

THE BANNING OF BOOKS: TRUTH IS TROUBLE

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“Fear of unmonitored writing is justified—because truth is trouble.”

— Toni Morrison, celebrated and censored author of *Burn This Book*

Censorship and book banning have become disturbingly prevalent in the United States—Texas and Florida in particular—but are not unheard of in Canada. What is more essential to writers than the right to express themselves freely, and for their works to be disseminated uncensored? And how does Canadian law apply to these questions?

The cornerstone of the Canadian right to freedom of expression is enshrined in the *Charter of Rights and Freedoms*. Section 2(b) guarantees as a “fundamental” freedom that of “thought, belief, opinion and expression.” According to the federal government website, protection for freedom of expression is based upon promoting “the search for and attainment of truth, participation in social and political decision-making, and the opportunity for individual self-fulfillment through expression.” Free expression is valued because it is instrumental to democratic governance. It encourages the open exchange of ideas, and it fosters individual self-actualization and thereby human dignity (justice.gc.ca/eng/csjs-jc/rfc-dlc/ccrf-ccd/check/art2b.html).

Freedom of expression is not an ironclad right. Like many Charter freedoms, it is subject to Section 1 of the Charter, which allows a freedom to be compromised if it is reasonable by law and demonstrably justified in a free and democratic society.

Courts interpreting Section 2(b) of the Charter apply the principle of content neutrality: the content of the expression, no matter how offensive, unpopular or disturbing, cannot deprive it of section 2(b) protection. Even falsehoods are protected.

An Alberta-based case decided in 1990 illustrates the points both of content neutrality and the Section 1 limitation. In *R. v. Keegstra*, an Alberta high-school teacher taught anti-Semitic ideas in his classrooms. James Keegstra was charged under the Criminal Code of wilfully promoting hatred against an identifiable group. In his defence, Keegstra claimed the Criminal Code provision infringed upon his Charter right to freedom of expression. The Supreme Court of Canada (SCC) confirmed that Keegstra’s teachings were protected as a form of “expression” and, according to the principle of content neutrality, the meaning of that expression was irrelevant. The SCC further agreed the Criminal Code hate provision infringed freedom of expression. However, the majority of the court concluded that even though the Criminal Code provision offended the Charter-



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protected freedom of expression, Section 1 acted as an override because eliminating racism and hatred was important to a free and democratic society. Therefore, Keegstra was convicted and the Criminal Code provision remained intact. Interestingly, a dissenting judgement by Justice McLachlin, who would become the Chief Justice of Canada, held that the Criminal Code provision could have a “chilling effect” and disagreed that criminal prosecutions reduce racism and hate propaganda. She would have held the Criminal Code provision to be unconstitutional.

In another Canadian case, *R. v. Zundel*, the author of a book, was charged under another Criminal Code provision: spreading false news. Ernst Zündel’s book, *Did Six Million Really Die?* contended the Holocaust was a conspiracy created by Jewish people.

Zündel's conviction in the lower courts was appealed to the Supreme Court of Canada because the Criminal Code provision offends the Charter-protected freedom of expression. Justice McLachlin led the majority in acknowledging first that Charter Section 2(b) has a broad domain, protecting even falsehoods, so long as the expression does not take a violent form. She accepted that the Criminal Code provision restricts freedom of expression and then questioned whether the Section 1 limitation acted to override the infringement of the freedom. She concluded it did not: the Criminal Code provision was not reasonable at law, or justifiable in a free and democratic society. Therefore, the provision was unconstitutional and Zündel's conviction was overturned.

Recent political and pandemic debates have shown how harmful the spread of false news can be. As abhorrent as it may be to allow the Zündels of this world to go free, however, the Charter-protected freedom of expression is a greater good worthy of protection. The spreading of false news leads to the creation of counteractive works and an open exchange of ideas that, if conveyed honourably, works to strengthen society.

Another famous case dealing with censorship and freedom of expression in the literary world is *Little Sisters Book and Art Emporium v. Canada*, decided in 2000. The Vancouver, B.C., bookstore carried books with gay and lesbian themes, often imported from the U.S. and blocked at the border. When the bookstore asked the courts to decide whether this form of censorship offended the Charter, the Supreme Court of Canada held that the Customs Act, which gave broad powers to customs inspectors to exclude "obscene" materials from entry into Canada, violated the Section 2(b) Charter right. The Court said customs officials were authorized to confiscate only material that had been specifically ruled by the courts to constitute a Criminal Code offence.

The Charter governs the policies and actions of governments in Canada (prohibiting them from enacting laws that offend the Charter, for example). The Charter does not govern school districts that decide to ban books

or people who challenge public libraries to remove them from shelves. The Canadian Federation of Library Associations promotes "the intellectual freedoms to hold opinions and to seek, receive and impart information and ideas through any media and regardless of frontiers." Libraries have policies permitting patrons to challenge books in their collections, and careful processes for deciding challenge requests. According to *Library News* ("Battle of the Banned Books," March 16, 2022, news.library.ualberta.ca), the main reasons libraries are challenged to remove books from shelves include profanity, anti-police views, racial slurs or stereotypes, and LGBTQIA+ content. It notes an alignment between the themes of challenged books and world current events. Illustrating the trend in Canada are the Chilliwack, B.C., board of school trustees debate about *All Boys Aren't Blue* by American author George M. Johnson, a coming-of-age story of a queer black youth; and the Calgary Catholic School board's ban of *And Tango Makes Three*, by American authors Justin Richardson and Peter Parnell, the children's story of a penguin chick raised by two male adults.

Challenges to ban books and other censorship attempts are now typically made at libraries, school boards and even bookstores, rather than at borders or in courts. Their increasing frequency is alarming. Ironically, such attempts often increase demand for the impugned book, which benefits an often marginalized author, the book publisher who took a risk, and the public who may not have otherwise known the book exists.

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Canadian writers whose books have been challenged

Joseph Boyden (*Three Day Road*), Timothy Findley (*The Wars*), Rupi Kaur (*Milk and Honey*), Margaret Atwood (*The Handmaid's Tale*), Laurence Hill (*The Book of Negroes*), Jeff Lemire (*Essex County*), Alice Munro (*Lives of Girls and Women*), Mordecai Richler (*The Apprenticeship of Duddy Kravitz*), Margaret Laurence (*The Diviners*), Kevin Major (*Hold Fast*), and David Alexander Robertson (*Betty: The Helen Betty Osborne Story* and *7 Generations: A Plains Cree Saga*). The former, about violence against Indigenous women, was placed on a list of books "not recommended for classrooms" by Alberta Education, and the latter was flagged by the Edmonton Public School Board on its list of "books to weed out." In 2022, Margaret Atwood fought back against book banning and burning by attempting to torch a flame-proof copy of *The Handmaid's Tale*. That commissioned copy was later sold at auction for \$130,000 USD, the proceeds of which were donated to PEN America, an organization that battles book censorship.



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