What Are the Limits of Government Control?

BY TERENCE CORCORAN

ABSTRACT

There is a renewed attempt to get governments into the newsrooms of Canada' s newspapers. We didn't do it two decades ago and we shouldn't do it now. Instead, argues the author, we should be moving in the other direction, removing government from control over the other media. The airwaves should be turned over to private ownership. There is no longer any credible justification for government involvement.

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I was a last minute replacement for Matthew Fraser, and as a result only got around to thinking about what I might talk about the day of my presentation. I thought then that what I'd talk about was the Kent Commission. But that morning Rob Pritchard of the *Toronto Star* made a striking presentation based on the Kent Commission report, picking up on many of the themes that were on my agenda. I must say Rob nailed the Kent Commission's many problems. Its analysis of the 1981 newspaper market proved wrong, its forecast of where the newspaper industry was going were wrong. Above all, its prescriptions were wrong on many levels. As Rob mentioned that morning, it proposed a press rights council, government controls over ownership and tax incentives for new newspaper owners to harness the alleged power of Southam and Thomson.

But there's one element of the Kent Commission that Rob didn't mention. That element is in the very first sentence of the formal report. Not the Forward to the report – which Rob quoted. The first words of the first chapter of the Kent Commission are: "Freedom of the press is not a property right of owners."

That opening sentence should have been seen as outrageous in 1981. It was not. And even today it still is not seen as a basic affront to principles I think all Canadians should hold dear. To this day, some of Canada's leading media gurus continue to use the Kent definition of freedom of the press as a guiding principle.

When a group of Canadian media luminaries – from Pierre Berton to Robert MacNeil to Charles Taylor, Paddy Sherman and John Millar – signed a letter last year calling on Ottawa to look into media concentration, they concluded with the Kent Statement: *Freedom of the press is not a property right.*

But if freedom of the press is not a property right, then what kind of right is it? And whose right is it? The Kent Commission provided the answer. It said: Freedom of the press is a "right of the people."

Now there are only two ways that "the people" exercise any rights. One is in the market place, as buyers and owners of property and production. The second way for people to exercise their rights is collectively, through government. The government is the people acting in the public interest. If follows that the logical end point of the Kent Commission syllogism is the following: "Freedom of the press belongs to the government".

That's really the Kent Royal Commission's basic premise, camouflaged in a haze of verbiage. Even so, the Kent report is today regularly cited as an authoritative reference by people who now want government to investigate media owners, and newspaper owners in particular. The Kent Commission's statement is a touchstone for more government intervention and control.

And you can understand why. Once you conclude that Freedom of the Press, which really is a subset of freedom of speech and expression – freedom of the media – once you've adopted the premise that freedom of the media belongs to government, then there's isn't a whole lot left to debate on the question: What are the limits of government control?

There are no formal limits. Governments can do just about anything they want to control the media, and in some respects they already do. They pass tax laws, ownership rules, regulations, legislate content, impose all kinds of proscriptive and restrictive behaviours on most of our media.

The only limit on this extension of government power is political convention. Which means governments will do whatever governments can get away with politically. And they have been getting away with a lot. Government involvement in the electronic media – radio and television, and film – has been lurching forward for years. In television and radio, the Kent Commission view on property rights has always been true. Freedom of the airwaves is a government right. The original reason for giving government control over electronic media was based on the belief that the supply of airwaves was limited. We simply could not let the airwaves become private property.

That premise has been obsolete for three decades, if it ever was true, but governments continue to find new excuses to expand state control over media property rights. There have been many past attempts to get government into the newspaper business. The Kent Commission called on Ottawa to take away the rights of owners and to use legislative power to restructure the industry. More than a decade earlier, the Davey Commission proposed a Press Ownership Review Board. The board would function as a kind of CRTC over newspapers.

So far, though, they haven't really be able to get their hands on the newspaper industry, but not for lack of trying and pressure from some quarters. They are today being urged to get into the newspaper business by a surprising number of newspaper people. Former publishers, journalism school deans, business people, media gurus – they've all issued calls for Ottawa to act in the current newspaper situation based on the premise that Freedom of the Press is not a property right that belongs to owners. Even though these grand plans have failed to win public support, governments and regulators keep trying.

The CRTC itself, which has no jurisdiction over print, has nevertheless managed to extract codes of newsroom conduct that limit the relationship between television newsrooms and newspaper newsrooms when cross ownership occurs. Some of Canada's media giants have agreed to this, setting precedents that reinforce the Kent Commission's subversive conclusion that freedom of the press belongs to the government.

Now the situation is getting worse. The calls for government and Parliamentary committees to begin interfering even more directly in the newspaper business are heard with increasing frequency. An all-star list of media executives and journalists, including many people who attended the February conference, have called on Ottawa to break the long-standing taboo against government meddling in the newspaper business.

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In a full page newspaper ad last June, they called on Ottawa to look at tax incentives "for media companies that meet objective criteria as to the independence of their newsrooms." At the same time, however, they pay lip service to the idea that government should not have an influence over editorial freedom.

Along this line, I was quite surprised to hear Russ Mills – whom I've admired greatly over the years – call for even more aggressive government involvement in the newspaper business.

At the opening of his comments, he explicitly said that he believes owners have every right to control their newspapers. They have the right "unquestionably", he said.

Then he went on to list five government initiatives that the Senate should look at to remove the owners' rights that he said they held unquestionably. Newspapers owe allegiance to citizens, he said, not shareholders. That sounds suspiciously like the Kent Commission conclusion.

I believe this new attempt to get governments into the newsrooms of the nation's newspapers is a dangerous extension of the Kent Commission's Marxist conclusion that the owners of the means of production should not be allowed to act as owners.

We didn't do it in 1981 – and we shouldn't do it now. Despite what we heard from Prof. Raboy (earlier on my panel), the Kent Commission statement on press freedom flies in the face of the history of free expression and freedom of the press. It defies logic. It's an assault on common law and constitutional principles.

We should be moving in the other direction. We should be removing government from control over the other media, not expanding it to newspapers. Radio, television – the airwaves – should be turned over to private ownership. There is no justification for government involvement. The original reason for government control over the airwaves was an alleged "scarcity" of airwaves. No such scarcity existed then, and with new technology today the argument for keeping government involved is ludicrously absurd. Advocates of intervention, however, are undeterred. Now they argue that we need government intervention because we have too much choice and too many outlets!

So the answer to the question *What Are the Limits to Government Control?* – is that we surpassed those limits long ago and it is time to begin scaling back government involvement and return the media to where freedom of the press dictates the media belongs. Freedom of the press is a property right.