

Prospects — Freedom of Expression

Panel Introduction

The Honourable Mr. Justice Peter deC. CORY*

The panelists discuss two aspects of expression. Sheila Block deals with libel and the possible effect on freedom of expression of large awards in libel cases. Professor Jacques Fremont outlines new technical advances and their possible effect on the dissemination of material that may be either pornographic or hate literature and the problems that arise as a result of their publication in this manner.

There is no doubt freedom of expression is of fundamental importance to any democratic society. The individual members of that society must be able to express their ideas and their approval or disapproval of public institutions and their work. This properly includes criticism of the courts and their decisions. If a democratic society is to achieve its potential, its citizens must be able to disseminate their ideas and opinions and to fully explore and discuss them. To have an idea or an opinion and to be unable to talk about it, write about it and discuss it would be the height of frustration. It would certainly benefit, foster and encourage a repressive regime.

On the other hand, it cannot be forgotten that the dignity of the individual is the basic underlying value in so many Charter rights and liberties. Indeed democratic society is founded upon the concept of the importance of individuals and their inherent dignity. It follows that the reputation of the individual is vitally important, for what greater loss can a person suffer than the loss of a good reputation? The expression of a false statement adversely affecting a person's reputation can do untold damage. Since the dawn of organized society, the importance of reputation has been recognized and there have been penalties for false allegations of bad character or misconduct of an individual. These two fundamentally important values of freedom of expression and the reputation of the individual must be considered and balanced in libel cases and this is what Sheila Block addresses in her paper.

Both the demeaning obscenity and the perfidious evil of hate literature, although they may be the ultimate destroyers of human dignity, are frequently published in the guise of the exercise of freedom of expression.

What constitutes obscenity will vary of course from age to age; from society to society and indeed will change within the lifetime of members of a society. Obviously to some, Titian's *The Rape of Lucretia by King Tarquin* is the height of obscenity while to most it remains a masterpiece and a damning testament of the evil of brute power exercised with the goal of achieving domination. The aspect of hate literature is something that will also have to be considered. It was only 60 years ago that hate literature in the

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form of "the great lie" put forward by that master propagandist Goebels led to the hideous nightmare of the holocaust. Thus as it is so cruelly demonstrated by the recent past, hate literature can have a devastating effect on a society. It is difficult enough to consider and to balance concepts of obscenity and hate literature in the context of freedom of expression. But how are we going to proceed in the face of the technological advances which permit the dissemination of pornography and hate literature in a manner that makes it readily available to a wide audience and yet extremely difficult to adequately identify either the author, the disseminator or the audience? Is the author within the jurisdiction of the Canadian courts if the obscenity and hate literature emanates from overseas? We must understand the medium and how it may be manipulated before we can grapple with the problems that it produces. These are matters explored by Professor Fremont.