

## Course Outline

COURSE:	LAWS 3903 A – Selected Legal Topics: Law & Communication in the Media Society
TERM:	Summer 2010
PREREQUISITES:	Third year standing
CLASS:	Day & Time: Mondays and Wednesdays – 2:35-5:25 pm Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Professor Sheryl Hamilton
CONTACT:	Office: C571 LA (Loeb) Office Hrs: Tuesdays 9:30-11:30 am, or by appointment Telephone: 613-520-2600 x 1178 Email: <a href="mailto:sheryl_hamilton@carleton.ca">sheryl_hamilton@carleton.ca</a>

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"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: [http://www.carleton.ca/pmc/students/accom\\_policy.html](http://www.carleton.ca/pmc/students/accom_policy.html) . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **June 11, 2010 for June exams and July 30, 2010 for August exams**. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: [www.carleton.ca/equity](http://www.carleton.ca/equity)

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**COURSE DESCRIPTION**

Freedom of expression is a fundamental right in Canada (and in many other societies), protected by the *Canadian Charter of Rights and Freedoms*. However, this right is never absolute. This course will examine the ways in which our capacity to communicate with each other is constrained and enabled by formal and informal legal mechanisms. We will situate this discussion specifically in the context of our current media society.

The law's capacity to regulate communication is constantly being challenged and shaped by the uses and practices of citizens deploying an increasing array of digital and mobile technologies, and by the impacts of these technologies and practices on industry habits and activities.

We will examine the regulatory framework within which Canadian mediated communication occurs, studying both its historical emergence as well as the current stresses under which it is operating. We will look at the ways that professional journalists, as much-valued communicators in democratic society, are renegotiating their legal framework of operation. However, much of our news and information now comes from communicators who are not formally trained journalists. We will explore the ways in which 'citizen journalists' and bloggers are also subject to the law. Censorship is a common part of Canadian society from industry self-regulation, to CRTC licensing practices, to the criminal law. We will study the ways in which certain communicative content – hate speech, obscene material, and child pornography – are controlled and regulated in Canada. We will look at the ways in which communications can be conceptualized as private property, and thus bought, sold, and licensed. We will specifically take up the areas of copyright, trademarks and publicity law. Finally, we will explore the ways in which media technologies are permeating the courtroom.

**COURSE OBJECTIVES**

- To introduce students to the legal and regulatory frameworks within which media operate in Canada;
- To expose students to the myriad ways in which their own communication practices are both constrained and enabled through law and regulation of communication;
- To encourage students to think critically about their rights to communicate in contemporary society;
- To encourage students to think critically about the ways in which digital and mobile technologies are impacting upon the communication and law landscape; and
- To develop critical thinking and reading skills, analytic writing skills, and public presentation skills.

**READINGS AND MATERIALS**

We will be using a textbook throughout this course: *Law's Expression: Communication, Law and Media in Canada* by Sheryl Hamilton. Markham: LexisNexis Canada, 2009. ISBN #978-0-433-45773-2. The text is available in the Carleton University Bookstore.

*Law's Expression* is also available on 2-hour reserve (#KE4420.H34 2009) at the Library.

We will be supplementing the chapters of *Law's Expression* with other academic and popular readings, legal cases, websites, blogs, online essays, YouTube videos, and so on. All of this information will be available in electronic form, either through links in the course outline or through WebCT.

**WebCT**

There is a WebCT site for this course and we will be using it. I will send e-mails to students, as a group and as individuals, as necessary, through this site. You should check it regularly. Supplemental material or guidelines may also be posted there, as well as certain of your readings. I prefer that students wishing to contact me by e-mail do so at the address: Sheryl\_Hamilton@Carleton.ca and not through the WebCT site.

**EVALUATION - (All components must be completed to pass this course)**

Evaluation in this course will consist of five components:

1. Participation (10%),
2. Three-Minute Review (5%),
3. Two Discussion Piece Analyses (15% each = 30%),
4. Research Paper (30%),
5. Final Examination (25%).

The requirements for each assignment will be discussed on the first day of class and as necessary throughout the course. If, at any time, you have questions about any element of an evaluation, please speak to me as soon as possible. Failure to complete the research essay or the final examination will result in a final grade of F.

A supplemental examination or essay assignment, following the same format, may be written upon application to/approval from the Registrar's Office. Exams are not returned but may be reviewed with the instructor during office hours the following term.

All assignments that you complete must be original. Please note Carleton University's policy on plagiarism and other instructional offences in the Undergraduate Calendar supplement, available online at <http://www.Carleton.ca/cu0607uc/regulations/acadregsuniv14.html>, item #14.1.2. If you have any questions about plagiarism, please ask. A FAQ document about plagiarism will be posted to WebCT.

**Participation**

Students are expected to attend all classes, respect the start/finish times of the class, read the required readings and discussion pieces, and be prepared to identify and discuss issues emerging from these in a thoughtful and informed manner during the class. Attendance will be taken at every class. Students are encouraged to ask questions, share experiences, and relate the course material to issues they see around them. The evaluation of participation will also encompass the level of engagement in the classroom, the

quality of participation in classroom activities, and the ability to bring concepts, critiques and ideas from the readings into classroom discussion.

### **Three-Minute Review**

We will begin each class with a three-minute review. These are fun, oral, think pieces designed to warm us up, to get us thinking and talking, and to bring everyday current issues into the classroom. Students will sign up for a date in their first week. Presentations should be a maximum of three minutes long, should present a current issue that the student is aware of, and should not involve any other academic research. Analyze the issues, go on a rant, make us laugh – any approach is alright as long as it draws out a current issue relevant to the course in some way and shows us you're thinking about it. The issue you choose does not have to be connected in any way to the material to be covered in that particular class. Have some fun with these – expose us to some interesting events and issues, and invite us to think and discuss.

### **Discussion Piece Analyses**

Students will note that certain readings/websites/videos have been designated in each session as Discussion Pieces (DPs). DPs will be used to generate discussion in that particular class. Over the course of the term, each student is to submit two (2) critical analyses (3-5 double-spaced, typed pages) of two different DPs (not to be selected from the same thematic – for example, not the two classes on intellectual property, nor the two classes on criminalized speech). Each discussion piece should be analyzed in relation to the other readings for that class, the lecture, class discussion, and any other relevant course material that we have covered. No further research is required. Each Discussion Piece Analysis (DPA) will be due the class following the one for which we have read that DP. If you do not submit by that deadline, you must choose another one. These will not be accepted late.

### **Research Paper**

Students will complete a final paper analyzing the social implications of the communication law issues discussed in an item of media that they have identified, selected and analyzed: a newspaper article, a documentary film, a YouTube video, etc. The analysis should be informed by academic research into the issue(s) identified. Not less than five academic, refereed sources should be incorporated. Feel free to use more. The media piece should be included with the submission of the paper, or clear reference to it provided, as appropriate. The paper should offer a critical analysis of the social, legal, economic, cultural, and/or political questions around an aspect of communication law, rather than offer a presentation of the law itself or a re-presentation of the media item. Papers should be between 10-12 double-spaced, typed pages in length. Students are encouraged to meet with me once informally over the course of the term, during office hours, to discuss their paper ideas.

The Research Paper is due on the last day of class, **June 21, 2010.**

I will be using the following general criteria when marking your paper. Please bear these in mind when preparing your paper:

- clarity of thesis statement and introduction
- logical development of an argument
- insight and originality
- research effort
- demonstrated critical analysis
- use of sources and evidence
- presentation of references
- spelling, grammar and punctuation
- style

Late research papers will be marked down one-third letter grade (e.g. B to B-) for each day submitted after the due date without an authorized extension from me. All extensions for medical reasons require written proof from a healthcare professional. Papers must be typed or word-processed and submitted in hard copy. Handwritten papers, computer files, or e-mail attachments will not be accepted. Please retain a photocopy or secure file copy of the submitted work. In the even of loss, theft, destruction, dispute over authorship, or any other eventuality, it will be your responsibility to provide a copy of your paper. I also recommend that

you keep earlier drafts and your research material.

Research Papers must be submitted in class to the professor or deposited in the essay drop box located outside the Law Department General Office, room C473 Loeb Building, on the due date. The Department of Law assumes no responsibility for essays or assignments submitted in an irregular manner. Papers will be returned at the final exam. Otherwise they may be picked up from the professor during office hours or returned by post where a stamped, self-addressed envelope is provided.

### **Final Examination**

There will be a three-hour final examination in the regularly scheduled examination period. It will examine students on their integrated and critical knowledge of all course materials – lectures, readings and discussions. It will be comprised of definitions, short answers, and essay questions. The exam will be discussed in more detail on the last class during the examination review.

### ***Special Needs***

If you have any special needs which require scheduling accommodation in order for you to maximize your learning experience (employment, travel, childcare, etc.), please speak to me at the beginning of term so that we can arrange a mutually satisfactory approach. Do not expect accommodation for such requests during the week in which an assignment is due if we have not already arranged it and you do not have a doctor's note.

## **READINGS AND COURSE SCHEDULE**

**May 10 Introduction: Communication and Law in a Media Society**

### **THEME I: FRAMEWORKS FOR REGULATING COMMUNICATION IN CANADA**

**May 12 Freedom of Expression and Its Limits in Democratic Society**

*Law's Expression*, pp. 1-8.

Raboy, Marc (2006), "Making Media: Creating Conditions for Communication the Public Good" in *Canadian Journal of Communication* 31(2) at <http://www.cjc-online.ca/index.php/journal/article/view/1733/1849>

Shade, Leslie Regan (2004), "Situating Communication Rights Historically in *Seeking Convergence in Policy and Practice, Communications in the Public Interest*, Vol 2, pp. 81-91 (Web CT)

Discussion Piece: Deibert, Ronald (2010), "China's Cyberspace Control Strategy: An Overview and Consideration of Issues for Canadian Policy" for Canadian International Council <http://www.canadianinternationalcouncil.org/resourcece/archives/chinapapers>

**May 17 Regulating Media in Canada: Challenges and Change**

*Law's Expression*, pp. 8-32.

Pedersen, Isabel (2008), " 'No Apple iPhone? You Must Be a Canadian': Mobile Technologies, Participatory Culture, and Rhetorical Transformation" in *Canadian Journal of Communication* 33(3): at <http://www.cjc-online.ca/index.php/journal/article/view/2100/2023>

Discussion Piece: CBC (2009) "FAQ: Net Neutrality and Internet Traffic Management" <http://www.cbc.ca/technology/story/2009/07/02/f-net-neutrality-faq.html>

**THEME II: LEGAL TROUBLES FOR COMMUNICATORS****May 19 Journalists, Confidentiality, Publication Bans, and Privileged Communication**

*Law's Expression*, pp. 33-55.

Dorland, Michael and Priscilla Walton (1996), "Untangling Karla's web: post-national arguments, cross-border crimes, and the investigation of Canadian culture" in *American Review of Canadian Studies* at <http://www.accessmylibrary.com/article-1G1-30258337/untangling-karla-web-post.html>

Discussion Piece: Sifton, Blake (2008), "A Right to Protect? The confidential source controversy in journalism" at [http://www.journalismethics.ca/feature\\_articles/right\\_to\\_protect.html](http://www.journalismethics.ca/feature_articles/right_to_protect.html)

**May 24 Victoria Day – No University Classes****May 26 Citizen Journalists, Blogs, and Defamation**

*Grant v. Torstar Corp.* 2009 SCC 61

<http://scc.lexum.umontreal.ca/en/2009/2009scc61/2009scc61.html>

Electronic Frontier Foundation, *Blogger's Legal Guide: Online Defamation Law* at

<http://www.eff.org/issues/bloggers/legal/liability/defamation>

Discussion Piece: Kravets, David (2010) "Student Facebook Tirade Against Teacher is Protected Speech" in *Wired* at <http://wired.com/threatlevel/2010/02/student-facebook-tirade-against-teacher-is-protected-speech/>

**THEME III: CRIMINALIZED COMMUNICATION****May 31 Obscene Communication and Community; Child Pornography and Deviance**

*Law's Expression*, pp. 87-101.

Kinehan, Anne-Marie (1999), "A Portrait of the Artist as a Sensitive Young Man: The State, the Media and 'The Ordeal of Eli Langer'" in *PopCan: Popular Culture in Canada* (Lynne Van Luven and Priscilla L. Walton, eds.), Scarborough: Prentice Hall Allyn, pp. 167-179.

Discussion Piece: *Little Sisters Book & Art Emporium v. Canada (Minister of Justice)* (2000) at <http://scc.lexum.umontreal.ca/en/2000/2000scc69/2000scc69.html>

**June 2 There will be no class today. Professor is at a conference.****June 7 Hate Speech: to censor or not to censor?**

*Law's Expression*, pp. 101-107

Kahn, Robert A. (2008), "Hate Speech and National Identity: The Case of the United States and Canada" *St. Thomas Legal Studies Research Paper Series*, pp. 1-29.

Discussion Pieces: Thornton, Liam (2010), "'South Park: Religious Defamation,' Freedom of Expression & Human Rights" at <http://www.humanrights.ie/index.php/2010/04/25/south-park-religious-defamation-freedom-of-expression-human-rights/>

David Keane (2010) "Keane on South Park, Islam and Hate Speech: A European Perspective" at <http://www.humanrights.ie/index.php/2010/04/26/keane-on-south-park-islam-and-hate-speech-a-european-perspective/#more-5355>

**THEME IV: COMMUNICATION AS PROPERTY****June 9           Who Can Own Communication? Principles of Intellectual Property**

*Law's Expression*, pp. 57-85.

Boyle, James (2002), "Fencing off ideas: enclosure & the disappearance of the public domain" in *Daedalus* 131(2): 13-25 at <http://james-boyle.com/daedalus.pdf>

Discussion Piece:       Bollier, David (2005), "Trademark Owners Whine, 'No Making Fun of Me!'" in *Brand Name Bullies: The Quest to Own and Control Culture*, Hoboken NJ: John Wiley & Sons, Inc., pp. 83-130 (WebCT)

**June 14           Remix and Reform: Copyright in Canada**

Murray, Laura (2009), "Brett Gaylor (Dir.) (2009) RiP: A Remix Manifesto – Review" <http://www.culturemachine.net/index.php/cm/article/view/372/380>

Craig, Carys J. (2006), "Putting the Community in Communication: Dissolving the Conflict Between Freedom of Expression and Copyright" in *University of Toronto Law Journal* 56: 75-114.

Discussion Piece:       Faden, Eric, "A Fair(y) Use Tale" at <http://cyberlaw.Stanford.edu/documentary-film-program/film-a-fair-y-use-tale>

**THEME V:       MEDIATING THE LAW****June 16           Cameras in the Courtroom ... what about BlackBerries, iPhones, Palm Pres?!**

*Law's Expression*, pp. 109-122.

Lepofsky, David (1996), "Cameras in the Courtroom: Not Without My Consent" in *National Journal of Constitutional Law* 6(3) (Web CT)

Henry, Daniel (1994), "Electronic Public Access to Court – An Ideas Whose Time Has Come" at [http://www.adidem.org/Electronic\\_Public\\_Access\\_To\\_Court\\_-\\_An\\_Idea\\_Whose\\_Time\\_Has\\_Come](http://www.adidem.org/Electronic_Public_Access_To_Court_-_An_Idea_Whose_Time_Has_Come)

Discussion Piece:       "Social Media Crashes the Courtroom" on National Public Radio: <http://www.npr.org/templates/story/story.php?storyId=112926570>  
(you can listen to the recorded interview or read the transcript)

**June 21           Wrap-up and Examination Review**

**Research Papers are due this week!**