



# a place of mind

## THE UNIVERSITY OF BRITISH COLUMBIA

### EDUC 500: Research Methodology in Education

#### Lecture Notes

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### Research Ethics & Law

#### 1. Research Law

##### a. Protection of Subjects / Participants

- i. Animal
- ii. Human

1. *National Research Act* (1974) created the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research in the US

- a. Subpart A of the 1974 regulations — basic HHS Policy for Protection of Human Research Subjects — was adopted by a many, but not all, federal agencies on June 18, 1991. It became known as the *Common Rule*.

- b. Belmont Report:

- i. Principle of Respect for Persons: Consideration must be given to individuals' autonomy. (This principle underlies the requirement of obtaining informed consent.)
- ii. Principle of Beneficence: Research must be shown to be beneficial and reflect the Hippocratic ideal of doing no harm.
- iii. Principle of Justice: The potential benefits of research must be balanced against the risks to subjects.

2. Palys & Lowman, 2002, pp. 1-2: Survey research, field studies, and other contemporary social science research techniques involve construction of detailed, accurate records of information about characteristics and behavior of specific, identified persons who serve as research participants. If divulged, some of these records can be used to harm research participants or others who are named in the records.

3. P. 2: When social researchers have refused to divulge information about research participants to courts and governmental entities, subpoena powers backed by the threat of criminal penalties for noncompliance have been used to try to motivate researchers to reveal research records. Social science tradition in the face of such threats is to staunchly resist, both to protect research participants and to preserve academic freedom

- iii. Sacred

1. First Nations Heritage Protection and Conservation Act— 2014 (Bill M208)  
[http://www.leg.bc.ca/40th2nd/1st\\_read/m208-1.htm](http://www.leg.bc.ca/40th2nd/1st_read/m208-1.htm)

- 2.

##### b. Privilege

- i. Lowman & Palys, 2003, p. 382: the “courts have not recognized a "scholar's privilege," "researcher privilege," "academic privilege," or "social science research privilege." But we have not argued that they should. On the contrary, we believe that researchers should assist the courts in their search for truth as long as they do not expose research participants to harm in the process.”

- ii. Wigmore criteria

1. The communications must originate in a confidence that they will not be disclosed;

2. This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;
  3. The relation must be one which in the opinion of the community ought to be sedulously fostered; and
  4. The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation. (Wigmore 1905:3185; italics in original)
  5. Palys & Lowman, 2002, pp. 7-8: We suggest that designing one's research in anticipation of meeting the requirements for privilege that are embodied in the Wigmore criteria will help the researcher address the court's concerns and thereby maximize the protection they can offer research participants through the common law.
  6. Shield Laws
- iii. Constitutional First Amendment and Charter sc. 2b protections for the press
    1. Is research a form of journalism?
      - a. Some state laws explicitly includes scholars in its definition of journalist
2. **Citizen & Researcher Media Law** <http://www.citmedialaw.org/>
    - a. BC Civil Liberties Association
      - i. Citizen Handbook <http://www.bccla.org/citizen/chapt1.pdf>
      - ii. Recording
    - b. Third Party Data (see Lecture #2)
    - c. Audio & Video Recording
      - i. Rights
        1. One-party Consent Law v Two-Party Consent Law
          - a. Canada: You can legally record any conversation that you are part of without consent of the other person. You cannot legally record a conversation between two other people as a third party unless you have their consent.
          - b. Scope of recording rights, e.g., US: [http://www.newmediarights.org/page/field\\_guide\\_audio\\_and\\_video\\_recordings#Audio](http://www.newmediarights.org/page/field_guide_audio_and_video_recordings#Audio)
          - c. California
            - i. California makes it a crime to record or eavesdrop on any confidential communication, including a private conversation or telephone call, without the consent of all parties to the conversation. See California v. Gibbons, 215 California
        2. "If you can see it, you can shoot it." If you can hear or see it when you are a party to it, you can record it. [http://www.andrewkantor.com/legalrights/Legal\\_Rights\\_of\\_Phographers.pdf](http://www.andrewkantor.com/legalrights/Legal_Rights_of_Phographers.pdf)
          - a. You can legally take pictures of anything that is visible to the general public (without special equipment — e.g., a telephoto lens), whether it or you are on public or private property.
          - b. That means you can legally take pictures of children, athletes, people on the street, beach bathers, buildings, cars, policemen, accident scenes, government officials, airplanes, airports, trains, and so on.

- c. You can legally take pictures when you are on private property, if that property is open to the public (e.g., a mall or office complex).
3. Guidelines in Canada <http://www.langleycameraclub.com/wp-content/uploads/2012/03/Photographers-Rights.pdf>
  - a. You can make a photograph of [or record] anything and anyone on any public property, (i.e.) streets, sidewalks, town squares, parks, government buildings open to the public, and public places are all OK. Except where a specific law prohibits it — generally a posted sign will advise — lack of sign does not ensure permission to photograph.
  - b. You may shoot on private property if it is open to the public, but you are obligated to stop if the owner or owner representative (security or manager) requests it. (i.e.) malls, retail stores, restaurants and office building lobbies.
    - i. You may photograph at public festivals and public events whether they are on public or private property, paid admittance or not. The event organizer or their representative (security) have the legal authority to demand that you stop taking pictures – the photographer must comply or typically you will be evicted from the site. Lack of ‘photography not permitted’ signage does not validate your photography.
- ii. Publishing  
[http://theme.ndc.gov.tw/tcap/commons.wikimedia.org/wiki/Commons\\_Photos\\_of\\_identifiable\\_people.html](http://theme.ndc.gov.tw/tcap/commons.wikimedia.org/wiki/Commons_Photos_of_identifiable_people.html)
  1. The subject's consent is usually needed for publishing a photograph of an identifiable individual taken in a **#private place**, and Commons expects this even if local laws do not require it. In many countries (especially English-speaking ones) the subject's consent is not usually needed for publishing a straightforward photograph of an identifiable individual taken in a **#public place**. However, the term published should not be construed to include commercial use, as consent is usually required in these situations.
- iii. Editing Audio & Video Records
  1. RTNDA Guidelines  
[https://www.rtdna.org/content/guidelines\\_for\\_ethical\\_video\\_and\\_audio\\_editing](https://www.rtdna.org/content/guidelines_for_ethical_video_and_audio_editing)
- iv. Covert (Surreptitious) v Overt Recording
  1. Media Law & Privacy Law
    - a. Criminal Code of Canada
    - b. <http://mpcam.com/content/canadian-laws-use-video-surveillance-systems>
    - c. Recording Private (Confidential Conversation)
    - d. Interception
      - i. BC wiretapping <http://www.legaltree.ca/print/908>
    - e.
  2. Rights

3. Investigative Journalism
  - a. CBC <http://www.cbc.radio-canada.ca/en/reporting-to-canadians/acts-and-policies/programming/journalism/investigative-journalism/>
  - b. Hidden Cameras <http://cironline.org/blog/post/hidden-pitfalls-using-hidden-cameras-268>
  - c. Lying to Get the Truth <http://ajrarchive.org/article.asp?id=4403>
  - d.
- v. School Context  
<http://www.servicealberta.ca/foip/documents/SchoolPromoVideo.pdf>
  1. Students Recording Teachers
    - a. Requa v Kent
      - i. News Report (21 May 2007)  
<http://www.seattlepi.com/local/article/Free-speech-vs-class-disruption-1238067.php>
      - ii. Komo 4 news report (14 February 2007)
      - iii. Ms. Mong “Mongzilla” youtube video  
<http://www.youtube.com/watch?v=aHIJMWrlZy0>
      - iv. Court Opinion (Justia.com)
    2. Teachers Recording Students
  - vi. Consent
  - vii. Privacy Protection
  - viii. Surveillant Video
  - ix. Video Voyeurism
  - x. Recording Devices / Technologies
    1. Livescribe case
    2. Surreptitious Devices

### 3. Intellectual Property Rights

#### a. Copyright

- i. What is a Copyright?
  1. Intellectual Property & Property
  2. Acquired by...
  3. For Life + 50 years in Canada...
- ii. Bundle of Rights

#### **Copyright— A Bundle of Rights**

1. Reproduction—right to create identical or near identical copies of the work.
2. Adaptation—right to create derivative works, such as abridgements, translations or versions in a range of media (book to movie to video to CD to on-line game)
3. Distribution—right to make the first sale of each authorized copy of the work.
4. Performance—right to present, recite, play, act or publicly perform the work.
5. Display—right to publicly show the work, by means of film, radio, TV, WWW or other device.
- Moral—right to the integrity of the work.

- iii. Ownership
  1. Work for Hire
  2. Academic Exception
- iv. Licensing Agencies, Consortia, and Schemes

1. Access Copyright
2. Distribution Services
3. Creative Commons <http://creativecommons.org/>
  - a. Licenses <http://creativecommons.org/licenses/>
    - i. E.g., Attribution-Noncommercial-Share Alike



- v. Public Domain
  1. Definition <http://fairuse.stanford.edu/overview/public-domain/>
    - a. Function of the age of work
  2. Creative Commons <https://creativecommons.org/publicdomain/>
- vi. **Exceptions: Fair Dealing**
  1. Copyright Act of Canada <http://laws-lois.justice.gc.ca/eng/acts/C-42/FullText.html>
    - a. Marginal note: Research, private study, etc.
      - i. 29 Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.
    - b. Marginal note: Criticism or review
      - i. 29.1 Fair dealing for the purpose of criticism or review does not infringe copyright if the following are mentioned:
        1. (a) the source; and
        2. (b) if given in the source, the name of the
        3. (i) author, in the case of a work,
        4. (ii) performer, in the case of a performer's performance,
        5. (iii) maker, in the case of a sound recording, or
        6. (iv) broadcaster, in the case of a communication signal.
    - c. Marginal note: News reporting
      - i. 29.2 Fair dealing for the purpose of news reporting does not infringe copyright if the following are mentioned:
        1. (a) the source; and
        2. (b) if given in the source, the name of the
        3. (i) author, in the case of a work,
        4. (ii) performer, in the case of a performer's performance,
        5. (iii) maker, in the case of a sound recording, or
        6. (iv) broadcaster, in the case of a communication signal.

### 3. Copyright Law

- i. Global
  1. Berne [http://www.wipo.int/treaties/en/ip/berne/trtdocs\\_wo001.html#P151\\_28262](http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html#P151_28262)
  2. WIPO Copyright Treaty (WCT) and WIPO Performers and Phonograms Treaty (WPPT) <http://cnx.org/content/m22656/latest/?collection=col10698/latest>
  3. SOCAN <http://www.socan.ca/>
- ii. Copyright Act of Canada <http://laws-lois.justice.gc.ca/eng/acts/C-42/page-15.html#h-26>

- iii. CIPO <http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/Home#6>
- iv. Copyright Law of US <http://www.copyright.gov/title17/92chap1.html#110>

- b. Public Performance or Display Rights
- c. Patent
- d. Trademark
- e. Trade Secrets

### 3. Privacy Protection

- a. TCPS2, p. 55: Privacy refers to an individual's right to be free from intrusion or interference by others. It is a fundamental right in a free and democratic society. Individuals have privacy interests in relation to their bodies, personal information, expressed thoughts and opinions, personal communications with others, and spaces they occupy. Research affects these various domains of privacy in different ways, depending on its objectives and methods. An important aspect of privacy is the right to control information about oneself. The concept of consent is related to the right to privacy. Privacy is respected if an individual has an opportunity to exercise control over personal information by consenting to, or withholding consent for, the collection, use and/or disclosure of information (see Chapter 3 for further discussion of consent).

### 4. Freedom of Information

- a. Canada Freedom of Information Office  
[http://www.cio.gov.bc.ca/cio/priv\\_leg/foippa/index.page](http://www.cio.gov.bc.ca/cio/priv_leg/foippa/index.page)
  - i. *Freedom of Information and Privacy Protection Act*
- b. BC Office of the Information and Privacy Commissioner
  - i. The Information and Privacy Commissioner enforces the *Freedom of Information and Protection of Privacy Act* ("FIPPA") and the *Personal Information Protection Act* ("PIPA").
    - 1. *Freedom of Information and Protection of Privacy Act*
    - 2. *Freedom of Information and Protection of Privacy Act Regulation*
    - 3. *Committees of the Executive Council Regulation*
    - 4. *Sectional Index* (access to OIPC Orders by section of FIPPA)
  - ii. Freedom of Information: FIPPA
    - 1. *Freedom of Information*- To make public bodies more open and accountable by providing the public with a legislated right of access to government records.
    - 2. The *Freedom of Information and Protection of Privacy Act* sets out the access and privacy rights of individuals as they relate to the public sector.
    - 3. FIPPA establishes an individual's right to access records— this includes access to a person's own "personal information" as well as records in the custody or control of a "public body" — see Schedule 2 and Schedule 3 for a list of public bodies that are covered by FIPPA.
    - 4. There are certain exceptions to accessing records— for example, a public body cannot disclose information that is deemed to be harmful to law enforcement, personal privacy or public safety. Policy advice and legal advice are also excluded. These exceptions are spelled out in sections 12 to 22.
    - 5. In addition to establishing an individual's right to access records, FIPPA also sets out the terms under which a public body can collect, use and disclose the "personal information" of individuals. Public bodies are held accountable for their information practices -- FIPPA requires that they take reasonable steps to protect the privacy of personal information they hold.

iii. PIPA

1. **Privacy-** To protect your right to personal privacy by prohibiting the unauthorized collection, use or disclosure of your personal information by public bodies.
2. The *Personal Information Protection Act* came into effect in January 2004, and sets out how private sector "organizations" can collect, use and disclose personal information. There are more than 300,000 organizations in B.C. covered by PIPA, including businesses and corporations, unions, political parties, and not-for-profits doing business in B.C.
3. Under PIPA, individuals have the right to access their own personal information. The law also sets out the rules by which organizations can collect, use and disclose personal information from customers, clients and/or employees. PIPA requires organizations to protect and secure personal information against unauthorized use or disclosure.

iv.