



## POLITICAL ACTIVITY AND THE JOURNALIST: A PARADOX

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The denial of the right of working journalists to engage in political activity is justified on the ground of maintaining their appearance of objectivity. It is paradoxical, and, in the view of the authors, unacceptable as a matter of principle, that the freedom of speech of individual journalists should be limited in the name of freedom of the press.

Parce que les journalistes doivent garder une apparence d'objectivité, il est justifié de leur nier le droit de se livrer à des activités politiques. Selon les auteurs il est paradoxal et, par principe, inacceptable de restreindre la liberté d'expression des journalistes au nom de la liberté de la presse.

### INTRODUCTION

A basic right enjoyed by the citizens of democratic states is that they may engage in lawful political activity. By lawful political activity we mean any form of political activity which is not expressly proscribed by the laws of a particular state. Thus, lawful political

activity would include such things as voting, standing for office, forming and belonging to political parties or special interest groups, taking part in election campaigns, holding public meetings, publishing political propaganda, and so on. Canada is a democratic state. Canadians, generally, are permitted to take part in political activity (Boyer, 1981) and, in certain respects, are officially encouraged to do so.<sup>1</sup> Indeed, with the adoption of the Charter of Rights and Freedoms, this basic right has been enshrined in our constitution. Canadians now have constitutional rights to freedom of expression, freedom of association, freedom of assembly, and to vote and be candidates in federal and provincial elections (Canadian Charter of Rights and Freedom, 1982, ss. 2(a), 2(c), 3).

The mass media are an important means through which political rights are realized. In 1938 Chief Justice Duff of the Supreme Court of Canada affirmed that "...free public discussion of public affairs...is the breath of life of parliamentary institutions" (Alberta Statutes, 1938). It is the individual journalist who, on a day to day basis, makes this abstract notion concrete. The courts have traditionally recognized the importance of protecting the ability of individuals, and in particular of journalists, to comment freely on matters of public concern. As a result, the courts have been generally willing to protect journalists against the state.

However, the same concerns which lead to protecting the ability of individual journalists to express themselves freely while carrying out their employer's business are relied on to justify limiting their freedoms when they are on

their own time. This is the paradox which this essay will explore. The political columnist may denounce the government of the day in the press of the employer's newspaper. The same person may lose a job for taking an active role in the affairs of a political party.

The questions posed here are: to what extent may journalists engage in political activity or express political views with which their employers disagree? Can employers seek to regulate the political activities of, or control the expression of political views by, the journalists whom they employ? More important, when an employee violates such an attempt at regulation, can the employer impose discipline and, if so, in what form? These issues may, as practical matters, be as significant to the individual journalists as the powers of the state to limit their freedom of expression. To put the matter at its most basic, many journalists, perhaps most, would be willing to risk fine or imprisonment to defend what they conceive to be their rights; they might not be willing to risk losing their jobs, particularly at a time of high unemployment. From a different perspective, it is strange that an employer who would support a journalist in, say, attempting to protect the identity of a source, might dismiss the same journalist for publicly expressing political views.

We will investigate these issues by looking, first, at the existing customs and ethics of English-language journalism. We will be especially concerned with analyzing the various justifications that are advanced within the profession for limiting the political activity of journalists. We will then look at the law as

it defines the power of employers to control the political activity of their journalist employees. Finally, we will advance certain conclusions. Our inquiry will be limited to political activity outside the workplace. The question of political activity inside the workplace is of a different nature and we do not intend to comment on it.

The paper does not address the question of whether a journalist should or should not feel bound to use a media rostrum for the propagation of views to which he or she is morally committed. Similarly, we do not touch the related issue of the reader's or viewer's "right" to reply. Fairness is treated here as an ideal in contrast to objectivity, a contrast that has been drawn (in its favour) for some years now. The mechanics of applying that ideal within journalism are beyond the scope of this paper. Our emphasis is on political activity outside not only the journalist's workplace, but also his or her working self: on political activity undertaken by a journalist in "non-journalist" time.

## 2. JOURNALISTIC CUSTOM AND ETHICS

### A. Professional Codes and Journalistic Custom

It is a characteristic of professional groups that they adopt codes defining permissible behaviour for their members. Primary school teachers in Ontario, for instance, "must subscribe and adhere to laws and codes of conduct both within their profession and within society as a whole" (Ontario Teachers' Federation, 1974). An Ontario high school teacher is required to behave as "a practical illustration

of scholarship and self-discipline" and to "endeavour at all times to enhance public regard for the teaching profession and to discourage untrue, unfair or exaggerated statements with regard to teaching" (Ontario Secondary School Teachers' Federation, 1979-80). A Canadian physician is expected "to conduct himself beyond reproach and ... report to the appropriate body of his peers conduct by a confrere which he considers unbecoming to the profession" (Canadian Medical Association, 1978). Such codes deal with behaviour that is professionally unacceptable (e.g., "immorality", fee splitting). The activities they proscribe are directly related to the professional's work. For example, the licence of an Ontario dentist was recently revoked because he was convicted of sexually assaulting a patient in his office. The Royal College of Dental Surgeons would not have disciplined him had he been convicted of assault away from his professional workplace (Dunn, 1982).

Codes and rules for North America media employees, on the other hand, address themselves in part to political activities which are not only considered to be unexceptionable, but exemplary, in citizens who are not journalists. The Guidelines published in 1969 by the Associated Press Managing Editors Association indicate a near universal acceptance by employers and management that "...reporters and editors should avoid participation in political action" (1970, 12a).

## B. The United States Approach

The codes adopted by individual newspapers in the United States express a similar approach.

That of the Milwaukee Journal is both the most succinct and the most forthright: "Participation in politics at any level is not allowed" (Swain, 1979, 129).

Two threads of justification for this approach to political activity run through the United States codes, often intertwined, and occasionally confused with each other. The first is that political activity is undesirable because it may give rise to a conflict of interest. The editorial view of The Daily Sentinel in Grand Junction, Colorado stated the problem clearly enough:

No staff member may take part in any outside activity which he might be expected to cover (APME, 1970).

A journalist cannot be expected to report fairly on events in which he or she has a direct, personal interest. In terms of political activity this would mean, for example, that a journalist should not be permitted to cover ones own political campaign. We find no difficulty with this notion. As a general principle it is a sound and legitimate guide to professional behaviour. It does not, however, provide sufficient justification for the prohibition of all political activity by journalists.

The other justification advanced is the one to which we take special exception. Journalists must not engage in political activity because this would tend to compromise their appearance of objectivity. The standard laid down by the Louisville, Kentucky *Courier Journal* and *Times* makes the point:

We must not give any person reason to suspect that our handling of a story, editorial or picture is related in any way to political activity by a member of the staff (Hulteng, 1981, 73).

A basic right of the citizen is denied the journalist in order that appearances may be maintained.

### C. The Canadian Approach

We sought to discover Canadian views by conducting interviews with the publishers and managing editors of twenty daily newspapers in May of 1982.<sup>2</sup> These newspapers were located in every province and had circulations ranging from 10,000 to 465,000. The results indicated that the Canadian attitude towards political activity on the part of journalists parallels that in the United States. There was expressed, with some exceptions (one of them being an editor who was, at the time, seeking a seat in Parliament), a belief that a newspaper's reputation for objectivity or impartiality would be harmed if its journalist employees were observed to be engaged in political activity. The general policy was, then, opposed to political activity; the general justification for such a policy was said, as in the United States, to derive from the need to maintain the appearance of objectivity. The most direct response came from the publisher of the Kitchener-Waterloo, Ontario **Record**:

Our answer is No.

## C. Commentary

How much personal freedom should be an individual be required to surrender as a consequence of being a journalist? As with any occupation, journalism demands the renunciation of a degree of freedom during working hours. The journalist accepts other people's decisions as to the sort of work he or she will do (Ottawa Citizen and Ottawa Newspaper Guild, 1980), what events will be covered, whether the stories will appear in print and, indeed, the hours of day or night to be worked. While these things are not decided without discussion, the final decision does to belong to the individual reporter. But a reporter's personal life is considered to be his or her own business as long as it does not interfere with the performance of duty. Thus, an employer is concerned only with what the reporter does during working hours. The precise limits of these concerns are generally spelled out in the contract of employment.

In Canada the decision to become involved in political activity is recognized as a personal matter. Political involvement is considered to be desirable -- an ideal not an aberration. The form which that involvement takes is a matter for each person's conscience. It is reasonable for a person in this society, particularly a journalist, to see a duty to exercise freedom as paramount: in this case the freedom to express political convictions in the way one thinks they should be expressed. To advocate the placing of limits on a reporter's freedom to express or act on political beliefs is a serious matter. It is not something that should be justified on purely pragmatic grounds. When the question is approached as a matter of principle,



it is not so easy. Sound journalistic practice is inseparable from a firm ethical base, which in turn must be grounded in principle. Custom is a less demanding ground on which to base a judgment of proper behaviour; but it lacks any general basis in principle. It appears, in fact, to be purely pragmatic. Many collective agreements recognize a journalist's right to run for public office, and may specify leave for the purpose. They may provide for the reporter's removal from a position of apparent conflict, such as political reporting, while pursuing a political career. Equally, newspapers have been known to tolerate the apparent conflict of having reporters active in their labour union report on union news.<sup>3</sup> The moral dilemma may be avoided through an agreement, tacit or otherwise, to avoid confronting it. A contract can be a pragmatic solution to such a moral problem. If a journalist accepts the provisions of a contract, he or she has presumably set aside the necessity for further examination of its ethical content, at least for the term of the agreement. One has, in effect, taken the corporate shilling, and in so doing indicated that one will abide by any ethical restrictions involved.

Consider the case of a reporter of strong ethical convictions who has gone to work for a newspaper whose code has not been consulted. The code turns out to be in conflict with the reporter's own views regarding political activity by editorial staff. The reporter defies it as a matter of principle. Two ethical questions arise: Was the reporter right to follow the convictions of conscience? Would the paper be justified in dismissing him or her for doing so? It will be noted that we are ascribing the purest motives to the reporter in the example.

There is no other way to deal with the principle. It is reasonable for such a reporter, we believe, to feel compelled not only to exercise his franchise at the ballot box, but to engage in more strenuous political activity. Politically active journalists are no less authentic and valuable than aloof and objective journalists. A valid, if extreme, argument can be made for the case that an employee of strong convictions would be wrong not to exercise legitimate political responsibilities as he or she saw them. From an employer's point of view, we would suggest that if a passionately activist journalist, or even a scrupulously uninvolved journalist, allows a political stance to interfere with the quality of ones work, then one should be subject to disciplinary measures based on that work, but not on the philosophy or its expression.

Political activity as such, therefore, should not be cause for disciplining a reporter. In fact, for an employer to think of political activity by one of its employees as being misconduct is probably a violation not only denying that individual's rights, but negating the employer's own ostensible view of democratic institutions and responsibilities.

A political activist can be either a good journalist or a bad one. Some of the ways in which he or she could be a bad journalist are:

1. Writing stories that are, in the opinion of the editors, biased or unfair. There are accepted procedures for dealing with reporting that is inadequate in this, as in any other way;

2. Exploiting his or her connection with the paper, for instance in publicizing or appearing on behalf of, political causes. This is no more acceptable than would be a reporter's appearance in a television commercial or the use of the employer's letterhead to solicit support for a business venture;
3. Performing political duties at times when the reporter is supposed to be working for the newspaper: using a newsroom phone and working hours to solicit support for a candidate or arrange meetings, or simply allowing political preoccupation to monopolize attention to the detriment of normal work.

What these examples have in common is that they focus on the quality of the reporter's work, not on political activities.

Political activity can conflict with a reporter's duty in employment, and, therefore, merit discipline. The discipline is then justified, not because of the activism, but because of the conflict. This could, for instance, involve deception (creating the impression that the employer agreed with the employee's political stance) or the reverse: exploitation of the reporter's position to indicate the strength of the convictions that led to political actions that the employer might not find acceptable. There are also situations in which the appearance of a conflict of interest, or the clear danger of an actual conflict, would warrant some management action. An obvious example would be a decision by a political reporter to become actively involved in politics. It would, we

think, be reasonable to deal with this by removing the reporter from the political beat, but not employment.

### 3. THE LAW

#### A. Political Activity of Employees Generally

Employees enjoy the general right of Canadians to engage in political activity outside the workplace. This right of employees may, of course, be limited by statute, as in the case of civil servants (Public Service Employment Act, 1970, s. 32; Public Service Act, 1980, ss. 11 - 16), although the validity of such limitations has been challenged (Ontario Public Service Employees Union and A. G. Ontario, 1979). Even if such limitations are found to be constitutionally valid, they must be interpreted strictly (Boyer, 1981, 231 - 266). An employee may also waive aspects of this right through a collective agreement. Where no such express limitations exist, however, an employer is not entitled to prohibit or limit the outside activities, as such, of employees (CBC and NABET, 1973, 277). To adopt the words of the arbitrator S. M. Beck,

the general rule is that an employee's life is his own and what he or she does away from the workplace is his or her own business and is no affair of the employer (Bell Canada and Communication Workers of Canada, 1979, 155)

Inevitably, this principle admits of exceptions. "What the employer may seek to do is

deal with the employment relationship of those employees" (CBC and NABET, 1973, 277). The ambit of the employer's disciplinary authority is limited to the employment relationship in the workplace and does not, and should not in a democratic society, extend further. However, it is recognized that under certain circumstances the employee's activities outside the workplace may affect the employment relationship inside the workplace. In such a case the employer has a management right to discipline the employee. The question then becomes one of defining the circumstances under which this management right will arise.

Policies or rules unilaterally imposed by employers must be reasonable. Which is to say that such rules or policies must, depending on the nature of the employer's business and the employee's duties, seek to protect some legitimate interest of the employer (United Steelworkers and John Inglis Ltd., 1957, 247 - 248). An employer may seek to restrict the outside activities of employees only where the employer has a "legitimate and substantial" (CBC and NABET, 1973, 270) reason for doing so. The employer will have a legitimate and substantial reason where:

- i. the outside activity is interfering with order in the workplace;
- ii. the outside activity is causing production to suffer or is affecting the business of the employer (CBC and NABET, 1973, 281; NPE and MTHA, 1964);
- iii. the outside activity is such as to create a conflict between the em-

ployee's duties to the employer and the outside activity (Jarvis and AMS, 1961, 981; Hallborg and the Crown in Right of Ontario, 1979, 289; Millhaven Fibres, 1967, 329).

An employer may not prohibit or circumscribe any outside activity, including political activity, as such. The employee is, therefore, perfectly free to engage in outside political activity unless and until that political activity becomes of such a nature as to bring it within one of the criteria outlined above (Bell Canada and CWC, 1978, 119). Further, it will be incumbent on the employer to prove that the employee's outside political activity has actually given rise to one of the three conditions noted (Millhaven Fibres, 1967). To put it another way, the existence of one of these conditions cannot be inferred from the mere fact of the employee's political activity. Indeed, the more nebulous is the nature of the alleged injury to the employer's interests, the more concrete will be the proof demanded.

While the awards at arbitration speak generally of activity outside the workplace, which might be presumed to include political activity, it is interesting that many of them deal, in fact, with the consequences of criminal acts committed outside the workplace (Brown and Beatty, 1977, 291 - 293). Management may well have a "legitimate and substantial" interest in disciplining employees in respect of criminal acts, but it is questionable whether the same principles should be applied to political activity. Political activity, as we have defined it, is not criminal. It is, to repeat, both a duty cast on citizens of a democratic state and a consti-

tutionally guaranteed right.

## B. The Position of the Journalist

A general observation should be made about the rights of journalists as employees. The tradition in Canada has been that they do not have many rights (Royal Commission on Newspapers, 1981).

The precise issue which is the subject of this essay seems to have arisen for determination on only two occasions. In the first case, the CBC on 27 October 1970, in response to the events of that month, issued a policy statement to its employees about "Matters of Public Controversy".<sup>4</sup> The statement stressed the importance of protecting the "integrity of the CBC." It emphasized that "accuracy, impartiality, good judgment, and respect for the law are essential." The operative portion of the statement provided that CBC "staff members" were prohibited from taking "public positions in matters of current political controversy." The National Association of Broadcast Employees and Technicians filed a grievance alleging that the policy statement both violated its collective agreement with the CBC and denied rights guaranteed by the Canadian Bill of Rights. The subsequent award at arbitration held that the CBC could not interfere in this fashion with the political rights of its employees who were "machinists, wiremen or mechanical riggers." However, it was decided that the CBC had a legitimate and substantial interest in the political activities of those employees who were involved in "communicating the news." The CBC had a proper concern with "protecting its own integrity" by ensuring that neither its "attempts at impartiality" nor

its "image of impartiality" were impaired. The outside political activity of a news broadcaster could have the effect of impairing "audience confidence in the integrity of his news broadcasts." At this point, the outside activities of the employee could be said to be affecting the work performance or the employment relationship of that employee, thereby providing a justification for the intervention of the employer. Finally, it was held that while the policy directive might be said to interfere with the activities of employees, it did not directly interfere with freedom of the press as guaranteed by the Canadian Bill of Rights. The most significant feature of the award, an inevitable feature given the general nature of the grievance, was its abstractness. It did not attempt to define precisely those employees whose political activities might be restricted, nor the circumstances under which restrictions might be imposed.

The other case involved a lengthy and complex dispute between a journalist, Andre Gagnon, and his employer, the Montreal Gazette. The drama began to unfold in early 1980. Gagnon was, at the time, one of only two francophone reporters employed by the Gazette, and a part-time law student. The government of Quebec was then sponsoring a referendum which would, it hoped, result in its being authorized to negotiate "sovereignty-association" with the government of Canada. On 22 March 1980 a memorandum on Company Policy was sent to all employees of the Gazette. The memorandum made specific reference to the referendum campaign and generally sought to warn employees to eschew public political activity during the campaign. This warning was fortified by extensive reference to the



paper's Editorial Code of Ethics. Gagnon was known to support the aims of the government of Quebec. He was, presumably in furtherance of the policy stated in the memorandum, and against his wishes, placed on four weeks' paid leave. In response, Gagnon filed a grievance and lodged a complaint with the Quebec Human Rights Commission. The grievance was unsuccessful, but the complaint to the Human Rights Commission was upheld. The Commission eventually ruled that the Gazette had discriminated against Gagnon on the basis of his "political convictions", something which was prohibited under section 10 of the Quebec Charter of Human Rights and Freedoms (1977). In its decision, which was not reached until 4 June 1981, the Commission held that a newspaper ought not to deprive any of its employees of freedom of political speech, except where a clear conflict of interest existed. The Commission found no conflict of interest in Gagnon's case and stated:

Depriving someone of a right because he expresses his political convictions is tantamount to discrimination for political convictions (The Gazette, 1981).

The conflict had moved to a further phase in September of 1980. Gagnon gave the management of the Gazette notice that he intended to chair a public meeting of a Parti Quebecois constituency association called to nominate a candidate for the anticipated provincial general election. The city editor replied in writing. He reiterated the paper's policy concerning political activity and threatened to dismiss Gagnon if he chaired the meeting. At the same time Gagnon filed a story about a troupe of chinese acrobats which was then performing in Montreal. In the

story he suggested that the ducks used in the show could do a better job of editing the **Gazette** than the current management. He also chaired the Parti Quebecois nominating meeting. On 30 September 1982 Gagnon was given written notice of dismissal on the ground of "gross misconduct." This was stated to consist in, first, his political activity, and, secondly, his writing and filing the story about the Chinese acrobats. Once again Gagnon grieved. In addition he complained to the Quebec Human Rights Commission that he had been the victim of discrimination on the basis of "political convictions." It is of interest by this time Gagnon had been removed, at his request, from his usual beat and assigned to cover the courts. The complaint to the Commissions was dismissed in September of 1982. It was held that in this instance, Gagnon had not been discriminated against on the basis of his political convictions. Indeed, the Commission observed that the **Gazette** was justified in forbidding one of its journalistic employees from being involved in a partisan meeting of this nature. The grievance was settled shortly after the decision of the Human Rights Commission had been announced. One of the terms of the settlement was that its terms not be made public (Beaulieu, 1981 and 1982; Courtois, et. al., 1981; The Gazette, 1980, 1981, 1982; The Globe and Mail, 1980; McConnell, 1980).

We can now formulate some principles concerning the ways and the extent to which an employer may properly seek to restrict the political activity of a journalist. The precise degree of restriction permitted would, in practice, depend on the facts of a particular case. Nonetheless, the following would seem to be

important concerns.

- i. The nature of the employer's business is obviously crucial. Is the employer a national television network, a daily newspaper, a local radio station, or a special - interest periodical? This would obviously be a crucial consideration in determining the reasonableness of the employer's rules about outside political activity. The CBC case proceeded on the basis of the employer's interest in maintaining an appearance of impartiality. Under certain circumstances an employer could have an equally legitimate and similar interest in maintaining an appearance of partiality. Thus, where the employer publishes, say, a journal for a religious denomination or a political party, the employer should, on the reasoning of CBC and NABET, be entitled to interfere with the outside political activity of employees in order to maintain its own special image of partiality. The nature of the business must determine the level of perceived partiality or impartiality that might be expected of employees.
- ii. The duties of the employee in question must be considered. This would be a factor in determining whether there is a conflict between the employee's duties and the outside political activity. A higher degree of political impartiality could reasonably be expected from the person who reads the

national news over CBC television than from the person who writes the gardening column in a daily newspaper. One would assume that the more political the journalistic responsibilities of a particular employee, the less freedom that employee might reasonably expect to have to engage in political activity outside the workplace. The public visibility of the employee is relevant. How likely is it that the particular journalist would be identified by members of the public?

- iii. Finally, the nature of the political activity itself must be considered. It cannot be the case that an employer may prohibit all political activity by a particular employee or class of employees. Thus, even if an employee were the Parliament Hill correspondent of a large daily newspaper, the management rights of the employer should not extend to disciplining that employee if he or she became involved in the local politics of the community where he or she lived. Further, it would be necessary to determine from the nature of the political activity in question the likelihood of members of the public connecting that journalist with the employer.

### C. Humans Rights Legislation

What effect, if any, does provincial human rights legislation have? Such laws, in five provinces at any rate,<sup>5</sup> may place limits on the powers of the employers.

The Quebec Charter of Human Rights and Freedoms (1977) provides in section 10 that:

Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on (inter alia) political convictions....

This the broadest statutory language to be found. Manitoba (Human Rights Act, s. 6(1)) prohibits discrimination in employment on the basis of "political beliefs". British Columbia (Human Rights Code, 1979, s. 8(2)) provides that "political belief" shall not constitute reasonable cause for discrimination in employment. Newfoundland will not permit discrimination in employment because of "political opinion" (Human Rights Code, 1970, s. 9(1)). The P. E. I. Human Rights Act (1980, s. 13) approach is unusual. Discrimination on the basis of association is proscribed in employment. Thus, an employee may not be the object of discrimination because of the "political belief" of anyone with whom they associate.

The obvious question is whether the words used these statutes would be interpreted to include political activity. There is no judicial authority on the point.<sup>6</sup> The two decisions given by the Quebec Human Rights Commission in the Gagnon affair appear to contradict each other on this issue. A statement issued by the Commission in 1980 suggests that "political convictions" are confined to political beliefs or membership in a political organization (Bergeron, 1980; Quebec Human Rights Commission, 1981 and 1982). We have been unable to discover

any decisions from the other provinces referred to which bear directly on the question.<sup>7</sup>

#### D. The Canadian Charter of Rights and Freedom

It is far too early, and in any case well beyond the scope of this paper, to comment in any detail on the guarantees contained in the Charter or the way they are likely to be interpreted by the courts. Some superficial observations will suffice. Section Two of the Charter provides that:

Everyone has the following fundamental freedoms:

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

(c) freedom of peaceful assembly; and

(d) freedom of association;

Section Three states:

Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

On their face these two sentences appear to guarantee to all Canadian citizens, regardless of the type of work they do, the right to speak out, the right to take part in organized political activity, and the right to stand for election.

These rights, however, must be read subject to the general limitation expressed in section one of the Charter:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Is an employer's management right to discipline employees as a result of political activity outside the workplace a "reasonable limit" and, if so, can it be "demonstrably justified in a free and democratic society"? A question would also arise as to the application of the Charter. Does it only guarantee the rights of Canadians as against the state, or would it apply also to "private" relations such as those between employers and employees?

### E. Commentary

As we suggested at the beginning of the article, a paradox arises from this analysis. It is a principle of Canadian law that the legal rights of journalists are no more and no less than those of other citizens.<sup>8</sup> Except, apparently, when it comes to political activity outside of the workplace. The nature of the work of journalists is such that their rights are, in this regard, less than those of other Canadians.

An explanation for this paradox may be discovered through a comparison of the position of journalists with that of judges. When a

Canadian accepts a judicial appointment he or she also accepts a substantial diminution of political rights. First, a federally - appointed judge may not vote in federal elections (Canadian Elections Act, 1970, s. 14(4)(d)). Secondly, there are limits on what a judge may say publicly concerning political questions. While it is not clear what these limits are, a judge who transgresses them may face removal from office. The recent inquiry into the public conduct of Mr. Justice Thomas Berger of the British Columbia Supreme Court established as a general principle that judges "...should avoid taking part in controversial political discussions" (Canadian Judicial Council, 1982a). What is particularly interesting about this inquiry is that it seems to have accepted that an important purpose in so limiting the freedom of speech of judges was the preservation of the appearance that judges are impartial (Canadian Judicial Council, 1982b, 11 and 17). And this is where the comparison becomes apposite. The freedom of the judges is limited to ensure that they appear to be impartial; so too the freedom of journalists is narrowed in order that they may appear to be objective.

## CONCLUSION

Sound journalist practice is perceived to be threatened by the idea that reporters might have personal political convictions and that they might exercise those convictions. Custom, professional codes and the law seek to deal with this threat by insisting, with varying degrees of severity, that journalists must foster the impression that they do not have political opinions. They are to do so by abstaining from the public expression of those opinions.



The accepted view misstates the issue. The issue should be the public's right to fair and unbiased reporting, not the maintenance of the appearance of journalistic objectivity. The law, journalistic custom, and the codes we have looked at obscure this point. They do so by focusing, not on whether a reporter's work is honest and accurate, but on what the reporter does on his or her own time. That focus is further narrowed, not to what ties a reporter may have as a committed member of a political party, but rather to the public acknowledgment of that allegiance. There are several possible bases for this enshrining in journalistic ethics of an apparent "virtue" of non-disclosure. First, although the myth of the objective, aloof journalist may have been laid to rest, it remains as the implicit basis for the notion that the virtuous journalist will be publicly seen as neutral. This is a difficult proposition to accept in Canada given the historic and current traditions of journalist-politicians and politician-journalists.<sup>9</sup>

We believe further that the codes and the custom favouring abstention from the normal political incidents of citizenship are based on a condescending journalistic view of the reading public. This view appears to hold that:

- i. the idea of the opinionless journalist is believable; and
- ii. that it is not in the public's interest to be told much of the truth about the actual involvement of journalists in politics.

The undoubted acquiescence of journalists in the notion that they are politically neutral could be a survival of an old stereotype of the North American journalist. The mythic hero-drunk reporter of the 1920's lived outside the restrictions of conventional norms and abstained, whether consciously or not, from many of the duties and activities of ordinary citizens (Stewart, 1980). This conception of the journalist has little, if any, basis in reality today.

A further curiosity is the selection of politics as the one area in which the overt exercise of individual convictions by journalists merits sanction. Might not the same logic prevent activist women from writing about sexism or acknowledged homosexuals from writing about gay rights?

In arguing against the a priori curtailment of journalist employee's right to exercise their citizenship obligations as they perceive them, we are appealing not only for ethical reasonableness, but for the application of common sense. The argument, from a management perspective, is: "What are we going to do if all our editorial people start running for office and addressing political rallies?" The first answer to the question is, of course, that all of them will not, no more than will all of any other category of employees be politically active. Secondly, however, where there is no prohibition against political activity, some journalists will undoubtedly become involved. This, in turn, will require editors and newsroom executives to decide whether there is a genuine threat to a particular reporter's effectiveness or whether the reporter's copy continues to

achieve an acceptable standard. But, and this is crucial to our argument, the standard applied should be one of fairness, not objectivity. To concentrate on the reporter's work, rather than political allegiance, will undoubtedly require more subtle decisions on assignments, and on journalists' writing, by editors and executives. Reporting has to be seen to be fair, not in order to accede to a spurious notion that journalists be objective, but because the journalism they produce must be of the highest quality.

This is, in fact, the purport of the Newspaper Guild policy on the political rights of employees. Thus, Article 25 (b) of the existing collective agreement between Local III, Montreal Newspaper Guild and the Montreal **Gazette** states:

The Employer shall hire and promote employees without regard to, nor shall the Employer discriminate against any employee for reason of (inter alia) political activities or political beliefs.

This clear principle has, however, been compromised by a subsequent letter of understanding. When an employee wishes to engage in some form of political activity, that employee is to so inform management. If management challenges the proposed political activity, reference is to be had to an agreed umpire. Depending on the urgency of the case, the umpire may be contacted by telephone. The umpire will then make an immediate ad hoc ruling. The letter of understanding "...requires editorial staff to abide by [the] umpire's ruling on whether their political activities create a conflict of interest" (Wilson, 1982). This procedure is, in our view,

a denial of the journalist employee's right to engage in political activity outside the workplace.

The politically active journalist can create problems for an employer. The task of deciding when political involvement affects work will be a difficult one. This fact provides neither ethical nor practical justification for the denial of rights which is inherent in the a priori prohibition of political activity.<sup>10</sup>

#### FOOTNOTES

<sup>1</sup>One has in mind the various federal and provincial statutes which permit tax deductions in respect of contributions to registered political parties and which make state funding available for election campaigns. For Canada, see Canada Elections Act, RSC 1970. For Ontario, see Election Finances Reform Act, RSO 1980, and Income Tax Act, RSO 1980.

<sup>2</sup>A transcript of the interviews with editorial executives is available on request to the authors.

<sup>3</sup>For instance, there was a time when the labour reporter for the Toronto **Telegram** was an officer in the Toronto Newspaper Guild.

<sup>4</sup>The facts are recounted in **Re CBC and NABET**. It is now clear that during this period the CBC practiced what has charitably been described as "self-censorship" and was anything but impartial. See also Robinson, 1975.

<sup>5</sup> In 1981 a bill was introduced in the Saskatchewan legislature to add "political affiliation" to the prohibited bases of discrimination in that province's Human Rights Code. The bill was not enacted.

<sup>6</sup> Two decisions of the Supreme Court of Canada -- **Gay Alliance Toward Equality v. Vancouver Sun** (1979) and **Seneca College v. Bhaduria** (1981) -- suggest a less than liberal approach to provincial human rights legislation.

<sup>7</sup> A Board of Inquiry established under the B. C. Human Rights Code decided in 1977 that it would be unreasonable to refuse to hire someone on the basis of political association or activity. See **Bremer and Board of Trustees, School District No. 62**.

<sup>8</sup> This principle has been enunciated in a number of cases. See the decision of the Supreme Court of Canada in **Banks v. Globe and Mail**, 1961.

<sup>9</sup> Some, besides William Lyon Mackenzie, who come immediately to mind are Douglas Fisher, Rene Levesque, Dalton Camp, Ron Collister, Frank Drea, Jack Burghardt, Michael Cassidy, James Fleming, Geoff Scott, and Claude Ryan. The leaders of the three parties in the Ontario legislature have press secretaries, all of whom were, until recently, independent and "objective" journalists. The number of former journalists working in public relations for politicians or government departments are legion. In November of 1983, one of the authors (Martin) took part in a panel discussion in London, Ontario organized by the Centre for investigative

Journalism. The subject of the discussion was "The Journalist in the Community." Martin outlined the argument contained in this paper. Another person on the panel was Joan Walters, then the Canadian Press bureau chief at Queen's Park. She took strong exception to our opinions and argued instead for the traditional approach which seeks to safeguard the objectivity of the individual journalist. In February of 1984 Ms. Walters was appointed Press Secretary to Premier William Davis.

<sup>10</sup> The preparation of this article was assisted through funds provided by the Ontario Law Foundation. An earlier version was presented at the annual conference of the Canadian Communication Association in Ottawa, June 1982. A revised version of that paper appeared in (1982) 5 Communication Information 35 under the title "Le journaliste et ses droits politiques de citoyen." The essay has been substantially revised and rewritten since then. We would like to thank Peter Desbarats, Morley Gorsky, Ian Hunter, Kathy McCready, Michelle MacDonald, Philip Slayton, Earl Palmer, Brenda Pritchard, and Joanne L. Warren for their assistance. The opinions expressed are entirely our own.

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