

Repeal all laws against expression

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Prime Minister Stephen Harper is reported to have said that “We [Canadians] don’t imprison people for their expressing political positions.” He was speaking in Miramichi, New Brunswick, early in August this year.

Mr Harper was answering a question about the Winter Games in Sochi, Russia, and what Canada might do regarding the Russian law banning advocacy of non-traditional sexual relations.

Mr Harper is wrong, of course. John Ross Taylor was twice imprisoned for expressing his political views. James Keegstra, Ernst Zundel, and Terry Tremaine has each been sentenced to jail for what he said (none has gone to jail for that reason, though; in Keestra’s case, for instance, his one-year sentence was suspended).

Had Mr Harper said we don’t often imprison people for expressing political positions, he might have been closer to the truth. Our Canadian way is, rather, to fine them and to issue cease and desist orders. Since 1970, when our current regime of anti-expression laws began, dozens of Canadians have been ordered to shut up, apologize, or pay money—or be jailed for contempt.

Certainly we’re happy that the climate for free expression is less chilly now than it recently was, as these days the Canadian Human Rights Commission lacks statutory power to interfere with the expression of opinion or emotion. The bill repealing Section 13 of the Canadian Human Rights Act passed the Senate this summer. That section had prohibited exposing members of certain groups of people to hatred or contempt.

Nonetheless, several provincial and territorial human rights commissions continue to claim such powers, whether clearly given them by statute or not. And, of course, our criminal code makes what it calls “Hate Propaganda” illegal. Because of Sections 318 and 319, Canadians can go to jail (up to five years) for expressing their views, even should they do so peacefully and without harassing anyone.

These remaining barriers to free expression rest on no good justification and should be removed.

Let us recall the reasons we have for wanting wide freedom of expression, both for ourselves and others. Some of these reasons are about expression itself and its place in our lives, some are about its social and political utility.

Not worrying about fines or jail enables people to be candid with each other. It enables research and the search for truth to proceed. It lets people get things off their chests. Without it, entertainment is less entertaining.

For open and creative people (a group to which most Canadians belong), life isn’t worth much if we are not making our opinions and emotions known to others. And it’s not much if

others are not making theirs know to us. Having views and feelings, and appreciating the views and feelings of others, is part of what living well is all about. This applies just as much to those whose views are abhorrent.

Wide freedom of expression provides us with a fair chance to influence law and government policy. We lack a fair chance when we cannot speak our mind or feelings except under threat of punishment. It also helps us to know the mind and feelings of those who run for office.

Finally, we care to treat people with respect, and respect requires applying no pressure to them save the pressures of evidence, argument, and example. To require that a person adopt a point of view or remain silent when the rest of us may speak is to treat that person with contempt.

There are two arguments for restricting speech that deserve attention. One is that abhorrent expression can spread evil attitudes, and evil attitudes can lead to evil actions. We are right to require, using laws and punishments, that people do not harm us, and so we are right to require them not to promote our harm.

The other is that abhorrent expression is itself harmful, as it directly harms the sense of dignity or self-worth of those toward whom it is directed.

These arguments can be answered. First, when ideas are critically discussed, the abhorrent ones have to compete against the good ones. Second, we don't have to let our sense of dignity or self-worth be held hostage to the unfounded attitudes of others. (We can neutralize them by recognizing them as unfounded.)

Indeed, by regulating expression, we force abhorrent expression underground, where it might well spread evil attitudes because it's goes uncontested. As well, by regulating expression, we coddle people and, thereby, prevent them from acquiring a sense of dignity based firmly on their appreciation of their worth.

If these replies to those who would restrict expression are sound, we would expect that laws against expression and their applications will play no role at all in the fight against bigotry and the struggle to bring people from marginalized groups into the mainstream.

And so it has been in Canada. Is anyone better off because John Ross Taylor went to jail or James Keegstra was successfully prosecuted? Would anyone's sense of self-worth been increased had the *Macleans*'s article on Muslim demography been officially ruled hateful? Was the plight of gays and lesbians made worse when a court overturned the Alberta panel's decision against Stephen Boisson? Will any of this merit more than a footnote in the history of the widening of equality and opportunity in Canada?

The arguments I've rehearsed went a long way toward getting Section 13 of the Canadian Human Rights Act repealed. They work just as well against provincial and territorial restrictions on expression, and just as well again against criminal code restrictions.