Whatever Happened To . . .

The Edmonton Journal and Freedom of the Press in Canada

Peter Bowal

> Every person who is the proprietor, editor, publisher or manager of any newspaper published in [Alberta], shall when required to do so by the Chairman [of the Social Credit Board], publish in that newspaper any statement furnished by the Chairman which has for its object the correction or amplification of any statement relating to any policy or activity of the Government of the Province published by that newspaper within the next preceding thirty-one days.
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> – *Alberta Accurate News and Information Act* (Bill 9, 1937)

Introduction

The *Charter of Rights and Freedoms* is 30 years old now and many will mistakenly assume that it was the beginning of human rights in Canada. What did human rights look like in Canada during the 115 years before the *Charter* was passed?

Simply put, if judges did not approve of a law enacted by a certain government – municipal, territorial, provincial or federal – they could creatively disallow it on the ground that it had been passed by the wrong level of government, invoking the *Constitution Act, 1867*. They reckoned that the other, appropriate level of government would not enact the offensive legislation even if it constitutionally could do so. This concept was referred to as the "Implied Bill of Rights" in the *Constitution Act, 1867*. The Supreme Court of Canada tacitly acknowledged it in the 1953 case of *Saumur v. City of Quebec*.

The famous *Alberta Press* case is one of the best examples of this early conception of the Implied Bill of Rights.

Background

The Great Depression of the early 1930s pounded the prairies hard and extreme conditions sometime attract extreme solutions. For Alberta, the solution to the Depression came in 1935 in the form of a new Social Credit party and a landslide government, led by William Aberhart, which captured 56 of the 63 seats in the Alberta legislature. This government believed the Depression was caused by influential eastern-controlled banks unduly limiting credit so that people did not have enough money to spend. Since "the existing means or system of distribution and exchange of wealth is considered to be inadequate, unjust and not suited to the welfare, prosperity and happiness of the people of Alberta," the government sought to inaugurate a "new economic order" upon the theory known as "Social Credit."

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The theory was complicated and radical. A general scheme of Social Credit legislation, based on three bills, created a small, powerful Social Credit Board to oversee wholesale economic reform. Among other tasks, this Board appointed the Provincial Credit Commission to determine the value of "Alberta Credit," defined by the legislation as "the unused capacity of the industries and people of the Province of Alberta to produce wanted goods and services." The Provincial Treasury would maintain the Provincial Credit Account from which $25/month Credit Certificates to increase the purchasing power of Albertans would be issued to stimulate the economy.

The idea was to establish a system of circulating credit that constantly reflected the economic capacity of Alberta to produce goods and services. It set up a new, regulated financial system as a medium of exchange, discounts and payment affecting all commercial, industrial and trading operations. Aberhart also sought to control the money supply (and potentially currency), taxation and banking, which were all federal areas of constitutional responsibility.

The Alberta media were united in strenuous and vocal opposition to these wacky economic and social policies of the new Social Credit government. The newspapers relentlessly criticized and ridiculed the inexperienced government. Premier Aberhart considered this media coverage unfairly harsh and biased. He bitterly commented during his weekly Christian radio show that he was "glad there will be no newspapers in heaven".

In addition to the Bills to excessively tax the Alberta operations of big banks, and license new credit institutions in Alberta, the government in 1937 demanded fair play from the newspapers. This new economic revolution, in the public interest, called for the "true and exact objects of the policy of the Government … to the end that the people may be informed with respect thereto" (preamble of the Bill). This kind of economic revolution could not succeed unless everyone believed in and

supported it. One judge of the Supreme Court of Canada would characterize it thus:

> It is, therefore, essential to control the sources of information of the people of Alberta, in order to keep them immune from any vacillation in their absolute faith in the plan of the Government. The Social Credit doctrine must become, for the people of Alberta, a sort of religious dogma of which a free and uncontrolled discussion is not permissible. The Bill aims to control any statement relating to any policy or activity of the Government of the Province and declares this object to be a matter of public interest . . . and by reducing any opposition to silence or bring upon it ridicule and public contempt.

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The reaction was swift and sharp. One British newspaper at the time apparently referred to Aberhart as "a little Hitler."[1] Alberta's Lieutenant-Governor at the time, John C. Bowen, took the unprecedented step of reserving Royal Assent on the three Bills and the federal Governor-General referred the constitutionality of these three Bills to the Supreme Court of Canada It is reported that the Social Credit government was so enraged by Bowen's reservation that it promptly revoked his official residence, vehicle and budget for clerical staff in retaliation.

The Constitutional Decision

Within five months of Lieutenant-Governor Bowen's reservation, the validity of the three challenged Bills – wrapped into a single case called the *Reference re: Alberta Statutes,* [1938] S.C.R. 100 was decided by the Supreme Court of Canada.

The judges of the Court unanimously agreed that the first two bills, relating to the taxation of federal banks and creation of Alberta credit institutions, were not within the power of any provincial legislature. These come under federal subjects of banks and banking, currency or trade and commerce, rather than with property and civil rights or matters merely local or private in the province.

The Press Bill (*Accurate News and Information Act*) was also found to be outside of Alberta's legislative authority. Some judges reasoned that this Bill was unconstitutional because it was part of a broader unconstitutional legislative package, namely the Social Credit economic reforms. The Chairman of the Social Credit Board, for example, who could issue requests and orders to the newspapers, was established under the general Social Credit legislation. If the primary legislation failed, so did the secondary legislation.

Other judges said that, even as an independent enactment, it exceeded Alberta's power under section 129 of the *Constitution Act, 1867* because:

- it attempted to curtail the right of public discussion, or
- it reduced the political rights of Albertans compared with residents of other provinces, or
- it interfered with the workings of Parliamentary institutions – all rights that existed at the time of Confederation.

. . . it is axiomatic that the practice of this right of free public discussion of public affairs, notwithstanding its incidental mischiefs, is the breath of life for parliamentary institutions.

This strengthened the construct of an Implied Bill of Rights in the *Constitution Act, 1867,* which itself only generally existed to assign sovereign legislative powers between the federal and provincial levels of government in Canada. The Chief Justice wrote:

> [legislatures] derive their efficacy from the free public discussion of affairs, from criticism and answer and counter-criticism, from attack upon policy and administration and defence and counter-attack; from the freest and fullest analysis and examination from every point of view of political proposals. This is true in respect of the discharge by Ministers of the Crown of their responsibility to Parliament, by members of Parliament of their duty to the electors, and by the electors themselves of their responsibilities in the election of their representatives.
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The Chief Justice concluded that this right of free political speech is necessarily implied from the *Constitution Act, 1867* as a whole because the Constitution itself must be protected. Since the *Constitution Act, 1867* did not appoint this as an exclusively provincial matter, the power is vested in the federal Parliament. Any attempt by a province to violate these rights of public debate and the press were unconstitutional.

Another judge went so far as to hold that this Press Bill was essentially an enactment of criminal law. Since crimes are exclusively federal jurisdiction in Canada, this legislation was unconstitutional on that ground.

In 1938, the final court for Canadian cases was the Judicial Committee of the Privy Council in England. Four months after the Supreme Court of Canada decision, a panel of five English Law Lords unanimously dismissed the Alberta government's appeal, mostly on the ground that, because of the Supreme Court of Canada decision a few months earlier, the Alberta government had repealed most of the primary economic reform legislation. If this legislation no longer existed, the Press Bill retained "no practical interest." The English Lords, however, added that they had no doubt as to the correctness of the Supreme Court of Canada decision.

Aftermath

The *Edmonton Journal* led this successful fight against the troublesome Social Credit *Accurate News and Information Act*. This highly publicized battle garnered the attention of the Pulitzer Prize organization, which in 1938 awarded the *Edmonton Journal* a special bronze plaque, the first, and to date only, such Pulitzer Prize for a non-American recipient. The citation reads: "for its editorial leadership in defense of the freedom of the press in the province of Alberta, Canada." This was only the second ever Pulitzer Special Award or Citation, and the only one awarded between 1930 and 1941.

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The Implied Bill of Rights doctrine demonstrated how judges in Canada could, and would, fashion human rights such as the freedoms of speech and the press. However, the formal entrenchment of the express *Charter* in 1982 eliminated the need for further judicial development of an implied Bill of Rights.

Interestingly, in a 2010 case, *R. v. National Post*, the Supreme Court of Canada ruled that newspapers' confidential sources may be protected today.[1] Who was the party seeking to compel disclosure of the confidential source of embarrassing information in that case? The Prime Minister of Canada. Perhaps little has changed since 1938 in terms of power struggles between the press and elected politicians, and in freedom of expression and the press.

Notes

1. Barr, John J., *The Dynasty: The Rise and Fall of Social Credit in Alberta.* Toronto: McClelland and Stewart Ltd (1974), page 109

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