

Course Outline

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<b>COURSE:</b>	<b>LAWS 3502B – Regulating Freedom of Expression in Canada</b>
<b>TERM:</b>	<b>WINTER 2021</b>
<b>PREREQUISITES:</b>	<b>1.0 credits in LAWS at the 2000 level</b>
<b>CLASS:</b>	<b>Day &amp; Time: Wednesdays 11:35 am – 2:25 pm</b> <b>Room: Class will be conducted asynchronously – see CULearn site and further details below in the course outline</b>
<b>PROFESSOR:</b>	<b>Sheryl Hamilton</b>
<b>CONTACT:</b>	<b>Office: Loeb Building 463C and Richcraft Hall 2306</b> <b>Office Hrs: Thursdays 9:30 a.m. – 11:30 a.m. via BBB, or by appointment</b> <b>Email: <a href="mailto:Sheryl.hamilton@carleton.ca">Sheryl.hamilton@carleton.ca</a></b> For all emails, please put LAWS 3502 <u>in the subject line</u>

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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.

**COURSE DESCRIPTION**

From standing on the steps of a state legislature holding a gun, to texting an intimate photo to a sexual partner, to hanging a noose on a construction site, to the explosion of ‘fake’ news, to the tracking of citizen movement in a pandemic through contact tracing apps, to the use of colonialist imagery in commercial brands, the stakes of what constitutes expression and what those expressions do in our world have never been higher. As individuals and as communities, we currently have an 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, international accords, 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 and its regulation;
- enable students to think critically about the ways in which digital, mobile and social media are impacting the mediascape in which they communicate;
- provide students with an analytic lexicon through which to better make sense of their experiences and world events; 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 disciplines.

### **COURSE DELIVERY**

LAWS 3502 will be delivered asynchronously. Lectures will be recorded in segments with powerpoint decks for you to view at your convenience. All material will be posted to the CULearn page for the course. For each week, I will indicate the sequence in which lecture and reading content should be viewed/read and other tasks completed. There is a graded quiz to do after completion of the lectures and readings. In order to help manage your time, I do recommend using the allocated course time (Wednesdays 11:35 a.m. – 2:25 p.m.), if possible, to view the lectures, complete the readings, do the quiz, and enter that week's concepts into your Glossary. This will ensure that you have a regular schedule in which to complete the course work and will help you stay on top of the material.

### **REQUIRED TEXTS**

This course has a required textbook, *Law's Expression: Communication, Law and Media in Canada* (2<sup>nd</sup> edition). Please ensure you have the second edition (it is a complete change from the first edition). This text is available for purchase or rent (new or used) through the Carleton University Bookstore at this link and should be acquired before the first day of class:

<https://www.bkstr.com/carletonstore/course-materials-results?shopBy=course&divisionDisplayName=&departmentDisplayName=LAWS&courseDisplay Name=3502&sectionDisplayName=B&programId=950&termId=100066198>

Additional readings are available on CULearn.

### **OFFICE HOURS**

I will be available via BBB on Thursday mornings 9:30 – 11:30 am. If you have a general question about the course, the evaluation, the material, etc. please join and ask your question. If you are not available at this time, please email me and we will set up a separate time to meet through an audio-visual interface or telephone, as per your preference.

### **ASK THE PROF DISCUSSION FORUM**

There is a class discussion forum on the CULearn site for you to post general questions the answers to which you feel will be of benefit to other members of the class as well.

### **TIME ZONE**

The time zone that will be used for the purposes of all assignment submissions, synchronous class activities and so on will be Eastern Standard Time. If you are not in that time zone, you should make the appropriate adjustments to the times specified in the outline.

### **EVALUATION**

There will be five types of evaluation in this class worth the following percentage of your final grade:

1. Introduction Recording: 5%
2. Weekly Quizzes: 25%
3. Concept Glossary: 20%
4. Issue Analysis Paper 25%
4. Take Home Exam: 25%

If, at any point in the term, you have any questions pertaining to evaluation, please contact me as quickly as possible for clarification.

All written assignments should be submitted in Word. Please do not submit your assignments as .PDF files. You can obtain Word for free from the university; I have provided a link to the relevant webpage on the CULearn site.

## Introduction Recording

Please make a brief, casual video or sound recording on your phone, introducing yourself to me, and upload it to the CULearn site by **January 20<sup>th</sup> by 11:59 pm**. Recordings should be three minutes or fewer and should tell me a little bit about who you are, how you are doing, why you're taking this class, and what you would like to get out of it.

These will not be evaluated for quality, production values, lighting, camera work, special effects, etc.. No need to add a soundtrack. If you complete and submit a recording that meets the requirements of the assignment, you will receive full grades. If you submit after the deadline, you will have one further week to submit for ½ marks (by January 27<sup>th</sup> at 11:59 pm). If you do not submit by January 27<sup>th</sup> you will receive 0 marks for this component. As it is essentially a “freebie,” there will be no extensions granted.

## Online Quizzes

Online quizzes each week will help motivate and reward you for listening to the lectures and doing the readings. They help you keep on track with your course work in terms of managing your time, completing assignments on time, spreading out the work over the term, and preparing for the final exam.

Readings are relevant content to this course and a solid knowledge of them must be demonstrated on the final exam to receive a passing score. Concepts from the lectures and readings are also a central component in the preparation of your Concept Glossary assignment. There will be quizzes on each of the weeks after the Introduction, not including the last week's course wrap-up and workshop. Quizzes will open up after the scheduled course time on Wednesday and will remain open for five days. Each quiz will be comprised of 5 multiple choice or true and false questions. The raw quiz scores of your best 8 quizzes out of a possible 10 will be converted to constitute 25% of your final grade.

Missed quizzes cannot be made up. The quizzes are timed and once you begin a quiz, you only have one opportunity to complete it. The completion window is one hour long. Adequate time to meet all PMC accommodations for extra time has thus been designed into the quiz structure.

## Concept Glossary

You will learn a number of analytical/theoretical concepts through readings, lectures, and course material that can be applied to make sense of contemporary issues and will even be useful in other classes you take. You are asked to keep a cumulative glossary of these terms. Your glossary should identify the concept, cite the reading or lecture from which you obtained it (including the author of the concept and page number where relevant), a full definition of the term (which can involve quoting from the source), and a brief reflection on how you might apply it to some situation in the world around you. I strongly recommend entering new terms into your Glossary on a weekly basis as you finish the videos, readings and quiz.

Concept Glossaries will be evaluated at the mid-point at the term (out of 10 grades for the work to date) and at the end point of the term (for another 10 grades for work done after the mid-term evaluation). The first installment of the Glossary is due on **February 10<sup>th</sup>** (drawing on material from weeks Jan. 13 – Feb. 10, inclusive) and the completed Glossary is due on **March 31<sup>st</sup>** (drawing on material from weeks Feb 24 – Mar 42, inclusive).

Glossaries will be evaluated on:

- the thoroughness/completeness of the list of terms,
- relevance of the terms (i.e. social/analytic/critical, not merely legal),
- use of readings as well as lectures/slides,
- accuracy of citations,
- accuracy and fullness of definitions, and
- the soundness of the assessment of how they might be applied.

You can use the template provided on CULearn or develop your own. Please also see the guide, “What is a concept?” on CULearn.

### Issue Analysis Paper

Making use of the work that you are doing in your Concept Glossary, you should identify a specific, contemporary social issue or event of interest to you. Freedom of expression and its regulation should be central to the issue or event you select. Please research the basic facts and press coverage of that issue using 3-5 quality news sources (which should appear, correctly cited in your bibliography). You should then choose a minimum of four appropriate concepts from your Glossary that you can use to analyze some of the central aspects of that issue. A good assignment will make use of concepts across several weeks’ of the course. Please prepare a 6-8 page, typed, double-spaced, essay analyzing your selected issue/event using those concepts.

Papers will be evaluated on the following:

- the depth and quality of information obtained about the issue or event;
- the identification of relevant and appropriate analytic concepts from course materials;
- demonstrated understanding of the analytic concepts used;
- the level discernment of what elements of the issue/event can be elucidated with the concept and the level of skill in the execution of the analysis of those elements with those concepts;
- use of specific details about the relevant concepts and their application to specific evidence from the news articles in the construction of the analysis;
- the quality of the writing and execution of the central elements of an analytic essay; and
- the use of proper citation, bibliographic and stylistic protocols.

The Issue Analysis Paper is due on **April 7<sup>th</sup>**.

### Take-Home Exam

There will be a take-home examination which will be due on the last day of the examination period, **April 27<sup>th</sup>**. It will consist of the completion of approximately four to five typed page answers to each of two essay questions out of a possible choice of three (i.e. your total exam will be approximately 8-10 double spaced pages). All relevant course materials (lectures, discussions, videos, and readings) should be used in your answers. Answers which do not use appropriate lecture and readings content, will not receive a passing grade.

### **EXTENSIONS and LATE PENALTIES**

Extensions with respect to the introductory video and the weekly quizzes are addressed in those sections above. For the concept glossary and for the final paper, for each day late, the maximum grade possible on the assignment will drop by 1/3 of a letter grade. For example, the maximum grade on the due date is A+; if the paper is one day late, the maximum grade possible is an A; the next day, A-, and so on. Keep in mind that this does not mean that the student will receive the maximum possible grade on the assignment.

The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date. [https://carleton.ca/registrar/wp-content/uploads/COVID-19\\_Self-declaration.pdf](https://carleton.ca/registrar/wp-content/uploads/COVID-19_Self-declaration.pdf) **Extensions for longer than 7 days will normally not be granted.** In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

### **SPECIAL NEEDS – Sheryl’s informal accommodations**

The formal accommodations for which you may be eligible are detailed after the course schedule below. If you have any other special needs as a student not addressed or not addressed adequately by existing policies, and that would benefit from an informal accommodation for you to maximize your learning experience (employment, child or elder care, course conflicts, etc.), please speak to me at the beginning of the term so that we can arrange a mutually satisfactory approach to meeting the course requirements and objectives. (This includes examining the due dates for all of your assignments in all of your classes and, in the event of conflict or overload, asking for any modifications to the due dates in this class well in advance of the due date).

### **DECLINING ONLINE IMAGING AND RECORDING STATEMENT**

This course may include classes or sessions that use video conferencing platforms, such as Zoom, MS Teams and BigBlueButton. This raises some important privacy considerations that all students should know. You are not required to turn your camera on and may decide to turn it on or off at any time. Students are not permitted to take photographs, screenshots, or record other students, TAs, or instructors unless they obtain explicit permission from the professor and all other students well in advance of the session. Classes or sessions will not be recorded by the instructor.

(This statement was adapted from the research-creation project Cam Hunters (artist-scholars Julia Chan and Stéfy McKnight [STÉFY]).)

## **STATEMENT OF STUDENT CONDUCT ONLINE**

All students are expected to contribute towards an engaging, inclusive, and safe learning environment. During all class-related activities, whether synchronous or asynchronous, students are expected to engage in respectful and courteous communication. In accordance with the [Student Rights and Responsibilities Policy](#), [discrimination and harassment](#) will not be tolerated. It is a violation of course policy to cut and paste, screen shot, share course content, or post the words of your classmates, TA, or Instructor outside of class without permission. All work submitted in this course must be uniquely your own. When submitting assignments and/or completing exams, you are expected to articulate responses in your own words rather than cutting and pasting from course materials without permission, which is a form of plagiarism.

## **ADDITIONAL STUDENT SUPPORT**

The Centre for Student Academic Support (CSAS) is a centralized collection of learning support services designed to help students achieve their goals and improve their learning both inside and outside the classroom. CSAS offers academic assistance with course content, academic writing and skills development. Visit CSAS on the 4th floor of MacOdrum Library or online at [carleton.ca/csas](http://carleton.ca/csas).

## **SCHEDULE OF CLASSES**

Note the required textbook is referred to below as *Law's Expression*.

### **January 13                      Introduction: Freedom of Expression Issues are All Around Us!**

<https://m.washingtontimes.com/news/2020/jul/12/redskins-retire-team-name-report/?fbclid=IwAR2ewt4-3NpGxBs-FuP3JihEOd6DCBsAGzh-rsobgaS1qw3Z6Uar3i3F4Pg>

<https://globalnews.ca/news/7114905/noose-found-toronto-construction-site/>

<https://www.theguardian.com/us-news/2020/jun/06/police-violence-protests-us-george-floyd>

### **January 20                      Foundations of Freedom of Expression**

*Law's Expression*, "Freedom of Expression and Its Limits in Media Society", pp. 1-28.

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.

**January 27**

### **Politics and Problems of Liberal Expression**

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, 55-104.

Greenspon, Edward and Taylor Owen (2018) “Democracy Divided: Countering Disinformation and Hate in the Digital Public Sphere” in the *Public Policy Forum* (August 15) at <https://ppforum.ca/publications/social-marketing-hate-speech-disinformation-democracy/>

Holmes, Aaron (2020), “Roughly half the Twitter accounts pushing to “Reopen America” are bots, researchers found” *Business Insider*, May 22, 2020 at <https://www.businessinsider.com/nearly-half-of-reopen-america-twitter-accounts-are-bots-report-2020-5>

**February 3**

### **Privacy in Surveillance Society**

*Law’s Expression*, Chapter 2, “Privacy in Surveillance Society,” pp. 30-60.

Lyon, David (2020), “The coronavirus pandemic highlights the need for a surveillance debate beyond ‘privacy’” in *The Conversation*, May 24 at <https://theconversation.com/the-coronavirus-pandemic-highlights-the-need-for-a-surveillance-debate-beyond-privacy-137060>

**February 10**

### **Reputation and Managing Our Digital Selves**

*Law’s Expression*, Chapter 3, “Regulating Reputation in the Contemporary Mediascape,” pp. 61-88.

Pitcan, Mikaela, Alice E. Marwick and danah boyd (2018), “Performing a Vanilla Self: Respectability Politics, Social Class, and the Digital World” in *Journal of Computer-Mediated Communication* 23: 163-179.

Laidlaw, Emily B. (2017), “Online Shaming and the Right to Privacy” in *Laws* 6(3): 1-26.

**The first installment of your Concept Glossary is due today by midnight.**

**February 17**

**Spring Break**

**February 24**

**The Criminalization of Sexualized Expression**

*Law's Expression*, Chapter 4, "Expressing Sex," pp. 89-111.

Cranny-Francis, Anne (2016), "Is Data a Toaster? Gender, Sex, Sexuality and Robots" in *Palgrave Communications* 2 at

Illes, Judy and Farhad R. Udwardia in *The Conversation*, August 27, 2019, at <https://theconversation.com/sex-robots-increase-the-potential-for-gender-based-violence-122361>

**March 3**

**Regulating the Non-Consensual Disclosure of Intimate Images aka "Revenge Porn"**

*Law's Expression*, Chapter 4, "Expressing Sex," pp. 111-120.

Dodge, Alexa (2019), "Nudes are Forever: Judicial Interpretation of Digital Technology's Impact on 'Revenge Porn'" in *Canadian Journal of Law and Society* 34(1): 121-143.

Langlois, Ganaele and Andrea Slane (2017), "Economies of Reputation: the case of revenge porn" in *Communication and Critical/Cultural Studies* 14(2): 120-138.

**March 10**

**Hateful Expression and Hate Speech**

*Law's Expression*, Chapter 5, "Hateful Communication and Hate Speech: Criminalizing Expression," pp. 121-146.

Kimberlé Crenshaw and guests on *Intersectionality Matters* podcast, "Under the BlackLight: The Fire This Time," Episode 19, posted June 10, 2020 at <https://aapf.org/all-episodes>

**March 17**

**Can the Law Stop Hateful Expression?**

"Poisoning Democracy: How Canada Can Address Harmful Speech Online" 2019, <https://ppforum.ca/publications/poisoning-democracy-what-can-be-done-about-harmful-speech-online/>

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

Findlay, Len (2016), “Prairie Racism and Free Expression” on the Centre for Free Expression Blog <https://cfe.ryerson.ca/blog/2016/09/prairie-racism-and-free-expression>

**March 24**                      **Owning Expression: Intellectual Property & the Quest for Control**

*Law’s Expression*, Chapter 6, “Propertizing Expression: Intellectual Property,” pp. 147-182.

Scassa, Teresa (2012), “Trademarks Worth a Thousand Words: Freedom of Expression and the Use of the Trademarks of Others” in *Le Cahier de Droit* 53(4): 887-.

**March 31**                      **Intellectual Property and Cultural Appropriation**

Vowel, Chelsea (2016), “What is Cultural Appropriation: Respecting Cultural Boundaries” (pp. 80-92) and “Icewine, Roquefort Cheese, and the Navajo Nation” (pp. 100-106) in *Indigenous Writes: A Guide to First Nations, Métis, and Inuit Issues in Canada*, Winnipeg: Portage and Main Press.

Dalton, Walker (2020), “There’s another story behind that Land o’ Lakes butter box” in *Indian Country Today*, April 22, 2020 at <https://indiancountrytoday.com/news/there-s-another-story-behind-that-land-o-lakes-butter-box-v-QWAwVzCUCmHEs3OmHTdA>

**Synchronous Workshop on Issues Analysis Paper**

*From 11:35 – 1:25, I will offer an optional synchronous session via the BBB office hours button where we will collaboratively analyze 2 examples of contemporary issue from the news using concepts from the course. It is intended to model how to complete the final paper. After the workshop, I am happy to stay online and answer any specific questions you may have.*

**The second installment of your Concept Glossary is due by midnight – please note it includes concepts from April 7<sup>th</sup>’s material.**

**April 7**                      **Course Wrap-Up and Exam Review**

*Law's Expression*, Chapter 7, "Conclusion: Resistance and Resilience," pp. 183-190.

**Issues Analysis Papers are due by midnight.**

## **ACADEMIC ACCOMMODATIONS**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

### **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 Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

### **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 Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

### **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>

### **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://studentsupport/svpolicy>

### **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://students.carleton.ca/services/accommodation/>

### **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.

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