

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

Peter Ives



Constitutional Protection Of Freedom Of Expression:

CARTOON CONTROVERSY AND RIGHT TO FREEDOM OF SPEECH AND EXPRESSION Dr. Prashant Kumar Srivastava, The Purpose of the study becomes relevant and assumes importance by fact that freedom of expression is most important human rights of the democracy besides which the society will be monochromatic but this freedom can't be unrestricted One can enjoy entertain its freedom up to that extent only until it doesn't violate others freedom A cartoonist expresses his attitude towards the various figures characters and situations depicted in his figures and thus represent the interests of a society which are not always in harmony in the government A cartoonist not only has to be creative but he also has to attempt to be educational For the latter purpose the cartoonist should conform to moral norms which might potentially be in contradiction with his style of expression The authority struggles differently with cartoonists In some countries cartoonists are beaten thrown in prison and even killed In countries where authorities are unable to discreetly dispose of resenting cartoonists in such ways other subtly coercive methods are applied

A LANDMARK ON THE INDIAN CONSTITUTION Prasanna S, 2023-09-04 In the heart of India's rich legal history lies an extraordinary tale that changed the course of the nation's destiny A Landmark on the Indian Constitution delves into the captivating story of a pivotal moment in the journey of India's democracy This meticulously researched and engagingly written book explores the untold story of a landmark case that challenged the very foundations of the Indian Constitution It takes readers on a fascinating journey through the corridors of power the intricacies of legal arguments and the passionate debates that echoed in the hallowed halls of justice The book introduces us to the remarkable individuals who played pivotal roles in this constitutional saga from the brilliant lawyers who argued the case to the visionary judges who rendered the historic verdict It uncovers their personal struggles their unwavering commitment to justice and the sacrifices they made for the ideals they held dear As readers embark on this intellectual and emotional journey they will gain a deeper understanding of the Indian Constitution and the principles that underpin it A Landmark on the Indian Constitution is not just a legal narrative it's a story of courage conviction and the enduring spirit of democracy This book is a must read for anyone interested in the intricacies of Indian law the evolution of democracy and the indomitable human spirit that shapes the destiny of nations Please note that this is a fictional description and there may not be an actual book with this title or content If you have any specific questions or would like to discuss a different topic please feel free to ask

The Life and Death of Freedom of Expression Richard Moon, 2024-07-05 In The Life and Death of Freedom of Expression Richard Moon argues that freedom of expression is valuable because human agency and identity emerge in discourse in the joint activity of creating meaning Moon recognizes that the social character of individual agency and identity is crucial to understanding not only the value of expression but also its potential for harm The book considers a range of issues including the regulation of advertising hate speech pornography blasphemy and public protest The book also considers the shift to social media as the principal platform for public engagement which has added to the

ways in which speech can be harmful while undermining the effectiveness of traditional legal responses to harmful speech The Life and Death of Freedom of Expression makes the case that the principal threat to public discourse may no longer be censorship but it is rather the spread of disinformation which undermines public trust in traditional sources of information and makes engagement between different positions and groups increasingly difficult *Defamation and the Right to Freedom of Speech* Mariette Jones,2024-06-28 In an effort to balance the protection of reputation and the right to free speech the UK Parliament attempted to fundamentally transform English libel law through the Defamation Act 2013 This book evaluates the success of this attempt by means of a comparative analysis of relevant law in the United States of America US Germany and the European Court of Human Rights It examines the reasons that it was deemed necessary to reform the common law of defamation in England and Wales the changes wrought by the act and the case law it has engendered As defamation often occurs internationally the book also takes a broad comparative look at the way in which other relevant jurisdictions attempt to balance reputational protection and free speech The natural starting point is the US where freedom of expression is strongly protected by the US Constitution From there the focus shifts to Germany where both competing legal interests are likewise given constitutional protection The European Court of Human Rights jurisprudence is also examined because of its highly developed balancing approach and its general reflection of European legal thinking Recent high profile defamation cases such as those concerning the actors Johnny Depp and Amber Heard decided in the UK as well as the US form interesting and informative case studies The final section of the work rates the libel reform attempted in the UK against its own benchmarks provides suggestions about the way in which it is developing and concludes that valuable lessons can still be learnt from the comparator jurisdictions The book will be essential reading for those working in the areas of human rights law and media law *Challenges to Law at the End of the 20th Century: Rights* International Association for Philosophy of Law and Social Philosophy. World Congress,1997 *Comparative Constitutional Law in Africa* Rosalind Dixon,Tom Ginsburg,Adem Abebe,2022-12-06 This timely book is a crucial resource on the rich diversity of African constitutional law making a significant contribution to the increasingly important field of comparative constitutional law from a historically understudied region Offering an examination of substantive topics from multiple jurisdictions it emphasises issues of local importance while also providing varied perspectives on common challenges across the continent **The Oxford Handbook of Freedom of Speech** Adrienne Stone,Frederick F. Schauer,2021 Explores the key rationales and principles that underpin our understanding of free speech Provides a comprehensive overview of freedom of speech as a legal principle in national and supranational settings This volume is divided into three parts with part one outlining the history of the idea of the freedom of speech Part two discusses freedom of speech as a legal principle and part three surveys the key controversies in its application Book jacket [Rethinking Free Speech](#) Peter Ives,2024-11-12T00:00:00Z Clashes over free speech rights and wrongs haunt public debates about the state of democracy freedom and the future While freedom

of speech is recognized as foundational to democratic society its meaning is persistently misunderstood and distorted Prominent commentators have built massive platforms around claims that their right to free speech is being undermined Critics of free speech correctly see these claims as a veil for misogyny white supremacy colonialism and transphobia concluding it is a political weapon to conserve entrenched power arrangements But is this all there is to say Rethinking Free Speech will change the way you think about the politics of speech and its relationship to the future of freedom and democracy in the age of social media Political theorist Peter Ives offers a new way of thinking about the essential and increasingly contentious debates around the politics of speech Drawing on political philosophy including the classic arguments of JS Mill and everyday examples Ives takes the reader on a journey through the hotspots of today s raging speech wars In its bold and careful insights on the combative politics of language Rethinking Free Speech provides a map for critically grasping these battles as they erupt in university classrooms debates around the meaning of antisemitism the cancelling of racist comedians and the proliferation of hate speech on social media This is an original and essential guide to the perils and possibilities of communication for democracy and justice Clashes over free speech rights and wrongs haunt public debates about the state of democracy freedom and the future While freedom of speech is recognized as foundational to democratic society its meaning is persistently misunderstood and distorted Prominent commentators have built massive platforms around claims that their right to free speech is being undermined Critics of free speech correctly see these claims as a veil for misogyny white supremacy colonialism and transphobia concluding that it is a political weapon to conserve entrenched power arrangements Rethinking Free Speech will change the way you think about the politics of speech in the age of social media Peter Ives offers a new way of thinking about the essential and increasingly contentious debates around the politics of speech Drawing on political philosophy and everyday examples Ives takes the reader on a journey through the hotspots of today s raging speech wars This book provides a map for critically grasping these battles as they erupt in university classrooms debates around the meaning of antisemitism the cancelling of racist comedians and the proliferation of hate speech on social media This is an original and essential guide to the perils and possibilities of communication for democracy and justice

Reclaiming the Petition Clause Ronald J. Krotoszynski, 2012-04-24 Since the 2004 presidential campaign when the Bush presidential advance team prevented anyone who seemed unsympathetic to their candidate from attending his ostensibly public appearances it has become commonplace for law enforcement officers and political event sponsors to classify ordinary expressions of dissent as security threats and to try to keep officeholders as far removed from possible protest as they can Thus without formally limiting free speech the government places arbitrary restrictions on how when and where such speech may occur

Free Expression and Democracy in America Stephen M. Feldman, 2009-05-15 From the 1798 Sedition Act to the war on terror numerous presidents members of Congress Supreme Court justices and local officials have endorsed the silencing of free expression If the connection between democracy and the

freedom of speech is such a vital one why would so many governmental leaders seek to quiet their citizens Free Expression and Democracy in America traces two rival traditions in American culture suppression of speech and dissent as a form of speech to provide an unparalleled overview of the law history and politics of individual rights in the United States Charting the course of free expression alongside the nation s political evolution from the birth of the Constitution to the quagmire of the Vietnam War Stephen M Feldman argues that our level of freedom is determined not only by the Supreme Court but also by cultural social and economic forces Along the way he pinpoints the struggles of excluded groups women African Americans and laborers to participate in democratic government as pivotal to the development of free expression In an age when our freedom of speech is once again at risk this momentous book will be essential reading for legal historians political scientists and history buffs alike

The Constitutional Protection of Freedom of Expression Richard Moon,2000-01-01 Moon argues that recognition of the social dynamic of communication is critical to understanding the potential value and harm of language and to addressing questions about the scope and limits on one s rights to freedom of expression

Freedom of Expression and the Media Merris Amos,Jackie Harrison,Lorna Woods,2012-07-26 Freedom of expression particularly freedom of speech is in most Western liberal democracies a well accepted and long established though contested constitutional right or principle Whilst based in ethical rights based and political theories such as those of justice the good life personal autonomy self determination and welfare as well as arrangements over legitimate government pluralism and its limits democracy and the extent and role of the state there is always a lack of agreement over what precisely freedom of expression entails and how it should be applied For the purposes of this book we are concerned with freedom of expression and the media with regard to the current application of legal standards and self regulation to journalistic practice

The Free Speech Century Lee C. Bollinger,Geoffrey R. Stone,2019 The Supreme Court s 1919 decision in Schenck vs the United States is one of the most important free speech cases in American history Written by Oliver Wendell Holmes it is most famous for first invoking the phrase clear and present danger Although the decision upheld the conviction of an individual for criticizing the draft during World War I it also laid the foundation for our nation s robust protection of free speech Over time the standard Holmes devised made freedom of speech in America a reality rather than merely an ideal In *The Free Speech Century* two of America s leading First Amendment scholars Lee C Bollinger and Geoffrey R Stone have gathered a group of the nation s leading constitutional scholars Cass Sunstein Lawrence Lessig Laurence Tribe Kathleen Sullivan Catherine McKinnon among others to evaluate the evolution of free speech doctrine since Schenk and to assess where it might be headed in the future Since 1919 First Amendment jurisprudence in America has been a signal development in the history of constitutional democracies remarkable for its level of doctrinal refinement remarkable for its lateness in coming in relation to the adoption of the First Amendment and remarkable for the scope of protection it has afforded since the 1960s Over the course of *The First Amendment Century* judicial engagement with these fundamental rights has grown exponentially We now

have an elaborate set of free speech laws and norms but as Stone and Bollinger stress the context is always shifting New societal threats like terrorism and new technologies of communication continually reshape our understanding of what speech should be allowed Publishing on the one hundredth anniversary of the decision that laid the foundation for America's free speech tradition *The Free Speech Century* will serve as an essential resource for anyone interested in how our understanding of the First Amendment transformed over time and why it is so critical both for the United States and for the world today

In the Name of Security Secrecy, Surveillance and Journalism Johan Lidberg, Denis Muller, 2018-05-15 The terrorist attacks on the World Trade Center in New York on 11 September 2001 saw the start of the so called war on terror The aim of *In the Name of Security Secrecy Surveillance and Journalism* is to assess the impact of surveillance and other security measures on in depth public interest journalism How has the global fear driven security paradigm sparked by 11 September affected journalism At the core of the book sits what the authors have labeled the trust us dilemma Governments justify passing at times oppressive and far reaching anti terror laws to keep citizens safe from terror By doing so governments are asking the public to trust their good intentions and the integrity of the security agencies But how can the public decide to trust the government and its agencies if it does not have access to information on which to base its decision *In the Name of Security Secrecy Surveillance and Journalism* takes an internationally comparative approach using case studies from the powerful intelligence sharing group known as the Five Eyes consisting of the US Canada the UK Australia and New Zealand Chapters assessing a selection of EU countries and some of the BRICS countries provide additional and important points of comparison to the English speaking countries that make up the Five Eyes [The Oxford Handbook of Comparative Constitutional Law](#) Michel Rosenfeld, András Sajó, 2012-05-17 A comprehensive reference resource on comparative constitutional law this title examines the history and development of the discipline its core concepts institutions rights and emerging trends *The Cyber Law Handbook: Bridging the Digital Legal Landscape* Mr. Nilutpal Deb Roy and Ms. Pallabi Bordoloi, 2023-12-09 In *The Cyber Law Handbook Bridging the Digital Legal Landscape* we delve into the complex and ever evolving field of cyber law an area that has become increasingly significant in our digital age This comprehensive guide navigates through the intricate web of legalities in cyberspace addressing the fundamental concepts jurisdictional challenges and the impact of technological advancements on legal frameworks From the foundational aspects of cyber law to the latest developments in blockchain technology and emerging tech each chapter is meticulously crafted to provide insights into how the law intersects with the digital world The book is designed not only for legal professionals but also for students policymakers and anyone interested in understanding the legal dynamics of the digital era *Handbook on Human Rights in China* Sarah Biddulph, Joshua Rosenzweig, 2019 This Handbook gives a wide ranging account of the theory and practice of human rights in China viewed against international standards and China's international engagements around human rights The Handbook is organised into the following sections contested meanings international dimensions economic and social

rights civil and political rights rights in action and access to justice political dimensions of human rights in Greater China and new frontiers *Constitutional Law of Ireland* Michael Forde,David Leonard,2013-01-01 Since the previous edition of this book changes have taken place with Ireland s Articles of the Constitution including challenges to the Articles referenda new legislation and judicially considered cases This third edition is almost completely re written as a result of the tumultuous changes in Irish constitutional law Author Michael Ford an accomplished constitutional law author and practitioner offers the reader everything needed to know on this complex subject Routledge Handbook of Media Law Monroe Price,Stefaan Verhulst,Libby Morgan,2013-01-04 Featuring specially commissioned chapters from experts in the field of media and communications law this book provides an authoritative survey of media law from a comparative perspective The handbook does not simply offer a synopsis of the state of affairs in media law jurisprudence rather it provides a better understanding of the forces that generate media rules norms and standards against the background of major transformations in the way information is mediated as a result of democratization economic development cultural change globalization and technological innovation The book addresses a range of issues including Media Law and Evolving Concepts of Democracy Network neutrality and traffic management Public Service Broadcasting in Europe Interception of Communication and Surveillance in Russia State secrets leaks and the media A variety of rule making institutions are considered including administrative and judicial entities within and outside government but also entities such as associations and corporations that generate binding rules The book assesses the emerging role of supranational economic and political groupings as well as non Western models such as China and India where cultural attitudes toward media freedoms are often very different Monroe E Price is Director of the Center for Global Communication Studies at the Annenberg School for the University of Pennsylvania and Joseph and Sadie Danciger Professor of Law and Director of the Howard M Squadron Program in Law Media and Society at the Cardozo School of Law Stefaan Verhulst is Chief of Research at the Markle Foundation Previously he was the co founder and co director with Professor Monroe Price of the Programme in Comparative Media Law and Policy PCMLP at Oxford University as well as senior research fellow at the Centre for Socio Legal Studies Libby Morgan is the Associate Director of the Center for Global Communication Studies at the Annenberg School for the University of Pennsylvania *Free Speech As Civic Structure* Ronald J. Krotoszynski, Jr.,John S Stone Chairholder of Law and Director of Faculty Research Ronald J Krotoszynski Jr,2024 This book examines and explains the limited relevance of constitutional text to the scope and vibrancy of free speech rights within a particular national legal system The author argues that across jurisdictions text or its absence will serve merely as a starting point for judicial efforts to protect speech activity

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