

Robert Ivan Martin

FREE EXPRESSION IN **Canada**



**Norman
Rockwell**

Free Expression in Canada:

Surrendered to Diversity and
Multiculturalism



Robert Ivan Martin

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Media Law

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*The Most Dangerous Branch: How the Supreme Court of Canada Has
Undermined Our Law and Our Democracy*

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To **Asha Mary Martin** with love and in confident
expectation of the many wonderful things you will
accomplish.



AUTHOR'S PREFACE

THE BEGINNING IS usually the best place to start.

In January of 1975 I was teaching in the Faculty of Law of the University of Nairobi and was well into my eighth year of living outside Canada. It occurred to me that perhaps it was time to return to Canada and, having two very small sons, it was clear that finding a job in Canada was essential. I was invited to deliver a paper at a conference at the State University of New York in Albany and, after the conference, headed north in search of a job.

The search took me to London, Ontario where I met David Johnston, then the Dean of the Faculty of Law of the University of Western Ontario and now His Excellency the Right Honourable David Johnston, Governor General and Commander in Chief of Canada. He was interested in offering me a job, but was uncertain as to what I might teach. He discussed this question with Andy MacFarlane, then the Dean of the School of Journalism at Western. They agreed that I could teach "Journalism and the Law", then a required course in the M.A. in Journalism programme. Consequently, I was offered a joint appointment in the School of Journalism and the Faculty of Law.

When I started at Western in September of 1975, I knew absolutely nothing about "Journalism and the Law". If Dr. Johnson were right, as he usually was, when he said, "Nothing concentrates the mind like the prospect of a hanging", then nothing creates as powerful an incentive for learning a subject as

being required to teach a course in it. Under Andy MacFarlane's direction and buoyed by his encouragement, I actually began to learn something about the law and the mass media. Andy ceased to be the Dean of the Journalism School in 1981. After his departure from the deanship, the School went steadily downhill, disappearing in 1998. Andy's death in 2002 was a terrible loss to both journalism and journalism education in Canada.

The first person to thank concerning this volume is Ian Holloway, until recently, the Dean of the Faculty of Law at Western. Though I am no longer employed in the Law Faculty, he was generous enough to make a law student available as a research assistant. That student, Leeanne Melnyk, of the U.W.O. Law class of 2010, did a superb job. She found all the material I wanted and presented it to me neatly arranged in binders with tabs. Her work was thorough and painstaking and completely lawyer-like.

I worked from a printout of the Second Edition of an earlier book, *Media Law*, on which I made corrections and improvements and to which I added information necessary to bring the whole thing up to date. My friend, Geri Akiens, did all the necessary keyboarding and did it with great skill and very pleasantly. Marianne Welch's retirement was a major loss to the scholarly capacity of the U.W.O. Law Faculty. She has prepared the Bibliography, Index and Table of Cases for my last three books. Her skill is beyond praise. The final thanks go to Barb Fetchison of the U.W.O. Law Library. The time I spent working in the Law Library would have been vastly less productive without her capable and generous assistance. Even after I left London, she continued to assist me in overcoming gaps in my capacity for on-line research. She also completed the Bibliography which Marianne Welch had started and did so in a fashion which was strikingly thorough and meticulous.

I owe a special debt of thanks to my dear friend Kristine Perz. She offered very generous and capable assistance at an extremely difficult point in the gestation of the book, being

instrumental in putting the final version together.

It is a pleasure to thank my sons, Ivan and Dawson, for their constant support and encouragement. I am highly biased about this, but do understand that being a parent is the supreme experience of human life. It is a great blessing to be the father of two such fine men.

The book is dedicated to my granddaughter, Asha. I thank her for all the happiness she has brought into my life over the past six and a half years.

Jan Hoffman and Mario Contini were unfailingly pleasant and helpful on many occasions. While this book began its life as the third edition of *Media Law*, that has changed completely. I was doing this work during a period which many have described as "The war on free expression". My strong support for free expression, plus my concomitant hostility towards those attacking it, began to occupy a greater and greater place in the manuscript. Irretrievable breakdown with Irwin Law resulted.

Beginning in 2010, I rewrote the book completely. As I hope the reader will come to realize, contemporary Canada supports neither free thinking, nor free expression. Consequently, an impressive array of Canadian publishers rejected the manuscript. Being in possession of a finished manuscript which does not have a publisher is not an experience I recommend. But fortunately, in October of 2011, I discovered Stairway Press. Ken Coffman, the publisher at Stairway Press, and I hit it off immediately. We quickly established a pleasant and productive working relationship. I have developed great admiration and respect for Ken.

Robert Ivan Martin
Guelph, Ontario
April 2012

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