

# Obscenity, Censorship, and Freedom of Expression: Does the *Charter* Protect Pornography?

Michael MacDonald

## Introduction

Freedom of speech has long been recognized as essential to political freedom; without it, democracy could not function. Even non-verbal, artistic expression has traditionally been valued for its symbolic commentary on political and social life. Freedom of expression is now constitutionally protected by s.2(b) of the *Canadian Charter of Rights and Freedoms*:<sup>1</sup>

2. Everyone has the following fundamental freedoms:

...

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

Unlike political and artistic expression, pornography has not traditionally been valued by society or protected by the law. Pornography expresses images and feelings of sexuality, among other things, not ideas or opinions concerning politics and society. It has been considered irrelevant to democracy and therefore denied the protection extended to the communication of ideas. Obscenity has been penalized for centuries,<sup>2</sup> and is still suppressed by both federal and provincial law in Canada.

The newly entrenched status of freedom of expression necessitates a re-examination of the traditional limits on freedom of speech, including obscenity law and censorship. Some limits will survive, as the freedoms guaranteed by the *Charter* are not absolute but are limited by s.1, which reads:

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.

1. Part I of the Constitution Act, 1982.

2. See, for example, *R. v. Carl* (1727), 93 E.R. 849 (K.B.).

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## **Table of Contents Obscenity Censorship Or Free Choice**

1. Understanding the eBook Obscenity Censorship Or Free Choice
  - The Rise of Digital Reading Obscenity Censorship Or Free Choice
  - Advantages of eBooks Over Traditional Books
2. Identifying Obscenity Censorship Or Free Choice
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Obscenity Censorship Or Free Choice
  - User-Friendly Interface
4. Exploring eBook Recommendations from Obscenity Censorship Or Free Choice

- Personalized Recommendations
- Obscenity Censorship Or Free Choice User Reviews and Ratings
- Obscenity Censorship Or Free Choice and Bestseller Lists
- 5. Accessing Obscenity Censorship Or Free Choice Free and Paid eBooks
  - Obscenity Censorship Or Free Choice Public Domain eBooks
  - Obscenity Censorship Or Free Choice eBook Subscription Services
  - Obscenity Censorship Or Free Choice Budget-Friendly Options
- 6. Navigating Obscenity Censorship Or Free Choice eBook Formats
  - ePub, PDF, MOBI, and More
  - Obscenity Censorship Or Free Choice Compatibility with Devices
  - Obscenity Censorship Or Free Choice Enhanced eBook Features
- 7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Obscenity Censorship Or Free Choice
  - Highlighting and Note-Taking Obscenity Censorship Or Free Choice
  - Interactive Elements Obscenity Censorship Or Free Choice
- 8. Staying Engaged with Obscenity Censorship Or Free Choice
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Obscenity Censorship Or Free Choice
- 9. Balancing eBooks and Physical Books Obscenity Censorship Or Free Choice
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Obscenity Censorship Or Free Choice
- 10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
- 11. Cultivating a Reading Routine Obscenity Censorship Or Free Choice
  - Setting Reading Goals Obscenity Censorship Or Free Choice
  - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Obscenity Censorship Or Free Choice

- Fact-Checking eBook Content of Obscenity Censorship Or Free Choice
- Distinguishing Credible Sources

### 13. Promoting Lifelong Learning

- Utilizing eBooks for Skill Development
- Exploring Educational eBooks

### 14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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