

Freedom of Expression

'Freedom of expression' is one of the fundamental freedoms protected by section 2 of the *Canadian Charter of Rights and Freedoms*.^[1] Section 2(b) provides that everyone has "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication."^[2]

In *R v Keegstra*, the Supreme Court of Canada identified three main objectives underlying the guarantee of free expression. First, free expression is "instrumental in promoting the free flow of ideas essential to democracy and the functioning of democratic institutions." Secondly, free expression is "an essential precondition of the search for truth." Thirdly, free expression is "worth protecting for its intrinsic value to the self-realization of both speaker and listener."^[3]

Given the breadth of the underlying objectives, the guarantee of free expression has been held to apply to artistic, educational and even commercial expression, as well as political expression. However, while all content and most forms of expression are protected, it is recognized that some types of expression are more important, or more central to the constitutional guarantee, than others.^[4]

Even prior to the *Charter of Rights and Freedoms*, the Supreme Court of Canada provided a degree of constitutional protection to political expression, because of its close link to our democratic system of government. Some justices of the Supreme Court had held that political expression, because of this link, was a matter of national significance and it was therefore outside the power of the provincial legislatures to detract from it; some justices had even suggested that this would be beyond the powers of either the legislatures or Parliament.^[5] But the latter view, in particular, never received clear support from a majority of the justices. The protection of free expression from federal as well as provincial legislation, and the protection of types of expression in addition to political expression, had to await the *Charter*.^[6]

While freedom of expression is a fundamental freedom, it is not absolute, but is subject to such "reasonable limits" as are "demonstrably justifiable in a free and democratic society," pursuant to section 1 of the *Charter* (see [balancing rights](#)). Limitations on freedom of expression, such as obscenity and child pornography laws, hate propaganda laws, and the law of defamation, have been upheld by the Supreme Court of Canada as "reasonable limits" upon free expression.^[7]

^[1] Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 2.

^[2] *Ibid.*

^[3] *R v Keegstra*, [1990] 3 SCR 697 at 802-805, 1990 CanLII 24 (SCC).

[4] Peter W Hogg & Wade Wright, *Constitutional Law of Canada*, 5th ed (date accessed 24 January 2022), (Toronto: Thomson Reuters Canada), ch. 43, § 43:8. Thomson Reuters ProView.

[5] See: *Reference Re Alberta Statutes - The Bank Taxation Act; The Credit of Alberta Regulation Act; and the Accurate News and Information Act*, [1938] SCR 100, 1938 CanLII 1 (SCC); *Saumur v Quebec (City)*, [1953] 2 SCR 299, 1953 CanLII 3 (SCC); and *Switzman v Elbling and A.G. of Quebec*, [1957] SCR 285, 1957 CanLII 2 (SCC).

[6] See generally: WS Tarnopolsky, *The Canadian Bill of Rights*, 2d ed (Toronto: McClelland & Stewart, 1975).

[7] See: *Constitutional Law of Canada*, *supra* note 4 at ch 43, § 43:27-43:29.