

Course Outline

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<b>COURSE:</b>	<b>LAWS 3502A – Regulating Freedom of Expression in Canada</b>
<b>TERM:</b>	<b>FALL 2018</b>
<b>PREREQUISITES:</b>	<b>1.0 credits in LAWS at the 2000 level</b>
<b>CLASS:</b>	<b>Day &amp; Time: Mondays 2:35 – 5:25 p.m. Room: Please check with Carleton Central for current room location</b>
<b>PROFESSOR:</b>	<b>Sheryl Hamilton</b>
<b>CONTACT:</b>	<b>Office: C463 Loeb Building and Richcraft Hall 2506 Office Hrs: Wednesdays 9:30am – 11:30am (Richcraft Hall Office) Telephone: 613-520-2600 x 1178 x 1975 Email: <a href="mailto:Sheryl.hamilton@carleton.ca">Sheryl.hamilton@carleton.ca</a></b>

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**Academic Accommodations**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

**Pregnancy obligation:** Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: [carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf](http://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf)

**Religious obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: [carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf](http://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf)

**Academic Accommodations for Students with Disabilities:** If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or [pmc@carleton.ca](mailto:pmc@carleton.ca) for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) [www.carleton.ca/pmc](http://www.carleton.ca/pmc)

**Plagiarism**

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at:

<http://carleton.ca/studentaffairs/academic-integrity/>

**Survivors of Sexual Violence**

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit:

[carleton.ca/sexual-violence-support](http://carleton.ca/sexual-violence-support)

**Accommodation for Student Activities**

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist.

<https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: [students.carleton.ca/course-outline](http://students.carleton.ca/course-outline)

**Department Policy**

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>

## **CALENDAR COURSE DESCRIPTION**

The claimed relationship between freedom of expression and Canadian democracy, including the historical development of the right and various limits on it, and the regulatory structures governing contemporary media, criminalized and commercial expression, and use of media in the courtroom.

## **COURSE DESCRIPTION**

From “taking a knee” during the playing of a national anthem, to texting an intimate photo to a sexual partner, to banning (or not) Holocaust deniers on social media sites, to the allegations and circulation of “fake news,” the stakes of how we express ourselves have never been higher. As individuals and as communities, we currently have a historically unprecedented capacity to access information, communicate across time and space, and to do so with a wide diversity of media. None of this is benign. Expression is political, anchored in the assumption that freedom of thought, speech and the press are essential to a robust and healthy democracy. Indeed, many nations – including Canada – enshrine the right to freedom of expression in their constitutions.

Yet, it is important not to equate freedom of expression with completely unfettered speech. The manner, mode, and content of our expression are governed by state rules, institutional regulations, community practices, social and cultural norms, and individual and group values. How we can and do communicate with each other is produced in practices of domination and resistance, unruly and unlawful behaviours, and uneven arrangements of resources and power.

This course starts from the assumption that how we express ourselves matters. A lot. It assumes that how we enable and limit our public expressions is constitutive of the type of society we have. Over the course of the term we will study some of the most fraught issues of our times, issues in which the right to freedom of expression is central.

## **LEARNING OBJECTIVES**

Through the analysis and discussion of historical and contemporary enactments of the productive and troubled relationship among states, citizens, and expression, this course will:

- introduce students to the philosophical underpinnings and historical emergence of free speech within a rights framework;
- expose students to a number of the most significant sites of contestation of expression in Canada;
- encourage students to reflect on the myriad ways in which their own communicative practices are both constrained and enabled through the idea and practice of freedom of expression;
- enable students to think critically about the ways in which digital, mobile and social media are impacting the mediascape in which they communicate; and
- facilitate the development sound critical thinking and reading skills and analytic writing skills, in relation to a variety of genres and modes of writing and a range of academic disciplines.

## **REQUIRED TEXTS**

All readings are available through CULearn.

## **EVALUATION**

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

Students will be evaluated in the following areas:

1. Participation (10%)
2. Three Discussion Piece Analyses (1<sup>st</sup> at 10% and 2<sup>nd</sup> two at 15% each for a total of 40%)
3. Rant (20%)
4. Final Examination (30%)

The requirements for each assignment will be discussed on the first day of class, are detailed in the course outline, and supplementary information will be provided 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.

Please note that all assignments must be word-processed and submitted in hard copy, unless completed in class. Discussion Piece Analyses will not be accepted by email. Please retain a secure digital copy of the submitted work. In the event of loss, theft, destruction, dispute over authorship, or any other eventuality, it will be your responsibility to provide a copy of your work and to demonstrate authorship. To this end and to minimize the impacts of technology failure, I recommend that you keep earlier drafts of your work and all relevant materials.

### **Participation**

You are expected to attend all classes, respect the start and finish times of the class, read the required readings and discussion pieces in advance of the class for which they are assigned, and come to class prepared to identify and discuss issues emerging from these in a thoughtful and informed manner. The participation grade will assess your level of engagement in the classroom, the quality of your participation in discussion, and specifically your ability to bring concepts, critiques and ideas from the readings into classroom discussion.

Mobile communication devices should remain turned off and stored in a purse, book bag, pocket, etc. during class time, except for laptops being used for note-taking purposes. Using your electronics for non-class related purposes is highly distracting to your classmates. Please show them and me the respect we deserve. **Repeated use of mobile communication devices, tablets or laptops for non-course related purposes will result in a grade of 0/10 for participation.**

Attendance will be taken in class. However, good attendance is a prerequisite for a good participation grade, not an equivalent to it. Participation is about respect, engagement, and working productively in a collaborative manner to enhance your own and others' learning. You are encouraged to ask questions, share experiences, and relate course material to issues you see around you in your everyday life. **Regular demonstrated knowledge of the content of assigned readings is essential to a participation grade in the A or B range.**

### Discussion Piece Analyses (DPAs)

You will note that certain non-academic readings/websites/videos/cases etc. have been designated each week as Discussion Pieces (DPs). Over the course of the term, you are expected to submit three (3) critical analyses of specified DP's. These should be 4-5 pages in length, typed and double-spaced. Please use 12pt font and 1 inch (2.5 cm) margins on all sides. Please include a cover page with the title of your analysis, your name, your student number, the date, the course name and number, and my name.

**DPAs are to be submitted in hard copy in class on the day that they are due. DPAs are not accepted in electronic form.**

The DP for the week when the assignment is due should be critically analyzed in relation to the other readings for that week. No further research is required; however, you must demonstrate comprehension of all of the readings for that particular week. No bibliography is required but as you will be making specific reference to sources, you should cite the author and page numbers, as appropriate. Feel free to use any accepted style guide.

Your focus should be on the DP and demonstrating that you can read it critically; the DP should be at the center of the analysis. Use concepts, critiques and ideas from the other readings to enhance that analysis. Do not describe the readings and do not write a mini-essay on the topic of that week. This is an assignment focused on helping you hone your critical reading skills of non-academic sources.

Below I have provided some questions to prompt you in how you can think critically about the DP. Please note that these questions are only prompts to your critical evaluation of the material. Not all questions will work equally well for all types of DPs and your analysis should not merely be answers to these questions.

- who is the author of the DP, what type of material is it (video, op-ed piece, advertisement, news article, etc.), where was it published or circulated? How do those factors affect its content, style, and arguments?
- how are you as the reader/viewer being addressed by the author?
- what assumptions is the author making about the nature of communication or expression? Of the state? Of the law? Of regulation? Of the economy? Of culture? Of the public interest? Of morality? Of certain groups in society?
- what are the assumptions made in the piece about who holds power and who does not?
- what is the nature of the problem that the author is trying to address with their piece? How does their definition of the problem shape their proposed solution of argument?

- How do these assumptions and framing compare and contrast with those in the other readings for that week?
- Is there a moral tone to the DP's argument? How can you recognize that? How does that tone impact the arguments?
- What concepts, arguments or ideas in the other readings that can assist in explaining/analyzing the argument or content of the DP?
- Do the various authors agree or disagree, why or why not?

Each DPA will be due as follows:

**DPA #1 – September 24<sup>th</sup>** (focused on the DP and readings for that week – “Fake New and Freedom of the Press”)

**DPA #2 – October 15<sup>th</sup>** (focused on the DP and readings for that week – “Mean Expression: Defamation, Cyberbullying and The Value of Reputation”)

**DPA #3 – November 5<sup>th</sup>** (focused on the DP and readings for that week – “Expressions By and About ‘Vulnerable’ Subjects: Child Pornography and Sexting”)

**Alternate DPA – November 19<sup>th</sup>** (focused on the DP and readings for that week – “Owning Expression, Controlling Culture: Copyright Wars”)

If you complete the assignment on the incorrect week's material, your assignment will not be graded.

**The DPAs will not be accepted late.** If you miss the deadline for DPA #1, #2, or #3 (or opt not to complete one or more of them), you are welcome to complete the Alternate DPA. You may also complete the Alternate DPA if you wish to replace one of the grades received for a previous DPA. I will include the grades for your best 3 DPA's in your final grade.

### Rant

Students will be asked to prepare a video rant (recorded on a mobile phone), in the style of the Rick Mercer rants (see <https://www.youtube.com/user/MercerReport> for examples of the genre), on one of the issues that we are taking up in class. The rant should be approximately 3 minutes long. Your rant should argue a position strongly and persuasively. Your position should be informed by background research but should be entertaining and engaging. You are encouraged to be creative in your approach to this assignment! For example, you may wish to shoot your video in a location that is relevant to the issue you select, feel free to use props, and be attentive to your rhetorical form. The rant should be scripted so that it is organized, clear, flows well and is persuasive.

You should upload to OneDrive by or on **December 7<sup>th</sup>**:

- the video rant;
- the script; and

- a 5-7 double spaced page reflection on the issue that you are taking a stand on. It should include a brief introduction, thesis statement on the problem or issue, a discussion and conclusion. You must use the relevant course material and at least 3 additional academic sources, in addition to journalistic and other media content.

The link to the OneDrive file will be sent to you in the latter part of the term.

If you do not have access to a mobile phone (or another device) to record your rant, please speak to me and we will make arrangements to assist you.

### Final Examination

There will be a final examination in the scheduled examination period (December 9-21). It will examine you on your integrated and critical knowledge of all course materials – lectures, readings, DPs, documentaries, and discussions. It will be comprised of two scenario-based essay questions and will require you to use concepts, ideas and arguments from the course material to critically think about the situation in the question. The exam will test your capacity to critically think, analyze, and to form a coherent and persuasive argument based on what you have learned and read. Appropriate content from the readings must be incorporated into your analysis in order to receive a passing grade. The exam will be discussed in more detail on the last class during the examination review. Not completing the final exam will result in a grade of F in the course.

### Policy on Late Work

DPA's are not accepted late and no extensions will be granted, as there is an alternate assignment available to you.

No extensions will be granted for the Rant, except under very exceptional circumstances. If the Rant is turned in late without an extension, it will be marked down by 5% for each day (including weekends) it is late. Unless an extension is granted, assignments that are not submitted within 7 days of the due date will receive an F.

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

### Other Special Needs

If you have any other special needs which require scheduling accommodation for you to maximize your learning experience (e.g. employment, childcare, travel, etc.) and for which formal accommodations are not available, please speak to me at the beginning of term so that we can arrange a mutually satisfactory approach. Do not expect this type of discretionary accommodation during the week in which an assignment is due if we have not already arranged it.

**SCHEDULE**

Please note that Thanksgiving falls on Monday, October 8, the Fall Break is October 22 -26, and that our last class is **Friday**, December 7<sup>th</sup> (which makes up for the Thanksgiving Holiday).

**September 10**            **Introduction**

**September 17**            **Foundations of Freedom of Expression**

Mill, John Stuart (1859) “Of the Liberty of Thought and Discussion” in *On Liberty*, pp. 18-51

Fish, Stanley (1994), “There’s No Such Thing as Free Speech, and It’s a Good Thing Too” in *There’s No Such Thing as Free Speech and It’s a Good Thing Too*, New York: Oxford University Press, pp. 102-109.

Discussion Piece:

Butler, Judith (2017), “Limits on Free Speech,” in *Verso* (blog)  
<https://www.versobooks.com/blogs/3529-limits-on-free-speech>

Fredersdorf, Conor (2017), “Judith Butler Overestimates the Power of Hateful Speech” in *The Atlantic* at  
<https://www.theatlantic.com/politics/archive/2017/12/judith-butler-on-the-power-of-hateful-speech/548138/>

**September 24**            **Fake News and Freedom of the Press**

In class screening of *Shadows of Liberty* (Tremblay, dir., 2012)

Cameron, Jamie (2016), “Section 2(b)’s Other Fundamental Freedom: The Press Guarantee, 1982-2012” in *The Unfulfilled Promise of Press Freedom in Canada* (L. Taylor and C.M. O’Hagan, eds.), Toronto: University of Toronto Press, pp. 201-209

Napoli, Philip M. (2018), “What If More Speech Is No Longer the Solution? First Amendment Theory Meets Fake News and the Filter Bubble” in *Federal Communications Law Journal*, 70.1, 55+.

Discussion Pieces: Please read three editorials from different newspapers involved in the *Journalists Are Not The Enemy* Project. In your analysis, please include a brief discussion of why you chose the newspapers that you did. See

[https://apps.bostonglobe.com/opinion/graphics/2018/08/freepress/?p1=HP\\_special](https://apps.bostonglobe.com/opinion/graphics/2018/08/freepress/?p1=HP_special)

**DPA #1 is due today!**



**October 1                    Privacy, Surveillance and Self-Expression in a Digital World**

Bodle, Robert (2011), “Privacy and Participation in the Cloud: Ethical Implications of Google’s Privacy Practices and Public Communications” in *The Ethics of Emerging Media* (B.E. Drushel and K. German, eds.) New York: Continuum, pp. 155-174.

Trepte, Sabine and Leonard Reinecke (2011), “The Social Web as a Shelter for Privacy” in *Privacy Online* (S. Trepte and L. Reinecke, eds.), Berlin: Springer Verlag, pp. 61-73.

Trottier, Daniel and David Lyon (2013), “Key Features of Social Media Surveillance” in *Internet and Surveillance* (C. Fuchs et al., eds.), London: Routledge.

Discussion Piece: *Surveillance Culture* (Btihaj Ajana and Anders Albrechtslund, dirs., 2017) at <https://www.youtube.com/watch?v=GqJM2GMOge0>

**October 8                    No Class – Thanksgiving Holiday****October 15                   Mean Expression: Defamation, Cyberbullying and the Value of Reputation**

Ardia, David S. (2010), “Reputation in a Networked World: Revisiting the Social Foundations of Defamation Law” in *Harvard Civil Rights-Civil Liberties Law Review* 45: 261-328.

Solove, Daniel (2007), “Shaming and The Digital Scarlet Letter” in *The Future of Reputation*, 76-102.

Discussion Piece: Walters, Hayden (2016), “What is the Price of Public Shaming? Here Are Your Thoughts” CBC Forum at <http://www.cbc.ca/news/canada/toronto/public-shaming-cbc-forum-1.3506189>

**Discussion Piece #2 is due today**

**October 22                    No Class – Fall Break****October 29                    Obscene Expression and the Threshold(s) of Harm**

Jochelson, Richard and Kirsten Kramar, (2014), “Adopting the Governmentality Approach to Obscenity and Indecency: Tracking Harm Through Discourse of the Supreme Court of Canada in *Locating Law: Race/Class/Gender/Sexuality Connections*, 3rd Ed. (E. Comack, ed.), 1-32.

Karaian, Lara (2005), “Troubling the Definition of Pornography: Little Sisters, a New Defining Moment in Feminists' Engagement with the Law?” in *Canadian Journal of Women and the Law* 17(1): 117-133.

Discussion Piece: *Little Sisters Book and Art Emporium v. Canada* (2000), 2 S.C.R. 1120 (S.C.C.) at <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1835/index.do>

**November 5                    Expressions By and About ‘Vulnerable’ Subjects: Child Pornography and Sexting**

Karaian, Lara and Katherine Van Meyl (2013), “Reframing Risqué/Risky: Queer Temporalities, Teenage Sexting and Freedom of Expression in *Laws* 4(1): 18-36.

Ringrose Jessica et al. (2013), “Teen Girls, Sexual Double Standards and ‘Sexting’: Gendered Value in Digital Image Exchange” in *Feminist Theory* 14(3): 305-323.

Salter, Michael (2015), “Privates in the Online Public: Sex(ting) and Reputation on Social Media” in *New Media and Society* 18(11): 2723-2739.

Discussion Piece: Browne, Rachel (2015), “Canada’s New CyberBullying Law is Targetting Teen Sexting Gone Awry,” *Vice News*.

**DPA #3 is due today!**

**November 12                    Hate Speech: To Censor or Not Censor?**

Fish, Stanley (1997), “Boutique Multiculturalism, or Why Liberals Are Incapable of Thinking About Hate Speech” in *Critical Inquiry* 23(2): 378-395.

Moon, Richard (2008-9) “Hate Speech Regulation in Canada” in *Florida State University Law Review* 79-97.

Discussion Piece: Warick, Jason (2017), “Boushie Case Highlights Problems With Hate Speech Law: Prof” at CBC.ca, February 20<sup>th</sup>.

**November 19                    Owning Expression, Controlling Culture: Copyright Wars**

Cvetkovski, Trajce (2014), “The Farcical Side to the War on Media Piracy: A Popular Case of Divine Comedy” in *Media, Culture & Society* 36(2): 246-257.

Patry, William (2009), “Copyright Owners and Moral Panics” in *Moral Panics and the Copyright Wars*, Oxford University Press, pp. 139-69.

Discussion Piece: Harris, Sophia (2017), “Netflix Anti-Piracy Team Aims to Make Stealing Content Uncool” at CBC.ca, March 28<sup>th</sup> and

Motion Pictures Association of America (2004) “Piracy: It’s a Crime”  
<https://www.youtube.com/watch?v=HmZm8vNHBSU>

**Alternate DPA is due today! (optional)**

**November 26                    When Corporations Speak: Trademarks**

Coombe, Rosemary (2001), “Sports Trademarks and Somatic Politics” in *Between Law and Culture: Relocating Legal Studies* (D. T. Goldberg, M. Musheno and L.C. Bower, eds), Minneapolis: University of Minnesota Press, pp. 22-49.

Discussion Piece: *Matal v. Tam* (2017) United States Supreme Court at  
[https://www.supremecourt.gov/opinions/16pdf/15-1293\\_1o13.pdf](https://www.supremecourt.gov/opinions/16pdf/15-1293_1o13.pdf)

**December 3                    When Corporations Speak: Advertising**

Flood, Catherine Beagan (2006/7), “Freedom of Commercial Expression: The Most Undervalued Charter Right” in *National Journal of Constitutional Law* 21: 271+.

Wilson, Andrew (2000), “Advertising and the *Charter*: Just Do it! An Analysis of the Constitutional Recognition of Commercial Expression” in *Dalhousie Journal of Legal Studies* 9: 302+)

Lexchin, Joel and Barbara Mintzes (2014), “A compromise too far: A review of Canadian cases of direct-to-consumer advertising regulation” in *The International Journal of Risk and Safety in Medicine* 26(4): 213-25.

Discussion Piece: Ad Standards (2018) *Guidelines for Consumer Advertising of Health Products* at  
<https://www.adstandards.com/en/clearance/consumerDrugs/Consumer-Advertising-Guidelines-for-Marketed-Health-Products-EN.pdf>

**December 7                    Course Wrap-Up and Examination Review**

**Rants are due today!**