understanding of the nuances of copyright law specifically for archivists	
<p>Module 5 - Principles of evidence law applied to records (e.g. e-discovery, records retention, and spoliation)</p> <p>In this module we will:</p> <ul style="list-style-type: none">• Discuss evidence law specifically as applied to records, including issues such as general underpinnings of evidence law, hearsay evidence, authentication of electronic records, and the Best Evidence Rule• Analyze a range of cases that have addressed records and evidence law and their meaning for information professionals• Consider the role of information professionals in the growing area of e-discovery and examine the Sedona Canada Principles• Discuss the important role that records managers must play with regards to electronic evidence as well as examining portions of the main Canadian standards on electronic records as documentary evidence• Consider the issue of how to create or update records retention schedules by searching for legal sources and understand common mistakes that should be avoided• Discuss the issue of spoliation, how case law has interpreted it, and options to take to avoid or prepare for potential lawsuits	<p>Week 8 (Friday November 4, 2022)</p> <p>NO CLASS FRIDAY NOVEMBER 11, 2022 for REMEMBRANCE DAY</p>
<p>Module 6 – Selected legal topics for information professionals (e.g., monetary appraisal, anti-spam law, a general introduction to privacy law)</p> <p>In this module we will:</p> <ul style="list-style-type: none">• Review the <i>Cultural Property and Export and Import Act</i> as a case study and analyze what is most important for archivists to consider when dealing with monetary appraisal• Discuss what records managers (and archivists) will need to know about Canada's Anti-Spam law• Discuss privacy law in general terms and consider the strengths and weaknesses of two sample advocacy-related privacy presentations (the foundations of privacy law and third-party privacy in archives)	<p>Week 9 (Friday November 18, 2022)</p>
<p>Module 7 - Student advocacy presentations and course wrap-up</p> <p>In this module we will:</p> <ul style="list-style-type: none">• Present your Advocacy Assignments to the class• Wrap-up the course and suggest ways to improve the course for future students	<p>Weeks 10-11 (Friday November 25, 2022 and December 2), 2022</p>



Attendance: Weekly in-person attendance is expected but not mandatory. That being said, especially now, I am most interested in flexibility and fostering a supportive student environment and so I will make a PowerPoint version (with audio) available online each week and for those who are unable to attend the in-person lecture, I will offer the opportunity to participate online rather than in person via asynchronous questions and answers via Canvas. However, please note, that if you are desirous of this option, I need to you be in touch with me so that I can best monitor participation. For this reason, if you will be unable to participate online for more than one week in a row, kindly notify me to explain the situation.

Evaluation: All assignments will be marked using the evaluative criteria given on the [iSchool web site](#).

Required Materials: There are no learning materials required to be purchased. Since this is an online course, you will require access to Canvas.

Academic Concession: If you miss marked coursework for the first time (assignment, exam, presentation, participation in class) and the course is still in-progress, **speak with me immediately** to find a solution for your missed coursework. Any concessions that will result in a change to the student record (such as late withdrawal from the course) will be referred to the Faculty of Graduate and Postdoctoral Studies for evaluation. If this is not the first time you have requested concession or classes are over, please consult the [Faculty of Graduate and Postdoctoral Studies' webpage on academic concession](#), and then contact me where appropriate.

Policies and Resources to Support Student Success: UBC provides resources to support student learning and to maintain healthy lifestyles but recognizes that sometimes crises arise and so there are additional resources to access including those for survivors of sexual violence. UBC values respect for the person and ideas of all members of the academic community. Harassment and discrimination are not tolerated nor is suppression of academic freedom. UBC provides appropriate accommodation for students with disabilities and for religious and cultural observances. UBC values academic honesty and students are expected to acknowledge the ideas generated by others and to uphold the highest academic standards in all of their actions. Details of the policies and how to access support are available here (<https://senate.ubc.ca/policies-resources-support-student-success>)

Academic Integrity: The academic enterprise is founded on honesty, civility, and integrity. As members of this enterprise, all students are expected to know, understand, and follow the codes of conduct regarding academic integrity. At the most basic level, this means submitting only original work done by you and acknowledging all sources of information or ideas and attributing them to others as required. This also means you should not cheat, copy, or mislead others about what is your work. Violations of academic integrity (i.e., misconduct) lead to the breakdown of the academic enterprise, and therefore serious consequences arise and harsh sanctions are imposed. For example, incidences of plagiarism or cheating may result in a mark of zero on the assignment or exam and more serious consequences may apply when the matter is referred to the Office of the Dean. Careful records are kept in order to monitor and prevent recurrences. A more detailed description of academic integrity, including the University's policies and procedures, may be found in the [UBC Calendar: Student Conduct and Discipline](#). Academic misconduct includes cheating, plagiarism, and self-plagiarism <http://www.calendar.ubc.ca/vancouver/index.cfm?tree=3,54,111,959> (\$7)

Academic Accommodation for Students with Disabilities: Academic accommodations help students with a disability or ongoing medical condition overcome challenges that may affect their academic success. Students requiring academic accommodations must register with the [Centre for](#)



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[Accessibility](#) (previously known as Access & Diversity). The Centre will determine that student's eligibility for accommodations in accordance with [Policy LR7: Accommodation for Students with Disabilities \(Joint Senate and Board Policy\)](#). Academic accommodations are not determined by your instructors, and instructors should not ask you about the nature of your disability or ongoing medical condition, or request copies of your disability documentation. However, your instructor may consult with the Centre for Accessibility should the accommodations affect the essential learning outcomes of a course.

Other Course Policies as Relevant: My goal is to see you succeed and to help you navigate this class in whatever way I can. If for any reasons – personal or academic – you find yourself struggling with this course, please do not hesitate to speak with me.