

**Course Outline**

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<b>COURSE:</b>	<b>LAWS 3502A – Regulating Freedom of Expression in Canada</b>
<b>TERM:</b>	<b>FALL 2019</b>
<b>PREREQUISITES:</b>	<b>LAWS 1.0 credit in LAWS at the 2000 level</b>
<b>CLASS:</b>	<b>Day &amp; Time: Mondays 6:05pm – 8:55pm</b>
	<b>Room: Please check with Carleton Central for current room location</b>
<b>INSTRUCTOR: (CONTRACT)</b>	<b>Safiyah Rochelle</b>
<b>CONTACT:</b>	<b>Office: TBD</b>
	<b>Office Hrs: TBD</b>
	<b>Email: safiyah.rochelle@carleton.ca</b>

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**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.

**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 critically reflect on their own communicative practices, and how these are both constrained and enabled through the idea and practice of freedom of expression;
- enable students to think critically about how digital, mobile and social media are impacting the mediascape in which they communicate; and
- facilitate the development of sound critical thinking and reading skills and analytic writing skills

**REQUIRED TEXTS**

Sheryl N. Hamilton, Sandra Robinson, “Law’s Expression: Communication, Law and Media in Canada”.

You can purchase this text at the University Bookstore.

All other readings will be made available through Culearn.

**EVALUATION**

**(All components must be completed in order to get a passing grade)**

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 Reflection Piece Analyses (1<sup>st</sup> at 10%, 2<sup>nd</sup> at 15% and 3<sup>rd</sup> at 20%, for a total of 45%)
3. Paper Abstract (10%)
4. Research Paper (35%)

Please read and refer to this course outline for details on requirements and expectations for these evaluation categories. More details will be also be given in class, and additional information will be provided as necessary throughout the semester.

**Participation (10%)**

A classroom is a collaborative environment, and participation is about respect, engagement, and working productively 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.

With this in mind, participation will be graded on the following aspects: attending class (there will be a sign-in sheet); reading all of the assigned materials *before* the lecture; your ability to engage with these materials in class and contribute to discussion in an informed, respectful, and thoughtful manner; your ability to identify and express relevant themes and topics that emerge throughout the course.

Please note, attendance is important, insofar as you cannot contribute without being in class. However, merely attending all of the lectures is not enough to secure full participation marks. Regular demonstrated knowledge of the content of assigned readings is **essential** to a good participation grade.

### Reflection Piece Analyses (1<sup>st</sup> at 10%, 2<sup>nd</sup> at 15, 3<sup>rd</sup> at 20%, for total of 45%)

Every week, non-academic readings/websites/videos/cases etc. have been designated as Reflection Pieces. Over the course of the term, you are expected to submit three (3) critical analyses of specified Reflection Pieces. These should be **4-5 pages** in length, typed and double-spaced.

The Reflection Pieces 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, but you must demonstrate comprehension of all of the readings for that particular week.

No bibliography is required, but you are expected to make specific reference to sources. Therefore, please be sure to cite authors and page numbers, as appropriate. Feel free to use any accepted style guide.

The Reflection Piece should be at the center of your analysis. You must demonstrate that you can read it critically, using concepts, critiques and ideas from the other readings to enhance that analysis. Do not just describe or summarize the material, 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.

When writing your Reflection Piece, you can use the following questions as a guideline. Please note that these questions are only prompts to your critical evaluation of the material. Not all questions will work equally well for all material, and your analysis should not merely be answers to these questions.

- who is the author of the Reflection Piece, 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?"
- 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 argument? How can you recognize that? How does that tone impact the arguments?
- What concepts, arguments or ideas in the other readings can assist in explaining/analyzing the argument or content of the Reflection Piece?

Each Reflection Piece Analysis (RPA) will be due as follows. Note you have the choice between **EITHER** of the weeks described. Please do not write on multiple weeks at a time or complete an assignment on an incorrect week's material. Doing so will result in your assignment not being marked.

Appropriate content from the readings must be incorporated into your analysis in order to receive a passing grade.

**RPA #1 – September 23<sup>rd</sup>** (focused on readings for weeks “Foundation and Limits of Freedom of Expression” **OR** “Freedom of the Press in the Era of Fake News”).

**RPA #2 – October 28<sup>th</sup>** (focused on the readings for weeks “Privacy and Surveillance in a Digital World” **OR** “Defamation, Cyberbullying and the Value of Reputation”)

**RPA #3 – November 18<sup>th</sup>** (focused on the readings for the weeks “Measuring Harm: Obscenity, Sex, and Expression” **OR** “Criminalizing Speech: Hate, Censorship, and Expression”)

**Alternate RPA – December 02<sup>nd</sup>** (focused on the readings for the week “Expression and “Vulnerable” Subjects” **OR** “Owning Expression, Controlling Culture: Copyright Wars”)

### **Paper Proposal (10%)**

You are asked to submit a brief paper proposal of 1-2 pages. The proposal should provide a summary of the topic, your thesis, central arguments and a short bibliography (3-4 sources). It is in your best interest to complete this in order to receive feedback on your potential research paper topic. The proposal is due November 11<sup>th</sup>.

### **Research Paper (35%)**

Your research paper can be on a topic of your choosing related to regulation and freedom of expression. It should address topics and themes covered throughout the course, and must incorporate relevant readings and course material. The required paper length is between 15-18 pages, and it is due December 06<sup>th</sup>.

### **SCHEDULE**

**\*\*\* Please note that Thanksgiving falls on Monday, October 14, the Fall Break is October 21-25, and that our last class is Friday, December 6th (which makes up for the Thanksgiving Holiday).**

### **September 09<sup>th</sup> Introduction**

### **September 16<sup>th</sup> Foundations and Limits 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.

Hamilton, Sheryl N. and Robinson, Sandra (2019), "Chapter 1: Freedom of Expression and Its Limits in a Media Society", 1-26

Reflection 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 23<sup>rd</sup> Freedom of the Press in the Era of Fake News**

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)

**RPA #1 is due today!**

**September 30<sup>th</sup> Privacy and Surveillance in a Digital World**

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.

Fuchs, Christian (2015), "Social Media Surveillance", in *The Handbook of Digital Politics*, 395-414.

Hamilton and Robinson (2019), "Law's Expression", Chapter 2, 29-59

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

### **October 07<sup>th</sup> 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.

Hamilton and Robinson (2019), “Law’s Expression”, Chapter 3, 61-86

Reflection Piece: Ronson, Jon (2017), “So You’ve Been Publicly Shamed”, 67-90

### **October 14<sup>th</sup> Thanksgiving Break, No Class**

### **October 21<sup>st</sup> Reading Week, No Class**

### **October 28<sup>th</sup> Measuring Harm: Obscenity, Sex, and Expression**

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.

Hamilton and Robinson (2019), “Law’s Expression”, Chapter 4, 89-92, 104-108

Reflection 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>

**RPA #2 is Due Today!**

### **November 04<sup>th</sup> Expression and “Vulnerable” Subjects**

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.

Hamilton and Robinson (2019), "Law's Expression", Chapter 4, 97-104, 111-119

Reflection Piece: Browne, Rachel (2015), "Canada's New CyberBullying Law is Targeting Teen Sexting Gone Awry," *Vice News*.

### **November 11<sup>th</sup> Criminalizing Speech: Hate, Censorship, and Expression**

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.

Hamilton and Robinson (2019), "Law's Expression", Chapter 5, 121-144

Discussion Piece: "Poisoning Democracy: How Canada Can Address Harmful Speech Online", 2018, <https://ppforum.ca/publications/poisoning-democracy-what-can-be-done-about-harmful-speech-online/>

### **Paper Proposal Due Today!**

### **November 18<sup>th</sup> 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.

Hamilton and Robinson (2019), "Law's Expression", Chapter Six, 147-171

Reflection Piece: Harris, Sophia (2017), "Netflix Anti-Piracy Team Aims to Make Stealing Content Uncool" at CBC.ca, March 28th and

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

### **RPA #3 is Due Today!**

**November 25<sup>th</sup> When Corporations Speak: Trademark Wars**

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.

Hamilton and Robinson (2019), "Law's Expression", Chapter Six, 171-181

Reflection 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 02<sup>nd</sup> When Corporations Speak: Expression and 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.

Reflection 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>

**Alternative RPA due today!**

**December 06<sup>th</sup> Course Wrap-Up**

**Research Paper Due Today!**

**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: <https://carleton.ca/equity/accommodation/academic/students/>

**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: <https://carleton.ca/equity/accommodation/academic/students/>

**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). <https://carleton.ca/pmc/students/accommodations/>

### **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: <https://carleton.ca/registrar/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: <https://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: <https://carleton.ca/equity/accommodation/academic/>

### **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/>

