CONFERENCE REPORT
PANELS & ROUNDTABLE

MONTREAL, QC | APRIL 2019
# Index

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledgments</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Panel 1 – “Why Enable Civil Society?”</td>
<td>13</td>
</tr>
<tr>
<td>Panel 2 – “Does Canada Enable Civil Society?”</td>
<td>23</td>
</tr>
<tr>
<td>Panel 3 – “National Security and Civil Society”</td>
<td>40</td>
</tr>
<tr>
<td>Panel 4 – “Safe Spaces or “Self-Spaces”? Pluralism, Free Expression, and Academic Freedom: A Roundtable Discussion”</td>
<td>51</td>
</tr>
<tr>
<td>Panel 5 – Public Lecture: “Civil Society at Risk? International Perspectives”</td>
<td>63</td>
</tr>
<tr>
<td>Closing Remarks</td>
<td>75</td>
</tr>
</tbody>
</table>
Acknowledgements

Voices-Voix wishes to express great appreciation to all the panellists for their participation during the panel discussions and for enriching the conference with their insights and expertise.

We deeply appreciate the tremendous support received from the conference co-convenor, the Canadian Council for International Co-operation and the event host, the McGill Centre for Human Rights and Legal Pluralism at the Faculty of Law, McGill University. The intellectual leadership and commitment of the members of the Conference Steering Committee is gratefully acknowledged:

- Pearl Eliadis, Co-Chair. Human rights lawyer at Eliadis Law Office and Member of the McGill Centre for Human Rights and Legal Pluralism
- Julia Sánchez, Co-Chair. President and CEO, Canadian Council for International Co-operation (CCIC)
- Lisa Lalande, Executive Lead, Mowat NFP
- Madeleine Macdonald, McGill Law Student
- Tim McSorley, National Coordinator, International Civil Liberties Monitoring Group (ICLMG)
- Rushdia Mehreen, Voices-Voix Coordinator
- Frederick John Packer, Associate Professor of Law and Director of the Human Rights Research and Education Centre (HRREC) at the University of Ottawa
- Meghan Pearson, McGill Law Student
- Nandini Ramanujam, Associate Professor (Professional) and Executive Director and Director of Programs, McGill Centre for Human Rights and Legal Pluralism

We also wish to thank our partners and donors for making the event possible:

Champions

- Canadian Union of Public Employees (CUPE)
- Public Service Alliance of Canada (PSAC)
- Canadian Council for International Co-operation (CCIC)
- McGill Centre for Human Rights and Legal Pluralism
- Voices-Voix

Supporters

- Ken and Debbie Rubin Public Interest Advocacy Fund
- An anonymous private foundation
- Law Office of Pearl Eliadis
- Law Teaching Network
Friends

- Katharine A. Pearson Chair in Civil Society and Public Policy
- Oxfam Canada
- Amnesty International
- Hans & Tamar Oppenheimer Chair in Public International Law
- Human Rights Research and Education Centre, University of Ottawa
- Dean’s Office, Faculty of Law, McGill University

Due to the much appreciated funding given by the Ken and Debbie Rubin Public Interest Advocacy Fund, we were able to use social media channels to invite other participants to share their views and to engage with a broader audience before, during and after the conference.

Special thanks are extended to all those whose logistical and administrative support made the organization of the conference possible, particularly Sharon Webb, Program Coordinator at the Centre for Human Rights and Legal Pluralism and Rushdia Mehreen, former Voices-Voix Coordinator as well as all volunteers who contributed to the success of the conference, Laura Cullell, Meghan Pearson, Rapti Ratnayake, Rokeya Chowdhury, Yvana Novoa Curich, Alexander Agnello, Parisa Akbarimalkeshi, Nicole Lisa LeBlanc, Jane Prevost, Emilie de Haas, Camille Provencher, Marion Miller. We are also very grateful for the contributions to the panel reports by law students Annette Angell, Elena Friederike Kennedy, and Melissa Moore. Much appreciation as well to Michaela Mayer, Voices-Voix Coordinator for the overall coordination of this conference report, Stefanie Gude for her assistance in proofreading and editing, Aroa El Horani for the French translation and Lucia Schwarz for the cover design.

Finally, we want to express deep gratitude to Pearl Eliadis, and Julia Sánchez, who co-chaired the steering committee as well as to the other members of the steering committee for their ongoing guidance, valuable support and constructive recommendations throughout the planning, implementation and finalization of this project.
“Enabling Civil Society” is a research initiative spearheaded by the national advocacy group Voices-Voix. Voices-Voix was founded in 2010 by Canadians, Canadian organizations and labour unions in response to the Harper government’s unprecedented federal funding cuts to civil society organizations (CSOs) and to measures that targeted progressive organizations. The Voices-Voix coalition has been working to support a strong enabling environment for CSOs with a focus on protecting advocacy and dissent and ensuring a vibrant space for civil society. The “Enabling Civil Society” project began in 2013 to theorize the concept of an enabling environment. It aimed to develop more explicit connections to Charter rights, and to explore civil society’s relationship to society at large, its policy and regulatory frameworks, and the role of human rights and fundamental freedoms in protecting CSOs and human rights defenders.

“Enabling Civil Society” invites us to reimagine civil society’s relationship with government, with philanthropy, with citizens, and with itself. It asks how we can better defend civil society and the public sphere it occupies, enabling CSOs to contribute more effectively to the democratic project that is explicitly connected to human rights, where, as conference co-chair Julia Sanchez says, civil society can become transformative and innovative.

The “Enabling Civil Society” initiative was spurred by the Canadian context in 2013, but it quickly became apparent that the issue of advocacy for civil society extended well beyond...
Canada and now is seen to form part of a wider international consciousness about the role of civil society and the imperative of advocacy and collaboration at a global level.

This report provides highlights and summaries of each of the panels of the October 2017 conference, which was held in Montreal at the Faculty of Law, McGill University. The “Enabling Civil Society” was the capstone event in the project.

Contributors to the conference highlighted key areas where fundamental changes are needed to meaningfully enable civil society:

- recognizing the collective as well as the individual dimensions of fundamental freedoms (including freedom of expression, association and peaceful assembly) so that CSOs, including charities, can carry out their work in a manner that is consistent with their missions;
- imposing positive obligations on States to respect, protect and fulfil fundamental freedoms for CSOs, including establishing enabling legal / regulatory frameworks;
- “widening the circle” of civil society to ensure that unions, women and women’s human rights defenders, people with disabilities, people of colour, and Indigenous peoples are regularly part of the conversation;
- protecting reproductive freedoms as prerequisites for women’s equality and providing active support and development assistance to women’s CSOs to achieve their goals;
- ensuring that funding frameworks respect principles of administrative fairness and do not hamper or stigmatize CSOs from seeking funding from legitimate sources, nationally or internationally;
- establishing regulatory frameworks for charitable organizations that are overseen by fully independent regulatory bodies, whose primary objectives are transparency, accountability, compliance, and the public good; and
- safeguarding the public interest, supporting the sustainability of charities and non-profits, and optimizing the policy environment for innovation and experimentation.

Voices-Voix has published more than 120 case studies on these and related issues affecting Canadian civil society (www.voices-voix.ca). Most deal with the increasingly restrictive civic space in which CSOs operate, especially when their work involves policy advocacy and dissent on behalf of the poor, the vulnerable and the marginalized in Canada and internationally.

Background

At the outset of the research initiative in 2013, a coalition of CSOs had met in Montreal at McGill University. Convened by Voices-Voix and the Canadian Council on International Cooperation, the initiative was a response to what many commentators saw as an inhospitable environment for Canadian civil society under the Harper government. The idea was to create a new forum for civil society leaders and practitioners, together with academics, to
Enabling Civil Society

Theorize emerging challenges to civil society in Canada, explore the idea of an enabling environment, and understand these new challenges in a global context.²

The 2013 meeting was among the first in Canada to convene a UN mandate-holder, international NGOs, and Canadian human rights defenders, along with immigration and settlement organizations, environmental organizations, women’s groups, unions, academics and lawyers, on these topics. The project also engaged francophone Quebec organizations that are not always involved in other Canadian discussions. Feedback from participants at the 2013 meeting indicated that the event was a watershed moment; it allowed participants from CSOs with different organizational missions to understand the common trends in the broader policy environment and to see that threats to civil society are not only a phenomenon occurring in other countries, but are emerging in Canada as well.³

The results of the 2013 meeting and the particular concerns raised in and about the Canadian context were noted in a 2014 report by Maina Kiai, the former UN Special Rapporteur on the rights to freedom of association and peaceful assembly, who attended the McGill meeting and heard first-hand about the experiences and impacts of a disenabling environment from CSOs in attendance.⁴

Why an enabling environment matters

At the global level, many of the concerns about narrowing spaces for civil society flagged in 2013 remained significant in 2017. In his final report, outgoing Special Rapporteur Maina Kiai noted,

civil society’s role in changing societies for the better is deeply contested. The space for civil society globally is closing rapidly. In established democracies as well as autocratic regimes and states in transition, laws and practices constraining freedoms of association and of peaceful assembly are flourishing.⁵

There are good, indeed urgent, reasons to debate the state of democracy and the role of civil society in it. According to Nick Robinson of the US-based International Center for Not-for-Profit Law (ICNL), only about 30% of people

born in the US in the 1980s agree that it is essential to live in a democratic society. ICNL has historically had an international focus, but it has now introduced a US Program, the US Protest Law Tracker, as a result of recent developments in the US. The US Protest Law Tracker monitors initiatives restricting the right to protest that have been introduced since Trump’s inauguration in November 2016. In Robinson’s view, we are witnessing a global democratic recession.

Democracy and dissent

CSOs play a central role in democratic society. Indeed, as Amnesty International (Canada) Secretary General Alex Neve says, CSOs are the lifeblood of democracy. CSOs are often pushed to test the boundaries of social norms and sometimes even legality. Government may be pressured to regulate or restrain CSOs, but in democratic societies where governments are accountable to the people and not the other way around, states that hinder advocacy groups’ activities must justify their actions. And yet, vulnerable groups, including workers, the poor, migrants and, in many societies, women, are often the least able to challenge the state and advocate for their own interests.

Mathieu Vick, a senior researcher at the Canadian Union of Public Employees (CUPE), reminds us that the role of organized labour is vital in a democracy. The relationship between organized labour and civil society has perhaps waned over the last few decades, Vick says, but Voices-Voix has worked to create spaces for unions to re-engage with civil society in building a strong, truly progressive agenda. Legislative measures that hurt workers’ ability to bargain collectively or engage in political debates must be considered as "disenabling" disabling factors. Though the many measures introduced under the Harper regime may have gone furthest in this respect, in the Canadian context, many of these issues persist under the current Liberal government.

Workers’ rights are key in the current context where migration has become politically contentious. Human rights may be universal in theory but in practice, migrant workers are denied access to these rights, says François Crépeau. Migrant workers undertake significant risks to find work in other countries and form underground networks to support each other and push for improved working conditions and greater security for themselves and their families. These workers need real political clout to achieve real change. Crépeau advocates for a change to voting rights, so that long-time residents can vote and participate in democratic communities. The franchise would have a meaningful impact on the enabling environment for CSOs working with these communities.

Women human rights defenders and CSOs face specific, dangerous threats, especially from what Françoise Girard describes as ultra-conservative religious
groups who reject sexual and reproductive rights and, indeed, challenge basic human rights for women. **Girard** argues that “if gender roles are seen as preordained rather than socially constructed, then women are inherently precluded from attaining equality.” The rise of populism and authoritarianism is a direct threat to women’s CSOs. In fact, when women fight for — and win — rights and greater access to public debate, the risk of reprisal grows. CSOs need to be protected and human rights defenders shielded from reprisal. Human rights law provides an important protection for CSOs but to be meaningful in practice, women’s rights, including reproductive rights, must be priorities.

**Actively enabling civil society**

The idea of an “enabling environment” is well-known in international development literature. Since the 1990s, the search for “what works” for CSOs in the development context has been influenced by the observation that policies and programs can fail for reasons other than the merit or capacity of the organizations responsible for delivering them.\(^6\) External factors such as legal and policy frameworks, social attitudes, and political priorities can play important roles in determining success.

The concept of an “enabling environment” provides a platform from which we can identify and assess the factors that actively help civil society to thrive.\(^7\) In the past, it has been based on three pillars: funding frameworks, participation in public policy development, and dialogue with government. And yet, in an era where nationalist and populist movements are gaining significant ground, **Nick**

**Robinson** tells us that we must renew our focus on civic liberties like freedom of assembly and freedom of association.

The “Enabling Civil Society” project takes this as its starting point to explicitly integrate human rights-based approaches to the work of civil society as a starting point for any discussion about what an enabling environment means. As **Julia Sanchez** notes, there is a growing global consensus that civil society plays an important role in strengthening democracy and that governments should focus on promoting rights, establishing adequate mechanisms for accountability, and fostering institutionalized dialogue between the government and civil society on equal terms. Human rights may often be understood as individual rights, but CSOs offer a collective dimension and “amplify” the perspectives and work of individuals who come together in common cause. These rights operate to protect:

---


\(^7\) CIVICUS, “State of Civil Society 2013.”
- CSOs’ rights to dissent, including freedom of expression, association, and peaceful assembly;
- the right to information and access to information in particular;
- privacy rights;
- robust protections for human rights defenders;
- equality rights, especially for vulnerable and marginalized people; and
- a fair, independent, and equitable regulatory environment, including for charitable organizations, recognizing the essential role of free and independent media.

The concept of an enabling environment thus shifts from a passive status to an active one where the government has a positive role in establishing conditions and policies that help CSOs to thrive.

Human-rights based approaches bring into sharp focus the importance of protecting civil society, especially in a time when issues ranging from populism to national security, and from a resurgence of fundamentalism to violence against women, appear to threaten the progress of the 20th century.

In her analysis of the women’s movement in the early 1970s, Mary Eberts recalls the enthusiasm for women’s rights in Canada. The Royal Commission on the Status of Women and the federal government cooperated with the National Action Committee on the Status of Women (NAC) so that women’s groups received government funding with relatively few restrictions. As one participant noted, women’s groups were able to set their own agendas and priorities. Things changed quickly when NAC opposed certain amendments to the Charlottetown Accord in 1992. The government used what Eberts calls “intimidation tactics against women’s organizations during and after the Charlottetown Accord, including ridiculing, smearing, vilification, trickery, physical violence, and surveillance.”

Combined with neo-liberal policies and practices in government, this led to funding restrictions for all CSOs, but there was a particular impact on feminist organizations. The result was that many women’s organizations had to reduce their services and activities. NAC was effectively “killed off” and women’s organizations were reduced to delivering services for government rather than building liberating communities and critiquing government.

State officials stopped seeking advice from women’s organizations on general policy issues. Instead, women were transformed into a “special interest group,” suggesting that gender equality was simply one more “interest” to be played off against others. Today, Eberts argues, women’s organizations are no longer full participants in general policy debates.

New restrictions on government funding in the 1990s affected all CSOs, notably the short-sighted and unsustainable practice of refusing to support core costs, which is also a practice among many philanthropic foundations. In fact, most major philanthropic foundations in Canada (especially private foundations) will not support core costs beyond those
that are prorated to support project funding. Project funding, by its very nature, isolates and highlights a particular initiative rather than supporting the whole of the grantee’s work. Results are often disseminated in a manner that ensures the visibility of the philanthropic foundations as “innovators”, sometimes to the detriment of established projects that are successful but need ongoing support. Project funding also has the effect of keeping wages low so that workers in the charitable sector, especially those CSOs focusing on advocacy, earn low wages and lack administrative support.

The result is that project-based funding can foster precisely the type of marginalization that social justice organizations purport to oppose.

Lisa Lalande of the Mowat Centre acknowledges that the overall trend has been to fund charities on a project basis instead of funding core costs, with a stronger focus on “outcomes”. Concerns about such funding practices are long-standing for the non-profit sector and a part of a larger picture. Greg Kealey and Mary Eberts say that funding problems and contentious or deteriorating relationships with government have been part of the governance environment in Canada for decades.

Civil society’s journey— and its relationship to government— has never been perfect, but its nadir occurred during the “dark decade” of the Harper years, between 2006 and 2015. That period exposed the vulnerability and fragility of CSOs. Canadian organizations were undermined and targeted by our own government. If we learned one thing during those years, Alex Neve says, it was that civil society is fragile, even in a country like Canada:

Among CSO leaders and activists, there was sheer disbelief that this weakening of CSOs had been achieved so readily and quickly. Without massive law reform or public policy change, the Harper government simply used existing methods to shut down the means and avenues that CSOs need to thrive.

During this period, CSOs in Canada were criticized by government authorities for receiving support from international sources, as if receiving funding were somehow a seditious activity. Similar criticisms are common in other (often undemocratic) countries.

Kathryn Chan’s research on charities and the law highlights that much of the debate in Canada about charities is connected to our approach to oversight and the legacy of longstanding strategies in dealing with the sector. The federal regulatory framework contains structural weaknesses that lie at the root of many of the problems noted during the Harper years and that the Conservative government was able to exploit. Many of those weaknesses are built into the regulatory framework that applies to charitable organizations in Canada, and are directly responsible for the way in which that framework was manipulated during the Harper decade.
Widening the circle

For many years, it has been apparent that certain groups have not even been part of the conversation about civil society. All human rights defenders experience some risk, says Alex Neve, but certain groups are particularly vulnerable, including women human rights defenders, LGBTQI defenders, youth defenders, and those working on issues related to territory, land, and the environment. As Mathieu Vick says, organized labour has also been the target of neo-liberal agendas to minimize its effectiveness, and while labour is best known for advancing workers’ rights, we should not forget that it has also worked hand-in-hand with civil society as part of many other struggles around women’s rights, minority rights, public services, and the environment, to name but a few.

In Canada, women’s organizations and people with disabilities experience socio-economic, political, or physical barriers that prevent them from participating in civil society. Mary Eberts says that many women were and, in many instances, still are excluded from engaging in civil society. At the same time, women’s CSOs need to broaden their own concerns and dialogue with excluded groups to become more inclusive.

People with disabilities have experienced different histories and face very different challenges. Ravi Malhotra underscores the fact that people with disabilities remain among the most marginalized Canadians, with higher-than-average rates of unemployment and poverty. According to Malhotra, the legislative framework in Canada is inadequate and lags significantly behind that of the US when it comes to the rights of persons with disabilities. Persons with disabilities require access to civil society’s structures and spaces in order to engage with it. That access is often poor to non-existent.

New technologies and increasing globalization can potentially provide enabling environments for people with disabilities to engage in civil society. We need to collaborate with organizations working on disability issues, so that CSOs can incorporate disability rights into their work in developing countries, as well as in Canada. This approach requires a much more active and engaged approach—a positive approach—to realizing rights.

A key but contentious strategy for widening the circle is the creation of safe spaces where marginalized groups in particular can engage in discussion and debate without fewer constraints. Nandini Ramanujam says student populations have become more diverse and universities are increasingly subject to demands that they provide “safe spaces.” Sydney Warshaw defines safe spaces as new normative spaces that shift the status quo towards the experiences, values, and needs of historically marginalized communities. These spaces, she argues, allow meaningful new conversations and debates to develop.
Nazampal Jaswal characterizes safe spaces as inclusive spaces for people of colour, whereas Jeansil Bruyère suggests a slightly different nuance, arguing that safe spaces are spaces in which people with divergent views can speak up and those who are uncomfortable with what is said can feel safe voicing their concerns. As Shaheen Shariff highlights, privacy and trust are key elements of safe spaces and, so, inclusivity may not be enough to create safe spaces at universities. Ongoing, meaningful participation and consultation may also be required.

Some academics and university administrators worry, however, that safe spaces threaten the university’s role in knowledge creation and dissemination and prevent universities from serving as places of rigorous, open debate. Building on this theme, James Turk and Celine Cooper argue that freedom of expression and the pursuit of justice, including the pursuit of justice through safe spaces, are not in conflict because they both challenge the status quo. Reconciling the university’s role in creating knowledge and fostering debate with the need for inclusive, democratic spaces on campus is a challenge, Cooper acknowledges. Safe spaces are relevant to civil society and universities alike, in that they are designed for the development of ideas, participatory engagement, and debate, which can then be shared with the rest of the university and with civil society at large.

National security and the protection of privacy

National security laws and surveillance of CSOs have a long history in Canada. Greg Kealey reminds us that minorities and labour movements throughout the twentieth century were targeted by police and security agencies in Canada. Motivated in part by the state’s desire to defend Canada’s capitalist system “against the connected threats of labour militancy and socialism,” Canadian police targeted labour organizations with “Bolshevik tendencies” in the labour revolt of 1917–20. Throughout World War II, the RCMP targeted pro-communist Ukrainians as “potential security threats.” During the Quebec FLQ crisis in 1970, police and security agencies targeted not only suspected FLQ members but also people on the left and labour organizations. And Indigenous activists and leaders have long been targets of surveillance and harassment.

National security concerns continue to be used to justify measures to repress activism and the work of CSOs, according to Dominique Peschard, who notes that surveillance measures and national security measures target movements or people who dissent and are considered to pose an economic or political threat.

In many countries, emergency powers are used to keep tabs on and restrict the activities of CSOs. Nick Robinson expresses concerns about the normalization of the use of emergency powers, for example. We have little
Empirical data on how many emergency powers have been used in the past, why some leaders use such powers while others do not, or the situations in which they are used.

According to Tim McSorley and Yavar Hameed, two Canadian legislative initiatives are of particular concern: the Anti-Terrorism Act, 2015 (ATA) and Bill C-59 (An Act respecting national security matters). Such legislation is consistent with states’ historical tendency to justify repressive policies by labelling them as national security measures, while individuals and advocacy groups experience a chilling effect — the reduced or interrupted involvement in advocacy or activism — as a result of surveillance measures. These measures also risk undermining equality by disproportionately impacting racialized communities.

CSOs in Canada use social media extensively, but because of the close connections between privacy, surveillance and “dissent activities,” CSOs are under a degree of scrutiny that many people may not fully understand. CSIS collects Canadians’ information, but there are major implications for privacy, according to Brenda McPhail, especially given the quantity of data gathered by private enterprises such as Google and Facebook. Panellists also raised a generational concern: young people may underestimate the implications of sharing information online.

McPhail emphasizes that the scope of individuals’ reasonable expectation of privacy regarding specific user-generated data has not yet been entirely determined and is decided on a case-by-case basis. Security agencies may use new technologies to capture information for years before the courts can intervene on questions of constitutionality. And, more generally, high levels of perceived danger related to terrorism increase the risk that rights violations will become more acceptable, politically and legally, for CSOs and their staff, not to mention the Canadian public.

In Quebec, amendments to the Lobbying Transparency and Ethics Act, introduced by the Quebec government in 2015, would assimilate CSOs to special interest groups, requiring them to register publicly. This move would have an impact on individual rights and on 61,000 non-profit organizations in Quebec working for social justice. Mercédez Roberge says placing volunteers and activists on public government registers as “lobbyists” would be a direct disincentive to involvement due to the fear of being associated publicly with lobbying activities that are understood by most people in Quebec as being associated with political scandals and favouring private interests.

---

Infrastructure & Sustainability

Ensuring basic human rights for not-for-profit organizations in the charitable sector is a condition for the very existence of these organizations and their capacity to advocate. But much more is needed to ensure that organizations can thrive. Key elements sector-wide are knowledge and infrastructure.

By identifying elements of the external environment critical to CSO functioning, we can reduce uncertainty, increase financial viability, and improve the capacity of CSOs to build solidarity and partnerships. Panellist Lisa Lalande of the Mowat Centre identifies operational initiatives that can improve the sector, such as partnerships and alliances to build knowledge infrastructure. Key elements of an enabling environment include:

- data and information;
- financing and funding reform;
- labour force development;
- regulation;
- relationship between government and the sector; and
- research, development, and innovation.

Real focus on an enabling environment, and funding initiatives that build infrastructure for the sector, Lalande says, would breathe new life into the non-profit and charitable sector. It would ensure that the right systems and structures are in place for the sector to thrive. This focus would require broader reform, involving multiple levels of government. Examples of initiatives that have been researched by the Mowat Centre include collaborative data infrastructure models, “what works” centres, and innovations in community development and social finance.

Conclusion

Despite concerns about shrinking civic space, human rights advocacy remains resilient everywhere, even in other countries in the grip of totalitarianism. Human rights defenders persist in organizing and claiming their rights, no matter how “disenabling” the environment. A safe and enabling environment ensures that those responsible for human rights violations do not enjoy impunity. But resilience is not a reason for complacency. CSOs today require a resolutely enabling environment to thrive. Laws and policy frameworks must support a positive approach to fundamental freedoms and equality rights. Women’s rights and reproductive rights in particular must be supported; persons with disabilities require robust supports, especially in technology, to be able to fully participate in civil society. Funding platforms need to support core costs and not-for-profits should not be penalized for obtaining funding from international sources. Advocacy should be supported, not shunned.

Technical and operational infrastructure are also important across the sector.
CSOs need the means to communicate with each other and with decision-makers. Engagement with government and policy-makers who are receptive to new ideas and the voices of those who are marginalized and vulnerable is critical. Lastly, governments must demonstrate true conviction in these principles, manifested in legislation, funding, and consultative practices.

As John Packer of the University of Ottawa notes in his closing remarks, robust democracies value dissent, promote the rule of law, and protect human rights. Human rights defenders and civil society need “breathing space” to CSOs to do their best work, protected by the framework of human rights law.

_The views expressed in this report reflect events up to October 2017_
Why Enable Civil Society?

“Why Enable Civil Society?” invites participants to reimagine civil society’s relationship with government and citizens. It offers the idea of an enabling environment as a broad platform on which CSOs will not only function but thrive. An enabling environment values diverse voices and gives “breathing space” to CSOs to do their best work. It serves as a platform to rebuild relationships with civil society and to strengthen the normative framework in which the concept of enabling environment is developing.

The idea of an enabling environment is well-established in development circles, but more limited in developed countries. Historically, the concept has focused on three pillars: (i) funding frameworks for CSOs; (ii) participation in the development of public policy; and (iii) dialogue with government.

This panel explores the concept more broadly as one that actively supports a progressive policy environment, reduces uncertainty, increases financial viability, and improves the capacity of civil society organizations to build solidarity and partnerships. It is grounded in robust protection of fundamental freedoms and equality rights, through the lenses of the women’s movement in Canada, the protection of civic freedoms in the US, and the disability rights movement.
Participants examine the significance of civil society to the democratic project and discuss how to better protect CSOs and the public spaces in which they work. Panellists explore the idea of an enabling environment as a catalyst for civil society to become more transformative, productive, and innovative.

*Please note that there were changes to the panel in this session, as Mr. Hayden King was unable to attend.*

Introductory Remarks

**On the idea of an enabling environment**

There is a growing global consensus that civil society plays an important role in strengthening democracy and governments should create an enabling environment by focusing on promoting rights, establishing adequate mechanisms, and fostering institutionalized dialogue between the government and civil society on equal terms.

Sanchez commented on the discrepancy between an increased awareness of the significance of civil society and a parallel development of governmental efforts to reduce open spaces for civil society to operate effectively. She referred to the CIVICUS Monitor, an annual report by a global alliance of civil society organizations and activists on the status of civil societies around the world. Its latest report found that only 2% of the world’s population lives in societies with “open” civic space, while the spaces for civil societies across the world are generally shrinking.

In this context, Sanchez invited the panellists to explore the idea of an enabling environment for civil societies to become more transformative, productive, and innovative.
Panelists

Lessons from women’s movement CSOs in Canada

Mary Eberts received her B.A. and LL.B. from the University of Western Ontario and her LL.M. from the Harvard Law School. She was called to the Bar of Ontario in 1974. From 1974 to 1980, she taught at the Faculty of Law, University of Toronto, leaving to join the litigation department at Torys, where she became a partner in January 1984. In 1994, she established a small, specialized litigation practice in Toronto, where she carries out equality rights litigation across Canada. Mary was a co-founder of Women’s Legal Education and Action Fund (LEAF) and the first chair of its National Legal Committee, acting as counsel in some of its early cases. In 1991, she became counsel to the Native Women’s Association of Canada, challenging its exclusion from the constitutional talks leading up to the Charlottetown Accord.

She remains counsel to the Native Women’s Association of Canada (NWAC), most recently acting in its Charter litigation and subsequent discussions with the Government of Canada on matrimonial real property on reserves. Mary writes and lectures widely on equality issues, in Canada and abroad, and has been associated with the constitutional litigation course at the University of Toronto’s Faculty of Law since its inception. Mary was appointed an Officer of the Order of Canada in 2017.

The initial purpose of organizations in the women’s movement was to establish themselves as equal actors in civil society and to be acknowledged as worthy of full participation in democratic processes.

The beginning of the women’s movement in the 1970s saw a dramatic increase in attention from government officials after the Royal Commission on the Status of Women in Canada presented its report in 1970. The National Action Committee on the Status of Women (NAC) was formed in 1971 as an umbrella group for several women’s organizations to pool information, and to coordinate activities to pressure the Canadian government to implement the recommendations of the Report of the Royal Commission on the Status of Women.

Government not only opened up a dialogue with women’s organizations but actively sought their advice and opinions regarding policies affecting women.

Representatives of all major political parties participated in annual meetings of the National Action Committee. NAC received government funding with relatively few restrictions.

---

These initiatives fostered what we would today call an enabling environment for women’s CSOs, which changed drastically once NAC participated in the constitutional reforms taking place at the end of the 1980s. NAC took a strong position against the amendments proposed by the federal and provincial governments to the Charlottetown Accord in 1992.

The government used intimidation tactics against women’s organizations during and after the Charlottetown Accord, including ridiculing, smearing, vilification, trickery, physical violence, and surveillance.

From then onward, major government funding was cut and what remained shifted from support for research and advocacy to project-based funding for services. State officials stopped seeking advice from women’s organizations on general policy issues. Instead, women were considered a special interest group and attention shifted to gender-based analysis. Because of these changes, NAC first reduced and eventually suspended all of its activities.

These events show that civil society organizations had already started to pull back twenty years before Stephen Harper became prime minister in 2006.

Eberts concluded by identifying two challenges that women’s CSOs are currently facing. First, many women are excluded from participating in civil society due to their vulnerable positions and because of state surveillance. These women include poor women, single mothers, female refugees, prisoners, and Indigenous women, who are exposed to widespread violence and surveillance by state officials.

Second, there are concerns about what has become acceptable behaviour by the government towards women’s organizations. Today, women’s organizations cannot imagine collaborating with governments in shaping national policies. Instead, they often find it necessary to focus their activities on matters of basic protection against the police and the state. Looking into the future, Eberts sees the challenge for women’s organizations is to not only recover ground lost since the “golden ages” of the 1970s and 1980s, but to start broadening their perspective and collaborate, in order to participate in constitutional and policy reforms.
Enabling Civil Society

Theorizing an “enabling environment” for CSOs dedicated to the rights of persons with disabilities

For people with disabilities, the precondition for engaging with civil society, namely access to institutions, is not self-evident. Stairs, the lack of adapted materials for visually impaired people, or transcriptions for the hearing impaired all create obstacles to engaging in civil society. People with disabilities remain among the most marginalized Canadians, with higher-than-average rates of unemployment and poverty. The status of persons with disabilities was reconfirmed by the Canadian Human Rights Commission (CHRC) in its 2015 report.

Despite being one of the first countries to include people with disabilities in its constitution (section 15 of the Canadian Charter of Rights and Freedoms), Canada still does not have disability legislation similar to the Disabilities Act (ADA) in the United States. Passed in 1990, the ADA is a comprehensive civil rights law that addresses the needs of people with disabilities in the US, prohibiting discrimination in employment, public services, public accommodations, and telecommunications.

One major hurdle is Canada’s decentralized structure as a federal state. Accessibility to services is regulated by provincial laws, resulting in very different levels of accommodation across the country.

In general, most provinces have not followed through in implementing the Convention on the Rights of Persons with Disabilities (CRPD), leaving it to commissions and tribunals to decide on disability cases individually.

In Ontario, the Accessibility for Ontarians with Disabilities Act (AODA) was enacted in 2005 and it targets an accessible Ontario by 2025, providing for regulations on accessibility in several areas. The AODA thus opened up new
Enabling Civil Society

ways for CSOs to advocate and to hold the provincial government accountable. Canada ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2010 and, in 2017, the Optional Protocol to the CRPD was tabled in Parliament with a view to acceding to the Protocol.

These instruments offer important opportunities for CSOs to operationalize the CRPD into their general work.

Collaborating with organizations working on disability issues, NGOs can incorporate disability rights into their work in developing countries, as well as in Canada.

People with disabilities do not normally share a disability identity with their parents, and so each new generation must create its own disability rights consciousness. This reality is a political challenge and requires constant advocacy and outreach for which sufficient funding is necessary to raise the awareness of the general public.

Malhotra argued that stronger legislation and better access to resources in Canada will remove barriers and make institutions more accessible for people with disabilities, so that they can participate in civil society.

Civil society and civic freedoms in the United States today

Nick Robinson is a Legal Advisor at the International Center for Not-for-Profit Law (ICNL), where his work focuses on the organization’s US civic freedom initiatives. Prior to joining ICNL, Nick was a lecturer and fellow at Yale University. He was previously a post-doctoral research fellow at the Center on the Legal Profession at Harvard Law School. His research at these two universities focused on access to justice, the role of lawyers in promoting liberal democracy, and the United States in a time of rising global authoritarianism. Before his time at Yale and Harvard, Nick spent seven years in South Asia. He served as a clerk to the Chief Justice of the Indian Supreme Court, worked at the Human Rights Law Network in New Delhi, taught at law schools in India and Pakistan, and was a senior fellow at the Center for Policy Research. His work in South Asia focused on human rights and access to justice. Nick’s research has been published in a number of academic journals and he has consulted for the World Bank, ABA Rule of Law Initiative, and other organizations.

In an era where nationalist and populist movements are gaining significant ground around the world, Robinson focused on two civic freedoms that are often overlooked, namely freedom of assembly and freedom of association.
ICNL operates in the midst of a global democratic recession. Only about 30% of people born in the US in the 1980s agree that it is imperative to live in a democratic society. As part of ICNL’s US Program, the US Protest Law Tracker follows initiatives at the federal and state level introduced since Trump’s inauguration in November 2016 that restrict the right to protest. So far, 31 states have considered, and 7 states have enacted, laws or executive orders limiting protests, including bans on campus protests, use of emergency powers or laws, which make those who organize protests liable for property damage by other protestors.²

Figure 1. US Protest Law Tracker. Source: ICNL

In its work on freedom of association, ICNL concentrates particularly on the Foreign Agents Registration Act (FARA), a 1938 law that was aimed at restricting German propaganda in the United States during the Second World War. Under FARA, "foreign principals" include “foreign governments, as well as individuals, groups, CSOs, and other entities carrying out lobbying and other ‘political activities.’” FARA requires agents of those foreign principals to register with the Department of Justice and report regularly on activities covered by the Act.

While intended to identify potential political influence of foreign entities, the vague provisions can become a burden to foreign institutions and to CSOs operating in a given country, threatening to isolate civil society actors by stopping beneficial cross-border civil society activities, as well as funding. International organizations, such as Transparency International or Greenpeace, could arguably fall under the broad language of FARA.

Since tensions have risen due to potential interference by Russia in the 2016 US presidential election, several bills have been introduced in Congress to strengthen FARA. The law has also been used as justification by other countries, like Russia or Hungary, for introducing their own “foreign agent” laws.³

Robinson concluded his presentation by noting that the emergence of increased populism and anti-democratic movements preceded Trump’s presidency, growing in parallel with global nationalistic and sovereigntist movements, which have put pressure on civil societies and civic spaces.


Moderator Julia Sanchez noted that for many years, certain groups have not even been part of the conversation about civil society. For instance, women’s organizations and people with disabilities experience socio-economic, political, or physical barriers that prevent them from participating in civil society.

Laws that have been on the books for years are re-emerging and being deployed in different socio-political contexts to limit open spaces for civil society. Globalization has “globalized expectations” but has not allowed for equitable realization of those expectations.

Sanchez asked the panel whether civil society needs to “reset” and regain lost ground or whether instead we need to reimagine a new way forward.

**Regaining or reimagining lost ground for civil society**

**Eberts** reiterated that many women were and still are excluded from engaging in civil society. Women’s CSOs need to broaden their own concerns and dialogue with excluded groups to become more inclusive.

Women’s organizations also require more research and even advice in order to envision a national action course on influencing and shaping policies, instead of focusing on basic protection against intimidation by police and the state.

**Malhotra** noted his concern about the lack of knowledge among the general public about disability and accessibility.

In contrast to the women’s movement in Canada, there never was a “golden era” for people with disabilities. Instead, Canada lags behind other countries such as the United States with regard to legislation on equal access for people with disabilities. The internet offers important opportunities for people with disabilities to work and to participate in civil society.

**New technologies and increasing globalization can potentially provide enabling environments for people with disabilities to engage in civil society.**

**Robinson** voiced concerns about the normalization of the use of emergency powers, both legally and culturally. For instance, he asked about the implications of protesting and raising one’s voice when it becomes normal to have emergency responses during demonstrations. He noted that there is little empirical data on how many
emergency powers have been used in the past, why some leaders use them while others do not, or in which situations they are used.

**Governmental funding for CSOs**

One of the major topics in the open discussion was government funding.

*While most participants agreed that the state has a responsibility to provide government funding for research and advocacy as part of an enabling environment, there was a consensus that state funding usually comes with “strings attached.”*

One participant, who was also involved in the women’s movement during the 1970s and 1980s, noted that, during the “golden era” referred to by Eberts, the government supported women’s CSOs with very few conditions. CSOs could therefore set their own agendas and discuss priorities, which is not as possible nowadays.

Eberts added that, due to the restriction of government funding in the 1990s, many women’s organizations had to reduce their services and activities. She criticized the university sector, which, in her opinion, has not sufficiently compensated for losses in research and advocacy.

Malhotra agreed that more funding is needed for research and awareness-raising. He sees, however, emerging technologies and increased globalization as an opportunity to compensate for reduced state funding. He argued that, particularly with the internet, CSOs can now have greater impact and reach out to more people without spending much money or being dependent on government funding.

Richardson added that, with increasing globalization, a vision of a global civil society capable of collaborating and assisting with funding worldwide has emerged. Laws such as the Foreign Agents Registration Act (FARA) undermine this by limiting the possibilities of supporting CSOs in other countries. This is a paradox of civil society today — it is becoming more international but, at the same time, restricted from providing aid to civil society in other countries.

**Concluding observations**

The panellists were asked to reimagine an enabling environment for the specific movements they are involved in. Would this entail regaining lost ground or is it necessary to reimagine a new enabling environment within a new socio-political context?
For the women’s movement in Canada, the “golden era” in the 1970s and 1980s, when women’s CSOs could take part in shaping policies and the government enabled an open dialogue, ended when women’s organizations opposed government’s views on constitutional amendments in the lead-up to the Canadian Charter.

Robinson described a trend of governmental attempts to reduce and limit basic civic freedoms in times of increasing nationalist and sovereigntist movements. Both Eberts and Robinson argued that this process of restricting open spaces for civil society is not a recent change but has been developing over the last few decades. As well, governments are not necessarily creating new laws to limit civil society, but rather strengthening and enforcing existing laws (e.g., FARA in the United States, dating from 1938).

As a result of the slow encroachment on open spaces and civil liberties, both panellists identified a shift in civil society in what has become “normal.”

Eberts noted that women’s organizations are no longer full participants in general policy debates while Robinson highlighted the normalization of the use of emergency powers during protests. For people with disabilities, there has never been a “golden age,” as Malhotra noted during his presentation. The ADA was enacted in the 1990s by a US Republican government, while similar laws are long overdue in Canada, with the exception of Ontario, which passed the AODA in 2005 and, more recently, Manitoba and Nova Scotia. While the Liberal government has yet to fulfill its promises concerning legislation on accessibility, Malhotra sees the internet and increasing globalization as opportunities for people with disabilities to overcome physical barriers to work, access information, and engage with civil society.

All three panellists agreed that more funding is needed for CSOs to advance research and advocacy and to raise awareness among the general public. Additionally, CSOs themselves need to become more inclusive by creating an enabling environment for the most vulnerable actors.¹

¹ Voices-Voix acknowledges with thanks the drafting and research assistance of Voices-Voix coordinator Michaela Mayer.
Panel 2

Does Canada Enable Civil Society?

Moderator
Alex Neve, Secretary General of Amnesty International (Canada)

Panellists
Kathryn Chan, Assistant Professor, Faculty of Law, University of Victoria
Lisa Lalande, Executive Lead, Mowat NFP
Sidney Ribaux, Co-founder and Executive Director of Équiterre
Mercédez Roberge, Coordinator of La Table des regroupements provinciaux d’organismes communautaires et bénévoles (TRPOCB)
Mathieu Vick, Senior Researcher, CUPE Quebec

What is an enabling environment? Do we have one in Canada? How do we set about answering this question? In this panel, the speakers note a global pattern of closing spaces and restrictions on advocacy and dissent for CSOs. Canadians have not been exempt from this pattern, and we need to look more closely at our own practices vis-à-vis CSOs and at policies to improve the enabling environment.

Civil society has been under a lot of strain for many years. The Harper government’s active suppression of progressive civil society, especially progressive CSOs, marked a historic low point in the relationship with government. Legal restrictions on freedom of expression, association, and peaceful assembly were used much more aggressively during the “dismal decade” of the Harper regime. Nonetheless, the roots of what made the “low point” possible are deeply rooted in the Canadian legal system and transcend partisan lines.

The speakers draw on theoretical and policy concepts, as well as developments in the field, to devise a more holistic understanding of practices and trends that enable and disenable the work of civil society organizations in Canada.
Enabling Civil Society

The not-for-profit sector generally lacks policy coherence and a regulatory framework. The most obvious example is Canada’s legal system for charities, which experts claim lacks independence and operates within the framework of income tax law not fit for that purpose.

As well, “disenabling” factors have targeted Canada’s labour movement, according to labour leaders. We don’t normally think of organized labour as part of the not-for-profit sector, but many of the specific tactics used to suppress the labour movement are direct violations of freedom of association and affect those organizations broadly understood to be part of civil society.

Activists have only recently begun to react against these restrictions. In Quebec, efforts to assimilate non-profits into professional lobby groups have been fiercely opposed by grassroots and community organizations as a direct threat to citizen engagement and freedom of expression and association.

Governance and human rights issues may be the most significant ones facing civil society organizations, but an enabling environment requires more than basic freedoms and human rights. It also requires innovations in information infrastructure and collaborative data, new funding mechanisms and finance tools, and applied research and development, which engage end-users in the process of deciding “what works.”

Introductory Remarks

Why Canadians should care about enabling civil society

Why should we, as Canadians, care about whether Canada has an enabling environment for civil society? After all, Canada is a democratic, healthy society with a vibrant non-profit sector. Still, there are three reasons to consider the question carefully.

Alex Neve became Secretary General of Amnesty International (Canada) in January 2000. Alex holds a Bachelor of Laws from Dalhousie and an LL.M. in International Human Rights Law from the University of Essex. In 2009, he was awarded an honorary Doctorate of Laws degree from the University of New Brunswick. He was named an Officer of the Order of Canada in 2007. Alex is also a leading contributor to civil society and human rights as a volunteer in many organizations. He is a founder of Voices-Voix and has been a member of its strategy group since 2011.

First, we should all care about whether CSOs in Canada operate freely and can genuinely thrive. We know that many CSOs in Canada, especially advocacy groups, continue to struggle with an outdated regulatory environment and a harsh funding context.
Second, CSOs have experienced a difficult journey in their interactions with government. While that journey has never been perfect, its nadir during the “dark decade” of the Harper years, between 2006 and 2015, exposed the vulnerability and fragility of CSOs, which were undermined and targeted by our own government.¹

Among CSO leaders and activists, there was sheer disbelief that this weakening of CSOs had been achieved so readily and quickly. Without massive law reform or public policy change, the Harper government simply used existing methods to shut down the means and avenues that CSOs need to thrive.

Third, we must consider the importance of the global context and of enabling CSOs everywhere. Canadians can offer good practices to the international community to strengthen advocacy, voice, and community.

Panellists

The Canada Revenue Agency and Canada’s federal regulatory legal framework

Kathryn Chan is an Assistant Professor of Law at the Faculty of Law, University of Victoria, where she teaches constitutional law, administrative law, and non-profit sector law. Kathryn has published in the areas of charity and non-profit sector law, administrative regulation, religious freedom, comparative law, human rights, and legal pluralism. In 2015, she received the Scholarly Paper Award from the Canadian Association of Law Teachers for her article entitled “The Co-optation of Charitable Resources by Threatened Welfare States.” Her first book, The Public-Private Nature of Charity Law, was published by Hart Bloomsbury in 2016.

Chan argues that three high-level factors are responsible for a “disenabling environment” in Canada’s legal and policy framework for non-profits and for charities in particular. First, the Charities Directorate has no independent statutory mandate to protect the interests of charitable organizations in Canada. Second, the Canada Revenue Agency (CRA) lacks independence from the executive, making it vulnerable to the ideology of the government of the day. Its mandate to further the aims of the Income Tax Act restricts the availability of legal arguments in the public interest. Third, Canadian law on

Enabling Civil Society

Charities is “thin,” with little legislative guidance. Soft laws, like guidelines, have little or no legislative foundation and are difficult to challenge.

The “dark decade” of the Harper era exposed problems in the regulatory framework for charities that predated the Conservative government. In fact, the political activities audits and other practices that undermined the sector were not the result of legislative changes. Rather they were put in place using a framework that still exists today.

We should step back and consider three high-level structural factors that “disenable” civil society in Canada. Those factors are not the responsibility of any particular government or political party. Rather, they are long-standing features of the Canadian regulatory framework.

First, our charities regulator, the Charities Directorate, is an internal administrative unit of the Canada Revenue Agency. As such, it has a general fiscal mandate, but no distinct statutory function or legislated responsibilities linked to the public interest in charitable purposes.

This constrains the availability of legal arguments that would otherwise be available to charities. In disputes between the charity regulator and charities, Canadian lawyers (unlike their counterparts in England, for example) cannot argue on behalf of their clients that the Minister’s discretion must be exercised in favour of increasing innovation in the sector or increasing public confidence in charities.

Second, the CRA, unlike revenue authorities in other countries, is a ministerial department that is subject to ministerial direction and control.

The Charity Directorate’s lack of legal independence makes charities vulnerable to the ideological views of the government of the day, as became obvious in the transition from the Harper government to the Trudeau government.

Facing criticism for the political activities audits during the Harper years, the Charities Director had argued at the time that the Directorate was entirely independent. Once the Trudeau government was elected, however, the political activities audits were suspended, and no comparable audits have been initiated since October 2015. The only thing that had changed was the government itself, following a general election in October 2015.

We lack a non-partisan voice representing the public interest in charity property. Canada has inherited the British common law tradition, which gives the Crown a supervisory power over charities, under both federal and provincial law, including in Quebec. Parens patriae is a legal concept that confers on the Attorney General the authority to protect the interests of those who are otherwise incapable of protecting themselves. In the UK, the
Attorney General or Solicitor General appears as a third party to defend such interests, including charitable property. The represented interests before the courts are triangulated among the public interest, the interests of the government, and those of the charitable entity. Despite our common law heritage, the lack of an Attorney General-like independent representation of the public interest in charitable property is entirely missing in Canada.

The third element is the fact that the Income Tax Act registered charity regime is “thin”: it contains little legislative direction with respect to the regulation of charities. A light touch might be seen as positive, in the sense that the Act has fewer rules and is less onerous. But it also means that guidelines and rules applying to charities are not squarely located within a clear legislative framework. As compared to Canada’s Income Tax Act, the Charities Act 2011 in the UK has more than three hundred sections. The result is that very little public discourse in Canada about these issues exists, although there has been some improvement of late, as a result of the swirl of controversy surrounding the political activities audits. Moreover, as the sector is governed by the “soft law” that the CRA posts online, legal challenges are difficult to mount successfully.

### Are we turning a corner?  
**Strengthening and enabling the charitable and non-profit sector in Canada**

Lisa Lalande is the Executive Lead for the Mowat Centre’s Not-for-Profit Research Hub (Mowat NFP), which is an independent, public policy think tank located at the Munk School of Global Affairs and Public Policy at the University of Toronto. Its work looks at foundational, structural, and systemic issues impacting the non-profit and charitable sector. Prior to this role, Lisa held a variety of senior positions in the non-profit sector that focused on helping organizations increase their accountability, establish performance metrics, raise revenue, scale out, and improve their overall capacity to deliver social impact. Lisa’s career has also included working in finance, supporting proposed mergers and large-scale restructuring exercises.

*In the months leading up to the 2015 Canadian federal election, charities and their political activities became a hot button issue, given the perceived “advocacy chill.” The newly elected federal government committed to strengthening the sector by focusing on the issue of public policy engagement and developing a new legislative framework, which had the positive effect of opening up the most promising opportunity for reform in the charitable sector in over a decade. Mowat NFP developed the Enabling*
Environment Series papers in partnership with Imagine Canada, to inform and provide recommendation on how to enable civil society and reform the broader government/sector relationship.

In 2012, the federal government allocated $13.4 million to conduct audits of charities’ public policy engagement activities over five years. The audits seemed to focus on the political activities of environmental groups and other charities perceived to be inconsistent with the ideology of the government. Fear that the government was trying to suppress the advocacy efforts of charities resulted in the perception of an “advocacy chill” in the sector. These events raised systemic problems in the relationship that had been brewing for years.

“Advocacy chill” refers to the hesitancy of voluntary sector organizations to engage in advocacy work due to fear of sanctions, loss of funding, and deregistration by the CRA.

Framing the problem

Key elements include the lack of a vision and unifying framework, the lack of harmonization across provinces and territories, and the lack of role clarity and overlapping responsibilities between the federal and provincial governments. Canada lacks an overarching guiding framework that articulates a vision and shapes the relationship between governments and the non-profit and charitable sector. As such a framework guides legislative and regulatory choices and trade-offs, its absence can result in haphazard decisions regarding the sector. These factors raise questions about what the government’s relationship with the sector should be and the nature of institutional linkages.

Non-profits and charities have been working within a constrained policy environment for some time. The last federal initiative in these areas was the Voluntary Sector Initiative, which ended in 2005.

A key output of the Initiative was the Code of Good Practice on Policy Dialogue, which focused on increased opportunities for policy dialogue, co-operation, and improved information. While the Initiative had some impact, it fell short of its potential in addressing structural, legislative, and regulatory barriers impacting the sector.

As a result, discontent with the regulatory and policy environment remains today. Consultations with stakeholders consistently highlighted a recurring theme — the importance of creating an enabling environment for the non-profit and charitable sector to recognize its important role in contributing to people’s quality of life.

Both provinces and territories play an important constitutional role in regulating non-profits and charities, yet there is a lack of harmonization in terms of transparency, information sharing, and corporate form. For charities, inadequate provincial legislative intervention has placed the entire burden of creating an enabling environment for charities on a federal tax instrument that is not designed for this purpose. Consequently, the regulation is unable to address some issues and is too rigid in dealing with others.

While the CRA has gradually filled the vacuum by providing policy direction on registered charities’ activities, it does not have the mandate to support the growth and development of the sector as a whole.

Issues cut across multiple ministries, including finance, revenue, employment, workforce development, and labour. Lack of capacity to consult on sector needs and priorities has an impact on the sector’s ability to proactively engage in policy dialogue and empower itself to participate in the democratic process.

In the current environment, Canada’s charitable sector is at a crossroads. Growing demands for services further strain already-strained capacity. The overall trend has been to fund charities on a project basis instead of funding core costs with a stronger focus on outcomes. Shrinking core budgets impact salaries and undermine employment conditions, contributing to precarity in the sector. In the context of slow revenue growth, the widening gap between demand and capacity may degrade the quality of supports provided to the most vulnerable in our communities. These issues constrain rather than enable the sector.

**Breaking down the components — Enabling Environment Series**

The *Enabling Environment Series* defines and explores different dimensions of an enabling environment for the sector, and supports public policy discussion and development. *Imagine Canada* is a partner in helping the federal and provincial governments to develop modern policy frameworks that strengthen the sector and enable it to improve the quality of life of people in Canada and around the world.

**What is an enabling environment?**

A vision for the relationship between government and civil society recognizes the sector’s important role in contributing to people’s quality of life.

An enabling environment is one where governments invest in the growth and success of the sector and consult with key stakeholders on their priorities and needs. Government safeguards the public interest, supports the sustainability of charities and non-profits, and optimizes
the policy landscape for innovation and experimentation.\(^3\)

**Elements of the Enabling Environment:**
- Data and information
- Financing and funding reform
- Labour force development
- Regulation
- Relationship between government and the sector
- Research, development, and innovation

An enabling environment would breathe new life into the non-profit and charitable sector. It would ensure that the right systems and structures are in place for it to thrive. This would require broader reform involving multiple levels of government.

How can our sector and our governments tackle such complicated reform? The following examples highlight some innovative approaches.

**Legislative reform to protect kids**
The *Protecting Children (Information Sharing) Act* was passed in Manitoba in September 2017 to help authorities find missing children faster and provide better care for kids at risk. The Act allows information to be disclosed and shared about children who need support services, as well as about their parents and guardians. The Act was modelled on Alberta legislation passed in 2013, which had reduced red tape and wait times, and slashed costs.

**Collaborative data infrastructure models**
The Alberta-based Child and Youth Data Laboratory (CYDL) is managed by PolicyWise for Children and Families, a non-profit organization that demonstrates an effective partnership between government and non-profit sectors in centralizing data using shared infrastructure.

CYDL is the lead data partner, receiving anonymized administrative data to analyze, conducting research, and publishing its results online for policy-makers, practitioners, and the general public. It consolidates specific data from other sources, creating a comprehensive database with downloadable tables and data visualization tools.

**Data and information: Engaging policy-makers and practitioners in the search for “what works”**

What Works Centres are a type of evidence institution known for making evidence accessible, understandable, and useful to policy-makers and practitioners. Bridging the gap that often exists between those who produce evidence and those who use it (i.e., governments and practitioners).

---

What Works Centres (WWCs) are unique in that they consider the views of impacted populations in setting research priorities and agendas. The What Works Centre originated in the UK in 2011 as a government-led initiative to enable public service commissioners to access independent, high-quality evidence for a broad range of social policy issues, allowing for the generation, synthesis, and translation of evidence into practice. WWCs are designed to add value to the evidence ecosystem by evaluating the rigour and usefulness of evidence and putting that evidence into practice. In the UK, they have been proven to have significant impact on issues such as residential care, education, police forces, and hospitals.

There is growing interest from governments, funders, and non-profits in creating Canadian What Works Centres. Canada has a rich foundation of evidence institutions to build on. Mowat NFP released “Bridging the Gap: Designing Canada What Works Centres,” which explores this idea further.4

Social innovation: The Winnipeg Boldness Project

The Winnipeg Boldness Project is a social innovation initiative working alongside the North End community to improve outcomes for young children in the Point Douglas area. The project supports local community members, many of whom are Indigenous, in partnership with community-based organizations, to test possible solutions to determine their effectiveness. They do so by engaging community members directly in developing evaluation frameworks and program strategies. They also account for multiple confounding factors and interrelated systems (e.g., health care, homelessness, income support, early childhood education) and take a holistic, participatory approach to their work.

Their bold goal is to dramatically improve the well-being of children and families in all aspects of self: physical, emotional, mental, and spiritual.

The child-centred model focuses on best practices for raising children through the deep community wisdom that exists in the North End. Engagement is at the heart of the approach.


---

4 Joanne Cave, Kent Aitken, Lisa Lalande, "Bridging the Gap: Designing a Canadian What Works Centre," Mowat Centre, September 19,
Social finance in Saskatchewan

The Government of Saskatchewan’s second Social Impact Bond (SIB) is a partnership between the Mosaic Company Foundation, Mother Teresa Middle School, and the Ministry of Education in Regina, Saskatchewan. The initiative was launched in September 2016 to improve school performance and graduation rates for 88 children in Grades 6 to 8 at risk of not graduating.

The Mosaic Company Foundation is investing $1 million in the school, over 5 years, to provide support for these children from middle school through to high school. About 70% of the students involved are First Nations or Métis. The Government of Saskatchewan will repay Mosaic the principal and interest equal to 1.3% annually if 82% of the students graduate Grade 12. If only 75% of the students graduate, 75% of the principal is repaid, without interest. If the graduation rates are below 75%, no repayment will be made. This SIB has the potential of saving taxpayers up to $1.7 million. The Government of Canada’s Social Innovation and Social Finance Strategy will likely increase the profile of outcomes-based funding agreements.5

Conclusion

All these approaches offer bottom-up strategies that put people and children at the centre of our efforts. They foster an enabling environment that can help inform and shape policy, legislation, regulation, and broader administrative practices. The end result is a stronger sector and, more importantly, one that can improve our quality of life.

The political activities audits in Canada
Lessons and implications for reform

Sidney Ribaux is Co-founder and Executive Director of Équiterre. He chaired the Montreal Regional Council on the Environment from 1996 to 2003 and has worked to increase funding for public transit in Quebec, as well as on Canada’s ratification of the Kyoto Protocol. In 2007, he received an Ashoka fellowship, which recognizes and supports social entrepreneurs. In 2009, he received the first Canadian Award for Environmental Innovation from the Royal Canadian Geographical Society. He is also an honorary fellow of the Royal Canadian Geographical Society. Sydney is an active member of the Voices-Voix family and recently joined its Strategy Group. He has been actively engaged in the debate about charity reform in Canada.

Understanding the political activities audits that took place in Canada during the Harper years requires a closer understanding of the connections between attacks on the environmental sector and the government’s determined development of the tar sands.

By the end of 2010, the Conservative government was taking a strong stance against organizations with the position that we should stop developing the tar sands. Ministers of the previous government went so far as to call environmentalists “terrorists” and to promote an active campaign to denigrate the environmental movement.

In 2012, the Harper government won its first majority. Shortly afterwards, the CRA received about $8 million in additional funds to audit organizations for so-called political activities, restricting charitable organizations in engaging in policy-oriented advocacy.

Name-calling, however, proved ineffective and it quickly became apparent that the government was looking for other, more muscular tactics.

This term “political activities” is highly confusing. In most people’s minds, political activities are associated with partisan activities and yet they are entirely different.

Stripping environmental charities of their charitable status through CRA audits became the weapon of choice, given that so many of Canada’s leading environmental organizations are also charities.

Many organizations subject to the audits have had to face years of expensive and time-consuming work. Équiterre’s audit lasted for four years and, for other organizations, audits lasted six years or longer.
The policy chill resulting from these audits is obvious: audited organizations will be much more careful and will self-censor for fear that policy-oriented activities will result in the loss of charitable status. Even before the Harper government, CSOs had hesitated to engage in advocacy for fear of being labelled as engaging in political activities or, worse, being accused of partisan activities.

A practical example makes the point: when an organization testifies before a parliamentary commission, this could be considered a political activity by the CRA. So could a subsequent conversation with the media about what was said before the parliamentary commission. In both cases, the time and research involved in preparation and delivery must be accounted for, and could be part of the 10% limit, in terms of advocacy work assimilated to “political activities.” If the organization then goes on to comment in the media that they appreciate the government’s position on a particular item, this may be interpreted as partisan, which, again, is entirely prohibited.

The current mandate letters under the Liberal government have specifically instructed ministers to “stop harassing” charities, which appears to be a legal admission that the previous government was, in fact, harassing charitable organizations. And while it is true that the current Liberal government has suspended the political activities audits, it should be remembered that it has not cancelled them; the sword of Damocles still hangs over the heads of targeted organizations, as the audits could be reactivated at any time.

Finally, as we consider reform at the federal level, especially legislative reform, it is worth exploring the opportunities offered by Canada’s bijural legal system. The common law approach to charities is alien to Quebec civil law: Are there alternatives? And why must we work within the current framework?

Locating the rules for charities in income tax legislation, which has no legal capacity to consider the public good, has no obvious or rational basis.

Critics often say that the federal government is entirely justified in regulating the activities of charities because significant funds are diverted from the public purse. However, there are other forms of tax exemption that apply to all non-profits (whether or not they are charities) and those exemptions are not subject to the restrictions on advocacy that apply to charities. For example, exemptions for consumption and real estate taxes are available to non-profits but there are no comparable restrictions on their activities, expression, or advocacy. No one is talking about abolishing those exemptions.

In conclusion, much of the current framework is incoherent and, in many respects, lacks a rational basis that actively encourages charities to do their best work.
Enabling Civil Society

Mon OSBL n’est pas un lobby!
My non-profit is not a lobby group!

Mercédez Roberge is Coordinator of the Table des regroupements provinciaux d’organismes communautaires et bénévoles (TRPOCB). She was formerly the president of the Mouvement pour une démocratie nouvelle and is a well-known activist and advocate in Montreal, and in Quebec more broadly. She works for community organizations, grassroots CSOs in social movements, across a wide range of issues, including opposing austerity measures.

The Mon OSBL campaign sounded the alarm about the detrimental effects of Quebec’s Bill 56, a proposed law that would conflate civil society with lobbyists. The campaign highlighted the impact on individual and collective rights to freedom of expression and association, and on the integrity of grassroots organizations working for social justice and their ability to function effectively.

A disenabling environment for CSOs has repercussions on freedom of expression, peaceful assembly, and association, including for CSOs working at every level.

In Quebec, the provincial campaign Mon OSBL n’est pas un lobby was led by the Table des regroupements provinciaux d’organismes communautaires et bénévoles (TRPOCB). It illustrated the CSOs’ struggles in speaking out against rules that stifle advocacy and freedom of association. Through the campaign, Mon OSBL aimed to sound the alarm about the detrimental effects of a legislative bill in Quebec that conflates civil society members with lobbyists.

The proposed legislation would impact individual rights, and the integrity of non-profit organizations working for social justice, as well as their ability to function effectively.

Background

In 2002, in response to the sponsorship scandal, in which the federal government used dubious funding schemes to promote federalism in Quebec, the Quebec government adopted the social services issues, i.e., food security, mental health, violence, substance abuse/addiction, etc.

6 The TRPOCB comprises 43 provincial groups that work across Quebec, including 3,000 grassroots organizations working on health and...
Enabling Civil Society

Lobbying Transparency and Ethics Act with the objective of regulating the practice of lobbying in the province and increasing its transparency and public confidence.

The 2002 Act states that activities aimed at influencing public office holders (elected officials and civil servants) must be recorded in the Registry of lobbyists. It defines these activities precisely, and establishes three types of lobbyists: consultants, corporate and organizational lobbyists. The purpose of the 2002 Act was to regulate the for-profit sector. Accordingly, only a few NPOs were subject to it; namely professional, employer and labour organisations, as well as NPOs mainly re-grouping for-profit organizations.

Between 2008 and 2015, the province’s Lobbyists Commissioner, François Casgrain, recommended that all non-profit organizations engaged in civil society be subject to the Act.

His recommendations formed the basis for Bill 56 (the Lobbying Transparency Act), which was introduced by the Quebec government in 2015, as an amendment to the 2002 Act. If Bill 56 was to move forward, each person advocating on behalf of an NPO or association would have to register as a “lobbyist.” As a result, their names would appear on a public record. In total, 61,000 non-profits would be affected, directly or indirectly, by the passage of the amended law.

Policy considerations

There are compelling policy reasons for excluding non-profits from the framework of paid lobbyists and public relations professionals. This is partly due to the very different mandates of these organizations, which operate for public benefit and focus on social justice missions, rather than for profit or compensation.

The distinct context within which CSOs work gives rise to specific concerns impacting freedom of expression and association.

CSOs are able to function largely thanks to volunteers and activists who act as spokespersons, sit on group committees, and sign letters and petitions to government. Placing all such individuals on public government registers as “lobbyists” would be a direct disincentive to individuals getting involved. A particular area of concern is the fear of being associated with lobbying activities as they are traditionally understood by most people in Quebec, as being associated with

---


political scandals and favouring private interests.

It is also common practice for CSOs to engage in joint campaigns and sign onto letters of joint action with other organizations. In such cases, Bill 56 would require each and every participant of each and every participating group to register as a lobbyist, even volunteers. The result would damage both the vitality of non-profit associations and the quality and weight of their collective representation. As well, volunteers from stigmatized or vulnerable groups might be reluctant to see their name publicized in a registry alongside public relations groups and paid lobbyists.

NPOs, as well as people involved in activities related to representation actions, would be at risk of being fined. Bill 56 also proposes increasing fines between $18,000 and $150,000 for those who do not comply with the Act.

A related phenomenon is the chilling effect that a public lobby registration would have on volunteers and activists who are engaged with organizations to self-advocate or to advocate for peers.

The stigma and marginalization associated with the publicity extends to persons who may be advocating for progressive changes to law or policy and who are also victims of violence, suffer from substance dependencies, or who have disabilities, and may not wish to have their names made public.

Additionally, TRPOCB argues that mandatory registration for NPOs doesn’t comply with the legislator’s initial intent to increase transparency of lobbying with respect to activities that would otherwise be hidden. The same concerns do not apply to CSOs whose work centres on public awareness and advocacy on policies.9

In her presentation, Roberge highlighted the differences between the goals of NPOs’ representations to government and those of business or private sector lobbyists. She also showed the public lack of gain in including NPOs in the 2002 Act, compared to disproportionate losses for NPOs.

Ensuring that all NPOs are subject to the Act would undermine the survival and freedom of expression of those organizations, and limit public participation in NPOs.

In addition to the political interventions of Mon OSBL n’est pas un lobby, the campaign has also raised NPO awareness of the importance of defending freedom of association and expression for the people they work with, but also for themselves as groups.

---

Enabling Civil Society

In order to exercise one’s individual freedom of association, spaces to regroup and join others must not only exist, but the state also has the duty to refrain from compromising their existence or development, which would be the case if Bill 56 was passed in its proposed form.

An organized labour perspective

When thinking about the role of civil society organizations, labour is often overlooked. Though the vital relationship between organized labour and civil society has perhaps waned over the last few decades, conversations like this one offer the space for unions to re-engage with civil society in building a strong, truly progressive agenda.

Organized labour is certainly best known for advancing workers’ rights, but it has also worked hand-in-hand with civil society as part of many other struggles, around women’s rights, minority rights, public services, and the environment, to name a few.

People often forget that a lot of the progress on these issues was first made at the bargaining table. For example, any anti-discrimination laws only came into effect long after similar anti-discrimination clauses were incorporated into collective agreements.

When considering the idea of enabling environments, legislative measures that hurt workers' ability to bargain collectively or to engage in political debates must be considered as "disenabling" factors.

Though the many measures introduced under the Harper regime may have gone the farthest in this respect, there are lingering and ongoing issues that persist under the current Liberal government.

Most concerning of all is the Liberals' propensity to encourage privatization and public-private partnerships through legislation. This diminishes the public's ability to affect the services they depend
Enabling Civil Society

on by putting market forces ahead of public interest, while also decreasing transparency and access to information. Beyond the need for specific legislative reforms are several macro issues that must be discussed as part of our broader understanding of an enabling civil society.

Neo-liberal agendas linked to austerity, free trade, and privatization completely undermine CSOs and disenfranchise voices trying to fight for social, economic, or environmental justice.

Let’s take NAFTA’s Chapter 11, for instance. Its investor-state dispute settlement tribunal allows foreign corporate interests to circumvent — and in some cases overturn — democratically enacted Canadian laws.

By putting market forces ahead of the public interest, free trade deals like NAFTA can stifle years of progress and advocacy efforts by groups seeking to protect the environment and human health.

Canada’s decision to rescind a ban of the neurotoxin MMT following a Chapter 11 lawsuit is a prime example.

Another example is the privately designed, financed, owned, and operated Réseau express métropolitain in Montreal. Whereas public transit is usually designed and run by the public sector to maximize ridership, this train was designed to maximize profits. In doing so, the government not only crippled the current, publicly operated transit network, but it also rammed through legislation which cut short environmental assessments, eliminated many public consultations, and even went so far as to allow the new train’s private owner to circumvent whistle-blower laws. How can CSOs feel empowered when the state is allowing private interests to shape public services?

Neo-liberalism has deep roots and even the not-for-profit sector has been hurt by marketization and financialization. Civil society cannot keep allowing market pressures to stand in the way of social progress. It is important for CSOs and unions to recognize that changing the status quo for the better cannot happen unless we also have a broad conversation about the economic and market forces opposing such change.¹

¹ This report was prepared with the assistance of McGill law student Nathan Cudicio.
Panel 3
National Security and Civil Society

Moderator
Tim McSorley, National Coordinator, International Civil Liberties Monitoring Group

Panellists
Greg Kealey, Professor Emeritus of History, University of New Brunswick
Yavar Hameed, Hameed Law, Ottawa
Brenda McPhail, Director, Privacy, Technology & Surveillance Project, Canadian Civil Liberties Association
Dominique Peschard, Board Member and Former President of Ligue des droits et libertés

The Anti-Terrorism Act, 2015 (ATA), also known as Bill C-51, has generated concerns from civil society organizations since its inception. Limitations on dissent and free expression and increased surveillance create a chilling effect on activists’ actions and advocacy. This comes in the context of security measures that have already seen heightened stigmatization and surveillance of Muslim and Indigenous communities, environmental and anti-pipeline activists as well as human rights defenders.

In June 2017, the Liberal government introduced Bill C-59, An Act Respecting National Security Matters, 2017, the long-awaited response to Bill C-51. Bill C-59 is meant to fulfill a commitment to address the most problematic aspects of the ATA, particularly those that threaten Charter rights. Bill C-59 was introduced just a day before Parliament adjourned for the summer. Initial reactions have been mixed. While improvements are welcome, civil society has raised concerns that Bill C-59 does not go far enough, and has maintained its call for a complete repeal of the ATA.

On the one hand, repeal followed by new legislation would allow for a “clean slate,” and legislation approached from a rights-based perspective, including compliance with the Canadian Charter of Rights and Freedoms.
On the other hand, security agencies argue that Bill C-59 is necessary and will be used with caution. Further, following terrorist attacks in the UK and France, security officials have cautioned against what they call a weakening of national security legislation.

Some experts have expressed that while C-51 went too far, targeted amendments would be preferable to seamlessly transition toward a reformed security framework, rather than undertaking what could be a complex and radical reworking of current legislation.

The panel examines the impact that both the ATA and the broader national security landscape have on individuals and civil society, particularly social justice activists. Central to this discussion is whether Bill C-59 will effectively undo the more problematic aspects of the ATA.

The panel examines the term “national security” and inquires as to whose security is envisaged and what the objectives of the national security agenda are. It also asks which alternatives exist to increase security and safety in Canada, while not infringing on civil liberties. Inherent in this discussion is the tension in what some experts see as the necessary “trade-off” between security laws and privacy — a concept that is contested and has implications for protecting civil liberties in Canada.

Moderator

Tim McSorley
National Coordinator, International Civil Liberties Monitoring Group

Tim McSorley is National Coordinator of the International Civil Liberties Monitoring Group. In the years since his studies in journalism and political science at Concordia University in Montreal, he has split his time between work in media and social justice — usually combining the two. This has included serving as the national coordinator for the Media Co-operative, and, most recently, as coordinator for Voices—Voix, defending the right to dissent and free expression in Canada.

Introduction

During the national security and civil society panel, the speakers addressed the implications of two Canadian legislative initiatives targeted at national security: the Anti-Terrorism Act, 2015 (ATA) and Bill C-59 (An Act respecting national security matters). The ATA was widely criticized. The opposition stemmed both from the language of the ATA and from its historical context. The speakers expressed concern that the Act follows states’ historical tendency to justify repressive policies by labelling them as national security measures and that individuals and advocacy groups experience a chilling effect
— the reduced or interrupted involvement in advocacy or activism — as a result of surveillance measures. These measures engage a number of rights in the *Canadian Charter of Rights and Freedoms*, namely s. 2 rights to freedom of thought, expression, and association. The Charter provides a counterbalance to national security concerns; its provisions help to assess the legitimacy of government acts. The panel began with an overview of the deleterious effects these measures may have on advocacy groups. Part 2 discusses examples of overbreadth in the ATA and Bill C-59. Part 3 concerns the risks created by the broad information-collection provisions, exacerbated by agencies’ ability to share that information.

Panellists

**Greg Kealey**  
**Professor Emeritus of History, University of New Brunswick**

---

**Greg Kealey** is Professor Emeritus of History at the University of New Brunswick. He is the co-author of *Secret Service: The History of Political Policing in Canada from the Fenians to Fortress America* (2012) and author of *Spying on Canadians: The RCMP Security Service and the Origins of the Long Cold War* (2017). Greg has served as a member of the Voices-Voix editorial board for three years.

---

**Yavar Hameed**  
**Hameed Law, Ottawa**

---

**Yavar Hameed** is a human rights lawyer based in Ottawa. Since 9/11, he has been involved in advising members of Muslim and Arab communities about their rights in the face of CSIS interviews, national security investigations, security clearances, and travel. He facilitated the repatriation of Abousfian Abdelrazik to Canada and has represented immigration security certificate detainee Mohamed Mahjoub. He is also currently involved in an application to delist an Islamic charity, IRFAN-Canada, as a terrorist entity. He is a member of the Canadian Muslim Lawyers Association and a sessional lecturer at Carleton University’s Department of Law. Yavar is a member of the Voices-Voix editorial board.
Enabling Civil Society

Brenda McPhail
Director, Privacy, Technology & Surveillance Project, Canadian Civil Liberties Association

Brenda McPhail is the Director of the Canadian Civil Liberties Association’s Privacy, Surveillance, and Technology Project. She advises on CCLA’s interventions in key court cases that raise privacy issues, most recently at the Supreme Court of Canada in *R. v. Marakah*, which focuses on text messages. She researches surveillance of dissent, government information sharing, digital surveillance capabilities, and privacy in relation to emergent technologies. Brenda also develops materials to improve public awareness about the importance of privacy as a social good. Research interests include privacy and DIY approaches to privacy protective identification, RFID-enhanced driver’s licenses, identity performance in government service interactions, Canadian ePassports, video surveillance, connected cars, and usage-based insurance. Brenda received her Ph.D. from the University of Toronto’s Faculty of Information.

Dominique Peschard
Board Member and Former President of *Ligue des droits et libertés*

Dominique Peschard is an active member of the board of the *Ligue des droits et libertés*. He was president from 2007 to 2015. Based in Montreal, the Ligue is an independent, non-partisan, not-for-profit organization (founded in 1963) promoting social justice and the UN International Bill of Rights. Recognizing the universal, indivisible, and interdependent nature of rights, the Ligue is a member of the International Federation for Human Rights. Since 2001, it has addressed several attacks on civil liberties. Dominique Peschard is regularly interviewed in the media on issues related to freedom of expression and the right to demonstrate. He has given talks in Quebec on the rapid expansion of surveillance and population control, as well as “anti-terrorist” measures and the roll-back of the right to demonstrate. He initiated and chaired a seminar on the issue of surveillance « *On nous fiche, ne nous en fichons pas!* » in Montreal in January 2010. He has also been co-chair of the International Civil Liberties Monitoring Group since 2012.
Summary of Roundtable Discussion

Effects of state surveillance on privacy and expressive interests

National security legislation is said to be justified because terrorism threats invoke serious danger of harm. But perceived risks, in isolation, are insufficient to legitimize national security measures; benefits must be balanced against the risk of Charter infringements.

High levels of perceived danger related to terrorism increases the risk that rights violations will become more acceptable, politically and legally.

We know that 55% of Canadians consider ISIS “a major threat to our country,” according to a 2017 Pew Research Center survey.¹

Despite this perception, the true number of fatalities caused by all terrorist attacks in Canada (including those attributed to the influence of other groups or ideologies) is low. This does not obviate the need for some national security measures, but provides a useful reference when balancing national security with other societal objectives.

The panellists emphasized that our society is a free society, encompassing the freedom of advocacy groups — “any organization that seeks to influence government policy, but not to govern” — to promote the interests of civil society.² Advocacy groups provide concrete benefits to many Canadians. Yet, their progressive activities often push the boundaries of social norms and legality. While governments may be pressured to regulate or restrain CSOs, state actions that hinder advocacy groups’ activities must be justified by strong countervailing concerns.

The individual right to dignity requires the ability to control the confidentiality and dissemination of personal information, free from compelled disclosure to the state.

State surveillance has a chilling effect on individuals’ expressive activities “because it impinges upon the privacy … to create freely.”³

State surveillance, facilitated by the ATA and Bill C-59,


affects free speech and privacy rights. These two rights are connected via the information aspect of the right to privacy.

Privacy is fundamental to advocacy groups’ ability to promote the interests that ground their mandate. They require the freedom to seek out and communicate information, to develop ideas, and to organize.

Advocacy groups engaged in lawful dissent and advocacy cannot operate effectively if they worry that their communications may be used against them or may be monitored by the state. The importance of this right is undervalued, in relation to competing interests.

Overbroad language and ambiguous purpose in the ATA and Bill C-59

The ATA and Bill C-59 are overbroad in a number of areas. The Security of Canada Information Sharing Act (SCISA) and Criminal Code amendments can be interpreted to restrain the activities of non-violent advocacy groups.

SCISA

SCISA was enacted pursuant to the ATA. Its purpose, stated in s. 3, is to facilitate information sharing between governmental agencies to protect Canada from “activities that undermine the security of Canada,” defined under s. 2 as:

any activity, including any of the following activities, if it undermines the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada […]


The word “undermines” is overbroad, because it could include activities unrelated to national security. One audience member noted that activities to promote Aboriginal rights to self-determination or self-government could be considered as undermining the “sovereignty” of Canada. Similarly, subsection 2(f) refers to “interference with critical infrastructure” — MP Alexandre Boulerice expressed concern that this language “might result in authorizing secret services to spy on people who intend to protest the construction of new pipelines.”

SCISA includes an exception for “advocacy, protest, dissent and artistic expression.” But Bill C-59 restricts the scope of the exception by adding “unless

carried on in conjunction with an activity that undermines the security of Canada.”

The result of this circular language is that it may effectively nullify any protection for “advocacy, protest, dissent and artistic expression.”

Amendments to the Criminal Code

The ATA added a new offence under Part II.1 (“Terrorism”) of the Criminal Code:

83.221 (1) Every person who, by communicating statements, knowingly advocates or promotes the commission of terrorism offences in general [...] is guilty of an indictable offence [...].

The term “in general” was criticized for overbreadth. Other terrorism offences derive from the defined term “terrorist activity,” grounded in harm to human life, health, or property. The new offence under s. 83.221, however, lacks the requirement that there actually be harm. Bill C-59 would replace s. 83.221 with a new offence, “Counselling commission of terrorism offence”:

83.221 (1) Every person who counsels another person to commit a terrorism offence [...] is guilty of an indictable offence [...].

The Canadian Bar Association and the Canadian Civil Liberties Association, two vocal opponents of the ATA’s s. 83.221 terrorism “in general” offence, were satisfied with this change, while noting the overlap with s. 464 of the Criminal Code (“Counselling offence that is not committed”). The overlap creates uncertainty and, potentially, vagueness, as a matter of statutory interpretation. Section 83.221 could be given an as-yet-unknown interpretation to distinguish it from s. 464 of the Criminal Code.

The new s. 83.221 could also overlap with other offences, notably uttering threats (s. 264.1 (1)), hate propaganda (ss 318–320), as well as inchoate offences such as attempt (s. 463), conspiracy (s. 465), facilitation (s. 467.1), participation (s. 467.11), recruitment (s. 467.111), and instruction (s. 467.13).

Clarity about the nature and necessity of the new s. 83.221 offence would aid statutory interpretation. Even if interpreted narrowly by the courts, the relatively low evidentiary standard required for the issuance of warrants may still risk unjustified intrusion upon individual privacy.

Implications of overbreadth

The risks posed by overbroad legislation are not new to the ATA and Bill C-59. Even before 9/11, security legislation had a chilling effect on non-violent
activism. According to two panel members, national security concerns have been used to justify measures to repress activism. Peschard noted that surveillance measures targeted movements or people who posed an economic or political threat.

According to Kealey, state surveillance has targeted ethnic minorities and labour movements throughout the twentieth century. During the labour revolt of 1917-20, Canadian police targeted labour organizations, especially those with “Bolshevik tendencies.” The RCMP was created in 1920, with responsibility over domestic intelligence and security. During World War II, the RCMP targeted pro-communist Ukrainians as “potential security threats.” Both examples of state surveillance were at least partially motivated by the state’s desire to defend Canada’s capitalist system “against the connected threats of labour militancy and socialism.”

In conclusion, both the ATA and Bill C-59 contain language that is ambiguous and overbroad, creating the risk that non-violent activities of advocacy groups will be captured. Both factors leave activists vulnerable to measures that silence dissent.

Broad powers to collect information and risks if shared with other agencies

The Canadian Security Intelligence Service (CSIS) is empowered to collect Canadians’ information. The privacy implications are especially significant given the quantity of data gathered by private enterprises such as Google and Facebook. The Bill C-59 amendments to the Canadian Security Intelligence Service Act (CSISA) would allow CSIS to collect “publicly available information.” This term could encompass users’ social media or public event pages. Panellists also raised a generational concern: young people may underestimate the implications of sharing information online.

The extent of individuals’ reasonable expectation of privacy regarding specific user-generated data has not yet been entirely determined. Whether electronic information confers a reasonable expectation of privacy is decided on a case-by-case basis and, in any event, a security agency may use new technologies to capture information for years before the courts can intervene on questions of constitutionality.

---


7 Canadian Security Intelligence Service Act, RSC 1985, c C-23 [CSISA 1985], s. 11. 05 permits the collection of “publicly available dataset[s],” defined under ss 11.01, 11.07(1)(a).

8 See e.g., X (Re), 2017 FC 1047 at paras 177, 181, 247.
Implications with regards to other statutes

The information-sharing provisions in the ATA and Bill C-59 exacerbate the risk of overbroad information-collection powers. Both legislative schemes favour warranted searches for information, mirroring the presumption of unreasonableness associated with warrantless searches. Yet, the CSISA equips CSIS with significant intelligence-gathering powers which could unjustifiably infringe upon privacy rights.

The CSISA authorises CSIS to collect, analyze, and retain information without a warrant, “to the extent that it is strictly necessary,” if related to activities which CSIS has reasonable grounds to suspect constitute “threats to the security of Canada.” In contrast, warrantless searches under the Criminal Code are generally assessed on a “reasonable grounds to believe” standard. These divergent standards pose a practical problem when information is shared across agencies. CSIS could lawfully collect information under a lower standard, then share that information with law enforcement, thus circumventing the more stringent standard imposed on law enforcement.

The Criminal Code’s evidentiary framework controls for reliability, while balancing the suspect’s rights with the need to protect the public. This purpose differs significantly from the CSIS mandate to collect information relating to national security both inside and outside Canada.

As intelligence gathering is one of CSIS’ main responsibilities, CSIS will be quick to promise informants confidentiality in return for receiving intelligence: s. 18.1 of the CSIS Act explicitly protects CSIS human sources. Law enforcement, on the other hand, has to gather evidence and use witnesses for prosecuting the accused in open court. It will therefore only offer confidentiality when truly necessary. This discrepancy of objectives led to a dramatic prosecutorial failure in 1985: the inability to mount a strong case against one of the main suspects in the Air India bombing as an informant’s identity was kept confidential. The bombing resulted in 329 fatalities, but there were evidentiary problems resulting from inefficient information sharing between CSIS and the RCMP.

---


10 Supra note [10], s 12(1).


The class privilege under s. 18.1 of the CSIS Act also favours intelligence gathering over terrorism prosecutions. If confidentiality is given too quickly by CSIS to gather intelligence, there can also be a potential conflict with the principle of audi alteram partem: the right of a suspect in a trial to receive information on evidence brought forth against him in order to have the chance to respond accordingly. Information obtained by confidential informants may also fall short of the Stinchcombe disclosure requirements which oblige the decision-maker to disclose all information relevant for defence.\(^\text{13}\)

Under an exclusively investigative mandate, information may serve functions that do not require high standards of reliability and constitutionality, unlike a prosecutorial mandate. Information is used differently depending on the mandate. For example, polygraph tests are considered valuable investigative tools by law enforcement, despite their inaccuracy and inadmissibility in court.\(^\text{14}\)

The combined operation of the SCISA and the CSISA creates a risk of abuse of power by agencies, whether that risk is inadvertent or otherwise. Even though courts can restrict the admissibility of evidence during trials, administrative action can cause hardship before judicial oversight becomes possible. The no-fly list was cited as an example wherein government actors can make a decision with significant personal consequences, with no warning and minimal disclosure obligations.\(^\text{15}\) In order to address this problem, the 2018 federal budget dedicated $81.4 million to the establishment of "a rigorous centralized screening model" and a redress system for legitimate passengers, sometimes even toddlers, who got caught up in the system.\(^\text{16}\) Critics of the no-fly list, though, have argued that while this will help current “false-positives,” it will not address the fundamental flaws of secrecy and lack of due process in the no-fly list system.

**Conclusion**

The ATA and Bill C-59 contain ambiguous purposes and overbroad provisions, thereby facilitating politically motivated and oppressive state action beyond what is required to protect Canada from terrorist attacks. Both broaden the scope of national security beyond the Criminal Code definition of “terrorist activity” as connected with harm to persons or property.


Historical examples show that we cannot rely on decision-makers’ good faith to use their discretion in a Charter-compliant way. The information-gathering and sharing powers afforded to agencies are insufficiently circumscribed, notably with respect to relevance and reliability. The privacy implications may have a chilling effect on advocacy groups. These measures also risk undermining equality by disproportionately impacting racialized communities.¹

¹ Voices-Voix acknowledges with thanks the drafting and research assistance of McGill law student Elena Friederike Kennedy.
In recent years, Western universities have been confronted with demands for institutional “safe spaces.” Kurt Lewin, a psychologist working in the 1940s, designed “sensitivity training” workshops to build self-awareness and reduce defensiveness among participants.

The concept of safe spaces has developed to use solidarity and the strength of the collective to carve out equitable space and voice for all in traditional institutional settings, especially universities. An emerging body of scholarship documents 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, policy-makers, and societal members; universities are often the incubators of civil society.
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. The “safe space” concept has been evolving and, more recently, the term “safer spaces” has been used to suggest that, while a space may not be safe in absolute terms, collective efforts can carve out more equitable spaces. 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.

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 can be heard? Is there a concern that safe spaces will be instrumentalized to shut out other voices? How do we mold the institutional environment — in the classroom and on campus — so that different narratives and perspectives can be expressed freely in a respectful manner? Whose responsibility is the creation of safe spaces, and, finally, are free speech and safe spaces in opposition, or can they be effectively reconciled?

The goal of the conference’s roundtable is therefore to explore these complex dimensions of debate and discourse with a focus on university settings.

Moderator

**Nandini Ramanujam**  
Associate Professor (Professional), Executive Director, Director of Programs, Centre for Human Rights and Legal Pluralism

Nandini Ramanujam is the Executive Director and Director of Programs of the Centre for Human Rights and Legal Pluralism at McGill University’s Faculty of Law, where she also serves as an Associate Professor (Professional). Dr. Ramanujam directs the International Human Rights Internship Program, as well as the Independent Human Rights Internship Program. She is the McGill representative for the Scholars at Risk Network and is a member of the steering committee of the Scholars at Risk (SAR) Canada Section. Her research and teaching interests include law and development, institutions and governance, economic justice, food security and food safety, the role of civil society, and the fourth estate (media) in promotion of the rule of law, as well as the exploration of interconnections between field-based human rights work and theoretical discourses.
Introduction
As student populations become more diverse, universities are increasingly asked to provide “safe spaces.” Some academics and university administrators argue, however, that safe spaces threaten the university’s role in knowledge creation and dissemination and prevent universities from serving as places of rigorous, open debate.

This roundtable discussion asked participants to explore concerns and discourses around safe spaces in the university context. Moderated by Nandini Ramanujam, the roundtable featured six participants who contributed student and activist perspectives, as well as perspectives from journalism, academia, and community work. Participants deliberated over the multi-faceted question of the desirability and feasibility of safe spaces in the university. Participants shared rich and diverse perspectives on the issue of reconciling the principles of academic freedom and free inquiry with the concept of safe spaces.

Panellists

**Nazampal Jaswal**
Law Student, Women of Colour Collective, McGill Faculty of Law

*Nazampal Jaswal* is a recent graduate of the McGill Faculty of Law and is currently an articling student at Cooper, Sandler, Shime & Bergman LLP. She co-founded and served as co-president of the Women of Colour Collective and is currently co-director of Innocence McGill. She also co-organized the “Beyond Ghomeshi” panel, which brought together a Crown prosecutor, a defence attorney, a legal scholar, and a support worker to discuss ethical defence practices in criminal sexual assault trials. The panel was an intentionally "safe space" and, subsequently, Nazampal co-wrote an article for *Quid Novi*, advocating for the use of safe spaces on campus. During her undergraduate degree at York University, Nazampal served as one of the lead coordinators of a student co-operative where she drafted and implemented a "safe space" policy.

Jaswal advocated for safe spaces at universities, citing her experience founding the Women of Colour Collective at McGill University’s Faculty of Law. Jaswal said that students distrust the university’s capacity to make students safe, yet also argued that university administrators do have a role to play in supporting safe spaces. University administration must listen to

marginalized students and take concrete actions to support them in creating their own safe spaces and in making all university spaces safer.

**Jeansil Bruyère**  
Executive Director, AIDS Community Care Montreal (ACCM)

Like Jaswal, Bruyère sees a place for safe spaces at universities and a role for university administration in their creation. Fostering safe spaces, Bruyère noted, means going beyond tokenism. He suggested that university administrators can help build safe spaces by ensuring meaningful involvement of marginalized students, over and above putting diverse students on admissions committees or in university publicity campaigns.

**Sydney Warshaw**  
Student, Activist

Warshaw also argued in favour of safe spaces at universities. She explained that these spaces allow for the development of ideas and debates, which can
then be shared with the rest of the university and with civil society at large. Warshaw traced the development of safe spaces through the feminist and gay rights movements. She also highlighted tensions between safe spaces and freedom of expression, explaining that safe spaces can require privileging marginalized voices over dominant ones.

Celine Cooper  
Writer, Columnist at the Montreal Gazette

Celine Cooper is a columnist at the Montreal Gazette. For over 15 years, she has worked at the intersection of scholarship, journalism, and public policy. Her areas of research and policy expertise include liberal democratic management of diversity; multiculturalism, interculturalism, education, immigration, and official languages in Canada; and nationalism, globalization, and urbanization. She holds degrees from Queen’s University and York University, and is currently pursuing a doctoral degree at the Ontario Institute for Studies in Education at the University of Toronto.

Cooper agreed with other participants that safe spaces belong at universities and that university administration has a role to play in fostering safe spaces. She noted that in today’s global climate, we must be able to rely on universities as sources of evidence-based research and rigorous debate. She also raised concerns around academic freedom and freedom of expression as they relate to denying controversial speakers opportunities to speak on campus. Cooper suggested that the university’s challenge is to be a space both where ideas can be questioned and where diverse individuals are welcome and comfortable.
Shaheen Shariff
Associate Professor, Department of Integrated Studies, Faculty of Education, McGill University

Shaheen Shariff is an Associate Professor in the Department of Integrated Studies in Education at McGill, and Director of Define the Line projects. Dr. Shariff is an international expert on socio-legal and policy issues with respect to online social communication, with a focus on cyberbullying, privacy, defamation, and criminal harassment. Her research and teaching are grounded in the study of law as it impacts educational policy, pedagogy, and practice. She is on the board of directors for Kids’ Help Phone and is conducting global mapping on cyberbullying for the UNICEF Innocenti Research Centre, Italy. Drawing on established constitutional, human rights, and tort law principles and doctrines, criminal law, and emerging legislation, she is developing guidelines for school administrators, teachers, and parents regarding the extent of their legal responsibilities to address cyberbullying in various contexts.

Shariff agreed that safe spaces should exist at universities. She suggested that university administration has a role in creating them and in making the entire “campus context” safer. Shariff suggested that universities can support safe spaces and fulfill their legal obligations to keep students safe by, for example, establishing university-wide policies and developing intersectional curricula. She proposed fostering safe spaces as a way to reclaim universities as the educators of society because safe spaces encourage collaborative dialogues on issues like systemic racism, which can reach society at large.
While Turk agreed with the other participants that university students should have safe spaces, he argued that university administration should not be involved in creating or maintaining these spaces. To be truly safe, Turk suggested, safe spaces must be created by their users. He contrasted his experiences as a student activist, working to keep the university out of students’ lives, with today’s student activists, whom he sees as asking universities to become more involved in protecting students. He suggested that students be aware that universities pursue marketing agendas that may not serve students well. Turk proposed that students build their own safe spaces rather than asking university administration to do so on their behalf.

Summary of Roundtable Discussion

What is a safe space?

The concept of safe spaces grew out of psychologist Kurt Lewin’s work creating “sensitivity training” workshops to build self-awareness and reduce defensiveness,” and the first safe spaces were psychological safe spaces. Safe spaces are contentious. Safe spaces may increase polarization, eliminate context, and restrict academic freedom.

As Turk stated, the term “safe space” can have multiple meanings and refer to various places and ideas. Roundtable participants articulated diverse
understandings of what “safe space” means.

**Safe spaces flourished within American social movements, and are now used by marginalized groups to assert their concerns and resist institutional hierarchies and structures.**

Jaswal argued that safe spaces are *inclusive spaces*. She explained that those creating safe spaces consider what inclusion entails and be accountable for making their spaces inclusive.

Bruyère suggested that safe spaces are spaces in which people with divergent views can speak up, and those who are uncomfortable with what is said can feel safe voicing their concerns.

Warshaw defined safe spaces as new normative spaces that shift the status quo towards the experiences, values, and needs of historically marginalized communities. These spaces, she argued, allow meaningful new conversations and debates to develop, which can later be shared with entire universities and the rest of civil society.

Like Warshaw, Turk argued that safe spaces help communities develop ideas that they will later share publicly. He described safe spaces as self-created spaces where dissidents or marginalized groups can organize and share ideas without being derided or silenced.

Shariff highlighted privacy and trust as key elements of safe spaces. Adding to Jaswal’s comments, she suggested that inclusivity may not be enough to create safe spaces at universities. Ongoing, meaningful participation and consultation may also be required.

Finally, Cooper raised the physicality of safe spaces. She suggested that safe spaces in the university context have evolved from safe physical spaces, like women’s centres, to safe intellectual spaces. University administrators, professors, and students attempt to create these safe intellectual spaces by implementing measures like trigger warnings in courses.

### Safe spaces in the university context

#### Universities as safe spaces

Roundtable participants agreed that a university as a whole cannot be a safe space. Jaswal thought that universities cannot be safe spaces because they are tainted by the systemic racism and sexism that pervade all institutions.

Warshaw contended that universities cannot be safe spaces because they remain hegemonic spaces, while safe spaces are those that shift the status quo.

Turk, on the other hand, argued that the multiple, conflicting perspectives present
Enabling Civil Society

at a university prevent the institution from being a safe space.

**Approaches to safe spaces in the university context**

Roundtable participants proposed ways for university administrators and student groups to foster safe or safer spaces at their institutions. Supporting safe spaces at universities can mean designating specific spaces for students with certain identities. It can also mean promoting safer spaces for everyone across the university. These two approaches reflect, in part, the distinction between physical and intellectual safe spaces.

**Dedicated safe spaces**

University administrators and student groups can approach safe spaces by providing or creating spaces dedicated to certain students. These might include, as Turk indicated, physical spaces such as women’s centres or student clubs like Muslim student societies.

**All spaces as safer spaces**

Universities and student groups can also approach safe spaces by working to make the entire university a safer space. Bruyère explained that Concordia University’s student society adopted this approach, choosing not to designate certain rooms as safe spaces, out of a belief that the whole university should be a safer space, and ideally a safe space. This approach distinguishes “safe spaces” from “safer spaces.”

**The idea of “safer spaces” recognizes that some elements of safe spaces can be integrated into spaces that cannot be entirely spaces.**

In a university context, this approach asks people throughout an institution to adjust to new norms designed to make the institution safer. As initiatives under this approach can apply to all individuals and spaces at a university, they may attract more freedom of expression-based criticisms than initiatives providing designated safe spaces for certain groups of students. As Turk argued, making universities more open and inclusive is an important goal, but the university as a whole can never be a safe space, as critical discussion and analysis is at the core of its mission.

Participants mentioned the creation of safe space policies as one way to make universities safer spaces and discussed the need for collaboration in creating such policies. Universities must collaborate with marginalized students when making safe space policies, Warshaw argued, because safe spaces exist to reflect the experiences of marginalized communities.

Shariff pointed out, however, that consultation may not be enough. Drawing on her experiences with McGill University’s sexual violence policy, she noted that views expressed during initial consultations may not be reflected in the final version of a policy. To ensure that diverse voices are part of university safe space policies, Shariff suggested that student groups be involved in initial
consultations and in reviewing completed policies.

Safe spaces, freedom of expression, and the role of the university

Participants responded indirectly to concerns that safe spaces at universities limit academic freedom and freedom of expression. As some participants noted, professors may see safe spaces as restricting academic freedom or freedom of expression if they are asked to provide trigger warnings or omit topics from courses. Safe spaces may also be framed as threatening freedom of expression because, as Warshaw explained, creating safe spaces can mean asking members of dominant groups to step back to make more space for the voices of marginalized communities.

As Warshaw noted, Dr. Jay Ellison, Dean of Students at the University of Chicago, articulated the position in a 2016 letter he wrote to the university’s incoming class, that safe spaces threaten freedom of expression and academic freedom. In his letter, Dean Ellison announced that the university’s commitment to academic freedom meant that it did not support intellectual safe spaces, trigger warnings, or barring controversial speakers from campus.

Turk claims this letter did not, in fact, reflect the University of Chicago’s position at all. The letter was written to appease prominent donors, but some University of Chicago faculty members wrote a letter in response to Dean Ellison, arguing that safe spaces and freedom of expression can coexist. The ability to make demands, including demands for spaces that are free of bias, threats, and intolerance, is central to academic freedom and freedom of expression.

Both Cooper and Turk thought that safe spaces could coexist with academic freedom and freedom of expression in the university context. As Cooper wrote in a Montreal Gazette op-ed about universities, “The reality is that safe spaces and free speech are not diametrically opposed ideas.” Building on this theme, Turk argued that freedom of expression and the pursuit of justice, including the pursuit of justice through safe spaces, are not in conflict because they both challenge the status quo.

Reconciling the university’s role in creating knowledge and fostering debate with the need for inclusive, democratic spaces on campus is a challenge, Cooper acknowledged. Yet she and Turk urged audience members to recognize that this can and should be done.

Looking ahead: The future of safe and safer spaces at universities

Making university classrooms safe or safer

In response to an audience question, participants considered how to create safer spaces in university classrooms and elsewhere. Creating safe spaces anywhere, Bruyère suggested, means
meeting people where they are. To do this, Bruyère advocated building a “call-in culture.” Instead of calling someone out for making an inappropriate remark, they should be “called in” by asking them to explain why they made the remark and prompting them to reflect. In the university context, Shariff suggested that institutions can make classrooms safer by bringing intersectionality into programs and courses. As an example, she cited the addition of mandatory social justice classes to McGill’s dentistry program.

Jaswal suggested that classrooms and other spaces are made safer when those in charge recognize the effects of systemic discrimination in their spaces. For example, a professor can acknowledge the impact of sexism in her classroom and organize a discussion on women’s rights in light of this impact.

Building trust and legitimacy in the university

Expanding on Shariff’s observation that trust is key to safe spaces, participants discussed how to build trust in universities and how to increase their legitimacy. Jaswal and Warshaw argued that to do this, universities need to take marginalized students’ concerns and experiences seriously. For Warshaw, this means that universities should apologize when they fail to consider diverse students in decision-making. Jaswal added that building trust requires universities to respond to students’ concerns with tangible actions, such as revising admissions processes.

Reflections

Including this roundtable in a conference on civil society raises the question of whether civil society organizations that represent universities have a role in the safe spaces debate. Canadian universities participate in civil society individually and through membership organizations that represent their shared interests.

These organizations, like Universities Canada, the U15, and regional university associations, take positions on issues such as research and experiential learning.

As the safe spaces debate goes to the heart of the university’s role, university organizations may take positions on this issue as well.

In October 2016, Universities Canada changed its membership criteria to require all member universities to commit to the “equal treatment of all persons without discrimination” in relation to “all institutional policies and practices.” In response to Trump’s January 2017 travel ban, the U15 issued a statement reiterating the importance of diversity and openness to research.
These actions were not framed as part of the safe spaces debate. They may, however, signal a move toward civil society organizations that represent universities asserting a role for themselves in making universities safer spaces. Yet, as the roundtable highlighted, universities define and approach safe spaces differently. This issue may be too contentious, and responses to it too diverse, for universities to adopt a shared position through their membership organizations. The roundtable also touched on the university’s role in providing a space for civil society to flourish. While safe spaces can be perceived as restricting academic freedom and freedom of expression, they can also be seen as a threat to the university’s role in building civil society.

Finally, this discussion raised questions of pedagogy. As centres for innovation, universities should use teaching methods that reflect current pedagogical research. The safe spaces debate can be seen as a call to study the effects of safer spaces on learning. Do students learn better in environments where they feel safer, or where their perspectives and experiences are challenged?

Conclusion

Our current global climate means that the university’s role in society has never been more important, Cooper observed. While questions around safe spaces in the university context challenge us to examine the university’s role, this discussion urged the audience to find a place for safe spaces at our universities.

Universities must remain centres for evidence-based research and lively debate, roundtable participants suggested, but they must also be places where people with diverse perspectives are welcome to add their voices to these debates.¹

¹ Voices-Voix acknowledges with thanks the drafting and research assistance of McGill law student Melissa Moor.
Public Lecture

Civil Society at Risk? International Perspectives

Panellists

Alex Neve, Secretary General, Amnesty International Canada
Franoise Girard, President, International Women’s Health Coalition
Franois Crépeau, Full Professor, Faculty of Law, McGill University, and former UN Special Rapporteur on the Human Rights of Migrants

The last panel discussion of the day brought together a diverse group of academics, lawyers, community organizers, and students in a packed room. The consensus: despite shrinking civic space, human rights advocacy remains resilient everywhere, even in countries in the grip of totalitarianism. Human rights defenders persist in organizing and claiming their rights, no matter how “disabling” the environment.

However, questions remain. How do we defend defenders? How do we ensure that governments accept the responsibility to encourage, rather than stifle, civil society engagement? What are the challenges facing women defenders working in difficult and dangerous countries?

The three panellists on the “Civil Society at Risk? International perspectives” panel provided diverse perspectives on these questions. The panellists’ positions, as well as the question-and-answer period, are summarized in this report, including Canada’s recent Feminist International Assistance Policy (FIAP), discussed by Franoise Girard as a potentially enabling framework for a vibrant and pluralistic civil society.
Introduction

Amplified voices, amplified risk

Human rights defenders (HRDs) and civil society organizations (CSOs) face serious risks and this fact is no longer shocking news to most — or at least it should not be. Reports abound in the international news cycle — from police surveillance of indigenous and environmental activists in Canada to the ongoing violence faced by teachers, union activists, and land defenders in Mexico.

In December 1998, on the 50th anniversary of the Universal Declaration of Human Rights (UDHR), the United Nations General Assembly (UNGA) adopted the “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,” commonly referred to as the “Human Rights Defenders Declaration.” While not legally binding, the Declaration is a powerful companion to the UDHR. It provides everyone with the right to protect and strive for the realization of fundamental human rights and freedoms promised by the UDHR.

The situation for defenders has worsened over the years. In 2016 alone, 281 defenders were killed in 22 countries, arrested for peaceful protest in 68 countries, and faced threats or attacks in 98 countries. The patterns are consistent — governments adopt new laws that authorize mass surveillance, the use of force, or implement stringent registration requirements for CSOs. Regardless of regional differences, defenders are labelled as threats to security, development, and traditional values. Similar trends have been observed by all the panelists.
Enabling Civil Society

Panellist

**Alex Neve**
Secretary General, Amnesty International Canada

Neve highlighted the risks faced by defenders and the connection between the international sphere and Canada’s foreign policy. Targeting defenders is not a remote phenomenon; it is also tolerated and perpetuated by our own government.

Neve started by describing three of his encounters in the week prior to the conference: first, with a Burundian human rights defender, Pierre Mbonimpa, currently living in exile in Belgium, following a 2015 assassination attempt and the arrest and subsequent killing of his son and son-in-law during anti-government protests; second, with an Amnesty International leader in Turkey who had marked her 100th day in prison; and third, a meeting with a visiting civil society delegation from Mexico, in which a land defender noted that anyone who opposes or simply asks questions about mining projects — many of which are owned by Canadian corporations — risks their life.

Defenders experience illegal arrest and detention, reprisals for exercising freedoms of assembly and expression, violence, and extrajudicial killings. All are commonplace occurrences for HRDs.

**While all HRDs are at risk, certain groups are particularly vulnerable, including women human rights defenders, LGBTQI defenders, youth defenders, and those working on issues related to territory, land, and the environment.**

Defenders working on the land and environment are particularly relevant for Canada, given the predominance of Canadian mining companies operating internationally. In 2015, 65% of murders of environmental rights defenders worldwide were in Latin America, according to a recent Amnesty...
International report entitled “We Are Defending the Land with Our Blood.”

Canada’s new “Voices at risk: Guidelines on human rights defenders” states that defenders opposing mining projects deserve support whether the corporation is Canadian or not. This statement is a welcome development. However, as Neve mentioned, these guidelines remain empty rhetoric without meaningful implementation.

In conclusion, Neve provided several recommendations to create an enabling environment for civil society.

First, governments must recognize the legitimacy of defending human rights and celebrating the accomplishments of civil society.

Second, there must be a safe, enabling environment for defenders that ensures that those responsible for human rights violations do not enjoy impunity.

Third, there should be government programs to train defenders in skills necessary for advocacy.

Fourth, defenders require the means to communicate with each other and with decision-makers. Last, governments must demonstrate true conviction. Government policy, such as Canada’s guidelines on human rights defenders and the new Feminist International Assistance Policy (FIAP), must be implemented by standing up for defenders over profit and mining development.

Neve’s remarks provided the historical context and international framework for defenders. The next two speakers addressed the context of two particularly vulnerable groups — women human rights defenders and migrant workers advocating for their rights.

---


Françoise Girard
President, International Women’s Health Coalition

Françoise Girard is President of the International Women’s Health Coalition and a highly regarded advocate for women’s rights and sexual and reproductive health and rights. A lawyer by training, she served as Director of the Public Health Program at the Open Society Foundations from 2006 to 2011. Françoise is regularly consulted by UN and intergovernmental agencies and has played a key advocacy role at UN conferences on population and development, women’s rights, and HIV/AIDS. She has contributed articles to peer-reviewed journals such as Science; the Journal of Adolescent Health; Health and Human Rights; International Family Planning Perspectives; and Reproductive Health Matters. Her other publications include “Global Implications of U.S. Domestic and International Policies on Sexuality” (2004), as well as chapters in “SexPolitics: Report from the Front Lines” (2007), and “Reproductive Health and Human Rights: The Way Forward” (2009).

Girard discussed the backlash faced by women’s health organizations and human rights defenders working on sexual and reproductive rights.

Women defenders at the international level have, for a long time now, faced ultra-conservative religious groups who reject sexual and reproductive rights. These groups subvert human rights concepts — by, for example, claiming personhood for the fetus — to deny women control over their own bodies. They also defy laws and even national constitutions.

In Kenya, for example, the right to abortion was included in the 2010 Kenyan constitution, as a result of extensive lobbying by women’s groups. However, Kenyan Catholic bishops refused to accept this, and managed to block the guidelines permitting doctors to determine whether there was a health-related need for an abortion, effectively denying women access to the hard-won constitutional right to abortion.

These religious groups often deploy an anti-gender agenda, arguing that biological sex is binary, and that it is deterministic of human destiny.

According to Girard, there can be no equality without reproductive choice, as everything else, from education to political participation, will not be effective without sexual and reproductive rights.

While the arguments of those groups are not new, Girard explained that they are regaining ground in Europe, Russia, and Latin America. If gender roles are seen as preordained, rather than socially constructed, then women are inherently
Enabling Civil Society

precluded from attaining equality. Such rhetoric powerfully negates the very foundation of human rights. As Girard reminded the audience, if boys will always be boys, destined to be providers and world leaders, while girls will always be girls, destined to be caregivers and mothers, the possibility of “creating — or even imagining — a different future is impossible and the entire edifice of human rights crumbles.”

A second set of actors, authoritarian and populist governments, have made alliances with these religious groups. They have identified feminism as a major threat to their worldview, and paint it as a foreign concept that is inconsistent with traditional values.

Such governments increasingly constrain the influence of feminist CSOs through extensive surveillance and regulation. Such regulations apply to the entire non-profit sector, but feminist organizations are particularly affected. Girard pointed to India as an example, where many women’s organizations have lost their status as a result of new registration requirements.

Notable achievements by women defenders are often met with counterattacks; women must be constantly vigilant to protect their own safety and to maintain hard-won sexual and reproductive rights.

In Poland, for example, police raided the offices of feminist organizations following protests to commemorate a 2016 mass protest, which had successfully blocked legislation banning abortion. Files and computers were seized to allegedly investigate wrongdoing by the justice ministry under the former government, which had provided funding to women’s groups.

Files removed included sensitive information on victims of domestic abuse. Organizations viewed the timing of the raid — one day after the mass protest — as an abuse of power and as harassment. As women fight for — and win — rights and greater access to public debate, the risk for reprisal is high. Girard concluded that the battle is constant and no success can be taken for granted.
François Crépeau
Full Professor, Faculty of Law, McGill University, and former United Nations Special Rapporteur on the Human Rights of Migrants

François Crépeau is Full Professor and the Hans Tamar Oppenheimer Chair in Public International Law at the Faculty of Law at McGill University, as well as the Director of the McGill Centre for Human Rights and Legal Pluralism. He was the UN Special Rapporteur on the Human Rights of Migrants between 2011 and 2017 and is a member of the Advisory Committee of the International Migration Initiative of the Open Society Foundations. He is a member of the board of directors of the International Bureau for Children’s Rights (Montreal), a Fellow of the Royal Society of Canada and the Pierre Elliott Trudeau Foundation, and an Advocatus Emeritus of the Quebec Bar Association. He heads the Mondialisation et droit international collection (29 books published to date) at Éditions Bruylant-Larcier (Brussels) and has given many conferences, published numerous articles, and written, edited, or co-edited nine books.

Public advocacy may endanger migrants who are already insecure and vulnerable by placing their immigration status at risk. Undocumented migrants and temporary foreign workers rarely organize, unionize, or protest due to the risk of being identified as undocumented or as a troublemaker by employers. Crépeau pointed out that migrants are often willing to accept precarious working conditions to provide for their families and anything that threatens this purpose is considered dangerous.

Human rights are theoretically universal, but many migrant workers are denied access, including to fundamental freedoms to associate and to advocate for migrant workers’ rights.

Nevertheless, Crépeau argued that lack of access to public debate does not mean that migrant workers lack agency. Not only have many migrant workers undertaken significant risks to find work internationally and support their families, but they have also formed underground networks. Legitimizing these workers requires political clout, and Crépeau advocated for a change to voting rights, so that any long-time resident should be able to vote.

According to Crépeau, there are multiple challenges to addressing the precariousness of migrant workers. First, the marginalization of migrant workers is difficult to overcome without the ability to self-advocate. As Crépeau noted, all other marginalized groups have struggled to wrestle their rights from the majority, but migrant workers cannot risk placing themselves in the public eye to do so, for fear of detection and deportation. In addition, their inability to publicly advocate for
Enabling Civil Society

themselves precludes them from contradicting erroneous and stereotypical assumptions about migration, most notably that migrants steal jobs from citizens or increase criminality. Defenders who advocate for migrant workers are also targeted. Crépeau discussed the situation of one activist who was recently banned from Qatar for two years due to his political activities.

However, this precarity is not accidental — precarious labour markets are created by legislation and policy. Many industrial sectors have been delocalized from the Global North to the Global South, but some sectors, such as agriculture, care, hospitality, and construction, cannot be delocalized. Crépeau noted that, in such markets, labour conditions have been delocalized the opposite way, from the Global South to the Global North.

**Governments have therefore created frameworks that benefit their own labour markets without providing human rights protections for migrant workers.**

For example, policies and programs such as the temporary foreign worker program in Canada and regulations that require banks and landlords to verify immigration status in the United Kingdom force migrants with few alternatives to accept lower wages, unstable employment conditions, insecure immigration status, and unsafe housing conditions, which leave them vulnerable to exploitation.

Precariousness is then perpetuated through political and economic structures created by the state and negative stereotypes of migrants that they themselves cannot publicly challenge.

While Crépeau noted several silver linings, including the increasing unionization of migrant workers in some sectors, much work remains to create an enabling environment for migrant workers to organize and assert their rights.

Discussion

*Given the international dimension to the panel and the panellists’ wide-ranging experiences, the discussion with the audience touched on diverse topics, including the refugee crisis in Europe, the Rohingya crisis in Burma, and gender rights following the Arab Spring. The panellists responded to audience questions and expanded on several themes discussed during their presentations.*
Resiliency and innovation

The resilience and creativity of defenders were highlighted. Despite disabling spaces and constricting legislation that threatens defenders’ safety, advocacy persists all over the world, albeit in different and creative ways.

In Egypt, following the Arab Spring, some women defenders were detained, had their passports seized and bank accounts frozen. Nonetheless, Girard points out, activism persists. Rather than focusing on public action, women defenders have created private women’s groups where they educate themselves and discuss predominant issues such as sexual harassment and gender-based violence. Crépeau argued that civil society groups have exploited a time of flux in migration policy to resolutely advocate for children’s and migrants’ rights during the refugee crisis and the preparatory process for the Global Compact for Migration. Despite the many risks facing defenders, stories of creativity and resilience create hope.

One cannot find a corner of the world without small or large organizations, or informal movements, Neve said, and brave individuals are taking a stand for human rights everywhere. The determination and unrelenting advocacy of CSOs are, in themselves, a silver lining.

The lifeblood of democracy

Each speaker highlighted the central role that CSOs and defenders play in democratic society and the need to acknowledge and celebrate their work. Neve said they are the “lifeblood” of democracy and called for governments to recognize defenders’ achievements.

Crépeau also emphasized increased attention to migrant workers by students, the press, and professionals. As their stories emerge through investigative journalism, novels, movies, and advocacy, the integral role of migrant workers in our labour market is beginning to be better recognized.

Finally, Girard wanted Canada to ensure that funding provided to women’s organizations through Canada’s new Feminist International Assistance Policy (FIAP) acknowledges the expertise and supports the work of foreign CSOs, and is not overly restricted. CSOs require flexibility and adaptability to organize and influence government policies. All panellists highlighted the need for Canada to commit to its obligation to foster safe spaces for defenders. All three panellists connected their international perspectives to Canada and highlighted the ways in which Canada could better encourage an enabling environment for civil society. Whether urging Justin Trudeau to take a stronger stance on the restriction of civil liberties in the Catalan independence movement
or encouraging Canada to step up on diplomatic and multilateral relations to address the current Rohingya crisis, panellists emphasized the need for Canada to take a leadership role.

**Canada’s role — Can Canada’s new Feminist International Assistance Policy better enable civil society?**

Canada’s new FIAP, if funded and implemented adequately, could potentially provide a framework to do so. Unfortunately, according to Girard, Canada’s current foreign assistance is lower as a percentage of GDP than under the Harper government. Despite this significant shortcoming, FIAP is worth considering in more detail.

While FIAP is currently receiving international attention, Canada is not the first government to adopt such a policy. In 2015, Sweden adopted the first feminist foreign policy. Following this development, journalists and activists argued that it was time for other countries to adopt a similar policy.

Adopting a feminist foreign policy is not simply about centring women’s rights but requires “an honest look at ingrained biases and a willingness to open the closed community of policy-makers to include new voices, expertise and analysis on an equal footing.” As noted by Girard, it is encouraging that Canada listened to recommendations made during the consultation period and included several underfunded issues in its feminist foreign policy, including the sexual and reproductive health of adolescents, LGBTQI rights, and the right to abortion. Including such issues demonstrates Canada’s commitment to heeding civil society perspectives, and situates Canada as a leader taking a stand for reproductive health and rights.

How can a feminist foreign policy better enable civil society? While Sweden’s feminist foreign policy was characterized as “radical” by some, many of the focus areas included in their Foreign Service Action Plan are similar to other national action plans and follow UN Security Council Resolutions (UNSCR): solid, but perhaps not radical.

UN resolutions 1325, 1820, 1888, 1960, and 2106 are reflected in Sweden’s Feminist Foreign Policy, which prioritizes prevention of and protection from sexual and gender-based violence (SGBV). Some have been critical, however, arguing that the Women, Peace, and Security (WPS) agenda crowds out other important gender issues. Hagen highlights that the narrow categories of vulnerability included in UNSCR 1325 “can ultimately create even more insecure environments for certain women who endure intersecting oppressions because of their sexual orientation and gender identity.”

Relatedly, Kirby and Shepherd claim that WPS policies have continually

---

narrowed the agenda to focus on the issue of prevention and protection. Elements often excluded from WPS policies include the protection of defenders, gender budgeting and financing, as well as a broader definition of security, which would include issues such as migration, climate change, and trafficking. Canada’s FIAP must learn from previous failures if it aims to provide a framework that better enables civil society.

Inadequate levels of funding, restrictions on aid provided to women’s organizations, and funding continuing to go to the usual, large, international NGOs, as highlighted by Girard, are significant concerns that will hinder the policy’s implementation.

**Conclusion**

The lecture’s title — civil society at risk? — was answered with a resounding yes. Yet, the panellists underscored several positive developments, including the resiliency of defenders and CSOs, increased acknowledgment of the achievements and risks assumed by human rights defenders, and emerging policies, such as Canada’s guidelines for HRDs and the FIAP. However, silver linings do not provide complete solutions to the significant threats faced by civil society.

While Neve’s recommendations are a starting point for best practices to strengthen the legitimacy, capacity, and protection of HRDs, further research is necessary.

Based on this panel discussion, remaining research questions might include: How do defenders themselves understand and advocate for enabling environments? What are the contours or limits of state obligations to facilitate civil society engagement? And how can multilateral diplomacy and foreign

---

policy, dominated by states, be re-envisioned through a feminist, or other critical theory, lens to integrate civil society in a meaningful way?

Such fundamental questions must be addressed to better facilitate enabling environments for civil society.¹

¹ Voices-Voix acknowledges with thanks the drafting and research assistance of McGill law student Annette Angell.
Closing Remarks

John Packer

Madam Co-Chairs, Colleagues and friends,

It’s an honour to be invited to provide some Closing Remarks at the end of this full day of exchanges on a topic which should be of the highest priority for our country as a free and democratic society.

I must admit that I am a novice amongst you, having lived and worked abroad for most of my adult life and career, and so not well placed to comment on the experiences of civil society in Canada the last many years. As such, allow me a few remarks about the subject from a distance, from that of a Canadian working for human rights, peace and justice abroad, while always relying upon and benefiting from these at home, or so I thought.

From a personal perspective, I have long been associated with a small but well-known American-then Canadian Human Rights NGO known as “Human Rights Internet” (HRI). After 40 years of existence, it was some years ago – out-of-the-blue subjected to a CRA assessment following an allegation of “political activity” in breach of its charitable status. The CRA specifically focused its investigation on the organization’s delivery of educational training on human rights-based conflict analysis and prevention (including mediation) for staff of the Organisation of Islamic Cooperation (OIC). The OIC is a 57 member inter-Governmental organization with which Canada has a formal relationship including a Special Envoy and of which the Government of

---

1 Professor John Packer is Associate Professor of Law and Director of the Human Rights Research and Education Centre (HRREC) at the University of Ottawa. He was appointed the Inaugural Neuberger-Jesin Professor of International Conflict Resolution in April 2018.
Canada occasionally funded some of the activity in question. It seems that the sole basis for CRA’s concern and eventual decision to revoke HRI’s charitable status (and impose a penalty of forfeiture of 100% of assets) was the simple correlation of the word “Islamic” with HRI’s publicly available annual report of its activities. Following substantial costs and considerable fear among its Board (which has resulted in a still-existing chilling effect), HRI chose not to expend further time and money to contest the unsubstantiated yet damaging CRA determination. The result was that an excellent small organization, run almost entirely on the good will and non-remunerated efforts of concerned citizens, came near to closing and its reach, effects and initiative have been compromised. This is all due to the action of the Government of Canada which purports to uphold the fundamental values of democracy, respect for human rights, and the rule of law both at home and abroad.

I share this story mainly to convey my own shock that this happened in my own country while I was spending my professional life promoting responsible authority, democratic governance and robust civil society around the world, usually in so-called “transitional” societies. In my work, Canada was – or had been – a shining example, a reference point of good and democratic government. It is a notion we have the temerity to include in our national slogan and a trumpeted commitment to “peace, order and good government” to assert in our Constitution.

Unfortunately, at age 50, my eyes were opened to what this meant for any society, its fragile nature, the importance of vigilance and the institutional framework which is essential to realise and maintain for a genuinely free and democratic society following the rule of law.

Let me add that it is on this basis that my colleague Viviana Fernandez and I, on behalf of the HRREC at uOttawa, were pleased to join the initiative for this conference and to support it. Indeed, we believe that a vibrant civil society is a hallmark of a free and democratic society and sine qua non for its full functioning, for maintenance of the rule of law and for good and effective governance which contributes to the realization of full lives in dignity and rights for all human beings and for sustainable peace and development of society as a whole and for the world.

With regard to today’s conference, permit me to share a few observations. First, I consider it poetic that the first panel began with remarks from Mary Eberts – among other things, a co-founder of the Women’s Legal Education and Action Fund (LEAF). There is no doubt that Canada is a significantly better country because of LEAF. Thank you, Mary, and thank you to all those who have done so much, and continue to do so much to fight for better policies, laws, programmes and practices, in short, for better governance and better politics. And thank you today
for pointing out that in a democratic society government should be “making it possible” for interested and affected persons and groups to express and advance their concerns and positions to advocate change. For me, this is a basic value and instrumental to the realization of other values and goals, including peace and prosperity.

**Not only should a robust civil society be protected from undue constraints, but it should be pro-actively facilitated to create the conditions necessary for the very society we purport to uphold.**

An effective civil society does not replace government in general nor specific public authority. Rather, it is instrumental for a high quality of governance which is able to know and understand the “will of the people” beyond periodic elections – both as a range and in terms of specific issues. Civil society is fundamental for any governance to design policy, elaborate law and to implement it on the basis of the widest voluntary compliance as it should be the case for any democracy or even for responsible authorities seeking good (if not wholly democratic) government. The crucial element of such a system of governance is evidence-based policy and decision-making that is not arbitrary reflecting and serving the public interest rather than particular or private interests. This is important in an era where more and more governments are willing to act to quell those who dare to question or dissent and oppose. Let me add that the evidence invoked this morning from Freedom House\(^2\) is only ex post facto and confirms what we know from history and for which we have elaborated norms and standards to address both to protect and to facilitate. But this realization is coming late, as many countries – self-described “illiberal democracies” – assert a new politics of what one German commentator has dubbed “orderism”\(^3\). It refers to a political climate, where security trumps human rights and simplistic majoritarianism trumps the democratic principles of human rights, including minority rights, in a period of securitization of civil spaces purportedly for our own good. I am sorry to say that in the immediate aftermath of 9/11, our own compatriot Michael Ignatieff infamously wrote in the NY Times\(^4\) and, later, in his book The Lesser Evil: Political Ethics in an Age of Terror that,

---


in essence, we can no longer afford to be nice with human rights in the face of such challenges to our security.\textsuperscript{5}

This logic is self-defeating.

\textbf{What kinds of “democracies” actively constrain freedoms and repress, and what is the perversion where we fear freedom and happily consent or demure in the face of spurious assertions that it is in OUR interest to be less free? Driven by fear, we seem to have been duped into accepting what is not in our interest – neither alone nor together.}

Related to these questions is a basic matter of paradigm. Who is the State in a democratic society? Whose space, resources and powers? And what is the legitimacy of some government of the day usurping the resources to constrain “making it possible” (as Mary asserts) for the expression of views differing from those of that momentary government?

Surely the aim of better governance requires the full range of existing views genuinely and peacefully expressed – to be heard and considered, including both critiques and proposals. Broad deliberation will permit innovations to become manifest, for mistakes to be avoided, resulting in better lives for all. It implies a paradigm not of civil society versus government, but of both categories of society along with private actors to engage together, varying, consciously, thoughtfully and honestly in the construction of overall well-being reconciling public and private interests and their often overlapping manifestations. In this respect, while not mentioned during the day, conceptions of the new economy with growing so-called “third sector” participation and wealth creation are increasingly recognized and essential. We need to re-imagine the economy in terms of a future of more leisure, uncertain distribution and prevailing insecurity, amidst complex inter-relations. Imagining this in terms of a binary relationship between public and private interests is neither realistic nor good.

\textbf{Civil society and community-based organisations are essential, and likely to be increasingly so.}

I believe it is in this spirit that my colleague \textbf{Ravi Malhotra} asserted this morning that we should not fear the opportunities of globalization and technology. Indeed, social movements can benefit, and have benefitted, greatly from these, but on the condition that we have the right regulatory framework which is the vital condition and nub of our concerns.

This optimism seemed to be present in some of the later morning presentations, where we saw examples of progressive innovation such as “What Works Centres” in the UK or Winnipeg’s “Boldness Project” demonstrating bottom-up approaches generated with few resources yet achieving significant effect and reach. I realise that we also saw the sobering challenge of moving from where we are (i.e. the prevailing shortcomings) to where we can and want to be. Still, it is observable that a number of countries have advanced. Indeed, Canada is lagging behind, but we can learn from others.

While the third panel was more than sobering, we appear to know the problems, and the use of technology may help us to organize as citizens and to continue the old struggle for freedom and for good government. This may be the impetus for us to contest old assumptions, policies and laws. As one participant asked, is not political expression and activity protected by our Charter as a legitimate and even charitable activity at least for public interests and benefits and not party-partisan activity? We were again reminded that these questions and many others have been considered in depth by other countries with useful conclusions from which Canada is able to learn and may borrow.

In addressing “safe spaces” (both physical and virtual), the conference explored how we can imagine and construct a new and different policy which is sensitive, even comfortable, and thoughtful despite the obvious countervailing challenges of reductionist social media and pervasive discomfort and defensiveness.

The role of the academy has an undoubted role to play – for learning and to cultivate a culture of respect, inclusion, equity and collaboration. This implies a positive disposition to engage, even if critically, rather than to exclude the “Other”.

“Safe” in this sense is not about being tepid or even correct, nor of “winning” anything, but rather of an approach I would call dialogic and deliberative ways of living together. This raises questions about general education, culture and a rich notion of democratic society that surely have deep implications and far reaches. Yet, I fear the mainstream is rather far behind with resorts to intimidation and violence that are at the other extreme of what we would hope. To the contrary, I fear more, the tendency is not encouraging.

I think this all tells us that we must return to and work from the well-known basic principles and repeat and rebuild. To end at the beginning, inspired by Mary’s proposition, let me underline that we can and should make it possible for Canada to create the conditions for a better society where people can share and pursue their views without fear and on relatively equal bases for the overall public interest. Today, we are in many respects ahead of where we were generations ago and this conference has enabled us to take a positive step – at
least to better understand, analyse and commit to further steps.
Thank you to the organisers, the sponsors and participants for creating this opportunity.

We look forward to an eventual conference report and to continuing the conversation with a view to realizing the possibilities we know exist.

Thank you.