



THE DEMOCRACY AND DISSENT PROJECT

Enabling Civil Society Conference

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Panels and Roundtable Concept Notes

Table of Contents

Panel 1 - Why Enable Civil Society? Reimagining the enabling environment	2
Panel 2 – Does Canada “Enable” Civil Society?	4
Panel 3 – National Security and Civil Society	6
Roundtable – Safe Spaces or “Self-Spaces”? Pluralism, Free Expression and Academic Freedom	8

Panel 1 - Why Enable Civil Society? Reimagining the enabling environment

“Why Enable Civil Society?” invites participants to reimagine civil society’s relationship with government, citizens and other stakeholders. This panel aims to situate civil society’s role and significance as a contributor to policymaking, to identify key outstanding and current challenges, and to discuss the key principles and content of an “enabling environment”. It offers the idea of an enabling environment as a broad platform on which to build dynamic and diverse relationships between civil society, government, citizens and other players.

Civil society plays many key roles in shaping and supporting democracy in Southern and Northern countries alike: as advocates, rights defenders, public educators, innovators, service providers, first responders, investors, and much more. The concept of an enabling environment refers to a set of conditions that actively facilitate and promote the development and growth of civil society and its contribution to inclusive policies and social justice. An enabling environment recognizes the capacity of civil society (both formal and informal) to engage in advocacy and dissent, in compliance with fundamental freedoms including freedom of expression and freedom of association and peaceful assembly.

The idea of an enabling environment is well-established in development circles, but more limited at domestic political level in developed countries. The concept has typically focused on three pillars: a) promoting rights, legislation, and policy measures that are supportive of a diverse and vibrant civil society; b) establishing timely, responsive, predictable, and flexible funding mechanisms appropriate to a diversity of CSOs; and c) establishing institutionalized and iterative dialogue, including of a multi-stakeholder nature, between the government and civil society as equal partners.

This session will reiterate these pillars, while exploring the concept more broadly: as one that actively supports an inclusive and progressive policy environment, reduces uncertainty and risk for civil society, increases financial viability for civil society organizations, and improves the capacity of civil society organizations to build solidarity and partnerships with each other and with other stakeholders.

Despite having a robust normative framework, the enabling environment for civil society is reduced and under attack in most countries around the world. The CIVICUS Monitor¹ reported that only 22 countries classify as ‘open’ societies while 108 are in the “obstructed”, “repressed” and “closed” categories. (Canada and the US, along with 63 other countries, are classified as “narrowed”). This results in just 2% of the world’s population live in a country

¹ <http://www.civicus.org/index.php/media-resources/reports-publications/2968-people-power-under-attack>

with ‘open’ civic space. This analysis also shows that more than three billion people live in countries with serious to extreme restrictions on fundamental civic freedoms. The report further shows that the phenomenon of “shrinking space” for civil society spreads across a wide range of countries including established democracies, economic powerhouses, and fragile and conflict affected states.

In this context, panelists will explore the idea of an enabling environment as a catalyst for civil society to become more transformative, productive, and innovative. This reimagined enabling environment is grounded in robust protection of fundamental freedoms and equality rights, examined through the lenses of the women’s movement in Canada, the protection of civic freedoms in the US, and the disability rights movement.

In addition, the session will discuss the particular situation of Indigenous organizations in Canada, some of which are set up as non-profit corporations, some which have charitable status under the *Income Tax Act* and others —whether they are organized as First Nations governments, social justice organizations or community service providers —are seen as a distinct subset of organizations and arguably transcend the definitions of “civil society organizations”. What are the implications for the legal structures and fundamental rights of organizations and non-profits serving Indigenous peoples? What is the responsibility, if any, for the federal government in enabling these organizations to function?

Panel 2 – Does Canada “Enable” Civil Society?

The election of a new federal government in October 2015 marked an important shift in the policy environment with the new government committing itself to a more constructive dialogue with civil society. Specific assurances in mandate letters promised to allow charities in particular to “do their work on behalf of Canadians free from political harassment, and to modernize the rules governing the charitable and not-for-profit sectors.”² Since then, research institutes and foundations in Canada have been examining the civil society and the enabling environment.

On March 31, 2017, the federal government fulfilled one of its commitments by releasing the *Report of the Consultation Panel on the Political Activities of Charities*. The Consultation Panel noted:

“We need a regulatory environment that respects and encourages their participation in public policy dialogue and development. This is not currently the case. The legislative framework for regulating charities in Canada is outdated and overly restrictive. It is, in the words of one submission, “antiquated, subjective, arbitrary and confusing – denying Canadians the right to have their voices heard through the charities they support.”³

The Panel recommended elimination of the “political activities” restrictions on charities under the *Income Tax Act*. This recommendation was largely a result of an audit program that had been the subject of considerable controversy under the Harper government. The Panel further noted that several consultees underscored the need for broader reforms to the charitable sector.

Beyond the issue of reforms to the so-called “political activities”, the policy agenda of the government is not yet clear. However, potentially significant reforms to the Canadian regulatory environment appear likely to take place in the near future, and the opportunity to engage with the reform process is an important one for CSOs.

Though the current government has been more positive and proactive in its relationship with civil society, the 2006-2016 decade demonstrated that the rights and freedoms of CSOs are vulnerable and fragile. Strong institutions and rights-based approaches are critical for enabling civil society.

Additional challenges and perspectives that have come to the fore in recent years include:

² Ministers Mandate Letters, November 2015. See, e.g. the Mandate Letter for the Minister of National Revenue, Online: Canada <<http://pm.gc.ca/eng/minister-national-revenue-mandate-letter>>.

³ Canada, 2017. [Report of the Consultation Panel on the Political Activities of Charities](#), Executive Summary.

- The need for a better understanding of the legal regulation of not-for-profit entities in Canada and Quebec;
- Protecting freedom of association and workers;
- Innovation in civil society initiatives;
- The exploration of alternatives for institutional accountability for civil society organizations, including alternatives to our current oversight of the charitable sector in Canada.

Panelists are invited to discuss these issues as well as policy alternatives and proposals that support the development of an enabling environment in Canada for civil society.

Panel 3 – National Security and Civil Society

The Anti-Terrorism Act, 2015, also known as Bill C-51, has now been in place for two years. At its introduction, civil society organizations raised significant concerns that its provisions would result in limitations on dissent and free expression, particularly through increased surveillance of both actions and language. This comes in the context of security measures that have already seen heightened stigmatization of Muslim and Indigenous communities, environmental and anti-pipeline activists, and human rights defenders.

In June 2017, the Liberal government introduced Bill C-59, the *National Security Act, 2017*, their long-awaited response to Bill C-51. Bill C-59 is meant to fulfill their commitment to address the most problematic aspects of the *ATA, 2015*, particularly in areas that threaten to violate charter rights. Bill C-59 was introduced just a day before Parliament adjourned for the summer, so further analysis is needed, but initial reactions were mixed. Overall, civil society raised concerns that the bill does not go far enough, and has maintained its call for a complete repeal of the *ATA, 2015* for several reasons. This includes that the *ATA, 2015*:

- Has such far reaching impacts on both the criminal code and in creation of other laws
- Was crafted as a reaction to an emergency issue (the 2014 shooting on Parliament Hill) and not through careful consideration
- Was never fully debated in the House of Commons because of limits imposed on debate by the government of the day

The new powers granted by the *ATA, 2015*, continue to raise significant concerns. Overall, there is worry that the broad definition of what constitutes a threat to national security could lead to individuals expressing political dissent to be caught up as “terrorists.” More specifically the bill:

- Introduced provisions against the promotion of “terrorism offences in general” (an undefined term), which experts argue threatens to criminalize free expression.
- Lowered the bar for preventive detention under peace bonds
- Granted new powers to all government bodies to share information “in respect of activities that undermine the security of Canada” with a list of 17 other national security related bodies, diminishing privacy protections
- Granted greater powers to stop an individual from boarding an airplane on security grounds, without laying criminal charges and without disclosing the information used to make such a decision
- Granted CSIS the ability to seek out a warrant to carry out disruption activities that would violate the Canadian Charter of Rights and Freedoms.

As such, repealing the bill and creating new pieces of legislation as needed, which could be examined and debated piece by piece, would ensure legislation which approaches security

from a rights based approach, including ensuring compliance with the Canadian Charter of Rights and Freedoms.

At the same time, security agency representatives have argued that the powers in the bill are necessary and will be used with caution. They state that since the *ATA, 2015*, was established, we have not seen any abuse of the powers contained in the law. Further, following terrorist attacks internationally, but especially in the UK and France, security officials have cautioned against what they call a weakening of national security legislation.

Experts have also argued that while C-51 went too far, targeted amendments would be preferred in order to seamlessly transition towards a reformed security framework, rather than undertaking what may be a complex and radical reworking of current legislation.

The goal of this panel is to examine the impact both the *ATA, 2015* and the greater national security landscape has on the ability for individuals and civil society, particularly social justice activists, to carry out their work. Central to this discussion will be whether Bill C-59 will effectively undo the changes brought by the *ATA, 2015*, and what modifications may be necessary. The panel will also examine what is meant by the term “national security”: Whose security? Against what? To what end? It will also ask what alternatives to laws like the *ATA, 2015* may help to increase security and safety in Canada, while not infringing on civil liberties. Inherent in this discussion is the tension of what some experts describe as the necessary “trade-off” between security laws and privacy—a concept disputed by others. Panelists will be asked to explore the validity of such a dichotomy, and what it may mean for protecting civil liberties in Canada.

Roundtable – Safe Spaces or “Self-Spaces”? Pluralism, Free Expression and Academic Freedom

In recent years, Western universities have been confronted with demands for institutional “safe spaces”. This concept stems from Kurt Lewin, a late 1940s psychologist who designed ‘sensitivity training’ workshops to build self-awareness and reduce defensiveness. This was used as a precursor to cultivating trust and mutual learning at a personal level for study participants.ⁱ These principles were later adopted by both the feminist and gay movements in the United States in the 1960s.ⁱⁱ

The concept of safe spaces uses solidarity and the strength of the collective to carve out an equitable space and voice for all in traditional institutional settings, especially universities. There is an emerging body of scholarship documenting the impact of universities on societal transformation. Historically, universities have worked closely with civil society to transform social, cultural and political institutions. Universities educate and shape the ideas of future generations of leaders, policymakers and societal members; universities are often the incubators of civil society.

The concept of safe spaces has been embraced by minority groups to assert their concerns and resist institutional hierarchies and structures which are perceived as patriarchal and dominated by majority interests. Power imbalances are seen as sustaining pre-existing inequalities that stem from differences in class, sex, gender, race, ability, and language. As Michel Foucault states, “power is not something that is acquired, seized, or shared, something that one holds on to or allows to slip away; power is exercised from innumerable points, in the interplay of nonegalitarian and mobile relations” (94).ⁱⁱⁱ

In recent years, safe spaces have been essentially proposed as a [set of respectful practices](#), implemented to equalize power relations of those within the space, thereby empowering the disenfranchised.^{iv} The ‘safe space’ concept has been evolving and of late the term “safer” spaces has emerged, suggesting that while a space may not be safe in absolute terms, collective efforts can carve out more equitable spaces in institutional settings. Safe spaces allow for marginalized voices to be represented, heard, understood, and ideally, acted upon—thereby fostering a respectful and inclusive intellectual environment for an increasingly diversified student body.

There is, however, concern surrounding the impact of safe spaces on robust and free expression. Members within academia, the media, and certain student groups perceive the safe space idea as contributing to discursive polarization and the perception of an “Other” who is dominating and suppressing free speech both on campus and in society more broadly. The concern is that debate and discussion taking place on “safe space” campuses allow for neither sound reflections, nor for the contextualization of issues within their complex, historical, socio-political realities. It is argued that the current push towards creating safe spaces does not enable universities to engage optimally with a diversified group of

stakeholders to craft a shared vision for fostering rich diversity and for building inclusive institutions.

It is argued that some professors, educators, and administrators are tempted to “play it safe”, leading them to disengage with ideas and themes in the classroom which are deemed controversial. Similarly, some students refrain from voicing certain ideas for fear of challenging what they perceive as the dominant narrative; they are increasingly likely to express their points of view on social media and through anonymous settings. From this perspective, this “safe censorship” is seen as undermining free and fertile debate which should be at the heart of universities in liberal democratic countries. Ironically, this trend can be seen as detrimental to the ethos of solidarity, which is critical for collective action. Stifling debate before it begins, it is argued, undermines the university’s traditional commitment to contributing to new knowledge and ideas.

However, in demanding safer spaces, the central question does not have to be framed in terms of free expression. Rather, it can be recast as how we can cultivate spaces where different perspectives on contentious subject matter can be shared respectfully, while developing a nuanced, appropriate and open environment for dissent and intergroup dialogue which demonstrates that the perspectives of marginalized or vulnerable groups contribute to transformational learning (see <https://www.gse.harvard.edu/news/uk/16/05/safe-space-vs-free-speech>).^v

The goal of the conference’s roundtable is therefore to explore these complex dimensions of debate and discourse with a focus on university settings. Progressive institutions of higher learning act as incubators for critical thought and engage the broader aims of global communities, therefore the aim should be a plurality of voices and representation, as well as free and respectful debate, rather than the construction of the “other”. McGill philosopher, Charles Taylor, recently noted:

To some extent, the members must know one another, listen to one another, and understand one another. If they are not acquainted, or if they cannot really understand one another, how can they engage in joint deliberation? (Taylor, 2016)

The concept of safe spaces invites fundamental questions: what type of education is required so that all parties—instructors and students alike—are informed and equipped to handle contentious social and political issues? How do we foster understanding and empathy so that marginalized voices are not muffled in spaces traditionally dominated by the privileged? How do we mould the institutional environment—in the classroom and on campus—so that different narratives and perspectives can be expressed freely in a respectful manner? Finally, are free speech and safe spaces in actuality the opposing forces they are seen to be?

ⁱ Sensitivity Training, Psychology Encyclopedia. <http://psychology.jrank.org/pages/569/Sensitivity-Training.html>

What's a 'safe space'? A look at the phrase's 50-year history. Fusion. 11 Novembre 2015. <http://fusion.kinja.com/what-s-a-safe-space-a-look-at-the-phrases-50-year-hi-1793852786>

ⁱⁱ The real history of the 'safe space'. Mind Hacks. 12 November 2015. <https://mindhacks.com/2015/11/12/the-real-history-of-the-safe-space/>

ⁱⁱⁱ Foucault, M. (1978). *The History of Sexuality, Vol 1*. New York: Pantheon Books.

^{iv} Safer Spaces. Politics & Care. 10 March 2017. <https://politicsandcare.wordpress.com/2017/03/10/safer-spaces/>

^v Safe Space vs Free Speech?: Engaging in difficult conversations to find new approaches to controversial issues. 18 May 2016. <https://www.gse.harvard.edu/news/uk/16/05/safe-space-vs-free-speech>