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Criminalizing Dissent: Suppressing Freedom of Expression in Canada, Pt. 1

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Freedom of expression is the freedom to convey meaning. It is the original, foundational liberty upon which all other rights depend. A democratic society cannot exist without the ability to freely speak, write, and dissent across all spheres of life, without punishment. It is the gateway to all rights and freedoms, and the mechanism by which individuals can challenge injustice, hold those in power to account, and participate meaningfully in society. It is inconceivable that a functioning democracy could exist without robust and protected expression — in all its forms, and in every aspect of society.

Even within the legal system, consider the Charter of Rights and Freedoms: what value is your Constitutional right to a fair trial if you cannot express your allegation that a judge is biased? If you're prevented from expressing your defence or challenging injustice, all your legal rights are a façade. Effective expression is the gateway to justice.

Judges, prosecutors and other lawyers will always attempt to deny you the right to express yourself in your claim, defence or legal action, for e.g., motions to strike, limits on calling or questioning witnesses, and rulings that exclude key evidence under the guise of "*not relevant*." When your voice is excluded, your case is lost — regardless of its merit. This is all a denial of freedom of expression and a clear example of how restrictions on expression lead directly to injustice.

Even when expression is technically allowed, delays and procedural obstacles can render it meaningless. The cost in time, energy, and money may have already robbed you of justice, if you are even heard at all. Justice denied by delay is still justice denied. In other words, the choice of your timing to exercise your freedom of expression, can be as critical as the expression itself. These subtle forms of suppression are no less damaging than overt censorship.

Governments across Canada have displayed a growing and improper interest in controlling public expression, particularly when that expression challenges official narratives or exposes Government malfeasance or criminal activity by its officials.

Take the case of Municipal Governments. In jurisdictions like Kelowna, B.C., public participation at council meetings is subject to Council pre-approval. Even when the public seeks to express allegations of misconduct by officials, one must seek permission to criticize those in power, often from the very individuals being criticized. This is a practice that is altogether undemocratic — it's bureaucratic censorship and a conflict of interest, undermining your freedom of expression which is now dependent upon the fiat of some benevolent City councillor.

Nor are these rare or isolated incidents. Across Canada, freedom of expression is being undermined by the very institutions charged with safeguarding it — including all levels of Government and,

increasingly, the judiciary. Many of these efforts happen under colour of law, order, civility, or public safety, but the true intention is to suppress threatening dissent against Government narratives, corruption and/or criminal activity. Our common law, reflected in the Charter of Rights and Freedoms (Charter), recognizes expression as a central guarantee, yet this fundamental freedom is the first to be curtailed or prohibited when power is threatened. Unless expression amounts to a criminal act, it cannot be demonstrably justified simply because someone's feelings may be hurt, individually or collectively.

Let's consider some essential, Constitutional aspects of this fundamental freedom, to provide a background on its nature and importance, before exploring the various methods employed by Governments to deny us this critical freedom. By necessity, this series of four articles, will be extensive.

Freedom of expression predates the Charter. The Charter merely recognizes it as a Constitutional provision; it did not create it, to the surprise of many. As the Supreme Court of Canada (SCC) has affirmed, this freedom is a foundational concept that underpins Western democracy:

*"Freedom of expression is not... a creature of the Charter. It is one of the fundamental concepts that has formed the basis for the historical development of the political, social and educational institutions of western society."*ⁱ

SCC Justice Ivan Rand, writing in 1957 — decades before the Charter — emphasized:

*"Liberty in this is little less vital to man's mind and spirit than breathing is to his physical existence... it is embodied in his status of citizenship."*ⁱⁱ

Expression is an inherently fundamental, "*original*"ⁱⁱⁱ freedom. It is not a privilege handed down by the state — it is inherent to individual and upon which, undeniably the very existence of the State rests.

In *Irwin Toy*,^{iv} the SCC defined expression broadly as any activity intended to convey meaning. Expression is a multi-faceted freedom, consisting of content and form, both of which are Constitutionally protected. The Court used the term "*activity*" when referencing expression, strongly implying that expression is not restricted to oral or written communications.

If the activity is meant to communicate something, it is expression. The meaning, in turn, is derived from the content of the expressive activity. This includes virtually all forms of communication: speech, writing, art, gestures, singing, protests, performance — even controversial or offensive messages such as hate speech (though — and I submit arguably - subject to limits under s. 1 of the Charter), are first recognized as expression before being assessed for legal justification.

The intent to convey meaning is the key element. As such, expression encompasses a wide array of human actions, intentions and issues.

Some topics of expression are recognized as being more important than others. Among all forms of expression, political expression receives the highest level of Constitutional protection^v and must be interpreted broadly.^{vi} The SCC has affirmed that it: "*...lies at the core of the Charter's guarantee of free expression.*"^{vii}

Freedom of expression, especially that of a political nature, will not always include pleasantries and

will frequently have a sting to it. This is not only acceptable, but encouraged, so long as one does not dive into the areas of criminality, violence or torts (slander, libel, defamation.) These should be the only real limits to freedom of expression if this is to remain the fundamental freedom that is being claimed.

Public protests, even if only one person is involved, derive from the absence of an effective means of making oneself heard. Hence, it is taken to the public, by being in the public. This is an important way to counter Government sponsored and controlled media.

“If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”^{viii}

The second facet relates to the form of the expressive activity and is limited only by human creativity. Today, the internet is the dominant platform for public discourse, but it did not exist just decades ago. Future forms may be unimaginable now. The form of expression is thus, not static. It is a living, constantly evolving freedom, not confined to traditional platforms and encompasses all technological forms of communication. But then again, this can and must be said for all rights and freedoms.

Constitutionally protected forms of expression include, *inter alia*:

- Oral and written communication, including singing
- Visual arts, signs, banners, videos
- Social media posts, memes, music, newspapers, publications
- Protests, rallies, picketing, and sit-ins
- Tone, volume, gestures, and demeanour

This brings us to a critical, essential element of expression: effectiveness.

Canadian courts have repeatedly endorsed the idea that expression must be effective to be meaningful. Former SCC Chief Justice McLachlin approvingly quoted from Justice Pell in the United States: *“Speech without effective communication is not speech but an idle monologue in the wilderness.”^{ix}*

Chief Justice McLachlin then, in putting a slightly Canadian twist to J. Pell’s reflections, further emphasized:

“The ability to speak in one’s own home or on a remote street corner does not fulfill the objective of the guarantee of freedom of expression, which is that each citizen be afforded the opportunity to present [his] her views for public consumption and attempt to persuade [his] her fellow citizens.”^x (my emphasis)

This principle is critical. If your expressions are relegated to isolated or invisible locations, (or the “wilderness”), they lose their power and effectiveness. This has direct implications for the tactics used by Governments to control where expression can occur, to limit or prohibit their effectiveness.

Just as in business — where success depends on “*location, location, location*” — freedom of expression is deeply connected to place. The location is as important as the expression.^{xi} The SCC and lower courts have consistently held that public spaces such as parks, city halls, and courthouses are not just physical

spaces, they are symbolic and functional forums for public discourse and are Constitutionally protected forums for expression. Governments have a positive obligation to ensure that these spaces remain open and accessible for public discourse. As the SCC put it:

“If freedom of expression is to be more than an abstraction, it must encompass the circumstances of communication... Government entities have a duty to ensure that public spaces are open for public protests.”^{xii} (my emphasis)

I submit further, that this applies not just to protests, but all forms of expression, insofar as they are all Constitutionally protected. When Governments restrict or prohibit access to these areas, they are not just managing logistics—they are unconstitutionally suppressing dissent.

Being forced to protest in remote or low-traffic areas, or where far removed from the building or people at issue, is a form of suppression. It deprives expression of its audience, impact, effectiveness, and legitimacy. And *they* know it; using location-based restrictions as a strategic tool to control and prohibit effective messaging. Expression is deeply connected to place; location is as important as the expression.

One of the most overlooked but essential aspects of expression is the freedom of the public to hear and listen.^{xiii} Constitutional protection extends not only to the speaker but to the audience. Compelling people to express themselves in places where no one is listening violates both the expressive rights of the speaker and the receptive rights of the public.

The location of speech often carries symbolic meaning. Being forced to speak in places you would never choose, undermines genuine freedom and implies we are not truly free. Expression must be free both in content and in context. It would be unconstitutional and highly unreasonable to compel someone to express themselves on political issues, only in front of sports venues. Logically, effectiveness of communication rests on the proximity to the venue most associated with the topic of the expression.

Nor are public protests simply about affirmation among like-minded individuals — though they remain an invaluable benefit and support program. They are also about reaching others, sparking dialogue, and influencing public opinion. Displacing expression into irrelevant spaces robs us of that power. In practical terms, forcing public discourse into obscurity — through bylaws or Provincial legislation — renders it ineffective. It is no different than shouting from a raft in the middle of the ocean.

What we are witnessing in Canada is a systematic erosion of expressive and receptive rights, often under the colour of law, regulation, civility, safety or public order. But freedom of expression is not about politeness or permission — it’s about absolute freedom:

- the freedom to dissent;
- the freedom to criticize;
- the freedom to be heard.

Whether through procedural threat, hurdles, proxies, intimidation, restrictive statutes or bylaws, or strategic displacement, Governments are silencing oppositional voices and dissent. The consequences are severe, with ramifications across the entire spectrum of society including cultural, political and legal: you cannot express yourself effectively and the others cannot receive your expressions. This has

led us to the situation we are in today, where the public truly believes that the majority of Canadians are leftists-Socialists, only because that is because the majority of protests being promoted by Governments, are leftists. This is far from an accurate reflection of true, societal values.

The right to speak freely on any issue is not a fringe concern — it is the beating heart of democracy. It is the test of whether we truly live in a free society. And that test is being failed, not by accident, but by design.

In Part 2-4 of this series, we will examine the weapons Governments are using to limit and prohibit freedom of expression.

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- ¹ *Edmonton Journal v Alberta (Attorney General)* 1989 CanLII 20 SCC
² *Irwin Toy Ltd. V Quebec (Attorney General)* 1989 canLII 87
³ *R. v. Guignard* 2002 SCC 14 LeBel J. para. 19-21; *Saumur v City of Quebec (City)* 1953 CanLII 3 SCC 299, 329; *RWDSU v Dolphin Delivery Ltd.* 1986 CanLII 5 SCC para. 12
⁴ *Irwin Toy Ltd. V Quebec (Attorney General)* 1989 CanLII 87
⁵ *Harper v. Canada (A.G.)* 2004 SCC 33 CanLII para. 11; *Vancouver v. Zhang*, 2010 BCCA 450 CanLII para. 40, 68
⁶ *Libman v Quebec (A.G.)* 1997 [CanLII 326 SCC](#)
⁷ *R v Guignard* 2002 SCC 14 CanLII para. 20
⁸ *Edmonton Journal v Alberta (Attorney General)* 1989 CanLII 20 SCC
⁹ *Harper v Canada (Attorney General)* 2004 1 SCR 827, para. 20; *Baier v Alberta* 2007 SCC 31 CanLII para. 108
¹⁰ *Harper v Canada (Attorney General)* 2004 1 SCR 827, para. 20
¹¹ *Bracken v. Niagara Parks Police* 2018 ONCA 261 CanLII para. 44, 57
¹² Access to Public and Private Property under Freedom of expression 1988 CanLII Docs 3 Richard Moon p. 339
¹³ *R v Quintal* 2002 ABPC 79 CanLII para. 123; *Ruby v Canada (S.G.)* 2002 SCC 75 CanLII para. 52, 53; *Harper v. Canada 1(Attorney General)* 2004 SCC 33 CanLII para. 15-18, 20