

Faculty of Law – McGill University
Specialized Topics in Law 9: Technology and the Charter [3 credits]
Me Lex Gill
LAWG 519 001/009 [Summer 2020]

Course Schedule

Every Monday, Tuesday, and Wednesday
From July 6th to July 29th
2:35 pm - 5:25 pm EDT (GMT-4)

Please note that this course will not be recorded.

Important Dates

Last day to add/drop with reimbursement from McGill	July 13
Last day to withdraw without reimbursement from McGill	July 22

Course Description

This seminar will explore the relationship between emerging technologies and the Canadian *Charter of Rights and Freedoms*. From surveillance and censorship to automated discrimination, new technologies raise complex constitutional issues that require urgent and sustained attention from the legal community.

The course starts from the position that technology rearranges power.¹ Through the lens of the *Charter*, students will develop a critical understanding of the ways in which the law evolves, strains, breaks, and bends when new technologies fail to fit within old legal paradigms. From wiretaps and smart cities to risk-scoring algorithms and online censorship, we will deepen our understanding of the ways in which technical choices shape and constrain constitutional rights. While this course is rooted in public law, students will also be expected to interrogate the increasingly complex role that private actors play in defining the limits and possibilities of human rights in the 21st century.

In addition to a rich body of appellate *Charter* jurisprudence, students will be exposed to cutting-edge academic scholarship, submissions made before courts, international human rights sources, and expert perspectives. This course takes a participatory, critical, and imaginative approach to the future of constitutional law. By tackling yet-unsolved (and perhaps unsolvable) legal problems, students will sharpen their skills as writers and advocates.

Approach to Teaching and Learning

The course takes the form of a guided / semi-structured seminar. Its success depends on the presence and intellectual engagement of all participants. Students are therefore expected to review all materials in advance and come to class prepared to share their insights and questions. My hope is that you will learn as much (or more) from each other as you will from me.

There is no final exam for this course. Instead, assignments and reading lists have been designed to support a process of continuous learning, critical reflection, and skills development as you build up to your final essay. Students will also have the opportunity to meet and learn from several invited guests throughout the term.

¹ Paraphrasing a line from Phillip Rogaway, "[The Moral Character of Cryptographic Work](#)," 2015 IACR Distinguished Lecture (Asiacrypt 2015).

Course Objectives

By the end of this class, students will have:

- Enriched their understanding of how Canadian constitutional law evolves in response to technological, economic, social, and political change;
- Deepened their knowledge regarding specific *Charter* rights as they relate to emerging technologies, with a particular focus on those guaranteed by sections 2, 7-11, and 15, as well as the frameworks for determining the constitutional limits of those rights;
- Developed greater familiarity with cross-cutting questions related to *Charter* interpretation, application, standing, remedies, and judicial review of decisions involving *Charter* rights;
- Cultivated a degree of technical literacy (including more accurate mental models and technical vocabulary) for understanding and describing various technologies and their legal consequences;
- Developed an appreciation for the roles played by particular actors — including public interest groups, technologists, national governments, law enforcement, and the private sector — in shaping and defining the content and limits of *Charter* rights;
- Improved their ability to write and speak clearly, persuasively, and imaginatively about speculative and unsolved legal problems;
- Gained experience providing structured, meaningful feedback on written work to their peers;
- Strengthened their legal research, writing, and analytical skills by producing an original and analytically rigorous piece of written work in an emerging area of law.

Contacting the Instructor

Email address: lex.gill@mcgill.ca

Office hours: Wednesdays 5:30 to 6:30 pm or by appointment

When to send an email:

- You have a time-sensitive question that can be answered in a few lines or less
- You want to share something that does not require a response or that can be answered, for the benefit of the entire group, at the beginning of our next class

When to come to office hours:

- You have individual questions, reflections, or concerns about the course or a specific assignment that cannot be adequately addressed during our regular class time
- You are looking for guidance or feedback as you choose your final essay topic
- You are struggling with course material and need additional support

Course Materials

I strongly recommend that students acquire a decent **paper notebook** to use throughout this course before our first meeting. We will discuss the notebook in our first class together. Students must also have access to a computer with a stable internet connection, microphone, and webcam.

Obligatory texts: A full list of required readings will be provided to students a few weeks before the course begins. All materials will be available for free online or through the McGill Library; you do not need to purchase anything. This reading list may be amended from time to time, but students will be given notice of any changes.

Recommended texts: Optional or recommended readings are included for each day. I am also happy to suggest additional materials to support your research once you have selected a final essay topic.

If you were assigned a casebook in your first year Constitutional Law class or in Criminal Evidence, that book will continue to be a useful reference in this course. Robert Sharpe and Kent Roach's book, *The Canadian Charter of Rights and Freedoms*, 6th edition (Irwin Law: 2017) is another excellent resource. The e-book is available via the [CAIJ's dèsLibris database](#), which McGill students can access for free.

Language

English is the language of instruction for this course. However, students are welcomed and encouraged to express themselves in French if they prefer. In accordance with McGill's Charter of Students' Rights, students have the right to submit all graded written course work in either French or English.

Assignments and Evaluation

Participation / Discussion Leadership	Evaluated each class Discussion leader sign-up by July 7	15%
Class Journal	July 10, July 17 and July 31	20%
Final essay	Topic proposal by July 14 Share drafts by 3pm on July 26 Peer review in class on July 28 Final essay due on August 15	65% <i>(5% for peer review)</i>

PARTICIPATION AND DISCUSSION LEADERSHIP (15%)

As noted above, this course takes the form of a guided seminar, which means that engagement is essential to making the course function. As a result, you are expected to come to each class on time, having read and prepared to discuss the materials in advance.

Discussion Leadership

In every class — except for the first and the last — three or four students will be assigned to play the role of discussion leaders. A sign-up sheet will be circulated on the first day and all students must sign up by **July 7th**. I recommend that you choose a day focused on a subject that interests you, but which you are not likely to choose as a final essay topic. If you switch dates with another student after July 7th, please let me know.

As a discussion leader, you will have a special responsibility to speak up and guide the group's learning process on your assigned day. You can expect to be called on directly to answer questions about the assigned texts, explain tensions or key themes, and highlight issues of particular interest.

To prepare for your turn as a discussion leader, I recommend that you:

- Prepare notes on each assigned reading so that you can summarize a case, identify the key arguments of an academic text, or provide other background context for the class if asked;
- Discuss the readings with the other assigned leaders in advance of your assigned day;
- Identify 2-3 questions that will help make the class discussion more interesting and meaningful; a good question must be "both answerable and challenging. It will inspire analysis, synthesis, interpretation, and critical thinking." (From Stanford's [Teaching Commons](#))

Evaluation

The participation grade reflects the quality, and not the quantity, of student contributions throughout the course. You are not expected to speak in every class. Whether in our regular classes or when acting as one of the discussion leaders, excellent interventions will:

- Reflect an understanding of the assigned texts, the arguments and observations made by other students, and the relevant legal frameworks being discussed;
- Draw from experiences and ideas beyond the classroom to reason, analogize, and critique the assigned texts and the arguments of others;
- Demonstrate an awareness of the assumptions and values underlying an idea or position; strives to name, contextualize, and challenge those assumptions;
- Help move the conversation forward by opening new doors, putting new questions on the table, introducing tensions, and revealing complexity;
- Engage with the ideas of others in ways that are intellectually generous, productive, and fair;
- Create space for the viewpoints of others, support rather than silence, encourage and challenge, give appropriate credit to others for their ideas and insights.

During the first class, we will work together to prepare a short list of community norms to help guide the group over the coming month. The extent to which students respect and exemplify these expectations will be taken into account in their final participation grade.

CLASS JOURNAL (20%)

You are responsible for keeping a journal throughout the course. You must produce at least five separate entries by the end of the term, and meet the weekly targets summarized below:

At least one entry	by Friday July 10
At least three entries	by Friday July 17
At least five entries	by Friday July 31

You must submit the journal by email. You have two options:

Blog. Set up a free online blog and post your entries there. You can password protect your posts if you like so that they are not publicly available. If you want to write your journal entries by hand (legibly!) you can upload scans or photographs to the blog.

- Even if the email and password has not changed, you must re-send the link before every deadline so that I don't need to search through hundreds of emails to find it.

Text. Create a text file using a word processor and write each entry in the same document.

- No matter how many entries it includes, your class journal must be submitted by email as one single PDF document before every deadline.

What do I write about?

We often only realize what we know by trying to figure it out in writing. The class journal is a tool for you to deepen your thinking and engage with class material on your own time. Entries may include your thoughts on an issue discussed in class or the presentation of a guest speaker, a critical reflection on an assigned text, a comment linking class material to current affairs or relevant literature, your general reflections on the course, or ideas you are working through in preparation for the final essay. If including visual elements is useful to you (e.g., scans of drawings, diagrams) you are welcome to do so.

Though many students will find it helpful to focus each entry on a specific class and/or its assigned readings, this is not required. For those that find it challenging to participate in class, you may wish to work on entries about assigned materials before they are discussed as a group so that you have time to develop your views. Others will find the journal more useful as a tool to consolidate and deepen their reflections after we have already discussed a subject together. In short, make the class journal work for you.

Evaluation

The class journal is not meant to be an onerous or time-consuming exercise. Entries do not need to be long (1-3 paragraphs is fine) or meticulously edited (though they must be legible and coherent). As long as it is clear what sources you are referring to and you give appropriate credit, no formal citation is required.

Along with your ability to meet the weekly targets noted above, your class journal will be evaluated based on many of the same criteria as the participation grade (e.g., do your entries reflect an understanding of assigned texts? Are you able to identify and engage with the theoretical tensions and policy questions at stake?). What I am looking for here is original insight, clarity of thought, and depth of reasoning. Unlike the final essay, I am *not* reviewing for structure, style, or presentation.

I cannot provide feedback on every entry, but I will read them all. If your submissions are falling short of expectations in some way, I will let you know so that you have ample time to correct course.

Using Class Journal Entries in Class

From time to time, I may quote particularly interesting journal entries in order to facilitate discussion or to illustrate a point in class. I will always do this anonymously, though you are encouraged to take credit for your work if you are comfortable doing so. If you do not want me to quote a particular entry (or any of your entries), just make a clear and visible note in your journal to that effect.

FINAL ESSAY (65%)

You are responsible for submitting a final essay of **about 4,500 words** (excluding footnotes). This number is a guideline, and you will not be penalized for being over or under the limit, within reason. It is understood that submissions in French will tend to be a little longer, on average, than those in English.

The ultimate goal is a complete, well-researched, and impeccably structured piece of writing related to the course's key themes and objectives. Your goal should be to prepare something of publishable quality. You have a great deal of latitude in terms of subject matter, but **all essays must:**

- Relate primarily to some aspect of the Canadian *Charter* (though you are welcome to draw on comparative sources or international law as well);
- Explore a specific *application* of a specific *technology* in a specific *context* (for example, "drones" is not a subject, but "is it constitutional to use drones to conduct live video surveillance at mass political demonstrations?" might be);
- Make an original argument persuasively (this is not simply a research paper where you summarize the state of the law or the viewpoints of other scholars);
- Include complete and appropriate citations following the McGill guide.

We will spend time discussing potential essay topics in the first or second week of class. Students will be provided several examples of suitable topics and various sources of inspiration.

A Note Regarding Form and Style

Subject to prior approval, you may use this assignment as an opportunity to experiment with style and form. For example, your submission may take the shape of long-form narrative journalism or a script for a legal podcast. There may be other appropriate forms depending on your chosen topic — for example, if your core argument is that a particular case was wrongly decided on appeal, you could decide to structure your arguments in the form of a Supreme Court *intervener factum*.

Students will only be granted permission to diverge from the standard form academic essay if their chosen form aligns logically with their chosen topic and allows them to meet all general assignment requirements, including the obligation to provide complete citations. The same evaluation criteria apply regardless of form.

Your topic needs to be submitted for approval by July 14th.

Before you start writing, submit your essay topic by email to lex.gill@mcgill.ca for approval. I recommend you do this as soon as possible, but at the very latest by July 14th.

A few well-written, thoughtful sentences is enough — this does not need to be a formal proposal. However, you must demonstrate that your proposed topic conforms to the assignment criteria listed above.

In other words, your proposal must answer at least the following questions: (1) what aspect(s) of the *Charter* does your essay consider? (2) what specific application of which specific technology does your essay address, and in what context? (3) what is the argument that you intend to make? Please include at least 2-3 sources (cases, academic articles, books, etc.) that you anticipate will anchor your work. If you would like your final submission to take the form of anything other than a traditional academic essay, you must justify that choice at this stage.

Why is a topic proposal required?

There are a few reasons for this step. First, I want to make sure that your chosen topic is actually within the parameters of the course. If not, we will workshop the topic together to find something that interests you which also corresponds to the course objectives. Second, I want to make sure that your topic is clearly defined and realistic: there is nothing wrong with being ambitious, but the more ambitious you are, the more disciplined and specific you will need to be in defining the problem. Third, this stage provides an early opportunity to provide you with feedback, guidance, and recommended reading.

You must have a draft available for peer review by 3pm on July 26th.

The ability to provide specific, actionable, and intellectually generous feedback is a valuable skill. Students will have an opportunity to practice taking on this role by reviewing a classmate's draft work prior to final submission. This exercise is part of the evaluation for the final essay and represents 5% of your total grade.

This means that you must have a draft of your essay ready for another student to review on July 26th. This is not expected to be a perfected and finalized piece of work, but nor can it simply be an outline or bulleted list. We will discuss reasonable expectations for this draft in class based on how the course is progressing and the kind of feedback that students need most at this stage.

Peer review partners will be randomly assigned. On or before the 26th at 12pm, students will send their draft to their partner. Students will be provided with a worksheet to take notes as they read their classmate's work, and we will do an oral peer-review exercise in class on July 28th.

Your final submission is due on August 15th.

In evaluating your final written submission, the following will be taken into consideration:

- Is the submission clearly and intentionally organized? Does it have a logical and coherent structure?
- Is the submission persuasive? Is the reasoning complete and compelling?
- Is the piece well-written? Is it clear, enjoyable, and engaging to read?
- Does the author demonstrate an economy of words? Has the piece been edited to eliminate repetition, superfluous language, generalities, and weak arguments?
- Does the author demonstrate a mastery of the legal and technical issues at the core of their work?
- Is technical and legal language used accurately, precisely, and consistently? Is the work filled with glittering generalities, or does the author actually say what they mean?
- Does the submission demonstrate significant depth of research and analysis? Is it clear how this work fits into a larger legal debate and a broader social context?
- Are the insights original? Does the author go beyond the existing literature and put something new, imaginative, or exploratory on the table?
- Are all references properly cited? Have key authors and cornerstone pieces of jurisprudence on this topic been referenced? Does it engage meaningfully with these sources?

We will discuss these criteria in greater detail in class together.

Checklist for final essay submission

- Use the [standard form cover page](#) for written work and include your name
- Name your file "Technology and the Charter Summer 2020 – [Your Name]"
- Save the file in PDF format
- Prepare an email with the subject line "Technology and the Charter – Lex Gill"
- Attach the PDF file to the email
- Send the email to **both** saoassignments.law@mcgill.ca and lex.gill@mcgill.ca

Extensions

The Faculty of Law does not allow instructors to grant extensions for required term work. As a result, 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 contact the SAO directly via email SAO.law@mcgill.ca to request approval.

You can learn more about [extensions on exams and papers here](#).

Taking Advantage of the Library

Students at McGill Law are lucky to have access to an extraordinary library. I strongly recommend that you take advantage of this resource throughout your studies, and in particular as you prepare your final essay.

A few suggestions (courtesy of M^e Katarina Daniels, Assistant Librarian):

- Check out the [library guides](#) to find the right legal databases for your research questions (and know that the library has access to more e-books than it appears through these databases);
- Make a point of registering for the CAIJ and Practical Law Canada if you haven't already (a consent form is required but access is well worth it);
- Know that both M^e Daniels and Sonia Smith are doing virtual reference meetings and are available to help you plan your research in this course.
- Note that you can [chat](#), [email](#), or [text a librarian](#) from Mon - Fri: 10AM-6PM; Sat: 12PM-5PM.

Mandatory Statement on 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).

Academic Accommodations

If you believe that you may require an academic accommodation during this course, please discuss them with Nancy Czermel, Director (Student Life and Learning) (Nancy.Czermel2@mcgill.ca), and the [Office for Students with Disabilities](#), 514-398-6009. You can learn more about [academic accommodations here](#).

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.

The university also offers a number of free, high quality mental health resources, including through the [McGill University Student Wellness Hub](#). You may also find this list of [crisis lines and other resources](#) curated by Nightline helpful.

REQUIRED & RECOMMENDED READING
Specialized Topics in Law 9: Technology and the Charter [3 credits]
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An important note about this reading list:

- First, the reading list is subject to change — with reasonable notice — based on student feedback, current events, and the pace of the course.
- Each student is responsible for reviewing the material in the “**Read**” sections before every class. This material will form the basis for our discussion and our collective analysis. Students are also asked to read up on our guest lecturers and prepare thoughtful questions in advance.
- The “**Go Deeper**” section contain additional, non-mandatory sources that sometimes go well beyond the disciplinary universe of a traditional law school course. We will sometimes discuss these sources in class, but the seminar will not be led with the expectation that students have reviewed them.
- You’ll find that many of the links in the “Go Deeper” sections are actually readings lists or syllabi prepared for courses taught by others. Others are podcast episodes that relate to course themes — for students who prefer to learn while running, driving, or doing the dishes. I wanted to include these additional resources for a few reasons, including:
 - To help you move beyond basic legal research as you prepare for your final essay;
 - To give discussion leaders a path to deepen their understanding of the assigned materials;
 - To offer additional sources of inspiration for your class journal entries;
 - To share texts that might inspire you to take charge of your legal education more generally.
- A reminder that there is no final exam for this course. As a result, you do not need to prepare detailed notes about the assigned readings, memorize trivial points, or build a panicked, last-minute summary.
- **Instead, read for meaning, interest, relevance, tension, contradiction, and pleasure.** You do not need my permission — but you have it — to skim texts, control-f your way through cases, and read “diagonally” if those are the strategies that allow you to get to the heart of a text.

DAY 1: Introduction to Technology and the *Charter*
Monday, July 6, 2020

In this class, we get to know each other. Students will be introduced to the structure of the seminar, the course outline, and the framework for evaluation. Together, we'll set classroom norms and goals for the semester. For a bonus point, please bring a fork to class.

Deadlines: Sign up for your date as discussion leader by tomorrow
Discussion leaders for tomorrow's seminar will be chosen in class

Read

- The course outline!

DAY 2:**A Refresher on the *Charter* and Key Course Themes**

Tuesday, July 7, 2020

We read the *Charter* together and go over some of the most important moving parts — what it protects, what it doesn't, and why. We'll also touch on key legal building blocks for *Charter* analysis — like standing, application, jurisdiction, remedies, and the rules of constitutional interpretation. We start to understand how emerging technologies can shape and distort the law, and what that might mean for our constitutional rights.

Deadlines: Sign up for your date as discussion leader before class today

Read

- [Canadian Charter of Rights and Freedoms](#), Part 1 of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.
- Mari J. Matsuda, [The Keynote Address: Progressive Civil Liberties](#), 3 Temp. Pol. & Civ. Rts. L. Rev. 9 (1993-1994)
- Robert J. Sharpe and Kent Roach, *The Charter of Rights and Freedoms*, 6th ed (Irwin Law: 2017) ([free from the CAIJ for McGill students](#)):
 - Chapter 6: Application (pp. 102-118)
 - Chapter 7: *Charter* Litigation (pp. 119-139)
 - Chapter 17: Remedies (pp. 424-440)

Go Deeper

- **On the role of private actors and the technology sector:**
 - United Nations Office of the High Commissioner, [Guiding Principles on Business and Human Rights](#), HR/PUB/11/04 (Geneva: United Nations, 2011)
 - [Public-Interest Technology Resources](#), Bruce Schneier
 - See also Bruce Schneier (Sep 2019), "[Why Technologists Need to Get Involved in Public Policy](#)," Royal Society, London
 - [Tech's Moral Reckoning \(with Anil Dash\)](#), On Being Podcast
 - [Surveillance Capitalism and Democracy \(with Shoshana Zuboff\)](#), Data & Society Podcast
- **An archaic debate to which I feel obligated to expose you:**
 - Frank H. Easterbrook (1996). "[Cyberspace and the Law of the Horse](#)" (PDF). University of Chicago Legal Forum.
 - Lawrence Lessig (1999). "[The Law of the Horse: What Cyberlaw Might Teach](#)" (PDF). 113 Harv. L. Rev. 501. 113 (2): 501–549.

DAY 3:**Expression, Part 1: Hate Speech, Censorship, and Content Moderation**

Wednesday, July 8, 2020

In this class, we begin to work through the specific rights and freedoms guaranteed by the *Charter* — and in particular section 2(b). By engaging with different perspectives concerning online hate speech, we start to understand some of the amplifying and distorting effects of technology on expression. Whose speech matters, whose doesn't, and why?

Deadlines: Submit your class journal with at least one entry by Friday, July 10

Read

- [R. v. Keegstra](#), [1990] 3 SCR 697
- [Lemire v Canada \(Human Rights Commission\)](#), 2014 FCA 18, paras. 53-70
- House of Commons, [Taking Action to End Online Hate: Report of the Standing Committee on Justice and Human Rights](#) (June 2019)
- [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on online hate speech](#), prepared by David Kaye, UNGA, A/74/486, October 9, 2019
- Lee C. Bollinger & Geoffrey R. Stone, *The Free Speech Century* (Oxford University Press, 2019) at pp. 140-161; Catharine MacKinnon, *The First Amendment: An Equality Reading* [McGill Library/MyCourses]

Go Deeper

- **More case law:**
 - [Warman v Kouba](#), 2006 CHRT 50 at paras 24-81
 - [Saskatchewan \(Human Rights Commission\) v Whatcott](#), 2013 SCC 11
- **An overview of what's in the readings:**
 - Lex Gill, *Legal Aspects of Hate Speech in Canada*, Background Report prepared for the Canadian Commission on Democratic Expression (2020) [PDF by email/on MyCourses]
- **For those who need a *Charter* refresher on section 1:**
 - Robert J. Sharpe and Kent Roach, *The Charter of Rights and Freedoms*, 6th ed (Irwin Law: 2017) ([free from the CAIJ for McGill students](#)):
 - Chapter 4: Limitation of *Charter* Rights (pp. 66-94)
- **More perspectives:**
 - Read the [submissions to the JUST Committee](#) in preparing their June 2019 report on online hate (cited above)
 - [Décision n° 2020-801 DC](#) du 18 juin 2020 concernant la Loi visant à lutter contre les contenus haineux sur internet, Conseil constitutionnel (France)
 - Analysis of draft bill from [Article 19](#)

DAY 4:**Expression, Part 2: Truth, Lies, and Who Decides**

Monday, July 13, 2020

Building on our discussion and the readings last class, we think more about information controls, censorship, curation, moderation, and the role of private platforms — this time, with a focus on disinformation and misinformation.

- Guest:** Joshua Sealy-Harrington, Lawyer (Power Law) & JSD Candidate (Columbia)
- Read [his official bio](#) on the Power Law website
 - Check out his writing on [SSRN](#) and [ABlawg](#)
 - Follow him at [@JoshuaSealy](#)

Deadlines: Last day to add/drop with reimbursement from McGill

Read	<ul style="list-style-type: none"> • R v Zundel, [1992] 2 SCR 731 • Section 91 of the Canada Elections Act, S. C. 2000, c. 9 <ul style="list-style-type: none"> ◦ Noting that the provision is subject to a constitutional challenge • Evelyn Douek, “The Free Speech Blind Spot: Foreign Election Interference on Social Media”, <i>Combating Election Interference: When Foreign Powers Target Democracies</i> (Oxford University Press, 2020 Forthcoming) • For the guest lecture: <ul style="list-style-type: none"> ◦ Patricia Williams, <i>The Alchemy of Race and Rights</i> (Harvard University Press, 1991) at pp. 80-97: “Crimes Without Passion” [McGill Library/MyCourses] ◦ Joshua Sealy-Harrington, Twelve Angry (White) Men: The Constitutionality of the Statement of Principles (Ottawa Law Review, 2020) <ul style="list-style-type: none"> ▪ Pgs. 218-221: “Conclusion: The SOP is a Regulatory Reminder” ▪ Pgs. 221-226: “Liberty Veils and Equality Tales” ▪ Pgs. 230-234: “The Purposive Scope of Free Expression” ◦ Factum of the Intervener, Egale Canada Human Rights Trust (2019) ◦ Gwen Benaway, This Is What Happened When I Stood Up Publicly for Trans Rights in Toronto (Flare, 2019)
Go Deeper	<ul style="list-style-type: none"> • Censorship and content moderation: <ul style="list-style-type: none"> ◦ Dual-Use Technologies: Network Traffic Management and Device Intrusion for Targeted Monitoring: Annotated Bibliography, Siena Anstis, Sharly Chan, Adam Senft, and Ronald J. Deibert (Citizen Lab) ◦ Dalek, Jakub, Lex Gill, Bill Marczak, Sarah McKune, Naser Noor, Joshua Oliver, Jon Penney, Adam Senft, and Ron Deibert. Planet Netsweeper. Citizen Lab, University of Toronto, April 2018. ◦ The Lumen Database (founded by Wendy Seltzer) ◦ David Gilbert, A Twitter Account That Copies Trump's Tweets Word For Word Got Suspended Within 3 Days, Vice News, June 5 2020 • Truth, lies, propaganda, disinformation and misinformation: <ul style="list-style-type: none"> ◦ Disinformation: Annotated Bibliography, Gabrielle Lim (Citizen Lab) <ul style="list-style-type: none"> ▪ See also Gabrielle Lim’s Securitize/Counter-Securitize: The Life and Death of Malaysia’s Anti-Fake News Act, Data & Society, 2020 ◦ Lawfare’s Arbiters of Truth podcast series ◦ Lexicon of Lies, Caroline Jack, Data & Society ◦ Chris Tenove et. al. Digital Threats to Democratic Elections: How Foreign Actors Use Digital Techniques. Vancouver, BC: Centre for the Study of Democratic Institutions, UBC, 2018 ◦ Climate Change and Conspiracy: Networked Disinformation (with Joe Mulhall), Data & Society Podcast

DAY 5:**Freedom of the Press, Leaks, Hacks, and Whistleblowers**

Tuesday, July 14, 2020

In this class, we explore how technology is reshaping the constitutional and political roles played by journalists and whistleblowers in the 21st century. Why is freedom of the press given specific protection in the *Charter*, and what does that protection actually mean in practice? Who is entitled to claim it, who isn't, and why?

- Guest:** [Trevor Timm](#) Executive Director of [Freedom of the Press Foundation](#)
- Review the website for [SecureDrop](#), a whistleblower submission system
 - Check out his writing in *The Guardian* and *The Intercept*
 - Watch his [TED Talk](#) and follow him at [@trevertimm](#)

Deadlines: Final essay topic proposal due

Read	<ul style="list-style-type: none"> • Denis v. Côté, 2019 SCC 44 <ul style="list-style-type: none"> ◦ For reference: Journalistic Sources Protection Act, SC 2017, c 22 • R. v. Vice Media Canada Inc., 2018 SCC 53 • R. v. National Post, 2010 SCC 16 • Benjamin Oliphant, Freedom of the Press as a Distinct Constitutional Guarantee, (2013) 59:2 McGill LJ 283 [PDF] • Commission d'enquête sur la protection de la confidentialité des sources journalistiques (le juge Chamberland), Synthèse du rapport [version anglaise]
Go Deeper	<ul style="list-style-type: none"> • More case law: <ul style="list-style-type: none"> ◦ Globe and Mail v. Canada (Attorney General), 2010 SCC 41 ◦ Grant v. Torstar Corp., 2009 SCC 61 ◦ Canadian Broadcasting Corp. v. Lessard, [1991] 3 SCR 421 ◦ Edmonton Journal v. Alberta (Attorney General), [1989] 2 SCR 1326 • Press freedom and platforms: <ul style="list-style-type: none"> ◦ Freedom in Moderation: Platforms, Press, and the Public (with Mike Ananny, Tarleton Gillespie, Kate Klonick), Data & Society Podcast • Hacks, leaks, whistleblowers: <ul style="list-style-type: none"> ◦ Gabriella Coleman, The Public Interest Hack, Limn: Issue 8 (Eds. E. Gabriella Coleman and Christopher M. Kelty), February 2017 ◦ Gabriella Coleman, Various Syllabi • An international perspective: <ul style="list-style-type: none"> ◦ Press release summarizing the Federal Constitutional Court decision regarding German Bundesnachrichtendienst surveillance of foreign journalists: In their current form, surveillance powers of the Federal Intelligence Service regarding foreign telecommunications violate fundamental rights of the Basic Law, Press Release No. 37/2020 of 19 May 2020

DAY 6: Privacy, Part 1: Bodies, Places, and Things
Wednesday, July 15, 2020

We begin our exploration of privacy rights and section 8 with a focus on the material: bodies, places, and things. We take a close look at the search and seizure of electronic devices and start to think about the relationship between ownership, control, and privacy.

Deadlines: Submit your class journal with at least three entries by Friday, July 17

Read	<ul style="list-style-type: none">• Gerald Chan and Nader Hasan (eds.), <i>Digital Privacy: Criminal, Civil and Regulatory Litigation</i>, Chapter 1: Search and Seizure of Electronic Devices (Nader Hasan), LexisNexis 2018 [McGill LibraryMyCourses]• <i>R. v. Marakah</i>, 2017 SCC 59• <i>R. v. Fearon</i>, 2014 SCC 77• Lex Gill, Tamir Israel, and Christopher Parsons, Shining a Light on the Encryption Debate A Canadian Field Guide, Citizen Lab & CIPPIC **only read the executive summary**
Go Deeper	<ul style="list-style-type: none">• Encryption:<ul style="list-style-type: none">○ David O'Brien, Matt Olsen, Bruce Schneier, and Jonathan Zittrain, et al. Don't Panic. Making Progress on the "Going Dark" Debate, The Berkman Center for Internet & Society at Harvard University (Feb 1, 2016)• Spyware:<ul style="list-style-type: none">○ Bill Marczak and John Scott-Railton. The Million Dollar Dissident: NSO Group's iPhone Zero-Days Used Against a UAE Human Rights Defender. Citizen Lab, University of Toronto, August 24, 2016.○ John Scott-Railton, Bill Marczak, Claudio Guarnieri, Masashi Crete-Nishihata, et. al., The "Reckless" Series [on targeting of Mexican civil society actors with commercial spyware], Citizen Lab, University of Toronto, 2017-2018.○ Sarah McKune, Ron Deibert, Bill Marczak, Geoffrey Alexander, and John Scott-Railton. Commercial Spyware: The Multibillion Dollar Industry Built on an Ethical and Legal Quagmire, Citizen Lab, University of Toronto, December 6, 2017.○ Siena Anstis, Ronald J. Deibert and John Scott-Railton. A Proposed Response to the Commercial Surveillance Emergency, Lawfare, July 19, 2019.• Bodies:<ul style="list-style-type: none">○ <i>R. v. Saeed</i>, 2016 SCC 24○ <i>Aubry v. Éditions Vice-Versa</i>, [1998] 1 S.C.R. 591○ Facial Recognition Technology and the New Surveillance State, McGill Law Journal Podcast

DAY 7:**Privacy, Part 2: Ideas, Conversations, Relationships, Journeys**

Monday, July 20, 2020

What is the relationship between privacy and freedom, expression, and equality? Do you have a constitutional right to anonymity? How does control (or lack of control) over our information shape (or constrain) the kind of lives we're allowed to lead? In this class, we try to escape the property rights paradigm entirely.

- Guest:** Isabela Bagueros, Executive Director of the [Tor Project](#)
- Review the website for Tor and [try downloading it yourself](#)
 - Watch [How Tor Browser Protects Your Privacy and Identity Online](#)

Read	<ul style="list-style-type: none"> • R. v. Spencer, 2014 SCC 43 • Gerald Chan and Nader Hasan (eds.), <i>Digital Privacy: Criminal, Civil and Regulatory Litigation</i>, LexisNexis 2018 [McGill Library/MyCourses] <ul style="list-style-type: none"> ○ Chapter 2: Search and Seizure of Third Party Information (Stephen Aylward) ○ Chapter 3: Search and Seizure of Private Communications (Gerald Chan)
Go Deeper	<ul style="list-style-type: none"> • More interesting cases not covered in the Chan/Hasan chapters: <ul style="list-style-type: none"> ○ X (Re), 2017 FC 1047 ○ R. v. Mills, 2019 SCC 22 • On surveillance and censorship circumvention: <ul style="list-style-type: none"> ○ Phillip Rogaway, "The Moral Character of Cryptographic Work," 2015 IACR Distinguished Lecture (Asiacrypt 2015). ○ Maciej Cegłowski, "Haunted By Data," October 1, 2015 ○ Understanding Tor Onion Services and Their Use Cases, HOPE XI 2016 (David Goulet, Nima Fatemi, and George Kadianakis) and/or Deep Dive Into Tor Onion Services, NorthSec 2017 (David Goulet) ○ Topics in Applied Cryptography: Crypto for Social Good, Seny Kamara (Brown) [Syllabus] • International perspectives: <ul style="list-style-type: none"> ○ David Kaye. "Surveillance and human rights – Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression." (May 28, 2019). Human Rights Council. A/HRC/41/35 [English] [Français] • On surveillance, freedom and equality: <ul style="list-style-type: none"> ○ Eye in the Sky, Note to Self Podcast ○ Abolish Big Data (with Yeshimabeit Milner), Data & Society Podcast ○ Racializing Surveillance, Marnie Ritchie (University of Texas) [Syllabus] • On mobile communications surveillance: <ul style="list-style-type: none"> ○ Scott B. Weingart, The Route of a Text Message, a Love Story, <i>Motherboard</i> (Vice), February 22, 2019 ○ Stuart A. Thompson and Charlie Warzel, One Nation, Tracked: An Investigation into the Smartphone Tracking Industry, <i>New York Times (Opinion)</i>, December 19, 2019 ○ Citizen Lab. The Many Identifiers in Our Pockets: A primer on mobile privacy and security, Citizen Lab Research Report No. 53, University of Toronto, May 2015

DAY 8:**Making Choices, Part 1: Technology, Equality, and the Criminal Law**

Tuesday, July 21, 2020

Nowhere is the exercise of state power — and its impact on *Charter* rights — more direct and consequential than in the criminal law. In this class, we discuss the ways that technology is changing the criminal justice system, from policing to prisons.

- Guests:** Cynthia Khoo (Citizen Lab & Women's Legal Education & Action Fund) & Yolanda Song (Stevenson Whelton & International Human Rights Program)
- Read Cynthia Khoo's [bio here](#) and Yolanda Song's [bio here](#)
 - Follow Cynthia at [@Cyn_K](#) and Yolanda at [@y_y_song](#)

Read

- [Ruha Benjamin on her book "Race After Technology: Abolitionist Tools for the New Jim Code,"](#) Data & Society Research Institute Databite No. 124 [Video]
- Coalition for Critical Technology, [Abolish the #TechToPrisonPipeline](#) (take a look at the exceptional footnotes as well)
- Kashmir Hill, [Wrongfully Accused by an Algorithm](#), *New York Times*, June 24, 2020
- **Policing, Suspicion, Profiling, Discretion:**
 - [R. v. Le](#), 2019 SCC 34 [majority reasons]
 - Richardson, R., Schultz, J. M., & Crawford, K. (2019). [Dirty data, bad predictions: How civil rights violations impact police data, predictive policing systems, and justice.](#) *New York University Law Review*
- **Bail, Sentencing, Risk, Parole:**
 - Review the website for "[SmartBail](#)"
 - Compare with [R. v. Zora](#), 2020 SCC 14 at paras. 5-6, 19-27, 53-58, 73-82, 89, 100-106; [R. v. Antic](#), 2017 SCC 27 [headnote].
 - [Loomis v. Wisconsin](#), 2016 WI 68
 - Compare with: [R. v. Jackson](#), 2018 ONSC 2527

Go Deeper

- **More on Policing, Suspicion, Profiling, Discretion:**
 - [The Crime Machine Part 1](#) and [The Crime Machine Part 2](#), Reply All
 - [The Pre-Crime Unit](#), Hi-Phi Nation
 - [A Predictive Policing Syllabus](#), The New Inquiry
 - [The Rise of Big Data Policing: Surveillance, Race, and the Future of Law Enforcement \(with Andrew Guthrie Ferguson\)](#), Data & Society Podcast
 - Joshua Sealy-Harrington, [Body cameras are not an answer to systemic police violence – they undermine the push for defunding](#), *Globe and Mail*, June 19 2020
 - [R. v. Dudhi](#), 2019 ONCA 665
- **More on Bail, Sentencing, Incarceration, Risk, Parole:**
 - [Ewert v. Canada](#), 2018 SCC 30 [headnote]
 - Teresa Scassa, [Supreme Court of Canada Decision Has Relevance for Addressing Bias in Algorithmic Decision-Making](#), June 14, 2018
 - Julia Angwin, Jeff Larson, Surya Mattu, Lauren Kirchner, "[Machine Bias](#)," *ProPublica*, May 23, 2016
 - Jeff Larson, Surya Mattu, Lauren Kirchner and Julia Angwin, "[How We Analyzed the COMPAS Recidivism Algorithm](#)" *ProPublica* (23 May 2016)
 - Chaz Arnett, [From Decarceration to E-Carceration](#), *Cardozo Law Review*, Vol. 41, p. 641, 2019.
 - [Toward Abolition: A Reading List on Policing, Rebellion, and the Criminalization of Blackness](#), *Radical History Review*

DAY 9:**Making Choices, Part 2: Reasonable Machines and the Administrative State**

Wednesday, July 22, 2020

As administrative bodies turn toward automated decision-making, the legal rules surrounding state accountability, discretion, deference, and judicial review become less obvious — not that they were ever particularly clear to begin with. In this class we build on yesterday’s reflections and ask what it means for a technology-facilitated decision to be fair, reasonable, lawful, and reviewable when *Charter* rights are on the line.

Deadlines: Last day to withdraw without reimbursement from McGill
Draft essays must be shared with your peer-review partner by July 26 at 3pm

Read

- [Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor](#) (with Virginia Eubanks), *Data & Society* (Podcast)
- Patrick Butler, [Universal credit rules irrational and unlawful, judge says](#), *The Guardian* (June 22, 2020) [in case you’re curious, here is the court case: [2020] EWCA Civ 778]
- **On judicial review of administrative action:**
 - [Canada \(Minister of Citizenship and Immigration\) v Vavilov](#), 2019 SCC 65, paras. 55-57, 73-142.
 - [Baker v. Canada \(Minister of Citizenship and Immigration\)](#), [1999] 2 S.C.R. 817, paras. 21-48.
 - [Doré v Barreau du Québec](#), 2012 SCC 12, paras. 1-8, 22-58
 - [Law Society of British Columbia v. Trinity Western University](#), 2018 SCC 32, see especially paras. 111-119 (per McLachlin CJ), 162-208 (per Rowe J), and 302-314 (per Côté and Brown JJ)
 - Marion Oswald, [“Algorithm-assisted decision-making in the public sector: framing the issues using administrative law rules governing discretionary power”](#) (2018) 376:2128 *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences* 20170359.

Go Deeper

- **More on judicial review and rule of law:**
 - Mark Mancini, [The Conceptual Gap Between Doré and Vavilov](#), *Dalhousie Law Journal* (2020) versus Paul Daly, [Unresolved Issues after Vavilov II: The Doré Framework](#), *Administrative Law Matters* (2020)
 - [Vavilov and the “Culture of Justification”](#) (with Caroline Mandell), *Stereo Decisis*
 - On prosecutorial discretion: [R v. Anderson](#), 2014 SCC 41, paras 1-6, 34-50.
 - Catrina Denvir et al, [“The Devil in the Detail: Mitigating the Constitutional & Rule of Law Risks Associated with the use of Artificial Intelligence in the Legal Domain”](#) (2018) on SSRN.
 - Lilian Edwards & Michael Veale, [“Enslaving the Algorithm: From a ‘Right to an Explanation’ to a ‘Right to Better Decisions’?”](#) (2018) 16:3 *IEEE Security Privacy* 46–54 on SSRN.
 - Mireille Hildebrandt, [“Law as Information in the Era of Data-Driven Agency”](#) (2016) 79:1 *The Modern Law Review* 1–30.
- **More algorithms and case studies:**
 - Petra Molnar and Lex Gill, [Bots at the Gate: A Human Rights Analysis of Automated Decision Making in Canada’s Immigration and Refugee System](#), *Citizen Lab and the International Human Rights Program*, 2018
 - Stephanie Wykstra, [Government’s Use of Algorithm Serves Up False Fraud Charges](#), *Undark*
 - [Des robots en toges](#), *McGill Law Journal Podcast*
 - [The Age of the Algorithm, 99% Invisible](#)

DAY 10: Democracy, Power, and Public Space
Monday, July 27, 2020

Public space provides a rich — but conceptually tricky — environment for *Charter* analysis. Depending on context, it can undermine your right to privacy or heighten the constitutional value of your expression. It can be an equalizing force, or an exclusionary one. In this class, we'll start to synthesize what we've learned in previous classes and reflect on democratic and constitutional rights in the context of public and collective space. The "smart city" is our starting point for analysis.

- Guest:** Bianca Wylie, co-founder of Digital Public, co-founder of [Tech Reset Canada](#), Senior Fellow at the [Centre for International Governance Innovation](#)
- Read the Bloomberg profile: [Meet the Jane Jacobs of Smart Cities](#)
 - Check out her writing on [her blog](#)
 - Follow her at [@biancawylie](#)

- Read**
- **On smart cities:**
 - Bianca Wylie, [Civic Tech: A list of questions we'd like Sidewalk Labs to answer](#), *Torontoist*, October 30, 2017
 - Randy Reiland, [Five Questions You Should Have About Google's Plan to Reinvent Cities](#), *The Smithsonian*, December 4, 2017
 - **On public surveillance:**
 - Clare Garvie, Alvaro Bedoya, and Jonathan Frankle, "[The Perpetual Lineup: Unregulated Police Face Recognition in America](#)," Georgetown Law Center on Privacy & Technology (18 October 2016)
 - **On contact tracing apps:**
 - Ashkan Soltani, Ryan Calo, and Carl Bergstrom, [Contract Tracing Apps are Not a Solution to the COVID-19 crisis](#), Brookings [see also technologist Bruce Schneier's [blog post](#) on contract tracing apps]
 - Lisa M. Austin, Vincent Chiao, Beth Coleman, David Lie, Martha Shaffer, Andrea Slane, and François Tanguay-Renaud, [Test, Trace, and Isolate: Covid-19 and the Canadian Constitution](#)
- Go Deeper**
- [Some Thoughts](#), a collection of short essays on cities and the Sidewalk Labs story, curated by Nasma Ahmed, Matthew Claudel, Zahra Ebrahim, Christopher Pandolfi, and Bianca Wylie (Toronto: 2019)
 - Bianca Wylie, [Searching for the Smart City's Democratic Future](#), CIGI, August 13, 2018
 - [Smart Cities: Who Owns the Data?](#), McGill Law Journal Podcast
 - The [SPACE/RACE](#) reading list, the [SPACE/GENDER](#) reading list, and the [SPACE/BODY](#) reading list
 - Tactical Tech (Andrea Figari, Cade Diehm, Rose Regina Lawrence and the Tactical Tech team), [Shrinking Civil Space: A Digital Perspective](#)

DAY 11: Peer Review Day

Tuesday, July 28, 2020

In this class, we talk about great legal writing and advocacy. Students will have time in class to provide detailed feedback to their peer review partner, and an opportunity to briefly share their final essay topics with the larger group.

- Guest:** John-Scott Railton, Senior Researcher, [Citizen Lab](#)
- Check out some of his most recent work, including the [Dark Basin report](#), or listen to an interview with him on the [Lawfare Podcast](#)
 - Follow him at [@jsrailton](#)
 - Skim the readings on spyware from the “Go Deeper” section of Day 6

Deadlines: In-class peer review exercise

Read

- **On great legal research:**
 - [The Canadian Legal Research and Writing Guide](#), 2018 CanLII Docs 161, edited by Melanie Bueckert, André Clair, Maryvon Côté, Yasmin Khan, and Mandy Ostick, based on work by Catherine Best, 2018
- **On great advocacy:**
 - Choose a Supreme Court case you know fairly well from 2018 to 2020 that has some connection to course themes. Read 2-3 intervener factums OR watch the webcast oral arguments (you can look up the case [on the Court's website](#)). Be prepared to discuss in class.
- **For the peer review:**
 - Maria Popova, [How to Criticize with Kindness: Philosopher Daniel Dennett on the Four Steps to Arguing Intelligently](#), Brain Pickings blog, 2014

DAY 12: Consolidation, Synthesis, Looking Forward

Wednesday, July 29, 2020

We'll talk about the possibilities and limits of constitutional litigation as a tool for social and political change — particularly in a global context. We'll also revisit key course themes and attempt to synthesize some of the most important lessons learned.

Deadlines: Final class journal submission with at least five entries by Friday, July 31
Final essay submission by August 15 following SAO instructions

Read	<ul style="list-style-type: none">• Robert J. Sharpe, <i>Good Judgment: Making Judicial Decisions</i>, "Chapter 3: Is the Law Uncertain?" (University of Toronto Press: 2018) [McGill Library/MyCourses]• Revisit Mari J. Matsuda, The Keynote Address: Progressive Civil Liberties, 3 Temp. Pol. & Civ. Rts. L. Rev. 9 (1993-1994)
Go Deeper	<ul style="list-style-type: none">• A few reading lists that touch on multiple different course themes and therefore didn't quite fit under any particular day but might be helpful for your final essay. Enjoy:<ul style="list-style-type: none">○ Advanced Constitutional Law: New Issues in Speech, Press, and Religion and the accompanying case book, Martha Minow and Kendra Albert (Harvard)○ Center for Critical Race and Digital Studies Reading List and Syllabus, Lori Kido Lopez and Jackie Land○ Internet Technology, Economics and Policy, Henning Schulzrinne (Columbia)○ Race & Gender in Silicon Valley, Cynthia Lee (Stanford)○ Systems & Infrastructures, Miriam Posner (UCLA)○ Tech Ethics Curricula: A Collection of Syllabi (spreadsheet here), Casey Fiesler○ The Technologies and Politics of Control, Samantha Bates○ Technology & Disability, Ashley Shew (Virginia Tech)○ When Machines Decide: The Promise and Peril of Living in a Data-Driven Society, Randy Dryer and Suresh Venkatasubramanian (University of Utah)○ Critical Algorithm Studies, Florian Cech, Hilda Tellioğlu, Gabriel Grill, Fabian Fischer and Matthias Fass (TU Wein) [Syllabus]○ Critical Algorithm Studies, Tarleton Gillespie & Nick Seaver (Microsoft Research)○ The Ethics and Governance of Artificial Intelligence Jonathan Zittrain, Joi Ito (Harvard/MIT)