

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

Rights and freedoms in Canada

1. The *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.

Fundamental Freedoms

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

Application of Charter

32. (1) This Charter applies

(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

HUMAN RIGHTS IN CANADA: A Historical Perspective

Testing the Limits of Freedom of Expression: The Zundel Case

Supreme Court of Canada Building Ottawa, Canada August 27, 1992

If you remember the cases of [Boucher](#) and [Keegstra](#), you will remember that the Supreme Court of Canada has faced some tough questions regarding freedom of expression: Does freedom of expression mean you can say anything to anyone? If not, what can you say and to whom?

Ernst Zundel would again test the limits of freedom of expression and force the Supreme Court to answer these challenging questions.

How? Zundel helped to write and publish a 32-page booklet entitled *Did Six Million Really Die?* (Zundel only wrote the booklet's foreword and postscript - the document had been published previously by other people in the United States and England.) In it, the horrors of the Holocaust were dismissed as a myth perpetrated by a worldwide Jewish conspiracy.

Zundel was convicted of spreading false news under s. 181 of the Criminal Code. He appealed his conviction arguing s. 181 infringed upon the freedom of expression guaranteed him under s. 2(b) of the *Canadian Charter of Rights and Freedoms*.

You might wonder, "If Keegstra's conviction was upheld, then shouldn't Zundel's conviction also be upheld?" In short, no.

The law is a very precise thing. In this case, Zundel was charged with spreading false news under s. 181. In the previous case, Keegstra was charged with promoting hatred against an identifiable group of persons of a common religion under s. 319(2). These are different crimes. Section 319(2) violated the right to freedom of expression under the charter, but it was saved by section 1 as a law that could be justified in a free and democratic society. The same would not be true in this case.

The Supreme Court ruled as follows: Section 181 of the Criminal Code infringes section 2(b) of the *Charter of Rights and Freedoms* which guarantees the right to freedom of expression - as long as the expression is not violent. The court found *Did Six Million Really Die?* to be non-violent. Section 181 of the Code - unlike s. 319 in the Keegstra case - can't be justified under section 1 of the charter. The specific and important purpose of s. 319 was to fight false and hateful statements that could fracture Canadian society. Although it was argued that section 181 was trying to do the same thing as s. 319, the Supreme Court did not agree. It found section 181's attempt to censor all expressions "likely to cause injury or mischief to a public interest" unjustifiable since many acceptable expressions could fit that description.

In a bittersweet victory for freedom of expression, Ernst Zundel's conviction was overturned.

Quotable quote:

I disagree with what you say, but I will defend to the death your right to say it...

Voltaire French Philosopher (1694-1778)

Criminal Code s. 181 Every one who wilfully publishes a statement, tale or news that he knows is false and that causes or is likely to cause injury or mischief to a public interest is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

Freedom of Expression and Violence: Separating Form from Content

Expression can include words, acts, gestures, and pictures. Section 2(b) of the charter, a guarantee of freedom of expression, protects all communications which convey or attempt to convey meaning including, it appears, violent meaning. But when the physical form by which the communication is made is violent, it is not protected by section 2(b). For instance, advocating violence against Country X in a newspaper article would be protected. But throwing a rock through the window of Country X's embassy would not be protected. Both actions convey similar meaning, but the actual form of the second communication is violent.

Limiting the right

A law will be found to violate the freedom of expression where the law either has the purpose or effect of violating the right.

A law's purpose can limit the right either through limiting the content or form of expression. Limits on content are where the meaning of the expression is specifically forbidden by the law, such as hate-speech law, and is the most easily identifiable form of limitation.^[9] Limiting the form of the expression can often invoke section 2(b) as it will often have the effect of limiting the content as well.^[10]

Where a law does not intend to limit the freedom of expression it may still infringe section 2(b) through its effects.^[11] A law will be found to restrict expression if it has the effect of frustrating "the pursuit of truth, participation in the community, or individual self-fulfillment and human flourishing".

TREATMENT OR PUNISHMENT.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Enforcement

ENFORCEMENT OF GUARANTEED RIGHTS AND FREEDOMS / Exclusion of evidence bringing administration of justice into disrepute.

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.