

Brief presented to Senate committee

In this brief we will present our experiences and opinions relating to the following questions raised by the [Senate Committee](#).

How can the Government of Canada develop a policy and regulatory framework that encourages an appropriate diversity of news and views without harming freedom of the press?

What forms of self-regulation are appropriate?

What should the role of the CRTC be in the regulation and supervision of the Canadian news media?

Are there lessons to be learned from other countries about useful forms of media regulation and self-regulation?

The last Senate committee study on media, the Davey Report published in December, 1970, made several key points relating to press councils.

It was suggested “that Canada needs a press council” and that “government should have nothing to do with the council’s organization and powers”. The print media, said the report, should set up its own disciplinary body. It also suggested regional press councils could meet Canada’s diverse needs.

The latter is what happened.

Canadian provincial press councils started in the early 70’s, which was about the same time as those in Australia, New Zealand and the United States. A British press council began in the ‘50s and there are councils in most of Europe, many African countries and Israel.

The Manitoba Press Council is now 21 years old and was modeled after the Ontario Press Council and has learned from the experiences of others. We all learn from each other and apply the most suited to our own region and community.

What Canadian press councils all have in common is that we are self-regulated bodies. We are designed to be more receptive to community standards and be less cumbersome than the larger CRTC- style of bureaucracy with its slow process and change.

In most instances, councils have a mix of public members who have no work experience in media, ex-media people and current media employees. This type of forum is considered very important. Interested citizen members engage in discussions of media standards and ethics with experienced people, and all are involved in the decisions.

The Manitoba Press Council was set up with these major purposes:

- Investigate public complaints concerning news material published by the Council’s member newspapers

- Investigate complaints from the press about the conduct of individuals and organizations against the press
- Defend press freedom
- Encourage high standards of journalistic ethics
- Investigate restrictions on press access to information of public interest
- Make representations to government on issues related to press council objectives
- Issue annual and periodic reports on press council work

Many media observers and participants have argued that it is appropriate that an industry that sees itself as the eyes and ears of the public should be examined by a council that includes well-informed and independent members of the public rather than by government regulation.

Bill Moyers of PBS offered the opinion, “If even lawyers recognize the value of ethics committees, surely we journalists can tolerate a news council to keep us on our toes.” Jim Lehrer, former PBS News Hour host, said “It’s a great idea. News councils can help the profession of journalism.”

A member of the New Zealand Press Council, Terry Snow, puts it this way. “Self-regulation is a moral force and it depends on an industry with the maturity to sign-up to independent and reasonable scrutiny by its peers and members of the public. In this way, they will demonstrate to their readers that they act and publish in the interests of those very readers without qualification, and consequently are not afraid of having their integrity as editors and publishers scrutinized.”

Many press councils have adopted a code of ethics or conduct against which the work of their members can be judged, either as newspapers or individual journalists. An extreme example of the extent to which a press council can be seen to reflect local circumstances can be seen in a recent change to the code of ethics of the Israeli press council. After considerable, and frequently heated debate, the Israeli press council now requires journalists to put giving assistance to those in grave, immediate danger of injury or death ahead of their journalistic interest. Dr. Yehiel Limor, a member of the Israeli press council and chairman of the Sapir Academic College of Communication, is quoted on the web as having 200 ethical codes from press councils in his library, only one other of which requires similar action. This obligation, it is noted, reflects a uniquely Israeli experience in dealing with terror.

While there are a variety of codes of conduct around the world offering sound principles on which journalists should act, it is the Manitoba Press Council’s view that enacting any such a code into law would in the end restrict journalists’ freedom. The basic problem is that a law not only defines what you can do, but what you can’t do.

The Manitoba Press Council has not adopted a code of conduct or ethics in the belief that the best judge of community standards remains the community itself. If a citizen feels a newspaper has acted inappropriately or unfairly, he or she can bring the case to the

council to be argued and judged on its merits, on contemporary standards, and not on some preset law or regulation.

In practice, we have found our most effective work to be as mediators between citizens and newspapers, bringing the two sides together to work out a mutually agreeable solution. We have rarely found it necessary to go to the more adversarial setting of a formal hearing, although we are quite prepared to go to a formal hearing if mediation fails.

It is not uncommon for governments to consider policy and regulatory supervision of mass media but right from the start hundreds of years ago, many have brought up concern for government encroachment.

In an article on the subject in a 1989 *Broadcaster* magazine, Vancouver media lawyer Jon Festinger pointed out that in 1644, in a speech to the Parliament of England, John Milton attacked planned governmental or regulatory interference with creative judgments. He said that by embracing “a rigid, external formality we may soon fall into a gross conforming stupidity”.

A 19th century member of the House of Commons, Charles Bradlaugh, declared, “Without free speech, no search for truth is possible... no discovery of truth is useful... better a thousand fold abuse of free speech than denial of free speech. The abuse dies in a day, but the denial slays the life of the people, and entombs the hope of the race”.

Before dismissing these feelings as hyperbole from the distant past, consider the outcry by many in 2004 over free speech and government regulation in the matter of CHOI-FM Quebec.

There are many more examples of concern for government involvement in the process. From the experience gained by press councils we offer and agree with the following.

“It is essential that the press have access to information regarding the government and all public institutions and organizations. Any hindrance, whether judicial or administrative, undermines the freedom of the press and the legitimate right of citizens to be informed of the events, actions and decisions that affect them” – *The Quebec Press Council*

“Freedom of the press is an extension of the individual right to freedom of speech, any diminution of one right diminishes the other.” – *The Ontario Press Council*

In Australia, press freedom and free speech are rights that are spoken of widely but have little substantive support by way of legislation or guarantees. The only “guarantee” of free speech arises from an implication found in the federal constitution. The Australian Press Council, as the leading advocate for the freedom and the responsibility of the press, has adopted a Charter of a free press to give weight to the notions of freedom of communication. The Charter recognizes Australia’s endorsement of Article 19 of the

Universal Declaration of Human Rights, endorsing the right to the free flow of information to enable news and opinion to be freely available. The Charter underpins the press council's own approach to policy development with the aim of preserving the independence of the press from government regulation.

The CRTC has its own experience with detailed bureaucratic media regulation. It lasted 15 years before being abandoned. In 1975 they introduced sweeping new FM radio regulations in an effort to ensure a varied and comprehensive radio service in Canada.

They assigned approximately 100, one paragraph definitions for everything broadcast on air. These ranged from descriptions of music styles, news, sports, surveillance material, casual asides and witty remarks by announcers, contests, advertising, backgrounding, comedy and thematic comedy, etc. FM stations were required to broadcast a minimum of 20% from the areas the CRTC deemed "enrichment".

The Canadian Association of Broadcasters Vice-Chairman gave an assessment of these regulations and their stifling effect in a report to the House of Commons Standing Committee on Communications and Culture on April 26, 1983 as follows:

"... it is common for a private FM broadcaster to be required to ensure that more than 60 different mathematical criteria are met for each broadcast day, very few of these criteria pertain to Canadian content – almost all are explicit program content directives from the CRTC. There are minimums, maximums and ratios of percentages, hours, minutes and seconds plus a set of complex definitions to be understood. It is creating a sameness in the sound of stations and less diversity as the calculator, computer and rational rigid pre-planned programming has replaced the intuitive, reactive, and creative skills of our craft."

These and other conclusions that people working in broadcasting came to at the time, were similar to what veteran New York Times reporter and columnist, Tom Wicker offered in his 1975 book, *On Press*. "The imposition of standards and responsibility on the press moves it towards uniformity or presentation and away from diversity which is what guarantees that differing points of view on the same events will reach the public." He also suggested that, "Reasonable persons may and often do differ on what is responsible".

News does not come in nice tidy packages to which you can apply a mathematical formula to determine what the content of a newspaper should be. You cannot say in advance that X per cent of the news has to be about women, Y per cent about men, Z per cent about Filipinos and W per cent about First Nations. That content will vary from day to day, depending on who is doing what. Today's newspapers are all too aware of the need to remain cognizant of the demographic diversity of the market they are serving, and must be left free to pursue that market as they see fit. In the view of the Manitoba Press Council, any attempt to legislate diversity would have the opposite effect, and would, in fact, stifle diversity.

Why do governments feel the need to legislate the media? In a 1989 article on mass media in Saturday Night magazine, Ivor Shapira suggested that “The ethics of this powerful and influential industry remain suspect for no other reason than they are largely shrouded from view”.

Are there enough checks on the press? The media have acknowledged that the dissemination of news is not just another business. It is a form of public trust. “Conscience and conviction are an integral part of the trade, which of its nature must have a moral as well as a material existence”, a famous editor of The Guardian pointed out.

Their work is there for everyone to see and analyze every day. Their credibility is there with every publication and broadcast. The number of news outlets effectively inhibits any one of them from distorting and colouring the news to its own liking.

At a seminar at Mohawk College in Hamilton in 1981, it was concluded that so many diverse groups have a hand in the making and reporting of the news that no one in particular controls it. The issue does rest with the editor in any given newsroom, but the editor is like a gatekeeper. By the nature of how the job is done, all reporters have a hand to some extent in the idea and selection process. Governments, unions, the police, big and small business, any individual have ways of releasing or bringing information to a newsroom.

Also, the laws governing libel and hate crimes provide more than adequate protection for the public against press abuse.

Affecting opinion is by no means producing or controlling it. Take an election campaign for example. Coverage can affect it but so does paid advertising and the statements made by candidates. With so many conflicting forces at work on public opinion how can any single force be said to produce or control opinion?

The central point, as Walter Lippman said, is not that the full truth is revealed in any one account but out of free reporting and discussion, truth emerges.

In an article in The Financial Post in 1976, Knowlton Nash said, “I think the media’s reflection of business, labour and government is generally fair. Undoubtedly there are exceptions, but the problem is that everyone wants to see themselves reflected in their own self-image. The media has to present them as they are – it’s our occupational hazard.”

Some degree of abuse is inseparable from the proper use of everything. When faulty stories do get into print and turn out to be false or misleading it has been our experience that newspapers act responsibly when the error is brought to their attention.

If there is doubt, or there is a question of fairness or interpretation, a press council can adjudicate, providing quick and free access to citizens who feel they have a problem. The

public should not have to seek recourse through the courts for every problem. But as a matter of procedure, if someone is already seeking legal recourse, the Manitoba Press Council will decline to hear the complaint.

As the Davey report suggested, problems of the press could be alleviated by a watchdog organization “that would monitor the press the way the press monitors society”.

And, like most press councils, we are also helping the public understand the workings of media. As the Quebec Press Council states, “The press council has no judicial, regulatory or coercive powers; moral persuasion is its principle tool, and its authority depends on the quality of its work as well as the confidence and support it receives from media outlets and the public”.

In the Manitoba Press Council’s view, an observation by Sir William Blackstone, in Commentaries on the Laws of England (1765) remains as valid today as when it was first published: He said:

“Where blasphemous, immoral, treasonable, schismatical, seditious, or scandalous libels are punished by English law, the liberty of the press, properly understood, is by no means infringed or violated. The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publication, and not in freedom from censure for criminal matter when published. Every freeman has undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity.”

In conclusion, in the view of the Manitoba Press Council, the best policy and regulatory framework is to leave the press answerable to the laws governing libel and hate, but to impose no further restrictions or standards on them. Regional press councils make an appropriate form of self regulation, particularly in Canada where there is a need to respond to cultural and linguistic differences, which can vary greatly from region to region. The CRTC should have no role in the supervision of news. Finally, there are lessons to be learned from other countries, but the lessons should be applied with care to the Canadian context. What is appropriate in the fight against terror in Israel or the excesses of chequebook journalism in Britain may well not be appropriate in Canada, and would serve only to discredit press councils, or a government which tried to adopt them.

Respectfully submitted,

The Manitoba Press Council