

CANADA: Fragile consolidation efforts in media accountability

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Abstract

Media accountability in Canada is going through a phase of consolidation that remains fragile. The National NewsMedia Council (NNC) was created in 2015, replacing struggling provincial press councils. In Quebec, a smaller, geographically concentrated French-language media market, media accountability is a frequent topic of public debate. The Quebec Press Council reformed its structure in 2017 and it benefits from significant public funding. But the organization has lost members in recent years and it is dealing with a lawsuit from Québecor, a large media group. Outside established mechanisms, self-regulation within Canadian media outlets is modest with few ombudsmen and public editors. Some argue (Bernier, 2016) that citizens' criticisms of news organizations on social media and other forums offer promising ways to hold the press to account in a digital world.

INTRODUCTION

Canada has traditionally been considered a liberal media system (Hallin and Mancini, 2004, p. 67) with relatively scattered, modest and non-intrusive accountability mechanisms. Recent developments signal some consolidation of resources in response to digital disruption of the media industry, growing concerns regarding online disinformation and a crisis in media accountability (Taylor, 2014). The National NewsMedia Council (NNC) was created in 2015, replacing struggling provincial press councils (excluding Quebec's, which has remained active since its foundation in 1973). The Journalistic Sources Protection Act was passed in 2017, shifting the burden of proof to the party requiring disclosure of a source's identity. In 2019, the federal government began implementing several initiatives to support digital citizenship and journalism on civic issues, especially at the local level. These initiatives are meant to bolster demand as well as capacity for quality news and do not include regulatory measures or criteria. In a sense, media accountability has become a secondary concern as the media industry is faced with severe declines in revenue, leading to closures and bankruptcies. Also, trust in media and journalists is relatively high in Canada, according to recent international surveys of public perception of media and journalists (Brin, 2019; Edelman, 2019). For these reasons, issues of accountability appear to be less debated in the current context.

In Quebec, a smaller, geographically concentrated French-language media market, with vigorous labour unions and a more interventionist political culture, media accountability is a frequent topic of public debate. Two government-mandated expert reports on the media have been published since 2000 (Saint-Jean and Saint-Jean, 2003; Payette et al., 2010), and a special parliamentary commission was held in 2019. The largest media group in the province, Québecor, withdrew from the Quebec Press Council in 2010.

PART I: Media System and Journalistic Culture

According to Hallin and Mancini's (2004) typology, Canada's media system displays the characteristics of the Liberal Model with a high level of journalistic professionalization and low level of political parallelism (2004, p. 67, 75, 209). This characterization is shared by Canadian journalists, as shown by the Worlds of Journalism Study, where respondents reported low levels of political and governmental influences on their journalistic practice and a commitment to professional norms of neutrality (Rollwagen et al., 2019, p. 461, 471-73). However, a 2018 experts' survey of the Canadian media scene painted a somewhat different picture. Although experts acknowledge the robust professional ethics of Canadian journalists, they also perceive the strong influence of owners over the political coverage of private media organizations (Thibault et al., 2020, p. 645-6).

Given Canada's colonial history and Quebec's francophone majority, early authors (e.g. Gagnon, 1981; Siegel, 1996), emphasized differences between French and English-speaking Canadian journalists, based on the legacy of Anglo-American and French journalisms. A national survey of Canadian journalists conducted by Pritchard and Sauvageau (1999) disputed that thesis, however. Their research revealed the existence of a Canadian journalist's creed; that is, core professional values embraced by Canadian journalists irrespective of their language differences (1999, p. 34-7). As Rollwagen et al. (2019, p. 461, 472) show, this creed, "focused on neutral reporting and oriented more to perceived public interest than to business or audience interests, remains surprisingly intact despite contemporary pressures."

Since the 1960s, the Canadian media scene has witnessed the emergence of large media groups through acquisitions and mergers. The ensuing concentration of media ownership and convergence raised concerns of Royal Commissions and researchers alike (e.g. Davey, 1970; Kent, 1981; Goyette-Côté, Carbasse et George, 2012), to no effect. Outside of the two network hubs (Toronto and Montreal), regional markets are highly concentrated. Québecor owns the main French-language television network, three newspapers (two tabloids and a free daily) in Quebec, a free daily, specialty TV and magazines, as well as the telecommunications company Vidéotron. A single company holds nearly all newspapers in New Brunswick (Irving's Brunswick News) and in the rest of the Atlantic region (SaltWire Network).

Postmedia owns the largest newspaper chain in Canada with several daily and community newspapers in Ontario and Western Canada. CTV News, which is part of the CTV Television Network, is among the most popular news sources in English-speaking parts of Canada (Brin, 2019). The public broadcaster, with its English-language (CBC) and French-language services (Radio-Canada), is also popular (especially Radio-Canada), but receives among the lowest per capita public funding (29\$) in Western countries (Nordicity, 2018, p. 6). Provincial public broadcasters, like TVO and TFO in Ontario and Télé-Québec in Quebec, have a mandate to produce educational programming, including coverage of current affairs. The Aboriginal Peoples Television Network (APTN) covers the news and offers original programming from the perspective of First Nations peoples. Canadians rely strongly on television and digital platforms for news (Brin, 2019).

As elsewhere, measuring media concentration (and whether it remains a cause for concern) has become a more complex and contested issue in the digital age¹. Global platforms, led by Google and Facebook, are held responsible by many observers for the current financial troubles of national news media by their domination of the online advertising market. But “the more intractable but seldom recognized problem is that total ad spending in Canada has been declining on a per capita basis and relative to the national economy for about a decade” (CMCRP, 2019, p. v).

The Legal Framework for the Media

The legal framework for media activity and accountability in Canada derives primarily from the constitutional principles of freedom of expression and the press. The guarantee of freedom of expression is at the highest level of the legal hierarchy in Canada. Freedom of expression is to be guaranteed against the requirements that might be included in federal and state laws, as they impose limits that go beyond what the courts can to justify oneself in the framework of a free and democratic society. The sphere of speech and protected activities is very broad. It extends to all activities to convey meaning.

Falsehood or hateful talk is not excluded from protection. A priori, any activity - whatever it may be - that transmits or attempts to convey a meaning, has expressive content for the purposes of paragraph 2 (b) of the *Canadian Charter of Rights and Freedoms*. Protecting freedom of expression does not depend on whether the message is truthful. It follows that a rule of law intended solely to punish what is not in accordance with the truth may not be viewed as a reasonable limit on freedom of expression.

The laws provide for prohibitions to publish primarily to ensure the protection of certain rights in the course of trial proceedings or to protect vulnerable persons. For example, there are strict prohibitions against the publication of information relating to criminal events involving children. The Criminal Code punishes the distribution of hate speech and criminal damage to reputation. But the right to reputation is protected primarily by the mechanisms of civil liability.

To determine the extent to which the media are required to respect the reputation of individuals and companies, it must be established that the harm to the reputation caused by the statement is at fault; that is, it would not have been held by a reasonable person in similar circumstances.

In some provinces, legislation imposes limits to protect the privacy of individuals. It is generally accepted that the sphere of private life of a public figure may be more restricted than that of a private citizen. The laws of some provinces recognize the right of individuals to oppose the capture and dissemination of their image. An exception to this requirement is when public figures are involved or when the capture and dissemination of the image is justified by the public interest (Trudel, 2018).

¹ A frequently updated ownership chart can be viewed on *Fagstein*, a blog authored by Montreal Gazette journalist Steve Faguy. <https://blog.fagstein.com/media-ownership-chart/>

Limitations Associated with the Use of Public Airwaves

Due to the fact that the use of broadcast frequencies is not granted to all, Canadian broadcast legislation imposes additional obligations on the radio and TV media. The regulation of broadcast media recognizes that they are responsible for the content for which they exercise editorial control. For example, subsection (iv) of section 3 (1) (i) of the Broadcasting Act specifies that the programming offered by the Canadian broadcasting system should provide, to the extent possible, “a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern.” Section 3 (1) (g) states that “the programming offered by broadcasting undertakings should be of high standard.” The concept of high quality has been applied by regulators as an authority to impose on broadcasters’ compliance with good programming and journalistic practices (Trudel, 1989; Trudel et Abran, 1997).

PART II: ESTABLISHED INSTRUMENTS OF MEDIA ACCOUNTABILITY

Press Councils

The Canadian system of press self-regulation has experienced serious difficulties in recent years, to the point of being labelled “broken” (Taylor, 2014, p. 110). The press councils of the provinces of Alberta, Ontario, and the Atlantic region, for example, were facing declining membership and financial problems (p. 103-110). In 2012, the Manitoba Press Council ended its operation after the departure of its last members (Santin, 2012). In 2018, the Alberta Press Council finally shut down after 46 years of existence.

In this difficult context, the launch in 2015 of the National NewsMedia Council (NNC) generated some optimism among advocates of press self-regulation. The public editor of the *Toronto Star* at the time described it as the start of a “new era for media accountability in Canada” (English, 2015). Some viewed this new structure as a way to fix an ineffective system of press accountability scattered among provinces and whose relevance was increasingly questioned (English, 2013; Fielden 2012).

The NNC merged the press councils in Atlantic Canada, British Columbia and Ontario. Gathering news media outlets from throughout Canada (except Quebec), the Council aims “to serve as a forum for complaints against its members and to promote ethical practices within the news media industry” (NNCa, n.d.). Composed of 15 directors (eight from the public and seven professionals), the NNC considers complaints regarding the possible violation of journalistic standards and media ethics by a member news organization (NNCb, n.d.).

From 2016 to 2019, the NNC has produced an average of 28 decisions annually. The Council is also active on social media platforms to discuss media ethics and other professional questions. With close to 500 members, the NNC has broad membership throughout Canada, including from media companies that had left previous provincial councils (NNCc, n.d.). The NNC thus seems to have started to address some of the

problems that plagued former provincial councils, such as decreasing levels of membership and activities, along with a weak online presence (Taylor, Shapiro and Tubb, 2012).

The Quebec Press Council (*Conseil de presse du Québec* - CPQ) is the other important venue for press self-regulation in Canada. Its mission is to protect “the freedom of the press” and to defend “the right of the public to quality reporting” (CPQa, n.d.). Unlike the NNC and other defunct provincial press councils, the CPQ’s mandate is not limited to its members: it extends “to all media organizations that publish or broadcast in Quebec” (CPQa, n.d.).

Founded in 1973 by journalists and news media executives, the CPQ has quickly acquired a solid reputation, as well as praises for its dynamism (Pritchard, 1991). Jean-Claude Bertrand (1985) commended its unique structure, while a Canadian Royal Commission noted the council’s “vigor and authority” (Kent, 1981, p. 226). The CPQ went through several crises in its existence, however, and it has been criticized for its relative absence in the public debate, as well as its perceived bias towards news organizations (Corriveau, 2018).

Financially, the Quebec Press Council is on relatively good footing. In addition to collecting fees from member organizations, it receives considerable government support. Historically, this support has provided the CPQ “a greater degree of financial independence from the media” (Pritchard, 1991). It has also allowed the CPQ to provide more services, including public awareness campaigns, an active online presence and a well-stocked website with a searchable database where past rulings, going back to the 1970s, can be accessed (Taylor, 2014, p. 105). In 2017, the CPQ reformed its complaint-handling process, aiming at making it more effective and accountable (CPQ, 2016, p. 5). Among the changes, the CPQ started providing mediation services to settle complaints through a more informal arrangement.

Despite striving to adapt to an ever-changing environment, the CPQ is not immune to the risks facing press councils in a digital age, including the departure of members, which occurred in 2008 when the Quebec Association of Broadcasters left and in 2010, when Québecor, the large media conglomerate, withdrew as well. In addition, the fact that the CPQ considers complaints from all Quebec media exposes it to criticism or even prosecution from non-members. This is precisely what happened in 2018 when some Québecor media sued the CPQ, asking the self-regulatory body to stop processing complaints about them and claiming CAD 200,000 in compensatory and punitive damages (Pineda, 2018). The CPQ vowed to pursue its mission, but this lawsuit raises important questions for the press council and media regulation in general. While some accused Québecor of trying to “muzzle” the CPQ (Saulnier, 2018), others argued that in judging journalists and media that are not members of the press council, the CPQ exposes itself to such legal proceedings where these actors may seek repair for judgments perceived as affecting their reputation (Trudel, 2018b).

Hence, despite a consolidation of resources that appears to have stemmed the crisis of press self-regulation in several provinces, the situation remains fragile, including in Quebec. This

fragility is also highlighted by the weakness of other self-regulatory instruments, especially at the organizational level, as shown in the following sections.

Codes of Ethics

Canadian journalists and media do not adhere to a single national code of ethics. Rather, there is a plurality of documents, many of which have been updated for the digital age (to include issues related to blogging, social media and breaking news coverage, among others). The Canadian Association of Journalists (CAJ, 2011), *Fédération professionnelle des journalistes du Québec* (FPJQ, 2010), and other organizations have codes or guides offering general guidelines or standards on best journalistic practices. The Quebec Press Council (CPQ, 2015) has its own guide, while the National NewsMedia Council adjudicates complaints based on each “news organization’s own code of conduct” and generally accepted journalistic standards (NNCd, n.d.). The CBC’s Journalistic Standards and Practices is a voluminous and detailed online guide. The Canadian Broadcast Standards Council, a voluntary self-regulatory organization established by private broadcasters, administers a series of codes pertaining to journalistic ethics and independence, as well as equitable portrayal and violence (CBSC, n.d.).

In Quebec, an expert report authored by journalism professor Dominique Payette (2010) recommended creating a legal status for professional journalists. The proposal was rejected, due in part to disagreements between the FPJQ and Quebec Press Council regarding the development and enforcement of a single code of ethics (Acosta, 2012).

Ombudsmen and Public Editors

The Canadian public broadcaster’s French and English news services each have an ombudsman, both members of the Organization of News Ombudsmen and Standards Editors (ONO). Audience members who perceive a breach of ethics in news or current affairs content must first contact the program’s producer or editor: if they are dissatisfied with the response, they can then make a formal request for a review to the ombudsman (CBC Ombudsman, n.d.).

All of the ombudsmen’s decisions are published. They can be quite succinct - a few paragraphs - or several pages long, including investigation into the production process, background research on the topic area and examination of overall coverage. The ombudsman also produces an annual report and post occasional entries on the public broadcaster’s website.

Ombudsman positions in Canadian newspapers were largely eliminated by the early millennium, reportedly for financial reasons or because they were considered as an “unwanted buffer” between journalists and their audiences, rather than a “court of last resort”; others indicated “that the role could be handled by management” (Quixadá, 2010, p. 109-115). Brunswick News, which owns all three English-language daily newspapers in New Brunswick and almost all of its weeklies, had an ombudsman from 2014 to 2017.

Only two Canadian newspapers currently have public editors, both members of ONO. Kathy English held this position at the *Toronto Star* from 2007 to 2020 (replaced by Bruce Champion-Smith) and Sylvia Stead has been *The Globe and Mail's* first and only public editor since 2012, reporting directly to the editor-in-chief and to the publisher as needed (Silverman, 2012). There is no public editor or ombudsman at the largest newspaper chain in Canada, Postmedia, nor at Québecor, which owns the two most-read newspapers in Quebec, both tabloids.

This very modest presence of ombudsmen and public editors is a reminder of the limits to media accountability at the level of the news organizations in a Canadian context. If the creation of the National NewsMedia Council (NNC) signaled a “new era for media accountability in Canada” according to some (English, 2015), this clearly did not translate at the organizational level.

Audiovisual Regulation

The Canadian Broadcasting Act empowers the Canadian Radio-television and Telecommunications Commission (CRTC) to make regulations and conditions of license for broadcasting undertakings. The CRTC also has the power to hear and deal with complaints about licensees. It may impose obligations on radio and television licensees to comply with the requirements put in place by the industry through self-regulatory processes. It is always possible for citizens to intervene during the license renewal process and to demand that the CRTC strengthen the information obligations of businesses.

The CRTC has the power to suspend, revoke or refuse to renew a license. When it finds that a broadcaster is having difficulty meeting regulatory requirements, the CRTC has the practice of imposing more stringent obligations targeting the problems identified. The CRTC may also renew the license for a shorter period than that authorized by law. However, the regulatory agency rarely refuses to renew a license solely for non-compliance with programming requirements.

The Council has developed guidelines to guide the development of industry-managed standards. It refers to these guidelines when it asks a sector of the broadcasting industry to develop an industry standard or when a company proposes a standard and seeks approval. Given that the CRTC has chosen to refrain from regulating the media that broadcast on the Internet, it is more difficult for it to expect the strict application of standards emanating from self-regulatory bodies. It is as if the increased space taken up by unregulated online media makes it more problematic to apply more stringent measures on regulated media.

This situation could change, however, if the Canadian government implement key recommendations from an expert report it commissioned. The report, released in early 2020, advocates for an expanded role for the CRTC, notably to allow the regulatory agency to impose codes of conduct “regarding all media content undertakings,” from foreign or domestic entities, whether online or not (Yale et al., 2020). Needless to say, such changes would further media accountability beyond traditional broadcasting venues, thus adding to the consolidation of initiatives in this domain. In late 2020, the Canadian government

introduced Bill C-10 to modernize the Broadcasting Act. Although the proposed legislation does not contain specific provisions regarding the experts' proposals discussed above, the bill is still under review as of writing.

Academic Research and Journalism Education

Most of Canada's roughly 50 journalism programs are offered as college diplomas and at the undergraduate university level; there are also a half-dozen graduate programs. Courses on media ethics, law and journalism standards are usually part of the curriculum. Academic research on matters of journalism, including media accountability, is conducted by scholars in these programs or journalism schools, but also in communication and political science departments throughout the country's universities. The *Canadian Journal of Communication*, the *Canadian Journal of Political Science* and *Les cahiers du journalisme* are among the important peer-reviewed academic journals that publish such research.

The Ryerson Journalism Research Centre and *Centre d'études sur les médias* (CEM), housed at Université Laval, have produced several publications on the state of the media and journalism in Quebec and Canada, including media regulation. The Public Policy Forum, a national think tank led by a former editor-in-chief of the *Globe and Mail*, has also drawn national attention to the democratic role of news media and solutions to the crisis of journalism (Drohan, 2016; Public Policy Forum, 2017)

In addition to these venues, issues of media accountability, journalism ethics and media policy in Canada are frequently addressed by journalism professors and other academics on open-access online publications such as *J-Source*, *Policy Options*, and *The Conversation Canada*. Canadian journalism educators have, for instance, raised accountability issues pertaining to media and journalism schools with regards to gender and the representation of minority groups and the difficult relationship of news media with digital platforms. There has traditionally been a strong attention to the US context, recently regarding misinformation ("fake news") and polarization and concerns that Canadian media might follow the same trends.

Media Critics / Watchdogs

Several Canadian media have television critics that provide commentary on content aired on television networks. Very few of them have columnists whose beat is to cover the media industry as a whole. Once a year, the Quebec Professional Federation of Journalists (FPJQ) publishes a magazine, *Le Trente* ("Thirty"²), which addresses a variety of issues affecting the journalistic profession, such as the influence of politics on the media. J.-Source.ca, the Canadian Journalism Project's website, is another space for critical reflections on media and journalism in Canada.

The news site and podcast *Canadaland* has arguably been one of the most vocal media critics in Canada in recent years. Launched in 2013 by journalist Jesse Brown, *Canadaland* has exposed multiple scandals in the Canadian media industry, including a high-profile

² From the typographical code, -30-, indicating the end of news copy.

sexual harassment case at the English-language national public broadcaster's (CBC) and journalists accepting money from private companies for speaking engagements despite potential conflicts of interests.

Among *Canadaland's* biggest stories was the revelation that the former anchor of CBC's flagship news program, Peter Mansbridge, was paid by the Canadian Association of Petroleum Producers, a lobby group, for speaking at one of its gatherings in 2012 (Brown, 2014). In addition to criticisms directed at Mansbridge and the CBC, the story triggered a broader debate regarding the practice of accepting speaking fees in the media industry (Houp, 2014). A few weeks later, CBC's then editor-in-chief announced a series of measures to tighten "procedures around paid speeches" for their staff and freelancers to "answer the concerns about perceived conflicts of interest" (McGuire, 2014).

Innovative Instruments of Media Accountability

With high Internet penetration (90%) and 76% of Canadians reporting getting their news online (including from social media), the digital transformation of the Canadian news industry is ongoing (Brin, 2019). Most media are present on social media platforms such as Facebook, YouTube and Twitter where audiences can react to news and engage with journalists and fellow readers. Beyond online comments, however, not all media provide detailed information on their journalistic standards and how to flag a problem or make a complaint. For instance, on the main pages of the six most popular online Canadian media in the anglophone (CBC, CTV, Global News) and francophone (TVA Nouvelles, Radio-Canada, *La Presse*) markets, only the two public broadcasters and CTV have links to pages that detail ethics and corrections policies, as well as straightforward instructions on their complaint processes (Brin, 2019).

A few blogs maintained by journalists and other media professionals discuss media ethics and report journalistic shortcomings, such as the pioneering "Regret the Error"³, the *Journalism Doctor*⁴, *Fagstein*⁵, and *Wapizagonke.com*⁶. The citizen blog *Media Culpa*⁷ garnered public attention in 2012 when it discussed cases of possible plagiarism by *Globe and Mail* columnist Margaret Wente and the reaction from the newspaper public editor, which critics viewed as too complacent (Greenslade, 2012).

Non-governmental organizations and media actors also propose a variety of tools to help the media improve their reporting of minority groups and sensitive issues. For example, the Canadian Journalism Forum on Violence and Trauma offers a guide⁸ to assist journalists in their reporting of mental health issues. A similar online resource document⁹

³By Canadian journalist Craig Silverman. The blog is no longer active. <https://www.poynter.org/reporting-editing/2011/about-regret-the-error/>

⁴ By former journalists and professor John Miller. <http://www.thejournalismdoctor.ca/>

⁵By Montreal Gazette journalist Steve Faguy. <https://blog.fagstein.com/>

⁶By communication specialist Michel Lemay. <http://wapizagonke.com/>

⁷The blog is no longer active. <http://mediaculpapost.blogspot.com/>

⁸See <https://sites.google.com/a/journalismforum.ca/mindset-mediaguide-ca/mindset-download>

⁹See <http://riic.ca/>

was produced by Duncan McCue, a CBC journalist, to improve the news coverage of indigenous communities.

CONCLUSION

Media accountability in Canada is going through a phase of consolidation that remains fragile. The creation of the National NewsMedia Council (NNC) in 2015 provided a welcome relief for advocates of media self-regulation. It shifted the focus away from struggling provincial press councils outside Quebec, whose decline seemed inevitable. By consolidating existing resources, increasing its membership and remaining relatively active, the NNC appears to be off to a good start. The self-regulatory body remains vulnerable, however, to the same issues of legitimacy and effectiveness that have undermined other established mechanisms of media regulation in a digital age.

The situation appears more uncertain in Quebec. On the positive side, the Quebec Press Council reformed its structure in 2017 to make it more transparent and effective. It also counts on significant public funding. However, the organization has lost members in recent years and it is dealing with a lawsuit from Quebecor, a large media group, that challenges the mission of the organization.

Outside established mechanisms, self-regulation within Canadian media outlets is modest as shown by the scarcity of ombudsmen and public editors and an audiovisual regulatory framework that, in early 2021, is still not up to the challenges of the digital age. This situation, however, could change with the proposed Canadian government's Bill C-10 (still under review at the time of writing) to reform the Broadcasting Act.

Given the weakness of such culture of self-regulation, some argue (Bernier, 2016) that social media, comments sections, and other online forums offer an opportunity for ordinary citizens to act as an informal "fifth estate," partly compensating for the weaknesses of established instruments of self-regulation. More research is needed, however, to assess the effects of such citizens' regulation on the media in a Canadian context.

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