Introduction
You have encountered writing about legal history throughout your time in law, from actual legal historiography to reviews of history and the use of precedent in judgments. This course will introduce you to the study of Canadian legal history as a discipline of its own. We’ll consider how the field of Canadian legal history has developed to study law in its social context and in the process learn. In doing so we will learn the way that Canadian legal historians read, write and research Canadian legal history. We will spend time evaluating when legal historiography works and why. As case-studies to explore these ideas we will read articles written on six topics: methodology; industrialization and the birth of the administrative state (principally workplace accidents and the growth of the railways); legal education; codification; crime and public disorder (law on the books vs. law in action); and women’s legal history. An important part of the course is developing the ability to express yourself clearly in various forms of written and oral communication, engaging in constructive critical review of others’ research and experiencing peer-review of your own research. This course develops these skills through in-class exercises, a peer-reviewed research paper and presentations.

Time: Wednesday 8:35 – 11:25 am room 1265 688 Sherbrooke

Contact: Office: Room 506, NCDH (fifth floor) Telephone: (514) 398-4324 e-mail: tina.piper@mcgill.ca

Office Hours By appointment

Text and materials: Available on WebCT in the ‘Learning Modules’. Administrative and other course information will be available on WebCT as the course progresses.

Learning outcomes: The central goal of this course is that by the end of the course you will be able to write legal history as a legal historian. On the path to achieving this you will learn to:

a) Identify primary historical sources and interpret their reliability and pertinence.
b) Formulate questions at various levels about legal history.
c) Identify how different methodologies are used to portray legal history.
d) Evaluate the effectiveness, implications and credibility of those methodologies.
e) Communicate your research orally.
f) Participate in, and respond to, peer review of your written work.
**Concept Map**

![Concept Map Image]

**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 ([www.mcgill.ca/integrity](http://www.mcgill.ca/integrity)).

**Writing:** The Writing Centre offers individual consultation on all aspects of writing. Appointments are required. The Centre is located at Room 244, Education Bldg., 398-6960 ([www.mcgill.ca/writing/](http://www.mcgill.ca/writing/)).

**Language:** In accord with McGill University’s Charter of Students’ Rights, students in this course have the right to submit in English or in French any written work that is to be graded, and ask questions or otherwise participate in class discussion in French or English.

**Teaching Methodology:** This class will proceed by way of discussions, presentations and in-class exercises.

**Evaluation:**

<table>
<thead>
<tr>
<th>Grading scheme</th>
<th>% of grade</th>
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<tr>
<td>Paper</td>
<td>80</td>
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<tr>
<td>-Oral and written feedback you provide during the peer review (10%)</td>
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<td>-Primary source report (15%) (graded on a high pass, pass and fail scale)</td>
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<tr>
<td>In addition, in order to pass the paper you must:</td>
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<td>-Submit a research prospectus</td>
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<td>-Submit a draft paper</td>
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<td>-Present the draft paper</td>
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<td>-In-class presentation of reading (10%)</td>
<td>20</td>
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</table>
Participation (10%)
These will be graded on a high pass, pass and fail scale.

| Total | 100 |

Paper: (80%)

Pose an interesting problem or question based on a primary source, appropriate to this course that will require a combination of library research and your own analytical skills to answer. Below I have suggested a list of topics that model the kinds of questions you can ask of a primary source. You may want to consider doing a critical review of the secondary literature on a topic if you are less experienced in research and/or history. The paper should be 20-25 page double-spaced paper worth 75% of your final grade; the page limit is a lower limit. It is not uncommon for students to write a longer paper on their topic so long as the extra words are necessary (the risk is yours!).

Before that, a research prospectus is due Tuesday February 28th (3 pm at SAO, identified by name, 12 point font of your choice) to be submitted electronically to SAOassignments.law@mcgill.ca, and cc'd to my email address tina.piper@mcgill.ca. In the research prospectus please address the following questions:

1. What research problem or question do you intend to address?
2. What is your primary source? If you are not using a primary source, what is your thesis or argument?
3. Why is this an interesting source or question? Why is it problematic? Why is it significant?
4. How far along are you in your thinking and research? What do you expect to discover? What gaps do you anticipate? What do you think will be your methodological approach?
5. Attach a working bibliography of the sources you have used so far. Write short annotations for the material you have already read.

A draft of your paper is due Friday March 30, 2012 (3 pm at SAO, identified by name, double spaced, 12 point font of your choice) to be submitted electronically to SAOassignments.law@mcgill.ca, and cc'd to my email address tina.piper@mcgill.ca. I will post the papers on WebCT and you will have the opportunity to present the draft paper to your peers at a series of in-class discussion panels. When completing the peer review please use the form in this syllabus (and the grading rubric) as a guide. You will then be able to edit the paper before re-submitting it for final evaluation based on the comments you have received. Please include any written peer review comments you may have received with your final submission (due Monday April 30th, 3 pm at SAO, identified by name, double spaced, 12 point font of your choice) to be submitted on paper. Please format your references according to the McGill Guide or hyperlink to online resources. 10% of this grade will reflect the effort that you put into peer reviewing your colleagues’ paper.

In order to pass the paper you must complete the following three requirements:

(a) Submit a research prospectus: due by email at the SAO on February 28th 2012 at 3 pm. The abstract should outline the topic that you have chosen, the argument or story and methodology you intend to pursue.

(b) Submit a draft paper: due by email at the SAO on Friday March 30th 2012 at 3 pm. My experience from teaching this course suggests that a more complete draft paper is more usefully peer reviewed resulting in a stronger final paper.
(c) Present your draft paper: on your class presentation date for a maximum of 7 minutes. I will set presentation dates after you have picked a topic, attempting as much as possible to group like topics together. The presentations will take place in the last class of the course.

Primary source report:

Identify a primary source at the Faculty. Photograph the primary source. Write a short report (max 1000 words) answering the following sorts of questions:

1. What can you learn from looking at the document?
2. What can you learn from how and where the document is situated?
3. What true story can you tell about this source? Research the context to this primary source. What gaps remain?
4. What questions would you like to ask of this source?
5. Did your awareness of the present affect your choice of source and its interpretation? How?

Submit the primary source report Monday January 23rd (3 pm at the SAO, identified by name, 12 point font of your choice) electronically to SAOassignments.law@mcgill.ca, and cc’d to my email address tina.piper@mcgill.ca. Bring an 8.5 x 11 paper print-out of the source to class. Be prepared to discuss your primary source in class on January 25th. The primary source exercise is intended to help you prepare to write your paper by getting you writing legal history early on in the course and can become your paper if you wish.

Presentation and Participation: (20%)

a) Presenting a reading: you will be responsible for presenting one article and leading class discussion. The objective of your presentation will be to explain to the class the significance of the article in relation to the themes of the course: you can do this either through a traditional presentation, in-class exercises or in any other manner. While powerpoint or other media can be used, they are not necessary. If you are presenting an article orally, please limit your presentation to 15 minutes. I would encourage you to develop an in-class exercise. One example is editing a Wikipedia entry or interpreting a primary source related to the article under discussion. If you intend to run an in-class exercise, please send me a short email 5 days in advance as a half hour is usually required to usefully complete an in-class exercise and this helps me plan the class. The goal of this method of evaluation is to get you used to the idea of communicating legal historiography.

Note that if you are presenting on a ‘paired’ article (we read a number of articles on the exact same topic written from different approaches) you should plan a joint presentation with the student(s) presenting the paired piece. Also note that while I ask you to choose which article you’d like to present I reserve the right to move you to another to ensure the class runs smoothly.

Ideally your presentation will engage with questions such as:

1. What does this article tell us about the law?
2. What does this article tell us about studying the law in its social context?
3. How does the author use sources?
4. What methodology does the author adopt?
b) Participation: I will assess your participation in accordance with the rubric included in this syllabus.

Faculty Grading Guidelines: The Faculty of Law does not have a “grade curve” or average that I am required to meet. It is suggested that the average grade for a paper course fall within the B- to B+ range, and that no more than 15% of the class receive an A or A-. I intend to conform to these guidelines.

This rest of the syllabus includes these materials:
   a) Readings
   b) Questions to help you think about your paper topic
   c) Peer review checklist
   d) Paper evaluation criteria
   e) Participation rubric
**Readings:** There are no assigned texts for this course and readings are available on WebCT, grouped by ‘part’. Note that there are readings posted to WebCT that we are not covering in the course this year. Ignore them.

<table>
<thead>
<tr>
<th>Date</th>
<th>Reading and exercises</th>
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| Wednesday, January 11 | **Part 1: Methodology**  
- L. Kramer, ‘When Lawyers do History’ (to p. 28)  
- *JW Arnold, History: A Very Short Introduction* (c. 4)  
- Lepore, ‘Just the Facts Ma’am’  
- *The mysterious inner workings of the Law and History Review*  
| Wednesday, January 18 | **Part 1: Methodology**  
- JW Hurst, *Law and the Conditions of Freedom*  
- M. Horwitz, *The Transformation of American Law 1780-1860*  
- Girard, ‘Beamish Murdoch and His Epitome of the Laws of Nova-Scotia’  
- D. Fyson, ‘Les historiens du Québec face au droit’ |
| Monday, January 23 | Primary source report due to SAO                                                                 |
| Wednesday, January 25 | Primary source report and presentation  
**Part 1: Methodology**  
- B. Brown, ‘A Taxonomy of Recent Methodological Approaches in Canadian Legal History’  
- M. Ogilvie, ‘Prescriptions for Canadian Legal History’ |
| Wednesday, February 1 | **Part 2: Late 19th Century Industrial Ontario**  
- *RCB Risk, “The Nuisance of Litigation”: The Origins of Workers’ Compensation in Ontario* (paired with all in this section)  
- *RW Kostal, Legal Justice, Social Justice: An Incursion into the Social History of Work-Related Accident Law in Ontario, 1860-86*  
- *J Nedelsky, Judicial Conservatism in an Age of Innovation: Comparative Perspectives on Canadian Nuisance Law 1880-1930* |
| Wednesday, February 8 | **Part 3: Criminal Law, Order and Disorder**  
- *JW Walker, Quong Wing v. the King* (pair with Backhouse)  
- *C Backhouse, The White Women’s Labor Laws: Anti-Chinese Racism in Early Twentieth-Century Canada*  
- *C Mosher, Imperialism, Irrationality, and Illegality: The First 90 Years of Canadian Drug Policy, 1908-1998*  
- *TL Chapman, Drug Usage and the Victoria Daily Colonist: The Opium Smokers of Western Canada*  
-Presentation by Maryvon Côté, Liaison Librarian at the Nahum Gelber Law Library |
| Wednesday,          | **Part 3: Criminal Law, Order and Disorder** |
### February 15
- T Loo, ‘Bute Inlet Stories: Crime, Law, and Colonial Identity’
- BD Palmer, ‘Discordant Music: Charivaris and Whitecapping in Nineteenth-Century North America’

- Former student Charles Hoffman will discuss his paper writing process

### Wednesday, February 22
**Reading week – no class**

### Tuesday, February 28
**Research prospectus due at SAO**

### Wednesday, February 29
**Part 4: Legal Education**
- W Pue, ‘Professional Historians’ Fallacies’
- CI Kyer & JE Bickenbach, ‘The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario, 1923-57’
- WW Pue, ‘Common Law Legal Education in Canada’s Age of Light, Soap and Water’

### Wednesday, March 7
**Part 4: Legal Education**
- H Dick, ‘Cultural Chasm: “Mennonite” Lawyers in Western Canada 1900-1939’
- Mossman, ‘Women Lawyers in Canada: Becoming Lawyers “On the Same Terms as Men”’
- JEC Brierley, ‘Quebec Legal Education Since 1945: Cultural Paradoxes and Traditional Ambiguities’

### Wednesday, March 14
**Visit Sir Georges-Etienne Cartier house, "I Am a Sort of Lawyer Engaged in Politics and Business"**
- B Young, Georges-Etienne Cartier: Montreal Bourgeois
- Return to classroom and discussion.

### Wednesday, March 21
**Part 5: Women’s Legal History**
- C Backhouse, ‘The Tort of Seduction: Fathers and Daughters in Nineteenth Century Canada’ (pair with Cliché)
- P Girard, & R Veinott, ‘Married Women’s Property Law in Nova Scotia, 1850-1910’
- JM Brisson & N Kasirer, ‘The Married Woman in Ascendance, the Mother Country in Retreat’

### Wednesday, March 28
**Part 5: Women’s Legal History** (1/2 class, paper consultation in second half)
- SM Gaffield, ‘Justice Not Done: The Hanging of Elizabeth Workman’ (pair with Greenwood)
- Greenwood & Boissery, ‘Elizabeth Workman – Sinner or Saint’

### Friday, March 30
**Draft paper due at the SAO and emailed to tina.piper@mcgill.ca**

### Wednesday, April 4
**Peer review session**

### Wednesday, April 11
**Paper consultation office hours**

### Monday, April 30
**Final draft of paper due at SAO**
For those seeking a rudimentary history of Canada:

Questions to help you think about your paper topic:
The exercise of formulating your topic will be to find a primary source, an area of interest, limiting your essay temporally, geographically and otherwise. You are required to use at least one primary source in your essay.

1. Who was McGill’s first Black law graduate? (please see me if you’d like to tackle this topic, Prof. Blackett has already undertaken preliminary research on this topic)
2. What role did law play in the development of capitalist enterprise in Canada prior to 1867, post 1867, in a particular province, in a particular industry?
3. Has the legal profession accommodated women and/or minority lawyers over the 20th century? Any particular person or group?
4. What role has the law played in regulating morality during any period of Canadian history?
5. Self-consciously adopt and justify a methodology and tell the history of a Canadian law school.
6. Self-consciously adopt and justify a methodology and tell the history of a Canadian law society.
7. What is not Canadian legal history? Or, what is Canadian legal history?
8. Write a biography of a Canadian jurist.
9. Did law protect native people, encourage their displacement, or integrate them into the political and economic structure in any temporal period in Canada?
10. What were the social and cultural roles of punishment in 18th, 19th or 20th century criminal law?
11. What were the effects of French and/or English theories of codification on the development of law in 19th century Canada?
12. How have provincial matrimonial property regimes evolved? What have these changes suggested about the law in its social context?
13. How and why did the law and law enforcement change in dealing with domestic violence in a given time period?
14. How have provincial automobile, house or medical insurance schemes evolved? What have these changes suggested about the law in its social context?
15. How have the actions of law enforcers influenced law-making in a particular context? Describe the relationship between law enforcement and law-making.
16. Has the Supreme Court of Canada been federalist or centralist in its jurisprudence in what time period?
17. What role did the courts play in (fill in the blank) crisis? (secession, gay marriage, inflation, conscription, native land settlements)
18. How have the principles and goals of legal education in Canada changed?
19. What are the origins of Canadian human rights law?
20. Has the legal regulation of nature in Canada promoted exploitation of the natural environment? What roles has the law played in protecting or degrading the environment?
21. Did Canadian judges in the 19xx’s have coherent judicial philosophies? What shaped their philosophy or philosophies?
22. Closely study and situate a Canadian legal text or portion of a legal text and determine what it says about the development of legal institutions, laws, the reception of laws, legal culture and legal ways of knowing.
‘Simpsonize’ one of the following cases: (if you decide to pursue this type of topic you should read one of the articles in Learning Module ‘Resources for Paper Writing’)
-Deverill v. Grand Trunk Railway Company (1866) 25 Q. B. 517
-AG for Saskatchewan v. AG for Canada (Saskatchewan Farm Security Act) [1949] AC 110 Judicial Committee of the Privy Council
-Bliss v. Canada (Attorney General) [1979] 1 S.C.R. 183
-Butler v. The Queen [1992] 1 S.C.R. 452
-or a case of your choice

Presentation Criteria

1. Was the presentation clear, well structured and the use of teaching aids appropriate?
2. How effectively did the presentation involve the class?
3. Did the presentation help you engage and advance in your understanding of the materials?

[To be discussed]
Peer Review Checklist:
On a scale of 1 to 7 where 1 is ‘excellent’ and 7 is ‘poor’ please evaluate the paper (either overall or on each component below) and include comments for the author.

1  Overall, the methodology adopted by this paper is identifiable and the author has explained why this methodology (and not another) is appropriate to this piece.

2  This paper places legal history in its social context; it does not merely argue something about the law.

3  The period this paper covers is defined; that period is justified and well chosen to demonstrate the claims being made by the author.

4  The paper cites articles from the readings; those citations are relevant and well-placed. The paper clearly relates its discussion to themes and knowledge learnt in the course.

5  The paper uses a primary source. As far as you can tell, the author has thought about the primary source, investigated it and its implications.

6  The paper has an introduction and conclusion, and the author has clearly signaled where he or she is author going.
**Participation Rubric:** [to be discussed]

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<th>A</th>
<th>B+</th>
<th>B</th>
<th>B-</th>
<th>C</th>
<th>D</th>
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<tbody>
<tr>
<td>Actively supports, engages and listens to peers (ongoing)</td>
<td>Actively supports, engages and listens to peers (ongoing)</td>
<td>Makes a sincere effort to interact with peers (ongoing)</td>
<td>Arrives mostly, if not fully, prepared (ongoing)</td>
<td>Participates constructively in discussions (ongoing)</td>
<td>Makes relevant comments based on the assigned material (ongoing)</td>
<td>Limited interaction with peers</td>
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<tr>
<td>Arrives fully prepared at every session</td>
<td>Plays an active role in discussions (ongoing)</td>
<td>Comments occasionally advance the level and depth of the dialogue</td>
<td>Makes relevant comments based on the assigned material (ongoing)</td>
<td>When prepared, participates constructively in discussions and makes relevant comments based on the assigned material</td>
<td>Comments are generally vague or drawn from outside of the assigned material</td>
<td>Virtually no interaction with peers</td>
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<tr>
<td>Plays an active role in discussions (ongoing)</td>
<td>Comments occasionally advance the level and depth of the dialogue</td>
<td>Participates constructively in discussions (ongoing)</td>
<td>Makes relevant comments based on the assigned material (ongoing)</td>
<td>Demonstrates a noticeable lack of interest in the material (on going)</td>
<td>Demonstrates a noticeable lack of interest (on occasion)</td>
<td>Rarely prepared</td>
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<td>Comments advance the level and depth of the dialogue (consistently)</td>
<td>Group dynamic and level of discussion are often better because of the student’s presence</td>
<td>Group dynamic and level of discussion are occasionally better (never worse) because of the student’s presence</td>
<td>Group dynamic and level of discussion are not affected by the student’s presence</td>
<td>Group dynamic and level of discussion are significantly harmed by the student’s presence</td>
<td>Group dynamic and level of discussion are harmed by the student’s presence</td>
<td>No interaction with peers</td>
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