

# **Controlling the market: The need for regulation in Canadian newspaper ownership**

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## **Introduction**

A free press is an essential component of any modern democracy. In Canada, the Charter of Rights and Freedoms enshrines the right of freedom of the press<sup>1</sup> and similar commitments can be found in various democracies throughout the world.<sup>2</sup> This freedom is essential both for the need of the electorate to have the ability to become properly informed as actors in the democratic process, as well as to ensure some degree of accountability by governors.<sup>3</sup>

Since the press essentially acts as the gatherer, the filter, and the deliverer of information, it is generally held that a diverse range of voices within the press is preferable to ensure that multiple issues are covered within a competitive atmosphere between publications. Such an atmosphere reduces the likelihood of “blind spots”<sup>4</sup> in the news due to a lack of qualified coverage, bias, or monopolistic laziness. It also ensures that the ideologies or political leanings of a few journalists or publication owners do not become the only filter through which news is reported.

In light of these commonly held views, it is disturbing that Canada is home to one of the most concentrated media markets in the world.<sup>5</sup> Despite select arguments that might lead one to believe otherwise, newspaper ownership is more concentrated now than at any time in the country’s history.

While there are some benefits that might be derived from chain ownership, such as increased financial stability and increased resources, there is also a significant risk to the underlying principles of a free press. The Canadian government has visited the issue of regulating media ownership in the past, however no regulations currently exist with regard to newspapers.<sup>6</sup>

It is time for the government to revisit past attempts, such as the 1981 Royal Commission on Newspapers, and to consider what options or regulations may help to strengthen the role of this vital industry. It is also time that the onus be placed on those

who seek to acquire media outlets to prove the benefits of concentration and to be held accountable for their actions as the gatekeepers of information flows to the electorate, rather than having the onus placed on those who wish to see consolidation halted, which has traditionally been the case.<sup>7</sup>

This paper begins by examining the vital role that the press plays in our democracy. This is followed by a section exploring how this role can be obscured without the safeguards necessary to ensure a diverse and free press. The third section provides an overview of the debate that has occurred recently in Canada regarding regulation of the press. The fourth section examines one select case in the recent evolution of the print media landscape in Canada, to show some of the key problems being faced today, including the role that journalists play in the ever more concentrated media and the risks that they undergo as gatherers and as professionals. Finally, the concluding section shows why the general framework recommended over twenty years ago by the Royal Commission on Newspapers is still the best framework to deal with the problem of concentration when considering both the general dangers of media concentration and the current landscape of newspaper ownership.

### **The Role of the Press**

The media is more than simply a means of finding out facts. It also sets the context for the facts that are gathered, determines how such facts should be viewed and debated, and often offers in-depth analysis of events. In this way, the news media shapes not only how events are presented, but how they become relevant to the receivers of information. “The news media are essential to the formation of attitudes, opinions, beliefs and values in our society.”<sup>8</sup>

Dean Alger states that a democracy is, “a ‘marketplace of ideas,’ where a wide range of people and organizations have a real opportunity to express information and ideas for all of us to ponder.”<sup>9</sup> The notion of a free press, as it is so vehemently supported in Western democracies, is based on this idea of free and open exchange of ideas and expressions. Knowlton Nash, a former CBC news anchor, referred to the function of the media as “searchlights,” a notion congruent with the long-standing idea that the media should be a free marketplace of ideas – leaving no stone unturned in the search for truth.

The “marketplace of ideas” metaphor is commonly understood to have originated with the writings of 17<sup>th</sup> century poet John Milton, and to have been more formally developed in the works of 19<sup>th</sup> century philosopher John Stuart Mill.<sup>10</sup> Both writers developed notions whereby an understanding of truth could be achieved through the free exchange of ideas. Interpretations of how exactly to understand this concept in light of modern considerations of government regulation are, as might be expected, inconclusive, and this paper will not attempt to disclose a full account of interpretations. However, there are certain aspects of the debate that are pertinent here.

While the use of the “marketplace of ideas” metaphor has clearly entailed both economic and democratic considerations, there appears to be strong agreement that in any case a *competitive* market is necessary for the exchange of ideas – that consumers in the market are rational and are able to make informed decisions.<sup>11</sup> What also appears clear is that the original intent behind the metaphor suggests that it “was based on a marketplace consisting of many small sellers in competition with each other, and many buyers free to go somewhere else if they were not satisfied. It did not envision a captive market.”<sup>12</sup> Indeed, it can be assumed that the marketplace, as it relates to Mill’s metaphor, should provide clear evidence of competition between a variety of actors.

Gordon goes a step further in suggesting that, while neoclassical writers may attempt to hail Mill’s liberal ideals, he was in fact a very strong proponent of ensuring that marginalized or less popular voices were not pushed out of the market – as the unregulated, *laissez-faire* market model would generally prescribe. Rather, she notes that Mill states,

On any of the great open questions ... if either of the two opinions has a better claim than the other, not merely to be tolerated, but to be encouraged and countenanced, it is the one which happens at the particular time and place to be in a minority. That is the opinion which, for the time being, represents the neglected interests side of human well-being which is in danger of obtaining less than its share.<sup>13</sup>

Gordon states that Mill recommends going beyond mere tolerance of dissenting viewpoints, “[he] implies that the market is an inappropriate mechanism through which to achieve best the aims of development and improvement for all.”<sup>14</sup> Gordon suggests, in light of the previous quote, that Mill may have even endorsed some degree of governmental action to ensure equal shares of ability to make expression meaningful. To this she adds the caveat that private or individual means of ensuring equality would be preferential.<sup>15</sup> Of course, the thought that the private sector may require government regulation to ensure its competitiveness was likely considered absurd by most in Mill’s time – when the grip of both the state and the church over what could be published was only beginning to soften.<sup>16</sup>

Thus, it appears unlikely that the “market” is the best metaphor for the proposed model of free expression of ideas – or certainly, that a market left to the less-desired market forces leading to market failure or market imperfection is not a preferred model. However, use of the metaphor in this paper will follow this position on its meaning – that the “market” must be highly competitive, and where overt advantages for some and significant barriers to others cannot exist, if these occur, then the market is no longer effective.

This conclusion has not yet been reached by Canadian legislators or judges, and interpretation of what “freedom of the press” means, as it is noted in the constitution, has not really come to light, except that it is held as a freedom that cannot be taken away by the state. According to Robert Martin, “The [Charter of Rights and Freedoms’] guarantee of freedom of expression cannot be enforced against media owners or managers.”<sup>17</sup>

The reason why newspapers are such a crucial area of consideration in this debate is because they are one of the most powerful tools for the expression of ideas to society. Robert Hackett, one of the founders of NewsWatch Canada, states, “no other mass medium offers the same combined possibilities for accessibility, in-depth analysis, potential diversity of viewpoints, and sustained reflection on important political and economic issues.”<sup>18</sup> Alger states that newspapers remain “the foundation of the news media.”<sup>19</sup>

However, the ability to pursue open exchange means that some effort should be made to give a voice to a wide range of diverse persons and to attempt to adequately represent the varying viewpoints throughout the society – as per the intentions of Mill. In this way, Hackett suggests that, “journalism’s most important tasks in a democratic society include holding those in power accountable, and giving voice to those who can’t automatically command attention through money or political power.”<sup>20</sup>

It is this approach that is reflected in the works of many journalists, and has led to criticisms of the media’s “left-leaning” bias – though such criticisms are less prevalent with the current state of Canadian press.<sup>21</sup> As more conservative, or neo-liberal, viewpoints are likely to be presented, on average, by the more powerful and wealthy in society – who also have the resources available to them to announce their messages to a greater degree<sup>22</sup> – it follows that an open marketplace of ideas would pursue a significant opposition to such positions to give balance to coverage. In attempting to find a balance, many journalists may be seen as favoring the “left” in their attempts to allow anti-corporate or left-leaning interests be voiced.

On the whole, however, the fact that the debate over media ownership regulation is often simplified to a simple “right versus left” seems to miss the point of the real debate over democracy and liberal expression and the role of the media in society. Ultimately, there is no reason that a monopoly capitalist-owned press should be viewed as significantly different from a monopoly state-owned press. Indeed, Ben Bagdikian, dean emeritus of the Graduate School of Journalism at the University of California at Berkeley, states that the integration of journalism, news and public information into “the highest levels of financial and non journalistic corporate control’ is akin to the official control of information characteristic of a totalitarian state.”<sup>23</sup> It follows that *any* consolidation of the mass means of expression should be viewed critically as a possible threat to the continued function of the marketplace and to democracy.

The United States’ judicial precedent in this area is of utmost importance because the issue has received a greater degree of scrutiny at the legal level in that country. Alger notes that the “free press” provision in the U.S. constitution was meant to ensure that media sources are “genuinely independent and diverse. That independence is to ensure that the news produced is beholden to no one – not government, not interest groups, not corporations with big financial interests in various areas.”<sup>24</sup> In U.S. Supreme Court case *Associated Press v. United States* (1945), Justice Hugo Black ruled,

The First Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public,

that a free press is a condition to a free society ... Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom.<sup>25</sup>

It should be obvious that if any voices appear to dominate the press that opponents will use such voices as a target. It is this fact precisely that should aid in understanding that democracy is not well served by either position holding a monopolistic or oligopolistic position over the news industry. Rather, it is a competitive media industry that shines lights on every dark corner and reports on any findings that truly meets the public interest.<sup>26</sup>

Now that I have looked at the role that the press should ideally serve, I next will examine ways in which this role has been threatened by commercialization, conglomeration, and anti-competitive practices in the media industry.

### **Distorting the role of the press**

In light of the last section, it may seem ironic that democracy, or the marketplace metaphor, is sometimes used as a reason why some media outlets choose to ignore certain stories while exploiting others that may seem of questionable “public interest.” David Taras notes the convergence of news and entertainment, noting that much news is “either ‘framed’ in an eye-catching, sensational and entertaining way or is about the entertainment industry – celebrities, sports teams, movies, books, etc.”<sup>27</sup> Hackett refers to the corporate press’ response for increased “infotainment” as the “consumer sovereignty” argument.

Audiences have power, the argument runs, because their purchasing and viewing habits ultimately determine the kind of news content the media offer. No commercial news organization could survive without attracting viewers, listeners, and readers, and this supposedly makes consumers the ‘sovereign’ elements in the media system.<sup>28</sup>

While the premise of this argument falls back on the marketplace metaphor, because it assumes rational agents choose what to purchase, the problem with this argument is that audiences, according to Hackett, have no “coherent, collective voice,” and recent research shows that there is a very diverse and sometimes contradictory nature to the preferences of audiences in media consumption.<sup>29</sup> The argument, while it may help to dress up a simplified approach to the news that is generally cheaper for publishers, is especially flawed in cases where few print sources exist. Indeed, consumers can only register purchasing power when a reasonable range of choices exists. Monopolistic or oligopolistic suppliers can hardly claim to be following the regular forces of the market.

The negative factors of infotainment become multiplied when ownership is placed in the hands of a few corporations whose view it is to maximize return on investment. As competition declines, the need to investigate, find “scoops,” and take an active role toward news stories declines as well. Taras notes that the “effects on public policy, and indeed public debate, while difficult to measure, are enormous.”<sup>30</sup> He notes that as more

space is dedicated to infotainment, less space is given to stories of political significance, such as issues in health care, education, or local politics. He further states “studies have shown that there is a direct correlation between the issues that the public sees as important and the issues that are presented as important in the mass media.”<sup>31</sup>

This problem of news coverage is again compounded when publications are used as advertisement for products of media empires from which they originate. Taras notes U. S. examples such as a *Time* or *People* magazine cover showing a star of a Time-Warner<sup>32</sup> movie or TV show.<sup>33</sup> On various occasions in Canada, *The Globe and Mail* has given special attention to CTV broadcasts,<sup>34</sup> as has the *National Post* given for Global TV<sup>35</sup> – often specifically within news stories. The question, as Taras notes, “is whether readers and audiences are receiving an accurate account of the events being reported on, or whether the reporting dissolves into a form of advertising.”<sup>36</sup>

John Miller, former deputy managing editor of Canada’s largest newspaper, *The Toronto Star*,<sup>37</sup> also notes that as profits have become the focus of corporate chain media, that most of the profits are re-invested not for the purpose of improving news coverage or content, but rather are put into marketing. He notes that, in 1993, a much awaited re-design of the *Star* that carried the slogan, “The Shape of News to Come,” resulted in “narrower pages, more colour pictures, low-rub ink, more charts and graphs, bigger and cleaner type, a news summary on page two for readers in a hurry,” and a return to an award-winning nameplate from the 1960s – the result of hundreds of thousands of dollars in market research. As Miller laments, there was “no beefing up of local coverage, no new specialized beats, no substantial additions to editorial content.”<sup>38</sup> The modern press is, as James Squires, former editor of the *Chicago Tribune* puts it, “no longer an institution dedicated to the public interest, but rather a business run solely in the interest of the highest possible level of profitability.”<sup>39</sup>

A key component of this business interest is the changing nature of the advertising content of newspapers, and the ability of chains to dismantle financially weaker opposition. Kent notes that as advertising now accounts for approximately 80% of revenues at daily papers – with the range of advertising revenue cut considerably by the increase in other electronic mediums all vying for the advertising dollars of corporations – the ability for a single paper to gain a small advantage in a particular region can quickly cause the depletion of competitors. Once competition is essentially gone, rates of profit can extend well beyond those of most industries – as the cost of simply running more papers is minimal to the overall operating budget, while it allows for significant increases in advertising revenues.<sup>40</sup> Obviously conglomerates hold an advantage in wars to achieve such positions.

Another example of how conglomerates can engage in anti-competitive behavior that independent papers cannot is “Black Tuesday,” August 27, 1980, when a competitive trade-off was made between the two largest chain newspaper owners at that time. Southam closed its *Tribune* of Winnipeg, giving the Thomson-owned *Winnipeg Free Press* a monopoly in the city, while Thomson closed its *Ottawa Journal*, thus leaving the Southam-owned *Ottawa Citizen* as the only daily in the capital. Further, Thomson sold

its *Vancouver Sun* to Southam, which already owned the city's only other daily, the *Province*, and Thomson also sold to Southam its minority share in the *Montreal Gazette* – Montreal's only English daily following the recent demise of the *Star*.<sup>41</sup>

These actions led to the second of two major reviews of mass media by the Canadian federal government. Having now considered some of the key threats to the democratic and informative nature of the press, I now turn to the debate over regulation of the press in Canada, and discuss the recommendations in the second of these government reviews.

### **The debate over regulation**

While the Canadian Radio-Television and Telecommunications Commission (CRTC) can claim some degree of regulatory power over broadcast media and telecommunications in Canada, publishing in Canada is under no such regulatory body. Despite past attempts, such as the 1970 Special Senate Committee on Mass Media (the Davey Report), and the 1980-81 Royal Commission on Newspapers (the Kent Commission), the publishing industry in Canada is subject only to the Competition Act<sup>42</sup> – which governs based on economic market forces – and to certain provisions in the Income Tax Act<sup>43</sup> that encourages Canadian ownership and content. While tax provisions seem to be the major reason why Canadian newspapers are virtually all Canadian-owned, the Competition Act does not appear to be much of a safeguard for ensuring any degree of “competition.” It is the purpose of the Act to proscribe any merger that “prevents or lessens, or is likely to prevent or lessen, competition substantially.”<sup>44</sup> However, as Robert Babe notes, consolidation to the point where two firms account for 95% of all sales (as is the case in Canada's domestic beer industry) does not appear to violate the intentions of the Act.<sup>45</sup>

The loss of competition in the mass media (not to lessen the importance of beer to many Canadians) is clearly of greater effect to the health of our democracy. Yet the lack of government action dealing with very significant steps toward consolidation of Canada's mass media leads to the question of what value is placed on an open and free press by Canada's elected representatives. Publication ownership is currently at an alarming level of concentration to the point where the message of the medium is clearly being manipulated in favor of certain viewpoints.

The 1970 Davey Report lamented the end of the independent owner-operator of newspapers in Canada. At that time, only nine independent dailies continued to publish in the country.<sup>46</sup> Indeed, the rapid consolidation that had begun to take place in the news industry saw the top three chains move from holding 25% of the daily circulation in 1958, to 45% by 1970. By the time the Kent Commission was ordered in 1980, the number had risen to 57%, and in 1996, totaled 66% with Southam-Hollinger controlling 43% single-handedly.<sup>47</sup> By contrast, in 1996 in the U. S., eleven companies controlled 50% of daily circulation, with none exceeding 10%.<sup>48</sup>

The Kent Commission, led by former journalist and senior Liberal policy advisor Tom Kent, was charged with examining, among other aspects of the industry, the extent of newspaper ownership in Canada, the responsibility of the newspaper industry to the public, the quality of reporting, and the future of the industry. While the commission conceded, “some arguments, chiefly with respect to financial stability, can be made for chain newspapers,”<sup>49</sup> it made significant recommendations to restrict the number of newspapers and other media that could be owned by any single corporation.<sup>50</sup> Among a long list of recommendations, it called for:

- restricting expansion of any chain owning five or more daily papers;
- prohibiting any chain from acquiring more than five papers;
- preventing cross-ownership of newspapers and broadcast media where 50% or more of the broadcast medium’s market intersected with the newspaper’s market;<sup>51</sup>
- prohibiting the ownership of two or more papers having 75% or more of the circulation, in one language, in a defined geographical area;<sup>52</sup>
- preventing conglomerates from purchasing a daily paper where the purchaser’s non-newspaper assets exceed the value of the newspaper;
- establishing a Press Rights Panel with the power to apply such rules and, in certain areas, permit exceptions. This panel would also require owners to satisfy certain requirements in proving necessities in the case of any papers being closed down.<sup>53</sup>

Such proposals may seem Draconian given the extent of newspaper ownership in Canada today, but clearly the purpose of such proposals was to prevent what many see as the current state of crisis in Canadian news distribution based on a lack of ownership regulations. Up until this time, a politically independent press was “a treasured value in our society,” however the notion that the press is threatened by corporate ownership was new, and in many ways, remains a difficult one to accept.<sup>54</sup>

The further suggestion that big business in general is the main threat to press freedom in developed countries, and that only the state is powerful enough to protect the press, is such a reversal of the traditional view of government-press relations that few people have adopted it – particularly in a world where, with the exception of a small number of highly developed countries, threats to press freedom still originate in government.<sup>55</sup>

Thus, the Kent Commission's report, having faced an onslaught of opposition from newspaper publishers, was never implemented in any form. However, Desbarats suggests that this was partly due to its inability to answer one fundamental question, “Are chain-owned monopoly newspapers worse than the old individually owned competitive papers?”<sup>56</sup> The next section addresses this question by examining how Canada’s largest media conglomerate impedes the free flow of information.

### **CanWest's distortion of the market**

*“Canadian media are more fragmented and less concentrated than ever before ... I submit that people who believe otherwise are not looking at the facts and they also*

*probably believe Elvis is still alive.”* – Leonard Asper, president and chief executive officer, CanWest Global Communications Corp.<sup>57</sup>

In the past two years, CanWest has become the largest owner of Canadian mass media with an empire that covers a majority of the country’s daily newspapers, as well as the country’s second largest private national television network, various smaller radio networks, and Internet properties, including Canada.com. What is ironic about the statements made by Leonard Asper – son of Israel (Izzy) Asper, chairman of CanWest and former leader of the Manitoba Liberal Party – is that while the very assets of his own company render the statement false,<sup>58</sup> it also suggests that fragmentation of media ownership is desirable. The actions of CanWest in recent months appear to back up the desirability of fragmented ownership.

In November 2000, shortly before the last federal election, Izzy Asper published an opinion piece urging voters to elect Jean Chrétien’s Liberal Party to a third term. The piece appeared in every CanWest owned paper – approximately 40% of the nation’s circulation. Later, in January 2001, David Asper, chairman of CanWest’s publication committee, felt that newspaper coverage of the “Shawinigate” affair – which suggested Prime Minister Jean Chrétien may have had a conflict of interest over a bank loan to a friend – had been unfair to the prime minister. David Asper wrote an open letter to journalists stating this, again publishing it in each paper. Bloc Quebecois MP, Michel Gauthier asked, “Isn’t this eloquent proof that there is a great danger in the concentration of the press in Canada, a danger that political information will be pointed in the direction of the views of the prime minister?”<sup>59</sup> One journalist noted, “the history of support (financial and otherwise), combined with the chilling effect of federal regulation, has raised fears that CanWest will become out of necessity the broadcasting and publishing arm of the Liberal Party.”<sup>60</sup>

Such head office editorials, according to one journalist, can also have a “chilling effect in the newsroom.” The response by journalists generally is to avoid disagreement with ownership and to keep their jobs.<sup>61</sup> With a recent decision by CanWest to issue national editorials written in the company’s head office in Winnipeg and to distribute them to each CanWest paper, many journalists, most notably those at the *Montreal Gazette*, have protested the move as stifling their abilities to freely express themselves in the same papers. According to a 2002 news release from The Newspaper Guild of Canada, four *Regina Leader-Post* journalists were suspended for talking to outside media, while six journalists were given letters of reprimand for withdrawing by-lines while protesting what was viewed as censorship. Senior management had “changed a story to tone down criticism of CanWest for pulling articles by some of its columnists who expressed views the newspaper chain didn’t like.”<sup>62</sup> CanWest extended a prohibition upon all journalists in its print and broadcast division from participating in such protests.

Journalists have few options, as mobility within the industry is significantly limited with so many papers owned by the same corporation.<sup>63</sup> Many journalists feel that if they are fired from one paper, they will be shut out of the chain and have little hope of

finding other work. Many feel that their ability to provide the service expected of the press is jeopardized. Indeed, Gail Lem of the Communication, Energy and Paperworks Union of Canada, which represents many of Canada's journalists, recently stated,

If you talk to a journalist you will uncover a quiet fear about the state of journalism in Canada and about the quality and integrity of their craft ... Journalists talk about a shocking narrowing of the journalistic agenda. The range of material that is deemed newsworthy has declined and the resources for investigative journalism have virtually disappeared.<sup>64</sup>

One of the strongest arguments that is made for chain ownership is the stability of papers with large corporate backing – “who else can afford the risks or the cost of catastrophic libel insurance with its multimillion-dollar premiums and \$5 million deductibles?”<sup>65</sup> While the Kent Commission, as noted earlier, gave some credence to this argument, Kent has more recently denounced it stating, “One argument that had been made in the past was that a chain could afford to maintain an unprofitable newspaper that would have to close if it were independent. That argument had disappeared in August 1980 with the closures in Ottawa and Winnipeg.”<sup>66</sup> More recent examples show that large chains do not maintain newspapers simply for their democratic value, and that they are willing to sell them as nothing more than business investments.

Leonard Asper recently suggested selling community newspapers to raise \$400-million to \$800-million,<sup>67</sup> but noted that the company would probably wait out the sagging economy. “We think selling them eight months from now we’ll be looking at better numbers than we are today.”<sup>68</sup> Such comments show little regard for the local impacts of such moves.

Media mogul Conrad Black of Southam-Hollinger once explained that his company was “the greatest corporate friend Canadian working print journalists have ... we have rarely sold and never closed a daily paper.”<sup>69</sup> These comments were made shortly before Hollinger sold 13 daily newspapers, 136 community papers, 50% of the National Post and Internet portal Canada.com to CanWest in 2000.

What is also of interest is that one of the Southam's smaller papers, the *Cambridge (Ontario) Reporter*, which was purchased from Thomson in 1995, saw a 30% staff reduction in 1996. According to the CBC journalist who covered the story of the lay-offs, reporters went from an expectation of approximately two stories per day (40 stories per month) to four stories per day – “they have people there who are doing nothing but rewriting press releases and [they are] tossing these off as local news.”<sup>70</sup> A study issued in 1997 found that while quality and diversity at large papers “improved in some respects and declined in others ... smaller market dailies displayed a consistent decline.”<sup>71</sup> As Southam-Hollinger purchased most Ontario papers outside Toronto, a journalist for the *Windsor Star* noted, “Eventually there will one Queen's Park reporter for Southam.”<sup>72</sup> The emerging picture reveals that the quality of journalism within large corporate chains actually declines in many cases, while the commitment of the ownership to the paper or to news for the “public interest,” also declines as greater favour is given to economic interests.

There are other conglomerates that receive significant attention in the debate over ownership, some of which have been noted earlier in this paper. However, an exhaustive account of the practices of media conglomerates would lead only to the conclusion that already seems apparent, that the power of media chains is detrimental to the marketplace of ideas, and requires some check for the sake of public interest.

In concluding arguments for a new approach to the marketplace of ideas, it should be noted that distortion in the diversity of viewpoints in the news *could conceivably occur* with multiple independent newspapers. Such appears to have been the case many years ago in the U. S. when multiple press barons shared a similar commitment to laissez-faire economics, and exploited their work forces – yet, “they created newspapers which were worthy members of the fourth estate. ...as far as the health of the ... American bodies politic was concerned, it was not the quality of these publications which chiefly mattered but the variety.”<sup>73</sup> Such a system still maintains many key aspects of a competitive market.

Ultimately, what this paper demonstrates is that the ideal of the “marketplace of ideas” is one that cannot be applied to the current state of print journalism in Canada. On top of the aforementioned problems of monopolies – as exist in various provinces – and oligopolies, there are also notable barriers to entry for new comers to the industry, which prevents any natural increase of competition. Finally, not only has the market been significantly depleted on the supply and demand of the *goods* being traded, but the supply and demand of *labour* is also skewed as a result of market imperfection. Print journalists are not able to properly market their services within the industry. It is the conclusion of this paper that the “invisible hand” of the free market must now become visible in an open and accountable way, such that the system of information delivery, as well as the means of its regulation, can be closely scrutinized and held accountable for the ultimate product of diverse and meaningful ideas.

In the final section, I briefly outline certain solutions that have been considered in a recent parliamentary committee and show what sorts of changes to the current system could be beneficial to the Canadian public.

## **Solutions**

There are various approaches that might be considered to remedy the declining effectiveness of the marketplace of ideas, however, they generally include imposing regulations – not a concept readily accepted by those adhering to the free market as the only approach.

The one exception to the increased regulation approach would be relaxing the domestic ownership incentives in the Income Tax Act, which currently gives Canadian owners a large tax advantage over foreign owners – such that significant foreign ownership of Canadian news media is very rare. Indeed, the Standing Committee on

Industry recently noted the possibility of increasing the foreign ownership threshold in its July 2000 Interim Report on the Competition Act. While the notion of increased foreign ownership does not appear to have been well received by the committee, nor were changes to the Income Tax Act within the jurisdiction of the committee, Tom Kent did seem to suggest that some movement on the newspaper industry must take place, even if it does mean increased vulnerability to U. S. ownership of Canadian newspapers:

American takeover ... could be the lesser evil, if the only alternative is domination by a new Canadian media giant. But it would be a poor second to restoring the diversified Canadian ownership that there used to be ... I would certainly agree that to have some foreign ownership could be preferable to everything falling into the hands of one great big corporation just because it was Canadian.<sup>74</sup>

However it is unlikely that this approach would offer a long term solution, mainly because it could easily reproduce the problem simply with more foreign ownership. Gail Lem of the Communication, Energy and Paperworks Union of Canada, which represents many of Canada's journalists, noted to the same committee, "Exchanging a Canadian-owned chain for an American one does nothing to improve the situation but could put the cultural fabric of Canada, which I think we all recognize is already under siege, further at risk."<sup>75</sup>

Second, as was noted by the committee, relaxing the tax incentive would change "the thrust of [the North American Free Trade Agreement] with respect to Canada's ability to protect its cultural industries."<sup>76</sup> As is also clear in the report, any attempt to increase required domestic ownership would likely be met by a U. S. challenge under NAFTA. It is likely that future attempts to reverse any decision to open up the press to foreign ownership would be thwarted. In essence, the desired result may not be realized – it may even suffer a setback – and there would be no reversing the decision.

An alternative option is that tax incentives could be offered to locally owned newspapers.<sup>77</sup> This welcome move would give existing local owners some leverage in competing with chains that can afford to run some unprofitable papers. However, it is not enough. Ownership concentration is currently at a point where tax incentives would probably require accompaniment by additional policies to "free-up" ownership to some extent. A tax break may help current independent owners, but would be less likely to cause chains to sell-off news assets. It is also unclear whether such a move may be seen as anti-competitive and challenged under NAFTA.

In light of this, it is likely that regulation of ownership of the newspaper industry through other federal channels is the **only** step that can rectify the current concentration of newspaper ownership. As the above-mentioned committee concluded, it should not be the Competition Act specifically that lays out and enforces competition and editorial diversity. While Kent promoted the notion of a specific section of the Act dealing with newspaper ownership,<sup>78</sup> Gaston Jorré of the Competition Bureau pointed out that "The Act is one of general application ... the basic approach we use with newspapers are the same as with any other industry."<sup>79</sup> The report's conclusion suggests that no changes with respect to newspaper ownership would be included in future amendments. The

amendments to the Act passed in Bill C-23 on December 10, 2001, reflect this conclusion.

This leaves the possibility of following the framework of the Kent Commission in 1981. Indeed, there is no reason why a Newspaper Act, as suggested in the Kent Commission, would be charting new territory in terms of industry-specific ownership regulation. Two models already in effect in Canada include the Canada Transportation Act and the Bank Act.<sup>80</sup> The primary difference in the case of newspaper regulation is that, “administration ... would not ... be entrusted to a minister and a government department” in order to avoid the possibility and/or perception of conflict of interest.<sup>81</sup> It must be clear that the purpose of regulation is not to impose on the *content* of specific papers.<sup>82</sup> Such an imposition may bring some balance, but tampering with content would rightly be seen as a further dangerous threat to the freedom of press and expression.

It is for this reason that the suggestions of the Kent Commission are as important today as ever before. In calling for a specified Newspaper Act and Press Rights Panel, the newspaper industry could have an overseeing body at arms length to government that would hold the power to make binding decisions through federal legislation. Such proposals, as those noted earlier, would not impose on the content of newspapers, and would require little in terms of immediate movement in the industry. However, over a fixed period of time, certain companies would be required to divest themselves of media circulation that exceeded regional limits, and nationally distributed papers, or national broadcasters, would be required to divest themselves of some newspapers to meet given limits. Alternately, conglomerates could divest themselves of other non-newspaper assets. This measure, in particular, would have a significant impact on the underlying problems of media beholden to other corporate interests as were pointed to earlier.

In the longer term, the ability to acquire newspapers, or the ability of newspaper owners to acquire other assets, would be reviewed by an independent panel, which would examine both the democratic and economic effects of such acquisitions on the Canadian public. Those seeking new media outlets would be required to show the benefits of acquisitions, rather than simply assuming that there is no reason why such acquisitions should not take place. This approach is admittedly not the *laissez-faire* approach preferred by most owners of media chains, but it is an approach that recognizes the vital informative role that newspapers play, a role which should not and cannot be jeopardized by downplaying or eliminating certain perspectives.

Ultimately, such measures would do exactly what Canada's constitution already does – *recognize that the press is not simply another business* – that it is a crucial component of a healthy democracy, and it must be protected as such. Such a move would only enhance and preserve the marketplace of ideas, not impede it.

As a prescriptive model, this approach could have implications for many other countries that also experience increasing levels of media concentration and conglomeration, though it is not within the parameters of this paper to look in-depth at other specific cases. As was noted earlier, the U. S. does not have nearly the same level

of concentrated ownership in its newspaper industry as does Canada, though media ownership concentration remains a concern within the U. S. and appears somewhat more disconcerting when viewed on a more regionalized level.

Media concentration is clearly an issue of concern in most of the world's leading democracies. Some European countries, such as the U. K., have adopted regulative structures to safeguard against excessive concentration.<sup>83</sup> Others have no ownership regulations in place, such as Italy, where current Prime Minister, Silvio Berlusconi, owns one of the country's largest media empires and is seen by some critics as controlling his own political communications and campaigning machine.<sup>84</sup>

The impact of media on politics and policies has long been, and continues to be, a significant area of study, both theoretically and empirically. As we learn more about these impacts, it is possible that more safeguards against concentration and conglomeration will become necessary, though such considerations will take place in an atmosphere of increasing global adherence to classical economic principles – which appears at odds with such measures. The key aspect in any consideration must be ensuring that a healthy business atmosphere can co-exist with a healthy and competitive media environment – one that can truly broaden the marketplace of ideas and facilitate a healthy democracy.

## Notes

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<sup>1</sup> Part I, Sect. 2b of the Canadian Charter of Rights and Freedoms - this clause concerns various forms of freedom of expression.

<sup>2</sup> Most notably the First Amendment in the U. S. Constitution, see Alger, D. (1998). *Megamedia: How giant corporations dominate mass media, distort competition, and endanger democracy*. New York: Rowman & Littlefield Publishers, Inc.

France's Law of July 29, 1881, guarantees freedom of the press and Britain recognizes freedom of the press through jurisprudence convention (Kent, T., Picard, L., and Spears, B. (1981). *Royal Commission on newspapers*. Ottawa: Ministry of Supply and Services, p. 25).

<sup>3</sup> Winter, J. (1997). *Democracy's oxygen: How corporations control the news*. Montreal: Black Rose Books, p. 75.

Frost, C. (2000). *Media ethics and self-regulation*. Harlow: Pearson Education Limited, p. 24.

<sup>4</sup> Hackett, R., et al. (2000). *The missing news: Filters and blind spots in Canada's press*. Aurora, Ontario: Garamond Press.

Hackett provides an extensive study on "blind spots" in Canadian media.

<sup>5</sup> Reguly, E. (2002, February 28). Consumers beware: Canada is a haven for media oligopolies. *The Globe and Mail*, sec. B, p. 17.

Also see Gail Lem quote in Whelan, S. (2000). *Interim report on the Competition Act*. Ottawa: Standing Committee on Industry. Retrieved March 29, 2002 from the World Wide Web: <http://www.parl.gc.ca/InfoComDoc/36/2/INDU/Studies/Reports/indu01/07-toc-e.html>.

<sup>6</sup> The only media regulatory body in Canada is the Canadian Radio-Television and Telecommunications Commission (CRTC) for broadcast media ownership, telecommunications, or cross-ownership of broadcast and other mediums.

<sup>7</sup> The Davey Report followed the guideline that "all transactions that increase concentration of ownership in the mass media are undesirable and contrary to the public interest – unless shown to be otherwise" (quoted in Jackson, J. (1999). *Newspaper ownership in Canada: An overview of the Davey Committee and Kent Commission studies*. Ottawa: Government of Canada, Political and Social Affairs Division, p.

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2. Retrieved March 21, 2002 from the World Wide Web: <http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/BP/prb9935-e.htm>.
- <sup>8</sup> Winter, 1.
- <sup>9</sup> Alger, 1.
- <sup>10</sup> Napoli, P. M. (1999). The marketplace of ideas metaphor in communications regulation. *Journal of Communication*, p. 153.
- Gordon, J. (1997, Summer). John Stuart Mill and the 'marketplace of ideas.' *Social Theory & Practice*, 23, (2), 235.
- <sup>11</sup> Gordon, 235.
- Gozzi, R. Jr. (1990/91, Winter). The metaphor of the market. *ETC: A Review of General Semantics*, 47, (4), 403-6. Retrieved April 11, 2002 from the World Wide Web: <http://80-ftviewer.epnet.com.proxy.lib.sfu.ca/ftviewer/amfulltext.asp?EBSCOContent=ZWJjY8LX83ePprFrveX1a6Gmr32PprSFo6i5gKeWxpjDpfKApa2xfKWvrbjQ3%2B151uXjuuMA&db=AFH&AN=9103181456&ReturnURL=http%3A%2F%2Fmercury%2Elib%2Esfu%2Eca%2Ffulltext%2Fgateway%5Fback%2Ehtml>.
- Napoli, 151.
- <sup>12</sup> Gozzi.
- <sup>13</sup> Mill quoted in Gordon, 239.
- <sup>14</sup> Gordon, 239.
- <sup>15</sup> Gordon, 244.
- <sup>16</sup> Kent, 1981, 25-26.
- <sup>17</sup> Martin, R. (1997). *Media law*. Concord: Irwin Law, p. 11. – reference to Part I, Sect. 2b in Charter of Rights and Freedoms includes freedom of the press.
- <sup>18</sup> Hackett, 11-12.
- <sup>19</sup> Alger, 2.
- <sup>20</sup> Hackett, 15.
- <sup>21</sup> See Taras, D. (2001). *Power and betrayal in the Canadian media* (Updated ed.). Peterborough, Ontario: Broadview Press, pp. 199-225.
- <sup>22</sup> Some examples are access to marketing communications personnel and the ability to fund advertisements.
- <sup>23</sup> Quoted in Desbarats, P. (1996). *Guide to Canadian news media*. (2<sup>nd</sup> ed.). Toronto: Harcourt Brace Jovanovich Canada, pp. 80-82.
- <sup>24</sup> Alger, 2-3.
- <sup>25</sup> Quoted in Alger, 20; with portion of quote and case name added from Napoli, 154.
- <sup>26</sup> Journalism as serving the "public interest" as from Code of Ethics, Society of Professional Journalists in the United States: "The primary purpose of gathering and distributing news and opinion is to serve the general welfare by informing the people and enabling them to make judgements on the issues of the time" (quoted in Alger, 4).
- <sup>27</sup> Taras, 83.
- <sup>28</sup> Hackett, 47.
- <sup>29</sup> Hackett, 48.
- <sup>30</sup> Taras, 84.
- <sup>31</sup> Ibid. 84-85.
- <sup>32</sup> Time-Warner is the world's largest media company, holding many top-selling magazines, book publishers, record companies, cable operations and movie productions (Gozzi).
- <sup>33</sup> Taras, 85.
- <sup>34</sup> Both are owned by Bell Globemedia Inc.
- <sup>35</sup> Both are owned by CanWest Global Communications Corp.
- <sup>36</sup> Taras, 86.
- <sup>37</sup> The *Toronto Star* was a long-time independent daily now owned by TorStar Inc.
- <sup>38</sup> Miller, J. (1998). *Yesterday's news: Why Canada's daily newspapers are failing us*. Halifax: Fernwood Publishing, pp. 8-9.
- <sup>39</sup> Quoted in Miller, 21.

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- <sup>40</sup> Kent, T. (1992). The times and significance of the Kent Commission. In H. Holmes and D. Taras (Eds.), *Seeing ourselves: Media power and policy in Canada* (pp 21-39). Toronto: Harcourt Brace Jovanovich Canada, p. 24-25.
- <sup>41</sup> Hackett, 54; Kent, 1992, 23; Jackson, 3.
- <sup>42</sup> RS 1985, c. C-34 – see Babe, R. E. (Ed.). (1996). *Canada. In Media ownership and control in the age of convergence*. London: International Institute of Communications, p. 27.
- <sup>43</sup> RS, 1965, c.28 – see Babe, 30.
- <sup>44</sup> S. 92 quoted in Babe, 27.
- <sup>45</sup> *Ibid.*, 27.
- <sup>46</sup> Miller, 20.
- <sup>47</sup> Most of these papers are now owned by CanWest Global Communications Corp.
- <sup>48</sup> Winter, xii, 3.
- <sup>49</sup> Quoted in Jackson, 3.
- <sup>50</sup> Jackson, 3.
- <sup>51</sup> Such a provision would have prevented cross-ownership in current conglomerates such as Bell Globemedia's CTV and *The Globe and Mail* and CanWest's Global TV and numerous daily papers including the *National Post*.
- <sup>52</sup> Such a provision would have required the break-up of the Irving family's newspaper monopoly in New Brunswick, and CanWest's current monopolies in Newfoundland, Prince Edward Island and Saskatchewan, and possibly in cities such as Vancouver.
- <sup>53</sup> Jackson, 4.
- <sup>54</sup> Desbarats, 79.
- <sup>55</sup> *Ibid.*, 79.
- <sup>56</sup> *Ibid.*, 79.
- <sup>57</sup> Foss, K. (2002, March 2). CanWest presses Ottawa on media legislation. *The Globe and Mail*, sec. B, p. 4.
- <sup>58</sup> This statement is correct only in looking at the total number of owners of various media in Canada, a number that has increased exponentially with the advent of personal webpages and the ability to publish information on the Internet – it does not relate to total circulation. In fact, the impact of news that requires searching out is very limited, while readily available sources, as might be expected, have not seen significant change in circulation with the advent of new technologies and alternative media. See Alger, 21-22.
- <sup>59</sup> Fitzgerald, M. (2001, 2 April). Spiraling In On Itself. *Editor & Publisher*, 134, (14), 10.
- <sup>60</sup> Grace, K. M. (2001). Welcome to Asperland: Has CanWest Global's near monopoly made Canadian journalism one big Liberal family? *Report/ Newsmagazine (National Edition)*, 48, (10), 11.
- <sup>61</sup> Hackett, 208.
- <sup>62</sup> The Newspaper Guild of Canada. (2002, March 13). *CanWest gag order now extends to global television reporters as company refuses to lift discipline against Regina 10*. Ottawa: Canada NewsWire Ltd.
- <sup>63</sup> See David Robinson quoted in Whelan.
- <sup>64</sup> Gail Lem quoted in Whelan.
- <sup>65</sup> Wolzien, T. (1998). The Big News-Big Business Bargain. In N. J. Woodhull and R. W. Snyder (Eds.), *Media mergers*. New Brunswick, U.S.A.: Transaction Publishers, pp. 105-106.
- <sup>66</sup> Kent, 1992, 28.
- <sup>67</sup> CanWest's annual debt payment now sits at approximately \$300-million per year (Grace, 13).
- <sup>68</sup> Fraser, M. (2002, March 11). Fecan must show BCE the margins. *National Post*, sec. FP, p. 3.
- <sup>69</sup> Quoted in Hackett, 57.
- <sup>70</sup> Quoted in Hackett, 59.
- <sup>71</sup> Hackett, 59.
- <sup>72</sup> Quoted in Hackett, 63.
- <sup>73</sup> Brendon, P. (1982). *The life & death of the press barons*. London: Secker & Warburg, p. 252.
- <sup>74</sup> Kent, quoted in Whelan.
- <sup>75</sup> Lem quoted in Whelan; see also Hackett, 231.
- <sup>76</sup> Whelan.
- <sup>77</sup> Whelan.

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<sup>78</sup> Kent appeared in various statements to embrace any step that would curb the current trend of concentration (ibid.).

<sup>79</sup> Jorré, quoted in Whelan.

<sup>80</sup> Whelan; Kent, 1992, 35.

<sup>81</sup> Ibid.; Kent, 1992, 35.

<sup>82</sup> Kent, 1992, 22.

<sup>83</sup> Current regulations place limits on cross-ownership in T.V., radio, and newspapers. See Cox, B. (2000, October). Media ownership and the communications reform white paper. *The Political Quarterly*, 71, (4), 470.

<sup>84</sup> See Henneberger, M. (2002, April 21). Italian leader warns critics on tv to toe the line. *The New York Times* (Late edition), sec. 1, p. 5.

Also see Betts, P. (2001, May 5). The medium is the message as Italian poll is glued to tv. *Financial Times*, p. 6.

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