(1) Course Description

This course considers the social, political, and legal implications of the increasing use of surveillance technologies in Canada, and in other common law countries such as the United States and the United Kingdom. In particular, it focuses on the legal protections afforded to privacy in Canada, and critically examines the effectiveness of the regulatory frameworks and institutions established to protect individuals from overly intrusive public and private sector surveillance.

(2) Class Times

Tuesday 9:30 – 12:30 (Room 112). In the event that a seminar is cancelled, where possible a make-up seminar will be scheduled and students will be notified of the new time and venue by email.

(3) Teaching Overview and Expectations

Seminars in this course will follow a set format. Each seminar will begin with a 30-minute lecture on the listed topic, followed by one or two 15-20 minute presentations on a related topic by members of the class. There will then be a 15-minute break, after which the seminar will be devoted to student questions and general discussion of the material. Students are expected to have read the required reading before arriving at the seminar, and will be called on to answer questions on the relevant reading, law, and cases. In discussion, the emphasis will be on developing a critical understanding of the material, and as such students are strongly encouraged to try to form their own views on the law and related policy issues before the class.

(4) Textbook and Additional Reading

There is no prescribed text for this course. Students are instead expected to read the readings listed on the detailed syllabus, all of which are either available online or in the UBC Law Library. If you have difficulty locating any of the readings for class, please contact the one of the Law Library staff or email me for assistance. Note also that each week contains a series of supplementary readings. You are not expected to read these before class, but they are included for those students who may wish to explore the topic further or write on the relevant area for their final assignment.
(5) **Attendance, Assessment and Examination**

Students are expected to attend all seminars in this course, and attendance will be taken at the beginning of each class. Students who do not attend at least 10 of the 13 seminars during the semester (without good reason, such as illness) will receive a penalty of 20% of their final grade. Students who do not attend at least 7 of the 13 seminars during the semester will be deemed to have failed the course. If you do not expect to be able to attend a seminar, please contact me in advance by email setting out the reasons for your inability to attend.

The grade for this course will be comprised of two parts:

1. One 15-20 minute in-class presentation (20%)
2. A major research paper of 7000-8000 words (80%)

Topics for the in-class presentations are listed on the detailed syllabus, and students will be allocated a topic during the first seminar. Students are free to propose their own topics for the major research paper, which must then be agreed with me by 18 October 2016. In the event that a student does not propose a topic, a topic will be allocated to them. Research papers are to be submitted (as either a Microsoft Word document or PDF) by email (to goold@allard.ubc.ca) before 4pm on 21 December 2016, and should be referenced according to the McGill, Harvard or Chicago style. Please note that the word limit includes footnotes (but not lists of references), and that research papers that exceed the word limit will not be graded.

(6) **Academic Integrity and Plagiarism**

All UBC law students are subject to the University's rules on Academic Misconduct ([http://vpacademic.ubc.ca/integrity/ubc-regulation-on-plagiarism/](http://vpacademic.ubc.ca/integrity/ubc-regulation-on-plagiarism/)), and are expected to act with academic integrity at all times. Students should be especially aware of the University's rules in relation to plagiarism. If you plagiarize, you may be subject to penalties set out in the UBC calendar: ([http://www.calendar.ubc.ca/vancouver/index.cfm?tree=3,54,111,959](http://www.calendar.ubc.ca/vancouver/index.cfm?tree=3,54,111,959))

If you would like to learn more about academic misconduct, visit the UBC Library's website on academic integrity ([http://learningcommons.ubc.ca/guide-to-academic-integrity/](http://learningcommons.ubc.ca/guide-to-academic-integrity/)). Examples of academic misconduct can also be found in the UBC Annual Report on Student Discipline ([http://universitycounsel.ubc.ca/discipline/](http://universitycounsel.ubc.ca/discipline/)).

(7) **Recording of Seminars**

Seminars should not be recorded without prior permission. If you do wish to record a particular seminar, please email your request to me at least 24 hours before the scheduled seminar.

(8) **Office Hours**

If you wish to meet to outside of class, please email me to arrange a time. If you have a question about a specific case or reading that has been covered in the seminar, please email it to me before the meeting if possible.
### 9) Schedule of Classes

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<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Required Reading</th>
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<tbody>
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<td>Sept 6</td>
<td>Introduction to the course</td>
<td>None</td>
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<tr>
<td>Sept 13</td>
<td>What is Privacy?</td>
<td>See Detailed Syllabus</td>
</tr>
<tr>
<td>Sept 20</td>
<td>Privacy Protection under the <em>Charter</em></td>
<td>See Detailed Syllabus</td>
</tr>
<tr>
<td>Sept 27</td>
<td>Regulation of Personal Information in the Private Sector</td>
<td>See Detailed Syllabus</td>
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<tr>
<td>Oct 4</td>
<td>Regulation of Personal Information in the Public Sector</td>
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<td>Oct 11</td>
<td>Surveillance Theory and Practice</td>
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</tr>
<tr>
<td>Oct 18</td>
<td>Challenges to Privacy (1): Public Area Surveillance</td>
<td>See Detailed Syllabus</td>
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<tr>
<td>Oct 25</td>
<td>Challenges to Privacy (2): Identity Cards</td>
<td>See Detailed Syllabus</td>
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<tr>
<td>Nov 1</td>
<td>Challenges to Privacy (3): Biometrics and DNA Databases</td>
<td>See Detailed Syllabus</td>
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<tr>
<td>Nov 8</td>
<td>Challenges to Privacy (4): The Pursuit of Security</td>
<td>See Detailed Syllabus</td>
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<td>Nov 15</td>
<td>Regulation and Privacy Enhancing Technologies (PETS)</td>
<td>See Detailed Syllabus</td>
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<tr>
<td>Nov 22</td>
<td>Alternative Models of Privacy Protection and Regulation</td>
<td>See Detailed Syllabus</td>
</tr>
<tr>
<td>Nov 29</td>
<td>End of Term Review</td>
<td>None</td>
</tr>
</tbody>
</table>
What is Privacy?
Class 2 – September 13

(1) Required Reading


(2) Supplementary Reading


(3) Key Ideas

- The meanings and functions of privacy
- The relationship between individual and collective notions of privacy
- The case for regarding privacy as a right
- The features of a “surveillance society”

(4) Questions for Class Discussion

- Why is privacy valuable? Is privacy an inherently individual good?
- Does privacy deserve to be protected as a fundamental human right?
- What is meant by the phrase “contextual privacy”?
- Is it meaningful to speak of a right to privacy in public spaces?
Privacy Protection under the Charter
Class 3 – September 20

(1) Required Reading


(2) Supplementary Reading


(3) Key Ideas

- Privacy protections under Sections 7 and 8 of the Charter
- The definition of a “search” and the idea of a reasonable expectation of privacy
- The relationship between the right to privacy and the right to freedom of expression

(4) Student Presentation Topic

- How consistent have the courts been in their interpretation of what constitutes a reasonable expectation of privacy under the Charter?

(5) Questions for Class Discussion

- Does Section 8 of the Charter provide an adequate level of protection for individual privacy in Canada?
- Is it correct to describe privacy is an implied right under the Charter? If so, does this undermine the status of privacy when compared with other more explicit rights?
Regulation of Personal Information in the Private Sector
Class 4 – September 27

(1) Required Reading


(2) Supplementary Reading


(3) Key Ideas

- The definition of personal information
- The ten principles of personal information protection
- The role and powers of the Privacy Commissioner

(4) Student Presentation Topic

- Does PIPEDA provide an appropriate level of individual privacy protection in Canada?

(5) Questions for Class Discussion

- Is the definition of personal information sufficiently clear and comprehensive?
- Should the powers of the Privacy Commissioner be expanded? If so, in what ways?
- What is the relationship between the Federal Privacy Commissioner and her provincial counter-parts? How could this relationship be improved?
Regulation of Personal Information in the Public Sector
Class 5 – October 4

(1) Required Reading

- Power, M. (2013) *The Law of Privacy* (LexisNexus Canada) – Chapter 4

(2) Supplementary Reading


(3) Key Ideas

- The definition of personal information under the *Privacy Act*
- The distinction between collection and use of information
- The exempting provisions
- The role of the Privacy Commissioner

(4) Student Presentation Topics

- Has the *Privacy Act* been a success?
- Is there a case for reforming the notion of consent in Canadian data protection law?

(5) Questions for Class Discussion

- How effective has the *Privacy Act* been at regulating the use of personal information in the public sector?
- To what extent do the exempting provisions in the *Privacy Act* undermine its fundamental purpose? Should some of the provisions be repealed?
- Do we expect too much of the Privacy Commissioner?
Surveillance Theory and Practice
Class 6 – October 11

(1) Required Reading


(2) Supplementary Reading


(3) Key Ideas

• Sociological and political conceptions of surveillance
• Bentham’s Panopticon and Foucault’s account of surveillance
• The definition of a “surveillance society”

(4) Student Presentation Topic

• How have contemporary sociologists sought to explain the role of surveillance in modern society? Is surveillance an inevitable part of life in late-modern democracies?

(5) Questions for Class Discussion

• Is Bentham’s Panopticon still a good metaphor for the operation of surveillance in modern society?
• What is meant by the phrase the “surveillance assemblage”?
• Do you agree with Phillips that individuals have a right to use privacy enhancing technologies?
Challenges to Privacy (1): Public Area Surveillance
Class 7 – October 18

(1) Required Reading

- *A Report on Camera Surveillance in Canada (Parts 1 and 2)*: Available at http://www.sscqueens.org/projects/scan

(2) Supplementary Reading


(3) Key Ideas

- The aims and operation of public area CCTV
- Arguments for the protection of privacy in public spaces
- The relationship between privacy and anonymity

(4) Student Presentation Topic

- Should we protect privacy in public?

(5) Questions for Class Discussion

- Do we have a right to privacy in public spaces? How can such a right be justified?
- Is it possible to effectively regulate the use of public area surveillance technologies like CCTV?
- Is being watched in the street by CCTV cameras different from being watched by a police officer?
- Should private companies be allowed to operate CCTV cameras in public (or semi-public) spaces?
Challenges to Privacy (2): Identity Cards
Class 8 – October 25

(1) Required Reading


(2) Supplementary Reading

- Lyon, D., Rule, J. and Combet, E. (2004) “Identity Cards: Social Sorting by Database” *OII Internet Issue Brief No. 3*

(3) Key Ideas

- The history of technologies of identification
- The relationship between identification and mass surveillance
- The arguments for and against ID cards

(4) Student Presentation Topic

- Do compulsory ID cards constitute an invasion of privacy?

(5) Questions for Class Discussion

- Why are identity cards attractive to governments?
- Is it possible to produce ID cards that do not represent a threat to individual privacy?
- To what extent should the private sector be involved in the delivery of ID cards?
Challenges to Privacy (3): Biometrics, DNA Databases, and Health Records
Class 9 – November 1

(1) Required Reading

• Office of the Privacy Commissioner of Canada (2012), Genetic Information, the Life and Health Insurance Industry and the Protection of Personal Information: Framing the Debate. Available at: https://www.priv.gc.ca/information/research-recherche/2012/gi_intro_e.pdf

(2) Supplementary Reading

• Privacy Commissioner of Canada (1995) Genetic Testing and Privacy
• UK Human Genetics Commission (2009) Nothing to hide, nothing to fear? Balancing individual rights and the public interest in the governance and use of the National DNA Database
• R v Rodgers [2006] 1 S.C.R. 554

(3) Key Ideas

• DNA databases and genetic privacy
• The due process implications of DNA collection by law enforcement agencies
• The relationship between biometrics and surveillance

(4) Student Presentation Topic

• What are the arguments for a national DNA database in Canada? What are the arguments against?

(5) Questions for Class Discussion

• Is it meaningful to speak of “genetic privacy”? To what extent should genetic privacy be recognised as being distinct from a more general right to privacy?
• How does the Privacy Act regulate the use of genetic testing? Is there sufficient regulation of genetic testing in the private sector?
• To what extent can technology provide the basis for a system of genetic privacy protections? Are technological protections likely to be more or less effective than legal protections?
Challenges to Privacy (4): The Pursuit of Security
Class 10 – November 8

(1) Required Reading


(2) Supplementary Reading


(3) Key Ideas

- The meaning of security
- The relationship between security and human rights
- The distinction between balancing and proportionality in the context of security and privacy rights

(4) Student Presentation Topic

- How have the courts in Canada sought to reconcile individual privacy with the demands of national security? Is it true to say that there is a bias in favour of security?

(5) Questions for Class Discussion

- Do we have a right to security?
- Is it possible to enhance collective security without fundamentally weakening our right to privacy? Are security and privacy irreconcilable?
- How have recent changes in border security in Canada affected individual privacy?
Regulation and Privacy Enhancing Technologies (PETS)
Class 11 – November 15

(1) Required Reading


(2) Supplementary Reading

• Office of the Information and Privacy Commissioner (1995) Privacy-Enhancing Technologies - The Path to Anonymity (Volume I)
• Enterprise Privacy Group (2008) - Privacy by Design: An Overview of Privacy Enhancing Technologies

(3) Key Ideas

• The meaning of privacy-enhancing technologies (PETS)
• The relationship between legal and technological approaches to privacy protection
• The legal context for PET development

(4) Student Presentation Topic

• To what extent can privacy-enhancing technologies (PETS) provide a solution to the problem of protecting individual privacy?

(5) Questions for Class Discussion

• Should PETS be compulsory for all public and private sector organisations that collect and process personal information?
• Who should be responsible for regulating the use of privacy invasive technologies (PITS)? To what extent should the use of such technologies be restricted by law?
Alternative Models of Privacy Protection and Regulation
Class 12 – November 22

(1) Required Reading


(2) Supplementary Reading


(3) Key Ideas

- Social and political justifications for privacy
- The role of individuals and groups in the protection of privacy
- The relationship between privacy and gender
- Privacy and cyberspace

(5) Questions for Class Discussion

- To what extent should individuals be empowered with the ability to protect their own privacy? Should we abandon “top-down” models of regulation in favour of “bottom-up”, user-driven approaches?
- To what extent does the currency law reflect a gendered approach to questions of individual privacy?
- Does Lessig’s idea of code provide a useful basis for thinking about the regulation of privacy outside of the context of cyberspace?