

***THE CONSTITUTIONAL PROTECTION OF FREEDOM OF EXPRESSION*, RICHARD MOON (TORONTO: UNIVERSITY OF TORONTO PRESS, 2000)**

It is an irony of Canadian constitutional law that, while freedom of expression has been constitutionally protected for more than 20 years¹ and has been repeatedly identified by the Supreme Court of Canada as being one of our most critical and fundamental rights,² we are still struggling to determine exactly what freedom of expression means. Under s. 2(b) of the *Charter*, the Supreme Court of Canada has defined freedom of expression in very broad terms, finding that expression is any non-violent activity intended to convey meaning and that freedom of expression is infringed by any law that, either by purpose or in effect, restricts that meaning.³ Owing to this sweeping definition, freedom of expression challenges have been increasingly forced to the second stage of *Charter* analysis,⁴ which involves determining whether a given restriction on freedom of expression should be upheld as a reasonable limit “demonstrably justified in a free and democratic society” under s. 1 of the *Charter*.⁵ This s. 1 analysis requires a balancing between the interests of society at large and the value of freedom of expression, an exercise that again necessarily raises the question of what freedom of expression means in our society. The broad definition of freedom of expression under s. 2(b) of the *Charter* is of limited use in the s. 1 analysis, where the courts are forced to redefine the scope of freedom of expression in terms of the values or purposes served by free expression and the context in which the right is restricted.

The challenge of constructing a rational and useful constitutional definition of freedom of expression is the subject of Richard Moon’s book, *The Constitutional Protection of Freedom*

¹ Freedom of Expression became an entrenched constitutional right in 1982 with the passage of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*]. Section 2(b) of the *Charter* provides that: “Everyone has the following fundamental freedoms ... freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.”

² For example, in the recent case of *R. v. Guignard*, [2002] 1 S.C.R. 472 at para. 19 [*Guignard*], the Supreme Court of Canada commented on the Court’s recognition of the “fundamental importance of freedom of expression to the life of every individual as well as to Canadian democracy” and stated: “This Court attaches great weight to freedom of expression. Since the *Charter* came into force, it has on many occasions stressed the societal importance of freedom of expression and the special place it occupies in Canadian constitutional law.”

³ *Irvin Toy v. Quebec (A.G.)*, [1989] 1 S.C.R. 927 at 969-70, 978-79 [*Irvin Toy*]. According to the test established in *Irvin Toy*, a law that has the purpose of restricting expression will contravene s. 2(b) of the *Charter*. As stated by the Court, *ibid.* at 977, a law that has a different purpose but that has the effect of restricting expression contravenes s. 2(b) of the *Charter* only if the expression in question reflects the core values of the “pursuit of truth, participation in the community, or individual self-fulfillment and human flourishing.”

⁴ This is because the broad definition of freedom of expression results in a challenged law easily being found by the courts to violate the s. 2(b) right or because the likelihood of such a finding in the face of the broad definition of freedom of expression causes the government to concede such a violation.

⁵ Whenever legislation is challenged on the basis of an alleged *Charter* violation, at minimum a two-step analysis must be undertaken. The first step is to determine if the law in question violates a substantive *Charter* right. If a *Charter* right is not infringed, the legislation is constitutionally valid. If a *Charter* right is infringed, however, the court moves on to the second step of the analysis, which is to determine whether the violation is “saved” by s. 1 of the *Charter*, which provides that: “[t]he *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

Constitutional Protection Of Freedom Of Expression

SA Adler



Constitutional Protection Of Freedom Of Expression:

Reviewing **Constitutional Protection Of Freedom Of Expression**: Unlocking the Spellbinding Force of Linguistics

In a fast-paced world fueled by information and interconnectivity, the spellbinding force of linguistics has acquired newfound prominence. Its capacity to evoke emotions, stimulate contemplation, and stimulate metamorphosis is really astonishing. Within the pages of "**Constitutional Protection Of Freedom Of Expression**," an enthralling opus penned by a highly acclaimed wordsmith, readers embark on an immersive expedition to unravel the intricate significance of language and its indelible imprint on our lives. Throughout this assessment, we shall delve in to the book is central motifs, appraise its distinctive narrative style, and gauge its overarching influence on the minds of its readers.

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