

Course Outline

COURSE:	LAWS 3502A - Regulating Freedom of Expression in Canada
TERM:	Winter 2023
PREREQUISITES:	1.0 credit in LAWS at the 2000 level
CLASS:	Day & Time: Mon 18:05 to 20:55 Where Tory Building Rm 236
INSTRUCTOR:	Dr. Safiyah Rochelle
CONTACT:	Office Hrs: By Appointment, virtual 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

Attendance and Participation	20%
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The following are guidelines and expectations for attendance and participation:

- You are expected to attend class and must sign-in at the beginning of class so that I may record your attendance. **You may miss two classes** with no explanation or penalty. 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.
- Further, you are expected to participate in the online Discussion Forum on Brightspace. You must post **two comments/questions** on the readings per week, **for 10 weeks, in the designated Discussion Forum**. Your comments/questions can focus on one reading, or you can choose to post on multiple readings. You may also 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 start of class time on Monday evenings (6:05PM)**

- 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.

Reading Response x 3 30%

Over the course of the term, you must submit three Reading Responses responding to all the reading materials of a given week. You may choose which three weeks you would like to submit a response for. However, at **least one response** must be admitted **BY FEBRUARY 20th** and **all three responses** must be submitted **BEFORE APRIL 10th**. Responses should critically engage with **ALL** the materials of the week you are responding to, make connections between them, and raise questions/critiques – they are not meant to be a summary. Responses 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. Detailed information will be provided on Brightspace and in class.

Due Dates: See above. Regardless of the week you choose to submit a response for, all Reading Responses should be submitted by end of day on scheduled class days (Mondays). So, if you choose to submit a response for Week 3, the “due date” would be Monday, January 23rd.

Research Proposal (1-2 pages) 10%

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: February 13th

Research Paper (12-15 pages) 40%

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: April 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

WEEK 1 - January 9th

Introduction

Introduction to the course and admin

WEEK 2 - January 16th

Foundations & Limits of FOE

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.

Tufekci, Zeynep, "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

WEEK 3 - January 23rd Freedom of Press, (Mis)information, & the (Fake) News

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/>

WEEK 4 - January 30th Academic Freedom vs. FOE

Butler, Judith, "Exercising Rights: Academic Freedom and Boycott Politics" in *Who's Afraid of Academic Freedom?* ed. Akeel Bilgrami and Jonathan R. Cole, Columbia University Press, 293-313.

"Report of the Committee on Academic Freedom", p. 13-33, https://www.uottawa.ca/about-us/sites/g/files/bhrskd336/files/2021-11/report_committee_academic_freedom_en_final_v9.pdf

Haque, Eve and Ives, Peter, "What is Québec's Bill 32 on academic freedom, and why does it matter?" <https://theconversation.com/what-is-quebecs-bill-32-on-academic-freedom-and-why-does-it-matter-183122>

WEEK 5 - February 6th Privacy, Pandemics, & Surveillance as Protection

Smith Oduro-Marfo, Jessica Percy-Campbell, Lynn Ng Yu Ling, "(Un)Seeing as Care or Control: The Collection of Race-Identified COVID-19 Data:",

Surveillance & Society, 281-293

Monahan, Torin, "Reckoning with COVID, Racial Violence, and the Perilous Pursuit of Transparency", *Surveillance & Society*, 2-7

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>

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

WEEK 6 - February 13th **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.

WEEK 7 - February 20th **Break, No Class**

No readings

WEEK 8 - February 27th **FOE 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.

Coates, Ta-Nehisi, "The Cancellation of Colin Kaepernick, New York Times, <https://www.nytimes.com/2019/11/22/opinion/colin-kaepernick-nfl.html>

Bouvier, Gwen, "Racist call-outs and cancel culture on Twitter: The limitations of the platform's ability to define issues of social justice", *Discourse, Context & Media*, Volume 38, 2020: 1-10

WEEK 9 - March 6th **You Know It When You See It: Obscenity, Sex, & 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.

WEEK 10 - March 13th **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

WEEK 11 - March 20th **What is Hate Speech?**

Walker, Julian, "Hate Speech and Legal Boundaries in Canada"

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

Sumner, L.W. "The Balancing Act" in *The Hateful and the Obscene: Studies in the Limits of Free Expression*, University of Toronto Press, 2004, 52-87

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

WEEK 12 - March 27th **Regulating Hateful Expression: Legal Limitations**

"Taking Action to End Online Hate", Report of the Standing Committee on Justice and Human Rights,

<https://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP10581008/justrp29/justrp29-e.pdf>

Nesbitt, Michael, "Violent crime, hate speech or terrorism? How Canada views and prosecutes far-right extremism (2001-2019)", *Common Law World Review* 2021 50:1, 38-56

Lowe, David, "Far-Right Extremism: Is it Legitimate Freedom of Expression, Hate

Crime, or Terrorism?" *Terrorism and Political Violence*", 2020: 1-22

WEEK 13 - April 3 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.

WEEK 14 - April 10th Wrap-Up & Review

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

Winter 2023 Sessional Dates and University Closures	
<i>Please find a full list of important academic dates on the calendar website:</i> https://calendar.carleton.ca/academicyear/	
January 9, 2023	Winter term begins.
January 20, 2023	Last day for registration and course changes (including auditing) in full winter and late winter courses.
February 20, 2023	Statutory holiday. University closed.
February 20-24, 2023	Winter break. No classes.
March 15, 2023	Last day for academic withdrawal from full winter, late winter, and fall/winter courses.
April 7, 2023	Statutory holiday. University closed.
April 12, 2023	Winter term ends. Last day of full winter, late winter, and fall/winter classes.
April 15-27, 2023	Final examinations in full winter, late winter, and fall/winter courses will be held. Examinations are normally held all seven days of the week.
April 27, 2023	All final take-home examinations are due on this day.

University and Departmental Policies

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/>.

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/>.

COVID-19 PREVENTION MEASURES

It is important to remember that COVID is still present in Ottawa. The situation can change at any time and the risks of new variants and outbreaks are very real. There are a number of actions you can take to lower your risk and the risk you pose to those around you including being vaccinated, wearing a mask, staying home when you're sick, washing your hands and maintaining proper respiratory and cough etiquette.

Feeling sick? Remaining vigilant and not attending work or school when sick or with symptoms is critically important. If you feel ill or exhibit COVID-19 symptoms do not come to class or campus. If you feel ill or exhibit symptoms while on campus or in class, please leave campus immediately. In all situations, you must follow Carleton's symptom reporting protocols.

Masks: Carleton has paused the COVID-19 Mask Policy, but continues to strongly recommend masking when indoors, particularly if physical distancing cannot be

maintained. It may become necessary to quickly reinstate the mask requirement if pandemic circumstances were to change.

Vaccines: Further, while proof of vaccination is no longer required as of May 1 to attend campus or in-person activity, it may become necessary for the University to bring back proof of vaccination requirements on short notice if the situation and public health advice changes.

Students are strongly encouraged to get a full course of vaccination, including booster doses as soon as they are eligible, and submit their booster dose information in cuScreen as soon as possible. Please note that Carleton cannot guarantee that it will be able to offer virtual or hybrid learning options for those who are unable to attend the campus.

All members of the Carleton community are required to follow requirements and guidelines regarding health and safety which may change from time to time. For the most recent information about Carleton's COVID-19 response and health and safety requirements please see the University's COVID-19 website and review the Frequently Asked Questions (FAQs). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca.

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: 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>

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<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/>.