

**R v Butler, [1992] 1 SCR 452**

R v Butler is a Supreme Court of Canada case from 1992 that looked into whether obscene materials (in this case sexually obscene materials) were protected under section 2(b) [freedom of expression] of the Canadian Charter of Rights and Freedoms. Mr. Butler owned a shop that sold pornographic videos and other sexual paraphernalia. Police arrested him and confiscated items and charged him under section 163 of the Canadian Criminal Code for possessing and selling obscene materials. However, a few months later he reopened his store, and was arrested again. He claimed s.163 violated his s. 2(b) Charter right. The Supreme Court Justices found that his s. 2(b) right was infringed, however s.168 was upheld as a reasonable limit under section 1 of the Charter of Rights and Freedoms, which states “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” (underline added).

In making its decision the court considered evidence that pornography harms women and children and furthers sexual inequality. Women were being portrayed as desiring pleasure from pain or wanting to be humiliated and treated as objects of male domination. The Court stated that “degrading and dehumanizing materials place women in positions of subordination, servile submission or humiliation. They run against the principles of equality and dignity for all human beings.” The Court cited several reports that held the opinion that portraying persons being subjected to degrading sexual treatment results in harm: Attorney General’s Commission on Pornography (the “Meese Commission”), Final Report (US, 1986); Metro Toronto Task Force on Public Violence Against Women and Children, Final Report (1984); Report of the Joint Select Committee on Video Material (Australia, 1988); Pornography: Report of the Ministerial Committee of Inquiry into Pornography (New Zealand, 1988). Also, the Judges were influenced by the factum of the intervener LEAF (Women’s Legal Education and Action Fund) which wrote at length the harms pornography causes women. I have attached a copy of their factum since I find that is an important related material to this judgment (numerous cases LEAF cited were also cited in the Butler judgment).