

Course Outline

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| COURSE: | LAWS 3502 – Regulating Freedom of Expression in Canada |
| TERM: | Fall 2021 |
| PREREQUISITES: | 1.0 credit in LAWS at the 2000 level |
| CLASS: | Day & Time: Mondays, 18:05 to 20:55 Where: Zoom |
| INSTRUCTOR: | Dr. Safiyah Rochelle |
| CONTACT: | Office Hrs: By Appointment, On Zoom Email: safiyah.rochelle@carleton.ca |

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

Freedom of expression is considered to be a cornerstone of healthy democratic states. We place enormous value on our right to express ourselves freely and without fear of state censure or intervention, and in doing so, we recognize this means forms of expression we may find troubling must also be afforded the same sets of rights. These assumptions or assurances also give rise to tensions which lie at the heart of freedom of expression in the 21st century. In fact, freedom of expression, and its attendant rights, are carefully and routinely regulated by an array of legal, political, and social/cultural forces. At the same time, as citizens have unprecedented and seemingly unfettered access to information and to technologies that allow for the dissemination and communication of all manner of expression, there are increasing calls to regulate communicative spaces that breed hatred, violence, and radicalization. These tensions demand that we carefully consider just what freedom of expression entails, its possibilities and limitations, and its role in practices of domination, exclusion, and resistance. Through the analysis and discussion of historical and contemporary instances of the troubled relationship between states, citizens, and freedom of expression, this course will introduce students to the philosophical underpinnings and

historical emergence of free speech within a rights framework. We will examine a number of the most significant sites of contestation of expression in Canada, and critically reflect on our own communicative practices. We will ask: how are our practices both constrained and enabled by the idea and practice of freedom of expression? What role do digital technologies and social media play in shifting our understanding of both expression, and the role law should or should not play in regulating certain forms of expression? What is the future of freedom of expression?

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/materials will be made available through Brightspace, or through links on the syllabus.

EVALUATION

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| Attendance and Participation | 20% |
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Obviously, these are strange times. Despite our best efforts, it's virtually (no pun intended) impossible to recreate the classroom experience over Zoom. With that said, I have tried to structure this portion of the class in a way that will both encourage participation, and give opportunities for those who do not thrive with the online format (which is most of us, I think). The following are guidelines and expectations for participation:

- You are expected to attend each seminar class, during the class time. I am splitting the class into two groups: Group A and Group B. Group A will attend our Zoom class from 18:05-19:25, and Group B will attend our Zoom class from 19:35-20:55. I will assign Groups during the first class, but it will likely be alphabetical.
- **You may miss two seminar classes** with no explanation or penalty, but please note that more than one absence will impact your mark. If illness or some other issue precludes you from attending, please reach out to me and we can make accommodations
- Mere attendance is the bare minimum. To ensure you receive full marks, please

come to class with the readings done, and ready to engage in discussion.

- “Discussion” can take many forms: you can use your camera, or you may choose not to. You can use the microphone, or you may choose to use the chat box. You will also get marks for “leading” a weekly discussion
- You are expected to participate in the online Discussion Forum on Brightspace. Please post **a minimum of two-three comments/questions** on the readings for at least 10 weeks. You may choose which 10 weeks you would like to comment on. Your participation mark for this portion will be $10 \times 1\% = 10\%$. **You must post by the Thursday evening (9pm) prior to Monday’s class.**
- Because of the nature of this course and the topics we will be discussing, I will be providing a general guideline and some dos and don’ts for posting to the Discussion Form. We will talk more about this in class.

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| Reading Response x 3 | 30% |
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Over the course of the term, you can submit a reading response to any week’s material of your choosing, with one caveat – submission for the responses must be done PRIOR to the last week’s class (December 11th). Responses should critically engage with the materials, make connections, and raise questions/critiques – they are not meant to be a summary. If in written form, the responses should be 2-3 pages - I am open to alternative modes of delivery (we can talk more about this in class). Detailed information will be provided on Brightspace and in class.

Due Dates: Throughout Term

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| Research Proposal (1-2 pages) | 10% |
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You are asked to submit a research proposal that provides a summary of the topic you would like to write your research paper on, the concepts/cases you will be using to examine it, and a short bibliography (3-4 sources). The proposal will provide me an opportunity to give you suggestions and feedback on your paper topic.

Due Date: November 3rd

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| Research Paper (12-15 pages) | 40% |
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A research paper on your proposed topic of interest. Papers must be between 12-15 pages in length. A detailed guideline will be provided on Brightspace, and I will give time during class to discuss expectations and workshop ideas. Papers must be submitted online, through Brightspace. Your paper should use Times New Roman 12 point font, and be formatted as a Word doc (no PDFs). Please use Chicago-style for footnotes and bibliography.

Due Date: December 10th

STANDING

Please note, 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.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

Deadlines are for the benefit of individual students and are a necessary component to ensuring the class runs smoothly. We also want to be able to stay relatively on track when it comes to the readings and assignments, and to make sure that everyone is held to the same standards and expectations. Of course, life happens, and deadlines (rightfully so) sometimes have to take a backseat. I am flexible and open to discussing accommodation options when things happen (medical issues, family responsibilities, having to juggle too many responsibilities at once, etc) that may put you behind during the course of the semester. Please be sure, however, to communicate with me so that I am aware and can provide you with support. Of course, you don't have to provide personal details, but please keep me in the loop.

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/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, you will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

SCHEDULE

*Please note that Thanksgiving falls on Monday, October 11, the Fall Break is October 25-29th, and that our last class is Friday, December 10th (which makes up for the Thanksgiving Holiday)

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| September 13th | Introduction |
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Introduction to the course and admin

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| September 20th | Foundations and Limits of Freedom of Expression |
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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.

Zeynep Tufekci, "How social media took us from Tahrir Square to Donald Trump", <https://www.technologyreview.com/2018/08/14/240325/how-social-media-took-us-from-tahrir-square-to-donald-trump/>

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

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| September 27th | Freedom of Press, (Mis)information, and the (Fake) News |
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Helm, Rebecca K ; Nasu, Hitoshi, "Regulatory Responses to 'Fake News' and Freedom of Expression: Normative and Empirical Evaluation"

Human rights law review, 2021-03-12, Vol.21 (2), p.302-328

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

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/socialmarketing-hate-speech-disinformation-democracy/>

October 4th **Living in a Digital World: Privacy and Surveillance**

Lyon, David, "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-theneed-for-a-surveillance-debate-beyond-privacy-13706>

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

"Law's Expression", Chapter 2, 29-59

October 11th **Thanksgiving Holiday, No Class**

No readings

October 18th **Online Selves: Managing Online Reputations**

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

Law's Expression, Chapter 3, "Regulating Reputation in the Contemporary Mediascape," 61-88.

October 25th **Fall Break, No Class**

No readings

November 1st **Freedom of Expression and "Cancel Culture"**

Ng E, "No Grand Pronouncements Here...: Reflections on Cancel Culture and Digital Media Participation". *Television & New Media*, 2020;21(6):621-627.

"The Callout", NPR Podcast, 2018

<https://www.npr.org/2018/04/13/601971617/the-callout>

Ronson, Jon (2017), "So You've Been Publicly Shamed", 67-90

November 8th **You Know it When You See It: Obscenity, Sex, and Expression**

Karaian, Lara and Brady, Dillon. "Revisiting the "Private Use Exception" to Canada's Child Pornography Laws: Teenage Sexting, Sex-Positivity, Pleasure, and Control in the Digital Age." *Osgoode Hall Law Journal* 56.2 (2019) : 301-349.

Yan, Julie, "Art in the Dichotomy of Freedom of Expression & Obscenity: An Anti-Censorship Perspective," *Manitoba Law Journal* 40, no. 3 (2017): 365-390
 Law's Expression, Chapter 4, "Expressing Sex," 89-111.

November 15th **Expression, Revenge, and "Vulnerable" Subjects**

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.

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

November 22nd **What is Hate Speech?**

Julian Walker, Hate Speech and Legal Boundaries In Canada

https://publications.gc.ca/collections/collection_2018/bdp-lop/bp/YM32-2-2018-25-eng.pdf

Udupa, Sahana, and Pohjonen, Matti, "Extreme Speech and Global Digital Cultures", *International Journal of Communication* 13(2019), 3049-3067

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

November 29th **Regulating Hateful Expression: Legal Limitations**

Richard Moon, "Report to the Canadian Human Rights Commission Concerning Section 13 of the Canadian Human Rights Act and the Regulation of Hate Speech on the Internet", October 2008

"Poisoning Democracy: How Canada Can Address Harmful Speech

Online" 2019, <https://ppforum.ca/publications/poisoning-democracy-whatcan-be-done-about-harmful-speech-online/>

David Lowe, "Far-Right Extremism: Is it Legitimate Freedom of Expression, Hate Crime, or Terrorism?", *Terrorism and Political Violence*, 2020: 1-22

December 6th **Can We Own Expression? Perspectives from Law and Culture**

Vowel, Chelsea, "What is Cultural Appropriation: Respecting Cultural Boundaries" (pp. 80-92) in *Indigenous Writes: A Guide to First Nations, Métis & Inuit Issues in Canada*.

2016

Lenard, Peter and Balint Patty. "What is (the wrong of) cultural appropriation?" *Ethnicities*, 2020; 20(2):331-352

Law's Expression, Chapter 6, "Propertizing Expression: Intellectual Property,". 147-182.
December 10th **Wrap-Up and Review**

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

COVID-19 PREVENTION MEASURES

All members of the Carleton community are required to follow COVID-19 prevention measures and all mandatory public health requirements (e.g. wearing a mask, physical distancing, hand hygiene, respiratory and cough etiquette) and [mandatory self-screening](#) prior to coming to campus daily.

If you feel ill or exhibit COVID-19 symptoms while on campus or in class, please leave campus immediately, self-isolate, and complete the mandatory [symptom reporting tool](#). For purposes of contact tracing, attendance will be taken in all classes and labs. Participants can check in using posted QR codes through the cuScreen platform where provided. Students who do not have a smartphone will be required to complete a paper process as indicated on the [COVID-19 website](#).

All members of the Carleton community are required to follow guidelines regarding safe movement and seating on campus (e.g. directional arrows, designated entrances and exits, designated seats that maintain physical distancing). In order to avoid congestion, allow all previous occupants to fully vacate a classroom before entering. No food or drinks are permitted in any classrooms or labs.

For the most recent information about Carleton's COVID-19 response and required measures, please see the [University's COVID-19 webpage](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca

Please note that failure to comply with University policies and mandatory public health requirements, and endangering the safety of others are considered misconduct under the [Student Rights and Responsibilities Policy](#). Failure to comply with Carleton's COVID-19 procedures may lead to supplementary action involving Campus Safety and/or Student Affairs.

ACADEMIC ACCOMMODATIONS

Academic Accommodation

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

Pregnancy 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 accommodation regarding a formally-scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

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 [click here](#).

Academic Accommodations for Students with Disabilities: [The Paul Menton Centre for Students with Disabilities](#) (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or 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 to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable).

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 where 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/equity/sexual-assault-support-services>

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 will be provided to students who compete or perform at the national or international level. 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: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

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/>.

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

For more information on academic accommodation, please 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/student-experience-resources/>.