



We acknowledge that we are on the traditional, ancestral and unceded territory of the hən̓q̓əmi̓n̓əm̓ 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.

ARST 580 – Records, Archives, and the Law – Course Syllabus (3)

Program:	Master of Archival Studies
Year:	
Course Schedule:	One 3-hour class per week
Location:	IKBLC 155
Instructor:	Elissa How
Office location:	TBA
Office phone:	TBA
Office hours:	TBA
E-mail address:	ehow@mail.ubc.ca
Learning Management Site:	

Course Goal: The goal of this course is to empower students with the theoretical and practical knowledge required to apply legal principles to issues encountered by archivists and records professionals. The course prepares students to identify, locate, summarize, and analyze legal resources and to advocate on a given legal topic. Students will focus on the principles and functions of the Canadian legal system, and have the opportunity to compare and contrast these with other legal systems and cultures.

FNCC specialization: The assignments in this course can serve the requirements of the First Nations Curriculum Concentration (FNCC). For example, students in the FNCC can choose to focus their final advocacy assignment and the three information gathering assignments that lead up to it on a topic where the law intersects with Indigenous records and archives systems and initiatives. 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 principles and function of the Canadian legal system and its application to archives and records organizations.
2. Distinguish between and consider mitigating approaches for legal risks that arise from criminal, tort, and contract law for archivists and records managers.
3. Research and analyze relevant legislation and case law on topics of current concern for archivists and records managers.
4. Demonstrate an understanding of legal principles and apply them to topics of current concern for archivists and records managers.
5. Consider pathways for exploring differences between the Canadian legal system and other legal paradigms.
6. Demonstrate an ability to advocate for issues where the law interacts with archivists and records managers.



Course Topics:

Course Topics:

- Overview of the Canadian legal system
- Comparison of the Canadian legal system with other legal systems and cultures
- Researching Canadian legislation and case law online
- Analyzing key points in legislation and case law
- Contract law for archivists and records managers
- Copyright and intellectual property law for archivists
- Evidence law, e-discovery and records retention for records managers

Additional course topics may include, but not be limited to:

- Privacy and access issues for archivists and records managers
- Tax issues and monetary appraisal for archivists
- Spoliation and destruction of records from a legal perspective
- Proposed future changes to copyright law such as related to technological protection measures, Indigenous Knowledge, and orphan works

Prerequisites:

MAS and Dual students: completion of the MAS core courses. ARST 516 and ARST 555 can be taken as co-requisites.

MLIS students: completion of the MLIS core courses, plus permission of the course instructor and the Graduate Advisor.

Format of the course: A diversity of teaching and learning methods will be used, including lectures, class discussions, student presentations, and out-of-class exercises.

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.

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/csj-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/fpnlid>
- 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," ARCHIVESCANADA.ca, March 28, 2021. 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>
- 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>

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. It's available with Full Text Online through the UBC Library.
- 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 tort law: Linden et al., *Canadian Tort Law*.
- For contract law: Waddams, *The Law of Contracts*
- For criminal law: Roach et al., *Criminal Law and Procedure: Cases and Materials*
- 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>
- Mills, Allison. "Learning to Listen: Archival Sound Recordings and Indigenous Cultural and Intellectual Property". *Archivaria* 83 (June 13, 2017): 109-124 <https://archivaria.ca/index.php/archivaria/article/view/13602>
- 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>

Course Assignments:

Assignment Name	Due Date	Weight	Graduate Competencies
Participation		10%	2.1, 5.1
Legislation Analysis		20%	1.3, 2.1, 4.1
Case Brief		20%	4.1, 2.1, 4.1
Secondary Source Annotated Bibliography		20%	2.1, 4.1



Advocacy Assignment		30%	1.4, 2.2, 3.2, 4.1, 5.2
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Assignment descriptions:

Assignments are designed to build on each other toward the completion of the final Advocacy Assignment. You are invited to choose one topic of interest and then develop and demonstrate the ability to navigate legislation, case law, and other appropriate sources in order to conduct informed advocacy on issues where records and archives intersect with the law. You will have considerable leeway to choose a topic – it need only have something to do with the law and records or archives and sample topics will be shared with the class. There are many aspects of the law in which records and archives are implicated, and this approach to assignments allows you to follow one example through so that you understand the process of legal research and analysis as well as how to communicate information to others; you will then be able to apply this process to any one of the many questions that intersect with the law that you will face as a records professional.

- 1. Legislation Analysis:** You will be asked to choose one piece of legislation and analyze what role that legislation might play in informing your understanding of the issue that you have chosen for your assignments leading up to the final Advocacy Assignment. You will be able to choose from a list of pre-selected key pieces of legislation matched to the main topics we cover in class (typically no more than one section of an Act) or you may choose your own in consultation with the instructor. This written assignment (no more than 4 double-spaced pages) will require the ability to recognize in which jurisdiction(s) the chosen legislation applies and how to interpret what it means in plain English. Ultimately, the aim of the assignment is to help you recognize how a specific law might apply to relevant records topics. The assignment will be evaluated based on your ability to locate relevant legislation and find commentary on it in CanLII, to demonstrate understanding of how that piece of legislation relates to your chosen topic, and to communicate your findings and analysis clearly.
- 2. Case Brief:** A case brief is a standard tool used by lawyers to analyze the importance of a specific case by following a set structure. We will review the structure of sample case briefs in class, and this assignment provides you with an opportunity to use a case brief as a tool to enable you to recognize what will be important (in terms of subject) from a case and how much weight to give to decisions. As a step in preparing for the final Advocacy Assignment, the Case Brief should not only demonstrate the ability to find relevant cases but also to interpret legislation. The submitted case brief will be limited to 5 double-spaced pages and will be evaluated based on your ability to follow the template provided, ascertain the key relevant points of the case, and to communicate how the case relates to the greater subject of choice.
- 3. Secondary Source Annotated Bibliography:** Secondary sources provide invaluable information about how legislation and the common law will apply to a specific situation. For the topics in this course, secondary sources will likely include government or special interest white papers, journal articles from archives, records management, and legal sources, as well as summary articles written by law firm or in blogs. For this assignment, you will be required to locate 5 secondary sources on your topic, summarize each, and analyze the weight they should be given in consideration of the issue you are focused on. The assignment will be no more than 6 double-spaced pages. As with all of the assignments, the Secondary Source Annotated Bibliography stresses the need to be able to summarize both accurately and in a concise manner. Together, these three assignments aim to be products you could share with colleagues or for yourself in a bank of information rather than to serve as complete and detailed summaries of all important points from each source. Accordingly, the assignment will be evaluated based on your ability to locate relevant sources, to weight those sources, and to write in a concise manner.
- 4. Advocacy Assignment:** For this assignment, you will use the information you've accumulated through the Legislation Analysis, Case Brief, and Secondary Source Annotated Bibliography, to



create a 10-minute oral presentation in which you advocate on an aspect of the topic you've chosen to focus on. We will be analyzing sample examples of professional advocacy throughout the course, and this assignment provides you with an opportunity to practice this skill in front of an audience of your peers. Your presentation will be evaluated based on your ability to a) speak with authority on a legal subject and the records/archives issues associated with it; b) identify how and why the subject should be of interest to your audience; and c) communicate your position in a clear and interesting manner that will resonate with your audience. Your oral presentation should be accompanied by a written summary or PowerPoint for your audience to use as a resource after the presentation; the sources you cite in your presentation and upon which you drew to prepare it must be included in the slides or summary.

- 5. **Participation:** Participation grades will be based on your participation during each class, and evaluated combining class attendance and participation in class discussions and activities.

Course Schedule [week-by-week]:

Topic	Date
Module 1 - Overview of course and Introduction to the Canadian legal system	Week 1-2
Module 2 - Managing legal risks and liability and available defences in criminal law, tort law, and contract law	Week 3-4
Module 3 - Researching and analyzing legislation and case law relevant to records and archives	Weeks 5-6
Module 4 - Copyright and intellectual property law for archivists	Weeks 7-8
Module 5 - Principles of evidence law applied to records	Week 9
Module 6 – Selected legal topics for archivists (e.g., monetary appraisal, anti-spam law and Privacy and Access considerations)	Week 10
Module 7 - Legal advocacy for information professionals and student advocacy presentations	Week 11-12

Evaluation: All assignments will be marked using the evaluative criteria given on the [iSchool web site](#). Late submissions will have 5% total marks for the assignment deducted for each day beyond the due date unless discussed with me.

Required Materials: There are no learning materials required to be purchased.

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 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:

