

*Civil Society Follow-up of the  
Quebec City Summit of the  
Americas Plan of Action*

Report on Freedom of Expression in  
Canada

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## Executive Summary

This report on Freedom of Expression in Canada is one part of a 34-month, hemispheric-wide analysis of how well national governments in the Americas are complying with the commitments to strengthen democracy made at the 2001 Summit of the Americas in Quebec City.

Based on the opinion of 5 experts in the field and secondary research, this report addresses the main issues under debate in Canada regarding freedom of expression by looking at:

- a) Existing legal framework;
- b) The structure of ownership in the media sector;
- c) The exercise of freedom of expression of journalists, artists and demonstrators;  
and
- d) The impact of education and information technologies on freedom of expression.

The findings of this national study demonstrate the following:

- The respect of the right of freedom of expression in Canada is consistent with democratic practices and international conventions on human rights. However, there is concern that anti-terrorist and child pornography legislation may affect the exercise of freedom of expression.
- Canada faces the challenge of ensuring that concentration in ownership in the media sector does not imply a reduction in the number of points of view and the quality of the information available to the public.
- The Canadian broadcasting system has made advances toward the incorporation of different ethnic and minority groups, but more work needs to be done in order to make Canadian programming more representative of the cultural diversity that exists in the country.
- Canada's freedom of press is relatively high by world standards, but there is need to enact legislation that would better protect journalists in their work.
- Canada has undertaken a policy to promote the culture industry and has a relevant role in the financing of artistic expressions. It has also promoted the participation of private capital in support of culture/arts.
- The right of assembly and to stage public demonstrations is respected and the use of force is generally not abused. Yet in the last five years, tighter security measures have been put in place, particularly at international gatherings hosted in Canada.
- To ensure the capacity of Canadians to exercise their rights, Canada has developed a policy to foster education about the rights granted in the *Charter of Rights and Freedoms*, and has successfully used ICT technologies to reach isolated or rural areas.
- The recent enactment of anti-terrorist legislation imposed important restrictions on the exercise of freedom of expression, which are not fully assessed yet.

## COMMITMENTS UNDER THE QUEBEC CITY PLAN OF ACTION: FREEDOM OF EXPRESSION

The right of freedom of expression serves to strengthen democracy at several levels. The capacity of individuals to communicate, exchange and confront ideas is an essential part of a well-functioning democratic system and the basis of the creation of social bonds within a society. By opening common spaces in which all members of society can raise their voices, it ensures that democracies do not become the rule of the majority, but rather the rule of the people. This space is also essential to make new or previously not addressed issues and concerns salient, facilitating the debate around them.<sup>1</sup> It allows society to analyze changing realities, to re-examine values and beliefs, and to redefine the divide between what is and is not acceptable within a society. Finally, through the right of freedom of expression, valuable information is made available to the public, and this is relevant in at least two ways: on one hand, real citizen participation cannot be exercised without having access to information; and on the other, the dissemination of this information constitutes an important oversight tool for society to hold governments accountable.

In the Quebec City Plan of Action, the countries of the Americas committed themselves to "ensure that national legislation relating to freedom of expression is applied equitably to all, respecting freedom of expression and access to information of all citizens, and that journalists and opinion leaders are free to investigate and publish without fear of reprisals, harassment or retaliatory actions, including the misuse of anti-defamation laws."<sup>2</sup>

Yet how do we define freedom of expression? According to Article 19 of the U.N. *Universal Declaration on Human Rights*, "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."<sup>3</sup> However, most national and international conventions and other legislation on human rights argue in favour of establishing some limits to protect the privacy and the reputation of people, as well as the maintenance of public order and of national security. While this has been generally accepted, advocates of the right of freedom of expression have stressed that these limitations should be reduced to the minimum and that they should be clearly prescribed by law to avoid any discretionary power in the application of the exemptions to prevent criticism or denunciation of wrongdoing and/or corruption of public officials.

This report, although not exhaustive, will present an overview of the main issues related with freedom of expression in Canada. In order to do so it will look at four dimensions, presented in the following sections: 1) Legislative framework; 2) Structure of ownership in the media sector; 3) The exercise of freedom of expression by journalists, artists and demonstrators; and 4) The impact of levels of education and the use of technologies on freedom of expression.

**Section I** will be divided into four parts. The first part will describe the national legislative framework; the second, the international agreements and conventions on freedom of expression that Canada has subscribed to; the third will look at some of the complaint mechanisms that exist when the right of freedom of expression has not been respected; and the fourth will provide information on some of the courts' rulings related to freedom of expression and the restrictions in practice to the exercise of this right. **Section II** will analyze the structure of the media industry and review current legislative frameworks; ownership structures; access by minority groups; freedom of journalists and public trust in

the media. **Section III** will review how the arts community fares in their exercise of freedom of expression. **Section IV** examines the exercise of freedom of expression and the right of assembly. Finally, **Section V** will assess the impact of levels of education and access to technology on freedom of expression.

## **SECTION I. LEGAL FRAMEWORK ON FREEDOM OF EXPRESSION.**

The balance between the right of freedom of expression and the limitations to it is the outcome of an ongoing struggle to define and adapt the rules that establish relations among people. In Canada, two provisions established in the *Charter of Rights and Freedoms* capture the essence of this struggle: while section 2(b) guarantees freedom of expression, section 1 creates the possibility of limiting the exercise of this right.

### ***1.1 National Legislation on Freedom of Expression***

According to section 2(b) of the *Charter of Rights and Freedoms*, "freedom of thought, belief, opinion, and expression, including freedom of the press and other media communication" is a fundamental right. But Section 1 of the *Charter* stresses that the guarantees on the rights and freedoms established in the *Charter* can be "[...] subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

The confrontation of these two provisions within the *Charter* has been the focus of the debate about freedom of expression in Canada. In essence, the *Charter* only sets out the basic principles, while more specific references to the exercise of freedom of expression are found in other consolidated statutes and regulations such as the *Criminal Code*, the *Information Act*, and the *Security of Information Act*, as well as in the guidelines used by the Canada Customs and Revenue Agency (CCRA) to examine and approve the entry of goods through international borders. The restrictions to the right of freedom of expression in Canada are divided into three categories: **defamation laws**; **protection to vulnerable groups**; and **public order and national security**.

#### **Defamation laws**

Libel and slander laws are often seen as a necessary balance to freedom of expression, and to prevent that the publication and dissemination of information will unduly affect the privacy and reputation of a person.<sup>4</sup> If properly designed and implemented, defamation laws could help underpin increased media credibility. In Canada criminal and civil libel exist and Canadian legislation establishes severe penalties that range from 2 to 5 years of prison (*Criminal Code*, sections 297-301). Civil libel is often settled through the reparation of damages caused.

#### **Protection of vulnerable groups: child pornography**

Freedom of expression should serve to incorporate the different voices of people living within a society and create spaces for the exposure of new concerns. However, vulnerable groups must be protected. In order to protect children there are laws that punish the sexual exploitation of children and the circulation of child pornography. Child pornography is defined in section 163.1 of the *Criminal Code* as a "photographic, film,

video or other visual representation, that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity [...]; or any written material or visual representation that advocates or counsels sexual activity with a person under the age of eighteen years.”

According to the *Criminal Code* making, distributing and possessing child pornography are crimes that entail penalties between 5 and 10 years of prison (section 163.1 (2-4)). New legislation was enacted in 2001 in recognition of the growing presence of child pornography in the Internet; *Bill C-15A* amended the *Criminal Code* to punish Internet luring and the dissemination of child pornography on the Internet – each of these offences with a penalty of up to 10 years of prison. Access to child pornography on the Internet was also inserted as an offence and can lead to a maximum of 5 years in prison. To strengthen the ban on child pornography, under the new law courts can order the repossession of a computer system and the deletion of any child pornography material and any links to it from their computer servers (*Criminal Code*, Section 164.1).

As it stands now the *Criminal Code* establishes that if artistic merit can be found in the representation or written material under scrutiny, charges of child pornography could not be made. Currently further amendments are being discussed in the House of Commons under *Bill C-12* (before known as *Bill C-20*) in order to enhance the existing provisions to ban child pornography, namely removing the defence of artistic merit with one based on demonstrating public good.<sup>5</sup>

## **Public order and national security**

Among the generally accepted grounds to restrict freedom of expression is the need to maintain public order and national security, and most governments include this type of provisions within their legal frameworks. Canada has implemented, and even strengthened, some of these provisions in the wake of the 2001 terrorist attacks on the United States. To guarantee public order and the exercise of judicial investigations, the *Criminal Code* establishes bans on **hate speech, obscenity**; in the realm of **court procedures** there are also some restrictions to the publication of information related to the identity of victims or young offenders in trials.<sup>6</sup> In relation to **national security**, growing government concerns about terrorism have led to the establishment of restrictions to access and dissemination of information that are deemed to be essential for security or to protect national interests.

### ***a. Hate Speech and Propaganda***

According to the *Criminal Code* (sections 318-9), “anyone who incites to genocide or that incites hatred against any identifiable group where such incitement is likely to lead to a breach of peace, or that by communicating statements publicly wilfully promotes hatred against an identifiable group” can be liable to imprisonment for up to 2 years of prison. The CCRA considers as hate propaganda any good that advocates and/or promotes the destruction, in whole or in part, of any identifiable group by killing its members; or any literature related to blaming identifiable groups for serious economic or social problems, or suggesting that certain group is manipulating the media, trade, finance, government, or world politics to the detriment of society; or that stress that a group is racially inferior or that it is a serious threat to society as a whole.<sup>7</sup>

There are also provisions within the *Broadcasting Act* to prohibit any licensee from broadcasting or distributing programming that contains abusive comments to individuals or that would incite hatred on discriminatory grounds. Infringing these dispositions may cause the imposition of fines or the limitation and/or denial of the license renewal for the broadcaster.<sup>8</sup>

For instance, the CRTC decided on July 12, 2004 not to renew the licence of CHOI-FM, a radio station in Quebec, on the grounds that there have been too many complaints against two of its hosts for repeated use of abusive language. This is the first time ever that the CRTC has decided to undertake a measure like this based on content of a radio broadcast. Although the hosts have repeatedly used abusive language, some observers argue that the reaction of the CRTC was extreme and that it may be interpreted as an undue limitation to freedom of expression.<sup>9</sup> The owner of the Radio station has argued that the decision of the regulator was an act of censorship and in a rally in front of the Parliament on July 22, 2004 he asked the Prime Minister to voice his opinion on the matter. Since the government refused to comment, the owners of the station have lodged a complaint at the Federal Court of Appeal. By agreement between the CRTC, the owners of the radio station and the Federal Court of Appeals, CHOI-KM will be able to broadcast during the legal process.<sup>10</sup>

Publishers could also be liable for publishing or disseminating statements or news that the publisher knows are false and that are likely to cause injury to a public interest.<sup>11</sup> In some cases, there can even be injunctions against broadcasters and publishers. Bans on hate propaganda are not limited to printed materials. Electronic materials considered to incite hatred posted in the Internet can also be confiscated, destroyed and deleted from computer systems (*Criminal Code*, section 320.1).

### ***b. Obscenity***

According to the Criminal Code (section 163 (2)) "any publication whose dominant characteristic is the undue exploitation of sex, or of sex combined with crime, horror, cruelty and violence is considered obscene. Anyone who makes, prints, publishes, distributes or circulates any obscene written matter, picture, model, phonograph record is guilty of corrupting morals" and can be liable to a maximum of 2 years of prison.

Although this seems to be a very specific definition, there have been complaints about the discretionary powers of officials in charge of implementing the law in the definition of what constitutes obscenity. A prime example of this is the case of *Little Sister's Book & Art Emporium*, a bookstore in Vancouver serving homosexual customers that launched a constitutional challenge questioning the right of Canadian Customs and Revenue Agency (CCRA) to detain and confiscate their publications at the border as they entered Canada. In 2000 the Supreme Court ruled it was up to the CCRA, and not the importer, to demonstrate that materials were obscene, which in turn forced the CCRA to be more explicit in their judgments. CCRA subsequently created new guidelines and devised two tests to determine if materials entering through the border are obscene. The first is a tolerance test, and is aimed at determining whether public opinion would perceive the material to be harmful to society. The second determines if the defence of artistic merit could be applied to the case. Interestingly, according to these guidelines, should there be any doubt in the classification of the materials, the CCRA should resolve in favour of freedom of expression, and goods should be released.<sup>12</sup>

### *c. Court procedures*

Court procedures in Canada are open to the public. However, according to section 486 of the *Criminal Code* the court judge or justice may deem it necessary to exclude all or any member of the public if the judge is of the opinion that this is "in the interest of public morals, the maintenance of order or the proper administration of justice, or that it is necessary to prevent injury to international relations or national defence or national security." In relation with the proper administration of justice, publication bans may be applied to cases where the offender is under 18 years of age to facilitate his or her reintegration into society (*Youth Criminal Justice Act*); other reasons to impose publication bans are the need to protect the identity of victims and certain witnesses (particularly child witnesses) during and after the trials in cases of sex crimes. In some of these cases the bans may be permanent.

However, there are some problems regarding these exemptions. In certain high profile cases, many have argued that disclosure of information might serve the public interest more than a publication ban. For instance, Canadian journalists have complained about the ban imposed on the publication of court procedures in the trial against alleged serial killer Robert Pickton.<sup>13</sup> The case of Canadian writer Stephen Williams also stands out. Mr. Williams was jailed for a week in 2003 on the grounds that he had broken a court publication ban in the high-profile murder trial of Paul Bernardo and Karla Homolka.<sup>14</sup> PEN Canada has suggested that some of the pressures Mr. Williams is facing, including 97 criminal charges, may be related to the disclosure of information that he obtained through confidential sources and his criticisms of the performance of the police force and the Office of the Attorney General of Ontario in the handling of this case, and not necessarily just because the courts are trying to protect the public good.<sup>15</sup>

Perhaps of more concern are the implications of new anti-terrorist legislation, whereby officials are allowed **to compel the testimony of witnesses at secret investigative hearings prior to the laying of charges in trial, in cases where an offence related to terrorism has been committed or when there is reasonable ground to believe that it will be committed.** These secret hearings imply for witnesses the risk of overriding their right to remain silent and to avoid self-incrimination. The Anti-Terrorist Act has already been invoked retroactively in the trial of the 1985 Air India bombing to bring a new (unidentified) witness to testify in a secret hearing about the witness' knowledge of the case in order to prosecute more people involved in the attack.<sup>16</sup> Critics have stressed that due to the controversy surrounding the Anti-Terrorism Act, court procedures and the investigations related to terrorism should be under public scrutiny to keep the government accountable.<sup>17</sup>

### *d. National security*

According to the *Information Act* there are some exemptions to the right of access to and dissemination of information related to national security.<sup>18</sup> These limitations have been enhanced by amendments to the *Security of Information Act* in 2001, in an effort to protect confidential state information and ensure Canadian national security. The *Anti-Terrorist Act* allows the Attorney General to issue secrecy certificates to prohibit the release of information considered essential for national security. Although the Canadian government has pledged to use these new powers responsibly,<sup>19</sup> the use of these provisions may pose a serious challenge to access to information and to democratic oversight.

The *Security of Information Act* also has provisions to ban the dissemination and/or publication of secret information that is considered to be harmful for the country. The Act penalizes public servants or people who having access to secret information leak information to third parties; but also people who, knowing that the information is restricted, keep it for themselves or confirm and communicate such information (sections 4-14). Offences could entail a maximum penalty of 14 years in prison. According to the *Security of Information Act* (section 15 (1-3)), no person can be guilty of these offences if that person establishes that he or she acted in the public interest. The determination of what is considered the "public interest" in disclosure cases will rely on a judge or the court. One of the main criticisms made of this amendment is that it is a substantial deterrent to whistle blowers within the government and to journalists, since the penalties for leaking and disseminating confidential information are severe. This law was recently invoked related to secret information about the Maher Arar case that appeared in an *Ottawa Citizen* article published in November 2003 by Juliet O'Neill (see section 3).<sup>20</sup>

## **1.2 International Legislation on Freedom of Expression**

Canada's national legal framework on freedom of expression is consistent with the international commitments it has made through the ratification of international treaties and conventions. In essence, these treaties reiterate the relevance of the right of freedom of expression as well as the limitations that may justifiably be imposed on its exercise. By adhering to these international treaties and conventions, Canada recognizes the jurisdiction of international bodies to review and to make recommendations regarding compliance. Some of these conventions and agreements ratified by Canada are:

- Universal Declaration on Human Rights (1948)
- U.N. Covenant of Civil and Political Rights (1966)
- Inter-American Declaration on Human Rights (Canada became a signatory in 1990)
- Commitments on human rights within the context of the Summits of the Americas.

At the regional level, Canada has been an active promoter of human rights in the Americas and within the context of the Summit process. Yet, Canada has not ratified the *American Convention on Human Rights* and thus does not recognize the jurisdiction of the Inter-American Court on Human Rights. When Canada became a member of the Organizations of American States (OAS) it adhered to the *American Declaration of the Rights and Duties of Man*, and recognizes the jurisdiction of the Inter-American Human Rights Commission (IACHR) and the Special Rapporteur for Freedom of Expression.<sup>21</sup>

In 2000, the Inter-American Commission on Human Rights (IACHR) approved the ***Inter-American Declaration of Principles on Freedom of Expression***, aimed at protecting freedom of expression within the Inter-American human rights system.<sup>22</sup> In addition to the principles already stressed before, the *Declaration* also calls for the protection of journalism and the confidentiality of journalistic sources, for the enactment of anti-trust legislation to prevent excessive concentration of communication and media outlets, and for the development of an environment in which the government cannot exert control over media by means of the concession of licenses for radio and television broadcasting.<sup>23</sup>

As part of the Summit of the Americas process, Canada has made a number of commitments regarding freedom of expression, which are included in the Plans of Action established after the Summits of Miami (1994), Santiago (1998) and Québec City (2001). In the **Québec City Plan of Action**, Canada committed itself to disseminate information in order to create comparative jurisprudence, to strengthen the work of the Inter-American human rights system and to foster the compatibility between international and national legislation on freedom of expression. Also, to prevent the use of media as a political tool, the plan calls for equal access to registered parties during electoral campaigns. The Plan of Action also stresses the need to ensure equal access to emerging information and communication technologies and recognizes the relevance of media in promoting a democratic culture. Thus, media should be free from arbitrary interventions by the State, including excessive regulatory and legal impediments.<sup>24</sup>

Despite Canada having signed these agreements, Canadians have not used these bodies or documents as a method of recourse when they feel that their rights have been violated. Although it is not clear why the use of international resources has been so limited, it is the opinion of the Canadian Lawyers for International Human Rights (a NGO dedicated to foster international human rights) that many Canadian citizens and lawyers are not aware of this option.<sup>25</sup> When asked if Canada had ratified international treaties and/or agreements related to freedom of expression between 2000 and 2002, except for one of our five respondents who responded that Canada has signed the Plan of Action of Quebec City, the rest were not aware that Canada had signed any international commitment related to freedom of expression during that period. This illustrates the need to publicize and disseminate information about the commitments acquired by the governments in the Summitry process.

### ***1.3 Complaints Mechanism***

The *Charter of Rights and Freedoms* is embedded in the Constitution and as such it can override other statutes and regulations, as well as provincial legislation. Hence, individuals can question the unconstitutionality of certain pieces of legislation in court (section 24(1)). These claims should be filed in lower provincial courts first, and the rulings of these courts can be appealed. In some instances cases reach Provincial Supreme Courts and/or the Supreme Court of Canada, which is the last judicial resort to all litigants. The Supreme Court has the final say in the interpretation of the scope and nature of the rights and freedoms established in the *Charter*.<sup>26</sup>

In these trials, courts will interpret the provisions stated in the *Charter* and other laws and regulations to determine if the right of freedom of expression has been infringed and if so, if the limitations imposed on this right fall under the provisions of section 1 of the *Charter*. Once the Supreme Court has ruled on a matter, the lower courts should adhere to its decision and the government should follow that ruling.<sup>27</sup> This process, however, can be lengthy and costly depending on the nature of the case and if the ruling of the courts is appealed.

In addition to the courts, there are **other mechanisms for lodging complaints of abuse of the right of freedom of expression**. Most of these mechanisms work under the principle of mediation and conflict resolution. Any Canadian or individual from another country who resides in Canada can file a complaint at the **Human Rights Commission (HRC)**. The HRC has a relevant role in eliminating hate speech and discrimination on grounds of race, sex,

or religion. In certain cases the HRC can submit complaints to the Human Rights Tribunal. The Tribunal will prepare a hearing where both parties can express their points of view, and will then rule on the case. These decisions are binding; however, they can be appealed in the courts.<sup>28</sup> The HRC has a national office in Ottawa and 6 regional offices located in Halifax, Montreal, Toronto, Winnipeg, Edmonton and Vancouver (see appendix). In addition to the national and regional offices of the Human Rights Commission, some provinces also have their own human rights commissions, including Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec, and Saskatchewan.

Another complaint mechanism is **the Canadian Radio-Television and Telecommunications Commission (CRTC)**, an independent public authority in charge of supervising and regulating all aspects of the broadcasting system, including technical issues related to the relation between broadcasters and carriers, as well as to the content of programming (e.g. excessive violence, abusive language). Complaints can be submitted within 30 days following the emission of the program. The CRTC evaluates the complaint and in some cases will submit the complaint to the broadcaster and/or the Canadian Broadcasting Standards Council. In no circumstance can the CRTC decide on what materials are to be broadcasted and cannot act pre-emptively before a program is aired. Responses to complaints usually take three weeks.<sup>29</sup>

The private sector also oversees that broadcasters comply with the ethics codes agreed to by the broadcasting industry. The **Canadian Broadcasting Standards Council (CBSC)**, created in 1990, is a non-governmental organization formed by the Canadian Association of Broadcasters to administer a voluntary code of ethics.<sup>30</sup> These standards include provisions to prevent the broadcasted of unnecessary levels of violence, discrimination against a group on grounds of sex, sexual orientation, race, colour, religion, ethnic and/or national origin, and to avoid sexual stereotypes. There are also provisions that ensure a fair, full and proper presentation of information.<sup>31</sup> As the guarantor of this code of ethics, the CSBC can review complaints about programming of broadcasting outlets that are members of the Canadian Association of Broadcasters. The CSBC attempts to promote dialogue and the resolution of the complaint at the local level between the broadcaster and the audience directly.<sup>32</sup> Complaints can be sent in written by mail, or be directly submitted through the Internet.

Complaints about the programming of the Canadian Broadcasting Corporation (CBC) – a Crown Corporation – can be lodged with the **CBC ombudsman**. This is the office in charge of overseeing compliance with the CBC code of ethics and to ensure that information broadcasted is factual, accurate and comprehensive. A complainant can take his/her concern to the ombudsman, who will investigate and make a recommendation. The Ombudsman also maintains a database of the complaints received to determine if some of the potential problems of the CBC broadcastings are systemic in nature.

For concerns about print media, the complaint can be made to the **provincial press councils**. These organizations are in charge of overseeing that the rights of journalists are respected, while also ensuring that journalists behave in an ethical way while doing their jobs. Press councils are spaces where the public can submit complaints about the behaviour of the press while gathering and/or disseminating information. They also review complaints by the press about the behaviour of individuals or organizations to the press. In Canada, there are 6 provincial press councils: the Alberta Press Council, the Atlantic Press Council, le Conseil de presse du Québec, the Manitoba Press Council, and the Ontario Press Council.

Some of these councils – for example the British Columbia Press Council – have created explicit codes of conduct to evaluate the behaviour of members of the press or newspapers. Others – including the Ontario Press Council – have decided to use the decisions of previous adjudications as the basis for their deliberations. As with the other mechanisms, press councils encourage direct dialogue between journalists, editors with the public. However, if an agreement is not reached, an inquiry committee will hold an informal hearing and present recommendations to the Council, which then makes its final decision. Once the Council has reached a decision, the newspaper is obliged to publish a fair account of the Council's decision, including the text of the adjudication.<sup>33</sup>

#### ***1.4 Delimiting Freedom of Expression in the Courthouse and at the Border***

As was mentioned before, the definition of freedom of expression and the understanding of what is considered “reasonable limits” is broad. The demarcation between what is and what is not acceptable under freedom of expression evolves over time as old interpretations of the law collide with new challenges of real life. This part of the report takes a look at some of the most important cases related to freedom of expression in Canada, reviewing the effects these cases have had on the courts and on the law.

### **Creating Jurisprudence: Rulings of the Courts in Cases Related to Freedom of Expression**

#### ***a. Child Pornography***

In 1996, John Sharpe was arrested. There were two counts on child pornography against him: one related to his written depictions of sado-masochist sexual relations between children and adults. A second charge related to pornographic materials he posted on the Internet. Sharpe defended himself against these charges, arguing that section 163.1 of the *Criminal Code* violated his constitutional right to free expression. He was successful in making his case in provincial courts and the charges were dropped. However, in January 2001 the case went to the Supreme Court of Canada, which upheld the charges and reiterated the ban on child pornography.

In her judgement, Chief Justice Beverley McLachlin stressed that **although the ban on child pornography did limit freedom of expression, this harm was outweighed by the need to protect children from real or possible sexual exploitation**. But she also warned against indiscriminate banning of fictional works involving children, stressing the relevant role of freedom of expression in strengthening democracy.<sup>34</sup> The case was returned to the British Columbia Supreme Court, which ruled that since Sharpe's fictional writings had some artistic merit and no child had been harmed, they could not be considered as child pornography.<sup>35</sup> He was, however, charged for the dissemination of pornographic materials on the Internet. The dismissal of the child pornography charges due to findings that his writings contained artistic merit was highly criticized by some authorities and the general public.

#### ***b. Obscenity***

In 1990, *Little Sister's Book & Art Emporium* filed a constitutional challenge against the Canadian Customs and Revenue Agency (CCRA) complaining about the customs agents' censorship power. They sought to limit the authority of officials to seize and

destroy publications with homosexual themes, claiming that the materials were obscene.<sup>36</sup> The case reached the Supreme Court in 1998 and in 2000 the Supreme Court upheld the authority of customs officials to seize, and if deemed appropriate to destroy, imported publications that may be sexually obscene. However, in the ruling they shifted the burden of proving illegal obscenity from the importers to the Crown. Following the Supreme Court ruling, the CCRA developed new guidelines to determine obscenity, and the presentation of homosexual themes was not included as a criterion for obscenity. The data provided in Table 2 (infra p. 11) suggests that between 2000 and 2002 the number of titles that were seized at the border and classified as obscene dropped from 30,688 to 4,608. However, *Little Sister's* owners contend that that they are still targeted and their shipments unnecessarily detained at the border.

### *c. Hate speech*

In 2002, the Saskatchewan Human Rights Commission fined Hugh Owens and the *Saskatoon Star Phoenix* for publishing an anti-homosexual advertisement. The ad cited four Biblical passages that condemned homosexual conduct and featured a drawing of two stickmen holding hands surrounded by a circle with a slash through it. Mr. Owens' attempt to defend his actions on the grounds that there were a public declaration of his religious belief was rejected. He and the *Saskatoon Star Phoenix* were ordered to pay \$1,500.<sup>37</sup> This case was rather polemical because with this precedent religious believers who speak or write against homosexuality on doctrinal or biblical grounds may be called before provincial human rights tribunals and prosecuted for wilfully promoting hatred against an identifiable minority.

## **Material Obstruction and Confiscation of Publications: Limits to Freedom of Expression**

One of the purposes of the survey was to assess the effective exercise of freedom of expression and to determine some of the obstacles it faces in practice. As such, an analysis of material obstructions and the confiscation of publications is relevant in order to determine if these actions are done transparently and according to the law. The following will review the obstruction of information and the confiscation of publications.

When asked about the material obstruction and confiscation of publications, the experts surveyed did not reach a consensus. However, they all agree that there is a certain degree of obstruction in access and disclosure of information by government institutions. In the previous section the case of *Little Sister's Book & Art Emporium* was discussed, noting that until a 2000 Supreme Court decision CCRA agents used to have broad discretionary powers to determine what constituted "sexual obscenity" and "hate literature" and confiscate these materials. New CCRA guidelines have since been devised and implemented, but prior to these explicit parameters some of publications that were seized were not legally obscene—but were merely controversial or offensive to customs officials.

Charles Monpetit of the Union des écrivaines et des écrivains québécois provided the following figures on publications seized by CCRA, compiled from CCRA publications, including the *Quarterly List of Admissible and Prohibited Titles*. The figures in Table 1 indicate individual titles seized—not the number of copies seized. The figures in Table 2 show the number of publications seized at the border. As noted earlier, the new CCRA guidelines introduced in 2000 have significantly reduced the number of titles and publications that are seized and/or destroyed.

**Table 1. Individual Titles Seized by the CCRA (2000-2002).**

Year (Jan. 1 - Dec. 31)	2000	2001	2002
Held, then admitted	1,364	1,421	860
Held, then prohibited	432	128	242
TOTAL	1,796	1,549	1,102

**Table 2. Number of Publications Seized at the Border by the CCRA (2000-2002).**

Year (May 1 - April 30)	2000-2001	2001-2002
Detained Shipments*	3,397	2,948
<b>Number of Items</b>		
Total Detained	54,476	48,655
Cleared	23,715	43,998
Prohibited	30,755	4,646
Abandoned upon Detention	6	11
<b>Prohibition Motives</b>		
Obscenity	30,688	4,608
Hate Propaganda	**67	38
<b>Types of Prohibited Items</b>		
Books		450
Magazines		1,198
Comic Strips/Graphic Novels		309
Videos		1,027
DVDs		461
VCDs		310
CDs		378
Other		475

\* May include more than one item.

\*\* An approximate figure.

## SECTION II. COMMUNICATIONS MEDIA.

Media should reflect the different viewpoints existing within a society and facilitate public debate about salient issues.<sup>38</sup> Because of the relevance of media in the dissemination of information and ideas it is imperative that the broadcasting industry be protected from external government or interest group pressures.<sup>39</sup> In Canada, the ownership of media outlets is mostly private, but the government-sponsored Canadian Broadcasting Corporation (CBC) also plays an important role.

### 2.1 Legal Frameworks

Canada's approach to broadcasting regulation has leaned toward flexibility in an effort to facilitate the incorporation of regional needs and new technologies, and to adapt rapidly to changing situations (section 5). According to the 1991 *Broadcasting Act*, the Canadian broadcasting system should be effectively owned and controlled by

Canadians; the content of programming should reflect Canada's national identity, the views of multicultural and multiracial Canadian society, as well as the aboriginal cultures of Canada. Broadcasted programs should be presented in the two official languages (section 3). In practice the broadcasting industry functions as a self-regulatory system, and is bound by the limitations on freedom of expression established by law —e.g. hate speech, obscenity.

Under the current framework individuals and companies are required to have a license awarded by the Canadian Radio-Television and Telecommunications Commission (CRTC) to send on-the-air signals. Licenses must be renewed every 7 years. The CRTC and the Competition Bureau have the power to review the impact of mergers on the Canadian market. There are currently no restrictions on simultaneous ownership of dailies, T.V. and radio stations and to have assets in companies providing Internet services, except in those cases where the Competition Bureau considers that such concentration could effectively harm competition. Despite these controls, when asked about the existence of anti-trust regulation for the communications media, respondents noted that the existing regulations were insufficient. While the Competition Bureau can forbid media mergers and acquisitions in the name of preserving competition, in practice the state rarely intervenes in this sector, evidenced by increasing trends toward convergence of media ownership in Canada.

However, while growing concentration in the broadcasting industry poses some challenges to the diversity of voices in media, the introduction of new on-line and broadband technologies has added additional competitive pressures to Canadian broadcasters. Significant changes in the structure of the broadcasting industry have led to the fragmentation of and potential reduction of broadcasting viewership, and to an increasing presence of non-Canadian programming in Canada. This new reality has fuelled a debate about the need to reform the *Broadcasting Act* and to better define the roles and responsibilities of the CRTC and the Competition Bureau with regards to media mergers and convergence. In response the Competition Bureau has emphasized that changes should not entail excessive regulations that would affect the performance and competitiveness of the industry.

## ***2.2 Ownership of the Media Sector***

According to Freedom House, in 2002 **one of the main challenges regarding freedom of expression in Canada was the relatively high concentration of ownership in the news media.**<sup>40</sup> When asked about ownership of media, our respondents did not reach a consensus with regards to the level of concentration/dispersion of ownership in this sector. However, most of them believed that ownership of newspapers and television broadcasters was relatively concentrated, while ownership of radio broadcasters and magazines was more dispersed. Currently the main media corporations –CanWest-Global-Southam Communications, Bell Globemedia, and Quebecor– have a significant presence in the printed media, television, cable television, radio broadcasting, and even telephony and Internet services.

In 2001, five media owners –Canwest-Global, Quebecor, Torstar, Power Corporation and Bell Globe Media– owned 112 of the 117 **newspaper dailies** that circulated in Canada, leaving only 5 that were independently owned. In 1970 there were 107 Canadian dailies, 29 of which were independently owned.<sup>41</sup> CanWest-Global became the largest

newspaper publisher in Canada in 2000 when it acquired most of the dailies owned by Hollinger Inc., and currently owns approximately one third of the English-language daily newspapers in circulation in the country –including one of the two newspapers that have national circulation.<sup>42</sup> In 2000, the average weekly circulation of CanWest-Global's 14 dailies was 9.6 million issues. Following CanWest were Quebecor with 7.1 million (16 dailies), Torstar with 4.7 million (5 dailies), Power Corporation with 2.9 million (7 dailies), and Bell Globe Media with 2 million (1 daily).<sup>43</sup>

Bell Globemedia and CanWest-Global are also important players in the provision of **conventional and specialty television services**. For instance, Bell Globemedia owns 21 television station affiliates and a satellite-to-cable service, and has established affiliation agreements with four independently owned television stations, reaching 99% of English-speaking Canadians. With interests in 14 Canadian networks, this company has a strong presence in the specialty channels as well.<sup>44</sup> Through Global Television Network and CanWest Entertainment, CanWest Global has a relevant presence in the television and film industry. Global Television Network is comprised of 11 television stations, licensed in eight provinces, and 3 independent television stations –CH Hamilton, CH Vancouver Island and CH Horizon in Montreal, reaching 94% of English-speaking Canada. CanWest Entertainment is also involved in producing and distributing television programs and films.<sup>45</sup> Quebecor Media owns the main television broadcaster in Quebec offering services in French, has interests in cable and telephone service, and is one of the top five distributors of pay-per-view and specialty services.<sup>46</sup> In 2001, the CRTC did act to ensure competition when Quebecor, owner of the second largest television broadcaster in the province of Quebec, was interested in acquiring TVA, the largest television broadcaster in Quebec. In its ruling, the CTRC required Quebecor to sell one of the companies to ensure competition.<sup>47</sup> The CBC has a strong presence in Television, radio and Internet broadcasting.

Although media owners conceive convergence as a means to create economies of scale, reduce costs and to optimize the use of new digital technologies to create a single “multi-medium,” which could be accessed though television sets, computer and other electronic devices,<sup>48</sup> it is argued that convergence limits the scope and diversity of ideas broadcasted. However, the existence of a small number of large corporations in this sector does not in itself imply the reduction of sources of information and entertainment. It is in the absence of appropriate balances that concentration of ownership can lead to the predominance of certain viewpoints, which in turn can have significant political and social implications. Unfortunately, there are many who feel that this is what is happening in Canada.

### **Editorial lines: Pressures from Within**

According to a national public opinion survey, sponsored by the Communications, Energy and Paperworkers Union of Canada, a majority of Canadians believe that there is too much media concentration, and that media owners exercise too much control over the content of news and opinions in newspapers, radio and television stations.<sup>49</sup> Research and responses from experts confirm that one of the main sources of pressure on journalists is internal pressure from editors and media owners. When asked if journalists or other persons involved in communications have been fired for reasons connected to their work in the past three years, our respondents noted that this often happens. In the cases flagged by our respondents the pressure on, and in some cases dismissal of, journalists was not justified, posing serious questionings to freedom of expression.

Several cases cited involve CanWest-Global-Southam, who controls approximately one third of Canadian media, and as such has a large impact on the working environment for journalist and on the way Canadians exchange ideas and information.<sup>50</sup> The most important case was the company's decision in December of 2001 to require all of its newspapers to follow a common editorial line on key national and international issues. Many employees opposed the new policy on the grounds that it would silence regional points of view on national matters and obstruct freedom of expression. Further concern was raised when the employees who dissented were reprimanded, suspended and threatened with dismissal (e.g. some employees from *The Montreal Gazette*). Writers who used their editorial spaces to criticize that policy saw their columns edited, spiked, and even cancelled.<sup>51</sup> In 2002 Russell Mills was fired for publishing a critical feature in the *Ottawa Citizen* about the then-Prime Minister Jean Chrétien, calling for his resignation.

According to Canadian Journalists for Freedom of the Press, while owners of media should have the right to publish common editorials without government interference or intimidation from other sources, CanWest-Global failed to show equal respect for the rights of its employees and writers to dissent, setting a worrisome precedent for freedom of press.<sup>52</sup>

### ***2.3 Journalists Freedom***

By world standards, Canada has a free press; in 2002, Reporters Without Frontiers ranked Canada among the five countries that had the greatest freedom of press in the world.<sup>53</sup> Available evidence shows that in Canada government pressures over journalists is not significant. Nor is there significant third party pressure on media or media sponsors to withdraw support for programming due to content concerns.

That said, the situation in Canada is far from perfect. As it stands now there are no laws protecting journalists' confidential sources. Although news organizations and journalists defend the principle of confidentiality, no legal guarantees exist to protect that right and courts can force journalists to turn over information about their sources to the authorities. Failure to provide the name of the source can result in contempt of court charges and result in immediate jail time and/or a possible fine. Anti-terrorism legislation has enhanced the government's capacity to request the disclosure of confidential sources. According to the *Anti-Terrorist Act* witnesses, including journalists, can be compelled to disclose information in investigative hearings in cases related to terrorism. With the amendment to the *Security of Information Act*, further restrictions have been established on the access and dissemination of information considered essential for national security and/or national interests.

Two relevant cases related to the confidentiality of sources have occurred recently, which could have important implications for journalists and their sources. In one case the Royal Canadian Mounted Police (RCMP) raided *Ottawa Citizen* reporter Ms. Juliet O'Neill's house in January 2004 and seized her computer files, documents, notes and contact names in an effort to determine the source of a secret document used in a November 2003 article. Although no charges have been laid against her, according to the *Security of Information Act*, she could face up to 14 years of prison if found guilty of possessing and dissemination classified information with knowledge that the information was restricted.

Ironically, on the same day that the RCMP were raiding Ms. O'Neill's house the Ontario Supreme Court ruled in favour of the right of journalists to maintain the confidentiality of their sources for the sake of public interest. In this case, *National Post* journalist Andrew McIntosh's refusal in 2002 to hand over documents that he referenced in a 1999 article about the financial dealings of the then-Prime Minister Jean Chrétien was upheld by this provincial Supreme court, which in its ruling argued that even if the journalist was not entitled to possess these documents, freedom of expression was more important in order to hold governments and corporations accountable for their actions.<sup>54</sup>

While the waters around the confidentiality of journalists sources is murky –and must be clarified and strengthened to ensure that journalists can do their jobs without fear of reprisal, **the government is not the main source of pressures to journalists.** There have been no been cases of journalists displaced or exiled in Canada because of their writings.

According to our respondents, most of the pressure on journalists comes from the groups and criminal organizations that are often the subject of their reporting. As a result, the *Criminal Code* has recently been amended to include provisions to protect journalists from criminal organizations. In section 423.1, the *Code* establishes that no one can threaten, harass or harm journalists (their relatives or friends), and/or damage their property with the intent of causing fear in order to prevent them from disseminating information related to a criminal organization. Infringements to these provisions could entail a penalty of up to 14 years of prison.

Despite stiffer penalties, there have been cases of violence against journalists by the groups and individuals that are the subject of the stories and investigations produced. In 2001 various journalist associations, including PEN and Canadian Journalists for Freedom of Expression, denounced threats against Tahir Aslam Gora, editor of a Pakistani-Canadian paper *Watan*, for his critiques of Islamic extremism: He was forced to stop publishing his newspaper.<sup>55</sup> In a second case aggression against two journalists was related to their writings criticizing violent Sikh fundamentalism.<sup>56</sup> In 1998 Tara Singh Hayer, editor of the *Indo-Canadian Times* (Surrey, British Columbia) was assassinated outside of his home for professional reasons; the following year, *Vancouver Sun* reporter Kim Bolan received death threats from unidentified Sikhs for investigating his murder. Criminal organizations have also been involved in intimidation and attack on journalists. In 2001 there was a murder attempt on *The Montreal Gazette* crime reporter Michael Auger, who was covering the court proceedings of Biker gangs' wars. Auger survived the attack.

## **2.4 Public Trust in Media**

Despite media concentration and the challenges that Canadian journalists face, in the opinion of our respondents public confidence in the **communication media is relatively moderate for television, newspapers and magazines. Public trust in radio seems to be higher than other means, particularly the government-sponsored CBC radio**, which is interesting given that many other countries of the Americas have witnessed a declining trust in state-sponsored media. One expert noted that while Canadians rely on the news media for information, most people are aware that journalists make mistakes and occasionally distort the news. Hence, no institution deserves absolute trust.

## 2.5 Access to Media by Minority Groups

When asked about the public guarantees to minority groups to access broadcasting media, our respondents noted that the government did promote a policy of tolerant multiculturalism. As part of Canada's **Ethnic Broadcasting Policy**, the CRTC has awarded licences to several television and radio broadcasters that specialize in ethnic programming. In practice this has entailed the possibility for ethnic and minority groups to have access to their own dailies, radio and television broadcastings –e.g. Chinese language dailies, multiethnic broadcasters, and publications for gays and lesbians. However, because of the financial and technical restrictions that exist, ethnic stations often have to be shared among different ethnic groups.<sup>57</sup>

In Canada, representatives from visible minorities work as TV journalists in mainstream media and television networks like the Aboriginal Peoples Television Networks (APTN) and Vision TV are broadcast nationally. The case of the APTN is noteworthy. It was initiated in 1999, and originally conceived of as a regional initiative for the Northwest Territories, but when the submission for the license was done, the CRTC decided that it should have national reach to serve the diverse aboriginal communities of the country. The APTN has brought relevant aboriginal values and viewpoints to the Canadian public and helped to mitigate the effects of mainstream media on aboriginal communities.<sup>58</sup> The programming of the APTN is broadcasted in English, French and various aboriginal languages.

Despite these efforts, in practice mainstream media primarily reflects the traditional cultures of the country, rather than the diversity that has taken place in the Canada in the last quarter century. Often, First Nations, refugees and immigrants, Quebec and most of the Third World are not adequately included in programming. Canada's close proximity –geographically, culturally and linguistically– to our U.S. neighbours presents an additional set of challenges. In recognition of this reality, the CRTC called for an industry/community Task Force to research and define issues and potential recommendations to ensure that the Canadian broadcasting system better reflects Canada's multicultural identity. Their report will be issued later this year.<sup>59</sup>

## SECTION III: ARTISTS IN PUBLIC DEBATE

### Support for Artistic Expression

Arts and culture have been seen in Canada as a way to exchange and disseminate knowledge, beliefs, values, and traditions that together define Canada's national identity. The Canadian government actively promotes artistic activity and does work to provide creators with favourable conditions that will ensure access to their work by the public in Canada and abroad.<sup>60</sup>

The Department of Canadian Heritage is in charge of cultural policy, and a number of national cultural institutions such as the CBC, the Canada Council for the Arts, the National Film Board, and Telefilm have been established to foster the creation and dissemination of artistic expressions. Because the government considers this sector strategic, **the government has assumed an important role in funding the culture industry.** Although the amounts of public funding differ from year to year according to budget restrictions, the government at the federal, provincial and municipal levels have steadily

increased funding for culture since 1998 through the award of grants to artists and contributions to organizations. In the 2000-2001 fiscal year, the federal cultural spending represented 1.7% of the total federal budget (over CDN \$3 billion). In the following fiscal year (2001-2002), federal expenditures in culture were CDN\$3.2 billion, while provincial governments allotted CDN\$2.1 billion and municipal governments CDN\$1.8 billion. The figures for government expenditures in 2000-2001 at the provincial level were CDN\$1.9 billion, and CDN\$1.6 billion at the municipal level.<sup>61</sup>

Different levels of government allocate their cultural funding in different ways. In general the federal government devotes a large share of its funds to the maintenance of national culture agencies, to grants and contributions to organizations and for the promotion of culture-based industries (particularly in Quebec and Newfoundland and Labrador). Conversely, in 2000-2001, provincial governments distributed 63% of their cultural budget directly to grants and contributions, and municipal governments designated the majority of their budgets to the creation of libraries.<sup>62</sup>

**The private sector is also an important player in funding for arts and culture in Canada.** In fact, between 1999 and 2001 private funding increased at a faster rate than government funding. In 2001, private sector donations for performing arts amounted to more than CDN\$114.2 million, up 17.6% from 1999.<sup>63</sup> There is currently a debate about the role that the state and private investment should have in the promotion of the arts. Although the **Canadian government** considers that it is relevant to retain a strong role in promoting this sector, it is also **attempting to attract more private investment into the sector through a variety of incentives**, including matching donations and tax credit incentives.<sup>64</sup> For example, the Canadian Film or Video Production Tax Credit provides a fully refundable credit of up to 12% of the cost of production of an eligible Canadian corporation. There are also provisions within the *Income Tax Act* to allow Canadian-majority-owned corporations to claim advertising expenses placed in periodicals or on television stations.<sup>65</sup>

### Artistic Censorship

Despite policies aimed at promoting cultural expressions, artists in Canada still face some challenges regarding censorship. The decisions to censor works of art and artistic exhibits in Canada are generally supported by the restrictions to freedom of expression established by law. However, there are a couple of cases in which the reasons to censor were unclear. One example was the September 2001 decision by the Museum of Civilizations to postpone the opening of the exhibit by Arab artists entitled "Lands within Me", in the wake of the terrorist attacks on the United States. The curator of the exhibition, Dr. Aida Kaouk, complained publicly about that decision, and the Museum did eventually open the exhibition.

However, the main concern within the artistic community is related to child pornography legislation. Although there were no cases of censorship on the grounds of child pornography between 2000 and 2003, the arts community is very concerned about the proposed changes to the legislation under *Bill C-12*. Changes to the bill would not allow artists to defend themselves against criminal charges with the argument that the work has artistic merit, but rather shifts the burden and forces artists to prove that their work contributes to the "public good."

Artists fear that with the substitution of the artistic merit defence with one based on public good, they will no longer have the freedom to bring important issues to the public debate without being prosecuted. They argue that the concept of public good, defined by Justice Minister Martin Cauchon as “the standards of society,” is too subjective and could be interpreted according to the judge’s personal taste. Moreover, this definition constitutes a restriction to freedom of expression and artistic creativity because it only recognizes those expressions already part of the mainstream of society, leaving aside artistic expression that is novel and/or controversial.<sup>66</sup>

## **SECTION IV: FREEDOM OF EXPRESSION AND THE RIGHT OF ASSEMBLY**

One of the important aspects of freedom of expression is the capacity to voice ideas openly and to show dissent with actions or policies adopted by the government or other groups. Against world standards, exercise of the right to stage public demonstrations in Canada is respected. When asked about the respect to freedom of demonstrations and the level of repression used by police and security forces to control demonstrations, our respondents did not reach a consensus. However, they did flag some issues that must be taken into account.

### **The right to demonstrate**

In general, they all agreed that in Canada **the right to stage public demonstrations does exist, but that there are certain restrictions in place depending on** the nature of the demonstration. Some of these restrictions stem from provisions in the *Criminal Code* related to riots and unlawful demonstrations, and some are part of the new police strategies to keep peace during demonstrations. According to section 63 (1) of the *Code* any unlawful assembly of three or more people, which by its actions affect peace and order may be considered a riot –a crime punished with up to 2 years of prison. The *Code* also establishes that police forces are entitled to order and use as much force, in good faith and on reasonable grounds, as they deem necessary to stop a riot (section 32).

However, arguing that in the last five years demonstrators have increasingly resorted to violent strategies, some authorities have proposed an increase on the restrictions to public demonstrations. For instance, in May 2002 the Toronto Police Chief Julian Fantino proposed that city council consider enacting a bylaw to restrict the right of demonstrators, which would force demonstrators to seek a permit from the city government. This process would require demonstrators to sign a bond for any damage on private property that may occur during the demonstration. He also proposed criminalizing the use of objects to cover one’s face during demonstrations, and the imposition of deterrent sentences for demonstrators who are arrested and prosecuted.<sup>67</sup> None of these proposals were implemented. However, according to the experts surveyed, there is a sense that more restrictions and controls are being put in practice since September 11, 2001.

### **Demonstrations and police use of force**

In general the use of force to control public demonstrations is not abused, and Canadian police normally appear at demonstrations only to preserve peace and order. However, the amount of security displayed depends on the nature of the demonstration,

and in the last few years we have witnessed an increase in the presence and use of force. For instance, whenever world leaders have come to Canada for international meetings –the APEC Summit in Vancouver in 1997, the Summit of the Americas in Quebec in 2001, the G-8 Summit in Kananaskis in 2002– the security has been tight and elaborate to keep demonstrators and potential troublemakers away from state representatives. These operations normally include the use of horses to control the people, as well as heavy armed police forces with tear gas and water cannons. While preventing the destruction of property and attacks on people is necessary, preserving peace and order should not become an excuse to insulate state representatives from public criticism or to abrogate the right to assemble peacefully in public. Unfortunately direct confrontation between police and demonstrators only serves to tilt the balance toward greater security at the expense of the public’s right to demonstrate.

Incidents of violent actions against members of the population due to their expression of ideas in opposition to the government or another powerful have taken place in the past five years. There have been official complaints lodged against the RCMP for mistreatment of protesters at the 1997 APEC Summit, as well as the 2001 Quebec City Summit of the Americas –which prompted the Commission for Public Complaints Against the RCMP to release a scathing report condemning police actions. In June 2000 three members of the Ontario Coalition Against Poverty (OCAP) were arrested and charged with 'participating in a riot', 'counselling to participate in a riot', and 'counselling to assault police' after their participation in an anti-poverty demonstration in front of the Ontario provincial government buildings. In addition to state gatherings, a violent altercation between Palestinian and Israeli supporters at Concordia University took place in September 2002 over a scheduled speech by Benjamin Netanyahu, and riot police had to be called into to intervene.<sup>68</sup> Violent encounters between Canadian First Nations and whites over treaty rights have also occurred. Some of these clashes have entailed arbitrary actions such as the occupation of public land and the police shooting of a First Nations man.

## **SECTION V. EDUCATION AND NEW TECHNOLOGIES: CONDITIONS TO FACILITATE THE EXERCISE OF FREEDOM OF EXPRESSION.**

Within the summitry process, the governments of the Americas have underscored the relevance of education and access to new information and communications technologies in the promotion of freedom of expression, with the belief that the exercise of the right of freedom of expression is related, on one hand to the possibility of accessing timely and accurate information, and on the other to having the means to disseminate information and express one’s ideas. It should be noted that although **the indicators devised in the methodology** are useful to measure the reach of some means of communications and to determine the existence of conditions that would facilitate the exercise of freedom of expression, they **are insufficient on their own to measure freedom of expression**. One respondent suggested that the collection of indicators such as the ones included in the survey is useful only when balanced out and compared against other factors –access to telephone and Internet is not a *de facto* guarantor of free expression. The essential battle for freedom of expression is not technological but social and political –against the forces that would censor and repress free speech.

However, **Canada does maintain a high level of education**. According to the census of 2001, only 2.2% of the population over 15 years had 5 or less years of schooling, and less than one percent is illiterate.<sup>69</sup> We are also a “connected” country. Between 1990 and

2001, the Census shows that **there was an increase in the use of telephones, cellular telephones and the Internet by the Canadian public**: the number of telephone mainlines per 1000 people increased from 565 in 1990 to 676 in 2001, and the number of cellular telephone subscribers per 1000 people jumped from 22 in 1990 to 362 in 2001.<sup>70</sup> In 2002, 99.2% of the total number of households in Canada had at least one colour television set in 2002, 66.5% of them with cablevision, and 21.3% have a satellite disc.<sup>71</sup> According to the CRTC, in 2003 the general access level to the Internet in Canada was 68%. Over half of Canadians (54%) have access to the Internet at home, 36% have access at work and 14% at schools.<sup>72</sup> Since the 1990s, Canada has implemented a series of programs in order to ensure access to Internet for all Canadians, regardless of their geographical location or their income; **SchoolNet** and **LibraryNet** provide Internet access to public and First Nations schools, as well as to public libraries. There are also other programs such as the **Community Access Program (CAP)** aimed at establishing free and affordable public Internet access in urban, rural and remote communities in Canada.<sup>73</sup>

## CONCLUSIONS

In Canada, respect for freedom of expression is in line with the goals and objectives of a democratic system, where journalists, artists and demonstrators have been relevant to hold governments and public officials accountable for their actions. In the *Charter of Rights and Freedoms*, free expression is limited only by the need to protect the name and privacy of people, to defend the public order and ensure national security. In general, domestic legislation is consistent with international human rights commitments that Canada is a signatory to. Considered as essential in the projection of Canadian identity and for the exercise of citizenship, the Canadian government has implemented a number of programs to foster the culture industry, to disseminate information and to implement the use of ICT technologies to connect isolated and rural areas. Canada has also moved toward the promotion of multiculturalism, with the inclusion of different voices into the broadcasting industry. Aside from the regulations regarding ownership and content, Canada's regulatory system is rather flexible in order to enable companies working in the broadcasting industry cope with changing realities and technologies and to represent regional and social needs.

However, there are some issues that threaten the exercise of freedom of expression, namely newly introduced anti-terrorism legislation and the high concentration of ownership in the media sector. Both these challenges, in the absence of counterbalances, constitute a danger to freedom of expression and to the capacity of individuals to hold governments and other social actors accountable. Another source of concern is the fair and appropriate application of existing laws in real life cases. Although some advances have been made to make this process more transparent, efforts should be made to reduce the capacity of officials to arbitrarily apply restrictions without clear guidelines and definitions. There is also concern that the effort of the government to get rid of a perceived "loophole" in the ban on child pornography entails serious challenges to the exercise of freedom of expression of artists. Finally, although Canada generally respects the right to stage public demonstrations, concerns about public order in the last past five years have led to direct confrontations between police forces and demonstrators and to an increase in the use of force to control demonstrations.

## PROPOSALS

In this context, we suggest the following key recommendations:

- Security and public order should not override freedom of expression.
- There is a need for a national study to review the impact of increased media concentration on freedom of expression.
- Action must be taken to limit further concentration of media ownership, via anti-trust legislations.
- Although protection of children is essential, Canada should not substitute the artistic merit defence with one based on public good.
- Create legislation to protect the right of journalists to maintain confidentiality of their sources for the sake of the public good.
- Advocate the review of publication bans on court procedures, particularly in high-profile cases and when charges of terrorism are being laid.
- Canada should continue to work for increased supports for freedom of expression throughout the world within bilateral and multilateral contexts.
- The leadership role that Canada has had in the Inter-American human rights regime should be reinforced with Canada's ratification of the Inter-American Convention on Human Rights.
- Further efforts should be made to disseminate the commitments acquired by Canada in the Québec City Plan of Action.

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