

The 'Outrage Porn' Problem: How our Never-Ending Fury is leading to Hollowed-out Discussions about Government Ethics and Accountability.

By Ian Stedman

"Put simply, in today's dynamic world, last-generation governance and policy processes are a poor match for next-generation disruptive trends, and trust in government is an early casualty."¹

ABSTRACT

Social media platforms and the diversity of new media outlets are changing how the public engages in political discourse. Although much of this discourse consists in micro-opinions expressed online in 140 characters or less, that does not make it trivial. In fact, the form and tenor of public conversations about social issues can have a tremendous impact on how policy-makers treat those issues. My paper picks up on this idea by looking at what is called 'outrage culture' and specifically exploring its influence on the public's engagement with issues related to government ethics and accountability.

TABLE OF CONTENTS

I. Introduction	2
II. Mutual Respect and Government Ethics Laws.....	2
III. Public Confidence in Government.....	4
IV. Outrage Porn	6
V. The Implication of Indignation.....	8
VI. Leveraging Existing Accountability Infrastructure	12
1) More public outreach.	13
2) Explain public disclosure statements better.	13
3) Engage with the media more.....	14
4) Open up CCOIN and/or co-sponsor a larger annual conference.	14
5) Be unafraid to test the limits of their independence.	15
VII. Conclusion	16

¹ Kevin Lynch, "How disruptive technologies are eroding our trust in government", *The Globe and Mail (Canada)* (1 May 2017) OPINION, online: <<http://www.theglobeandmail.com/opinion/how-disruptive-technologies-are-eroding-our-trust-in-government/article34857043>>.

I. Introduction

People generally scoff when they are told that there is an area of law called 'government ethics law'. Outside of the relatively few public policy, public law and political science experts who are familiar with government accountability infrastructure, the area of study is not well known. In fact, conversations about government ethics law tend to quickly turn into conversations about public cynicism towards elected officials. It is hardly a revelation that the public distrusts politicians, but it is of course very important to continue to talk about why this is. This paper draws attention to outrage culture as a growing explanation for public cynicism and distrust. I begin by presenting Ian Greene and David Shugarman's theory of mutual respect as a way of demonstrating that Canada's democratic system is built on values that make its citizens want to push back against cynicism and all its causes. I then draw attention to one of those causes of cynicism by looking at a study from the United States that explores the emergence of outrage as a tool that is being employed by media in order to help drive revenue. I argue that outrage appears to be finding its way into the Canadian media landscape, especially with regards to matters of government ethics and accountability, and I list some examples. Finally, I propose that independent government ethics commissioners offer a plausible vehicle by which Canadians can push back against the growing concern that a culture of outrage will lead to hollow public discourse and greater public cynicism.

II. Mutual Respect and Government Ethics Laws

Vibrant, functioning democracies take seriously the value of mutual respect. As Ian Greene and David Shugarman explain, we display mutual respect for one another when we give the same consideration to others when making decisions that affect them that we feel they would owe to us if they were the ones making the decision(s).² Mutual respect is manifest within a democracy when the following five important principles³ are present: social equality, deference to the majority, minority rights, freedom (including freedom of expression) and integrity. Having a "familiarity with these principles provides a foundation for judging ethical behaviour in the public sphere and for resolving ethical questions in a democratic context."⁴

Social equality is a complex theoretical principle that is impossible to do justice to in a short paper such as this. Greene and Shugarman offer a starting point for thinking about social justice by noting that theories about this topic generally start from the position that all humans "deserve to be treated as equals and that the real-life situations of disadvantaged groups need to be considered to ensure that equality is not just a hollow

² Ian Greene & David Shugarman, eds, *Honest Politics Now: What Ethical Conduct Means in Canadian Public Life* (Toronto: James Lorimer & Co., 2017) [*Honest Politics*].

³ *Ibid* at 15 (Greene and Shugarman have coined these to be "principles of democracy").

⁴ *Ibid* at 24.

promise."⁵ The broad principle of mutual respect also arguably illuminates for us that people within a community ought to have the right to participate equally in the governance of that community. This is why we believe in free and fair elections. Greene and Shugarman argue that communities ought to search for consensus in their decision making processes, but that that majority rule should be considered appropriate when consensus cannot be achieved. The notion of 'majority rule' comes with its own nuance however, such that representatives be selected fairly, that no undue influence be brought to bear on a democratic process, and that no decision violates any other basic principles of democracy. Minority rights also clearly have a role here, ensuring that people from every side have the right to be heard and that those who are on the losing side of an issue "still have the right to be treated with equal concern and respect."⁶

The fourth principle, freedom, is a belief that mutual respect commits us to governing ourselves in a way that ensures every individual has the right and ability to live their lives as they choose. We have of course generally agreed upon certain important limitations to freedom, but we agree that a democracy does not work if citizens do not have freedom of expression, for example. According to Greene and Shugarman, we curtail freedoms only to the extent that they must be curtailed in order to best "advance the ideal of mutual respect."⁷ The final component of this principle of mutual respect is that of integrity. Integrity is explained as "honesty modified by concern and respect for our fellow human beings."⁸ For example, a candidate in an election can be honest with voters about what they plan to do, but that plan may demonstrate very little respect for others and would therefore be lacking in integrity. Conceiving of integrity as being honesty modified by respect for others really means that integrity does a great deal of heavy lifting and therefore plays a huge role in ethical politics.

If we accept the central importance of this multi-pronged conception of mutual respect, we can easily see why government ethics and accountability oversight regimes have emerged across Canada in order to help reinforce these values. Government ethics regimes, also called parliamentary conflict of interest regimes, establish codes of conduct for members of parliament that enforce moral norms believed to be desirable by both those who govern and those who are governed.⁹ These regimes, which I will return to below, exist because Canadians believe that we must have expectations of one another's behaviour, but that we also must find a way to respect those whom we disagree with, regardless of our ideological differences, and to treat one another fairly and respectfully.

⁵ *Ibid* at 25.

⁶ *Ibid* at 29.

⁷ *Ibid* at 31.

⁸ *Ibid* at 37.

⁹ I do not wish to imply here that I think these rules are reflective of the full complement of moral expectations held by those who are governed, only that the rules presently in place are in fact reflective of norms that can be easily agreed upon by both those who govern and the governed.

III. Public Confidence in Government

The divisive political rhetoric that has been increasingly employed in the United States seems to be inspiring Canadians to pay more attention to the ideals of mutual respect. Although it is impossible to demonstrate it certainly seems that Canadians are talking about government ethics and accountability now more than they ever have in the past. There is tremendous interest in the conduct of public officials and the management of public assets. This interest has very clearly been on the rise in Canada since several members of the Senate started receiving attention for their expense claims in 2012.¹⁰ Patrick Brazeau, Pamela Wallin and Mike Duffy are just a few of the Senators whose actions piqued the public interest.¹¹ At around the same time as the Senate started dealing with expense problems, Prime Minister Stephen Harper moved to close down Canada's largest freshwater research centre, the Experimental Lakes Area¹² and implemented some unprecedented policies restricting government scientists from sharing their research findings.¹³ These decisions were met with a great deal of public dismay.¹⁴ The very bizarre 2016 electoral cycle in the United States continued to ignite Canadians' interest in government ethics and accountability and has given rise to some real interest in the actions of public officials here in Canada. For example, Prime Minister Justin Trudeau's first meeting with President Donald Trump took place in the wake of revelations that he had taken a family vacation to a private island owned by a registered lobbyist whose charities receive hundreds of millions of dollars in funding from the federal government. This vacation became the subject of an investigation by Canada's Conflict of Interest and Ethics Commissioner.¹⁵ There are countless other stories that have emerged in Canada and the U.S. over the past few years, including that of Senator Don Meredith's improper relationship with a young staffer, for example, and these stories have captured public interest and given rise to real concerns about the levels of public trust in government officials.

¹⁰ CBC News, "A chronology of the Senate expenses scandal", *CBC News* (last update: 13 July 2016), online: <<http://www.cbc.ca/news/politics/senate-expense-scandal-timeline-1.3677457>>.

¹¹ John Paul Tasker, "Justice Ian Binnie cuts senators' expenses owed in 10 of 14 cases", *CBC News* (21 March 2016), online: <<http://www.cbc.ca/news/politics/justice-binnie-senate-arbitrator-1.3500650>>.

¹² Stephen Bede Scharper, "Closure of Experimental Lakes Area part of assault on science: Scharper", *The Toronto Star* (25 March 2013) Opinion, online: <https://www.thestar.com/opinion/commentary/2013/03/25/closure_of_experimental_lakes_area_part_of_assault_on_science_scharper.html>.

¹³ Jonathon Gatehouse, "When science goes silent", *Macleans*'s (3 May 2013), online: <<http://www.macleans.ca/news/canada/when-science-goes-silent>>.

¹⁴ See e.g. Carol Linnitt, "Harper's attack on science: No science, no evidence, no truth, no democracy", *Academic Matters* (May 2013), online: <<http://www.academicmatters.ca/2013/05/harpers-attack-on-science-no-science-no-evidence-no-truth-no-democracy>>.

¹⁵ Daniel Leblanc, "Ethics Commissioner probing Trudeau trip to Aga Khan's private island", *Globe and Mail (Canada)* (16 January 2017), OTHER.

Evidence of waning public trust in government can be seen in Samara Canada's 2017 report called "Democracy 360: The Second Report Card on How Canadians Communicate, Participate and Lead in Politics."¹⁶ This report summarized data that was collected using an online survey of 4003 Canadian residents.¹⁷ The results indicated that rates of civic engagement increased year-over-year,¹⁸ but that political engagement did not increase, and rates of activism in fact declined. Furthermore, the survey found that "more than half of Canadians do not trust political actors."¹⁹ An erosion of blind trust²⁰ in public officials is certainly not a bad thing, but it goes without saying that officials still do need public trust in order to govern properly. The survey results actually aren't surprising when compared to the previous year's results,²¹ but they do demonstrate that Canadians are very interested in improving their communities, yet largely disinterested in working with their politicians to do so.

Civic and political engagement is of course integral to a healthy and vibrant democracy. To ensure that parliamentarians are attentive to the impact that their actions can have on public trust, legislatures in every jurisdiction across Canada have created independent commissioners who are responsible for administering conflict of interest and ethics rules that apply to that jurisdiction's elected members of parliament. These ethics commissioners work with those members to help them understand the implications of their actions so that they can focus on behaving in ways that help to improve public confidence in government. In fact, most of these independent ethics commissioners' offices are created by legislation that includes a preamble that says something akin to:

Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Assembly's dignity and justifies the respect in which society holds the Assembly and its members.²²

Although preamble is not itself enforceable law, provincial and territorial ethics commissioners generally agree that it should be used to guide their interpretation of the

¹⁶ Jane Hilderman and Kendall Anderson, "Samara's 2017 Democracy 360: The Second Report Card on How Canadians Communicate, Participate and Lead in Politics" (28 March 2017), Samara Canada, online: <<http://www.samaracanada.com/research/2017-democracy-360>> [*Samara*].

¹⁷ *Ibid* at 37 (details about the survey's full methodology can be found here).

¹⁸ *Ibid* at 17 (civic engagement included: donating to a charity, volunteering for a charitable cause and/or working with others to solve a community problem).

¹⁹ *Ibid* at 24.

²⁰ *Ibid* at 24, 28.

²¹ Jane Hilderman, et al, "Democracy 360: A Report Card on How Canadians Communicate, Participate and Lead in Politics" (2015), Samara Canada, online: <http://www.samaracanada.com/docs/default-source/trioro-dropbox/democracy360_story_digital_final.pdf?sfvrsn=2>.

²² *Members' Integrity Act, 1994*, SO 1994, c 38, Preamble at 3 [*MIA*].

legislation they administer. It has therefore become rather common for ethics commissioners to draw attention to the lack of decorum displayed in Question Period, for example, even though their legislative mandates do not provide them with specific jurisdiction over the decorum in Question Period. Ethics commissioners in Canada have proven themselves to be interested in providing guidance to their stakeholders that occasionally reaches beyond the black and white walls of their legislative mandates. As Ontario's Integrity Commissioner Lynn Morrison noted in her 2014-2015 annual report,

I am dismayed when I see how elected officials behave during Question Period....[t]he dignity and respect have been lost, and public cynicism is increasing.

...

I have a duty to honour this office, and I would not be fulfilling that duty if I did not speak up. I join my predecessors in expressing concern, and once again, I encourage members to take a step forward and make some changes.²³

Minimizing public cynicism should be important to every individual who works in or with government if we want Canada to be regarded as a properly functioning democracy. It would be easy to speculate that the low levels of trust revealed by the Samara report are a direct response to the lack of civility in political discourse,²⁴ but it would be naive to think that there are not also many other reasons why public trust is so low. Relatively recent scholarship from the United States argues that something new is happening in the media landscape that seems to be contributing to the low levels of public trust. A media-driven outrage industry has emerged that is causing the public to engage with socially meaningful issues in overly emotional ways that serve to overshadow and diminish the complexity of those issues, rather than to open up thoughtful debate. It is to this industry of outrage that we will now turn our attention.

IV. Outrage Porn

In their 2014 book, Jeffrey M Berry and Sarah Sobieraj dig deep into the United States' changing media landscape and argue that a new outrage-driven genre of political opinion has emerged.²⁵

...outrage-based political content cannot be explained by increased political polarization in the United States but rather requires an understanding of the structural changes in the media landscape - primarily regulatory and

²³ Ontario, Office of the Integrity Commissioner, *Annual Report, 2014-2015* (Toronto: Publications Ontario, 2015) at 3.

²⁴ See e.g. *Ibid*; *Samara*, *supra* note 16 at 34.

²⁵ Jeffrey M Berry & Sarah Sobieraj, *The Outrage Industry: Political Opinion Media and the New Incivility* (New York: Oxford University Press, 2014) at 5 [*Outrage Industry*].

technological - that have rendered such content newly profitable. This profitability has spurred imitation and unprecedented growth.²⁶

It is impossible to do justice to a full book in only a few sentences, but Berry and Sobieraj argue that outrage as a genre consists in a particular style of discourse. The authors studied and coded specific political programming on four primary media formats over a period of 10 weeks. These formats were cable television, talk radio, political blogs and newspaper columns. They looked for different manifestations of outrage in order to begin to measure them. They were able to identify thirteen types of recurring speech and behaviour that they concluded constituted outrage.²⁷ These were:

...insulting language, name-calling, emotional display, emotional language, verbal fighting/sparring, character assassination, misrepresentative language, mockery, conflagration, ideologically extremizing language, slippery slope argumentation, belittling, and obscene language.²⁸

The four most common types of outrage speech were mockery, misrepresentative exaggeration, insulting language and name-calling.²⁹

Further studies have demonstrated that anger is more influential than other emotions,³⁰ it is cathartic,³¹ and that it can spread quickly through the use of modern media.³² It is not difficult to see then how outrage discourse can therefore be easily monetized. Berry and Sobieraj note that outrage is not only being monetized through the four primary media sources they studied, but also through the use of social media. This is of course significant for Canadians because social media crosses borders and Canadians take a deep interest in U.S. politics. Some even argue that Canadian political discourse at times mirrors the political discourse that has emerged from the United States.³³

²⁶ *Ibid* at 6.

²⁷ *Ibid* at 36.

²⁸ *Ibid*.

²⁹ *Ibid* at 39.

³⁰ Rui Fan, et al, "Anger is More Influential Than Joy: Sentiment Correlation in Weibo", online: (2014) 9:10 at 14 <<https://arxiv.org/pdf/1309.2402v1.pdf>> [*Weibo*].

³¹ Ryan C Martin et al, "Anger on the Internet: The Perceived Value of Rant-Sites" (2013) 16:2 *Cyberpsychology, Behaviour and Social Networking* 119.

³² *Weibo, supra* note 30 at 2.

³³ See e.g. Gary Mason, "Our political discourse has become belligerent, cynical and un-Canadian", *The Globe and Mail (Canada)* (16 October 2015), online: <<https://www.theglobeandmail.com/news/british-columbia/our-political-discourse-has-become-belligerent-cynical-and-un-canadian/article26855652/>>; Safiah Chowdhury, "It's not just America: Canadian politicians use Islamophobia to make gains in polls", *The Guardian (UK)* (5 October 2015), online: <<https://www.theguardian.com/commentisfree/2015/oct/05/not-just-america-canadian-politicians-islamophobia-gains-polls>>.

According to an online survey of 2,010 Canadians over the age of 18 that was conducted by Abacus Data in August 2016,³⁴ Facebook and other social media sites are accessed as news sources at double the rate that they were just two years ago. In fact, 51% of survey respondents indicated that they get their news online first.³⁵ Add to these statistics the many studies that explore how social media users filter their newsfeeds so that they evolve into virtual echo chambers that reflect a narrowing of worldviews and perspectives³⁶ and you can see how a media outlet might easily generate revenue by getting people to click on well-curated outrage porn.³⁷

There are unfortunately no studies that look at the adoption of outrage as a tool in the Canadian media's reporting about government ethics and accountability. In the wake of the 2016 U.S. election and the 2017 Conservative Party of Canada leadership campaign, it does seem like Canadian media outlets are increasing their use of outrage in order to capture readers' attention. The next section of this paper includes some headlines from Canadian media outlets that do very little to hide the fact that they are trying to trigger a negative emotion in order to draw in readers.

V. The Implication of Indignation

Discussions about government accountability begin to hollow out and lose nuance as fewer people who engage in those discussions seek out and listen to opinions outside of their own self-curated news bubbles. People who stick closely to their comfort zones will like, re-post, re-Tweet and otherwise share news that they find appealing, which in turn feeds back in to the 24-hour digital news cycle³⁸ and inspires the creation of more content that is similar in nature. The mind-numbing speed of our digital world means that we no longer need to wait for an election cycle to get a sense of what the public thinks about public policy issues or whether the public has trust in its elected officials. We now have tools at our disposal that give us access to instant feedback in an era where privacy is treated as an afterthought and data is being collected and commercialized in relation to almost every activity we engage in.

³⁴ Mark Blevis & David Coletto, "Matters of Opinion 2017: 8 Things we Learned About Politics, The News, and The Internet" (7 February 2017), online: <<http://abacusdata.ca/matters-of-opinion-2017-8-things-we-learned-about-politics-the-news-and-the-internet>>.

³⁵ *Ibid.*

³⁶ Cass R Sunstein, *#Republic: Divided Democracy in the Age of Social Media* (New Jersey, Princeton University Press, 2017) at 60.

³⁷ See *Ibid* (for a discussion of what Sunstein calls "hashtag entrepreneurs", i.e. the use of hashtags for education and amplification).

³⁸ Kasper Welbers et al, "News selection criteria in the digital age: Professional norms versus on line audience metrics" (2016) 17:8 Journalism 1037.

Media outlets can now instantly report on public opinion and news offerings are therefore curated to reflect what the public has signalled it wants to read. Those offerings are targeted at specific audiences by using specific mediums and platforms at specific times, etc. Feedback matters to media because it helps them create content that people want to read, which in turn helps them to generate income to sustain their operations. An excellent example of this is the evolution of the story regarding Prime Minister Justin Trudeau's visit to the Aga Khan's private island. An innocent question by a reporter about the Prime Minister's holiday vacation led to an article that caused an enraged public to question who the Prime Minister had gone to visit and how he had gotten there. Reporters responded to this public interest and pressured the Prime Minister so much that they extracted enough information from him about his vacation that no member of the public will be surprised when Canada's Conflict of Interest And Ethics Commissioner finds the Prime Minister to have broken the law when he accept the benefit of travel on a private aircraft.³⁹

Our modern digital world means that we are relentlessly connected and our engagement is constant.⁴⁰ The content we consume is effectively controlled by each of us. This control can lead to news stories repeating themselves so much that we develop a comfort with the perspective they offer and a familiarity, among other things,⁴¹ that inspires us to want share our opinions about them with anyone who will listen. A well crafted Tweet or Facebook post can actually find its way into a newspaper article⁴² and be framed as being representative of public opinion on a topic. In fact, it often seems that citizens', and not necessarily experts', opinions are becoming the news. It is perhaps not surprising then that some politicians strategically dismiss unfavourable news stories by declaring that such news is nothing more than opinion devoid of fact.⁴³

Unfortunately, an individual's understanding of current affairs can be easily distorted as a result of how it is disseminated. A user may never see an article about a confusing social issue put into broader context. With traditional media sources

³⁹ Prime Minister Justin Trudeau is being investigated for allegedly breaching two sections of the applicable legislation, including a section that relates to accepting travel on a private aircraft (see *Conflict of Interest Act*, SC 2006, c 9, s 12).

⁴⁰ See e.g. Insights West, "2016 Canadian Social Media Monitor" (May 2016), online: < http://www.insightswest.com/wp-content/uploads/2016/05/Rep_InsightsWest_CDNSocialMediaMonitor_2016.pdf > (for just one of many surveys that demonstrates the extent of Canadians' social media use).

⁴¹ Sue Yeon Syn & Sanghee Oh, "Why do social network site users share information on Facebook and Twitter?" (2015) 41:5 J Info Sci 553 at 559.

⁴² See Travis M Andrews, "After Cornell's death, 'only Eddie Vedder is left. Let that sink in'" *The Toronto Star* (19 May 2017), online: < <https://www.thestar.com/entertainment/music/2017/05/19/after-cornells-death-only-eddie-vedder-is-left-let-that-sink-in.html> > (for an example of an article on a major newspaper's website where a regular citizen's Tweet become the headline).

⁴³ I am of course referencing President Donald Trump's "fake news" refrain.

disappearing⁴⁴ and hard-hitting investigative journalism struggling with resource issues,⁴⁵ even traditional media outlets can be accused of using clickbait⁴⁶ and manufactured outrage in order to increase readership numbers.⁴⁷ Here are some simple examples of headlines from Canadian media that are clearly crafted to attract readers by appealing to their emotional displeasure:⁴⁸

- Is Justin Trudeau a white supremacist? Maybe⁴⁹
- Are Canadians learning to distrust Trudeau?⁵⁰
- Angry anglos file complaints against Trudeau for French only answers in Quebec⁵¹
- Editorial: The prime minister's anger management⁵²

⁴⁴ Ross Howard, "Will the last working journalist in Canada please turn the lights out?" *iPolitics* (2 February 2017), online: < <http://ipolitics.ca/2016/02/02/will-the-last-working-journalist-in-canada-please-turn-the-lights-out>>.

⁴⁵ See e.g. Kathy English, "Does survival of investigative journalism depend on collaboration over competition?" *The Toronto Star* (8 April 2016), online: < https://www.thestar.com/opinion/public_editor/2016/04/08/does-survival-of-investigative-journalism-depend-on-collaboration-over-competition.html>.

⁴⁶ See e.g. Bryan Gardiner, "You'll be Outraged at How Easy it was to get you to Click on this Headline", *Wired* (18 December 2015), online: <<https://www.wired.com/2015/12/psychology-of-clickbait>> (for a brief discussion of what clickbait is and how it works by manufacturing emotion).

⁴⁷ See e.g. Jonah Berger & Katherine L Milkman, "What Makes Online Content Viral?" (2012) 49:2 *J Marketing Res* 192; Jonah Berger, "Arousal Increases Social Transmission of Information" (2011) 22:7 *Psych Studies* 891.

⁴⁸ See e.g. Julio Reis, "Breaking the News: First Impressions Matter on Online News", online: (2015) Proceedings of the 9th International Conference on Web and Social Media at 356 <<https://arxiv.org/pdf/1503.07921v2.pdf>>; Andrew Mitrovica, "Corporate media ignore the big scandals in favour of tabloid outrage", *Ricochet Media* (31 August 2016) WEB, online: < <https://ricochet.media/en/1367/corporate-media-ignores-the-big-scandals-in-favour-of-tabloid-outrage>>

⁴⁹ Shantal Otchere, "Is Justin Trudeau a white Supremacist? Maybe", *Now Toronto* (9 February 2017), online: <<https://nowtoronto.com/news/justin-trudeau-a-white-supremacist-maybe>>.

⁵⁰ Doreen Barrie, "Are Canadians learning to distrust Trudeau?" *Chronicle Journal (Northwest Ontario)* (22 January 2017) COMMENTARY, online: <http://www.chroniclejournal.com/opinion/columns/are-canadians-learning-to-distrust-trudeau/article_45af72e0-df59-11e6-aa60-27c9b5e9dc2d.html>.

⁵¹ Philip Authier, "Angry anglos file complaints against Trudeau for French only answers in Quebec" *Montreal Gazette* (19 January 2017), online: <<http://montrealgazette.com/news/quebec/justin-trudeau-raked-over-the-coals-for-french-answers-to-english-questions>>.

⁵² Ottawa Citizen Editorial Board, "Editorial: The prime minister's anger management", *Ottawa Citizen* (19 May 2016), online:

- Cash-For-Access: Liberals use an old trick to reclaim the moral high ground⁵³
- How Trudeau Is Screwing Over the Generation that Got Him Elected⁵⁴
- The angry, radical right⁵⁵
- 3 bureaucrats spent \$12Gs dining in Paris, and we picked up the bill⁵⁶

These Canadian headlines resemble President Donald Trump's tweets, which have themselves become headlines. The President's tweets are unfortunately designed to elicit emotional responses rather than to contribute to level-headed debate.⁵⁷ They are re-tweeted and re-posted and reproduced in newspapers. Hollow outrage from the President seems to have become the norm because it drives engagement and engagement leads to influence. We are becoming a society that is accepting of a sub-culture that constantly signals its disapproval while rarely listening to others' perspectives.⁵⁸

If we do value mutual respect in our democracy, whether that conception looks exactly like Greene and Shugarman's or not, then we ought to be attentive to the risk that our addiction to outrage might take us away from having fulsome well-informed and balanced discussions about important important issues. As British Columbia's Conflict of Interest Commissioner H.A.D. Oliver noted in his 2000 annual report,

In this new "on-line" society, the public has had more access to information than ever before about contentious topics. Constituents will assess their elected leaders by their responses to these issues - often before the politician has a chance to formulate any opinion on the subject. At times, politicians must make unpopular judgements - it is as simple as that. How they control and communicate those judgements is reflected in the public's scrutiny of the quality of their leadership. It is the honesty and integrity they have used in

<<http://ottawacitizen.com/opinion/editorials/editorial-the-prime-ministers-anger-management>>.

⁵³ Andrew MacDougall, "Cash-for-Access: Liberals use an old trick to reclaim the moral high ground" *The Globe and Mail (Canada)* (30 January 2017), A11.

⁵⁴ Geoff Dembicki, "How Trudeau Is Screwing Over the Generation that Got Him Elected", *The Tyee* (28 December 2016), online:

<<https://thetyee.ca/Opinion/2016/12/28/Trudeau-Generation-Screwed>>.

⁵⁵ Martin Patriquin, "The angry, radical right", *Macleans's* (21 January 2016), online: <<http://www.macleans.ca/politics/the-angry-radical-right>>.

⁵⁶ David Akin, "3 bureaucrats spent \$12Gs dining in Paris, and we picked up the bill" *The Toronto Sun* (23 August 2016), online: <<http://www.torontosun.com/2016/08/23/politicians-racked-up-whopping-1-million-bill-in-paris>>.

⁵⁷ See e.g. Brian L Ott, "The age of Twitter: Donald J. Trump and the politics of debasement" (2017) 34:1 *Crit Stud in Media Comm* 59.

⁵⁸ *Outrage Industry*, *supra* note 25 at 180.

order to make those judgements that reassures the public and encourages confidence.⁵⁹

In fact, ethics commissioners may be one of the last and best under-tapped resources we have to help turn this ship around. As I noted above, ethics commissioners care about public trust and cynicism. They are concerned about the way members act and the way that the public views members' actions. Canada's ethics commissioners care about the negative effect that incivility between members can have on public trust and they care about helping to promote strong, ethical, democratic governance.

VI. Leveraging Existing Accountability Infrastructure

The Canadian government has promoted 2017 as being a year to reflect on the country's first 150 years. For scholars interested in government ethics and accountability systems, there has perhaps been no better year than this one to look back at how far Canada has come. Not only are we seeing increased public interest in campaign financing,⁶⁰ lobbying,⁶¹ conflicts of interest⁶² and whistleblowing,⁶³ but we are also having more fulsome discussions about the importance of public consultation and engagement,⁶⁴ especially with Indigenous communities.⁶⁵ These conversations are

⁵⁹ Province of British Columbia, Conflict of Interest Commissioner, *Annual Report, 2000* (Victoria: British Columbia Periodicals, 2000) at 4, online: <http://www.coibc.ca/down/reports/2000_annual_report.pdf>.

⁶⁰ See e.g. Shannon Proudfoot, "Justin Trudeau's cash-for-access 'window dressing'", *Maclean's* (January 27, 2017), online: <<http://www.macleans.ca/politics/ottawa/justin-trudeaus-cash-for-access-window-dressing/>>.

⁶¹ See e.g. Kathy Tomlinson, "British Columbia: The 'wild west' of fundraising" *The Globe and Mail* (10 March 2017), online: <<https://www.theglobeandmail.com/news/investigations/wild-west-bc-lobbyists-breaking-one-of-provinces-few-political-donationrules/article34207677>>.

⁶² See e.g. Colby Cosh, "An Alberta politician revolts against a conflict-of-interest rap. Here's why you may care", *National Post (Canada)* (3 March 2017), online: <<http://news.nationalpost.com/full-comment/colby-cosh-an-alberta-politician-revolts-against-a-conflict-of-interest-rap-heres-why-you-may-care>>.

⁶³ See e.g. Joanne Laucius, "Protection of whistleblowers 'an afterthought' in Public Servants Disclosure Protection Act", *The Ottawa Sun* (21 March 2017), online: <<http://www.ottawasun.com/2017/03/21/protection-of-whistleblowers-an-afterthought-in-public-servants-disclosure-protection-act>>.

⁶⁴ See e.g. Government of Canada, *Third Biennial Plan to the Open Government Partnership 2016-2018*, at Commitment 20: Enable Open Dialogue and Open Policy Making, online: <<http://open.canada.ca/en/content/third-biennial-plan-open-government-partnership>>.

⁶⁵ See e.g. Truth and Reconciliation Canada. *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*. (Winnipeg: Truth and Reconciliation Commission of Canada, 2015).

happening in Canada against the backdrop of a very confusing and worrisome time in United States politics. We are reminded that it is important to work hard to strengthen our own public sector accountability infrastructure during times when political will is strong. It has become as clear as it has ever been that government accountability infrastructure plays an important role in protecting our democracy from falling victim to leaders of questionable moral character.

Despite all the above, many of our parliamentary ethics regimes throughout Canada have not been progressing due to what seems to be a lack of political will. As Ian Greene and I note in chapter 6 of *Honest Politics Now*, there are "opportunities to improve ethics commissions all across Canada."⁶⁶ What is now becoming even more clear however, is that there is an opportunity for these offices to move beyond dealing with conflict of interest rules for members and to legitimately inject themselves into the public discourse more generally. Our government ethics infrastructure ought to be leveraged in order to help keep our public discourse moving forward, not backward. If ethics commissioners are frustrated with politicians' indifference about the level of public cynicism towards politics, then they can continue to signal their frustration by focusing more on public outreach and education.

The list of possibilities for increased engagement is endless, but here are a few things that our determined and caring independent ethics commissioners can do that won't require legislative amendments.

1) More public outreach.

- Ethics commissioners should all have websites and they should post every single public report that they prepare on those websites.
- Commissioners should blog (or microblog) about things that are relevant to their work. These offices are cloaked behind a partial veil of secrecy because their legislative mandates prohibit commissioners from sharing certain information about their work with the public. Regardless, there are plenty of things that a commissioner can share without breaching the confidentiality of his or her stakeholders. For example, Commissioner Morrison in Ontario wrote an Op-ed for the *Toronto Star* newspaper that was published on April 16, 2014, called "A Push for Clarity of the Role of the Political Staffer."⁶⁷ Her mandate did not require her to do this, yet she didn't lose the confidence of the Assembly for having done so. That should have been a signal to her and to others that increased public engagement about these issues is perfectly acceptable.

2) Explain public disclosure statements better.

⁶⁶ *Honest Politics*, *supra* note 2 at 150.

⁶⁷ Lynn Morrison, "Ontario needs clarity on the role of political staffers", *The Toronto Star* (15 April 2014), online: <https://www.thestar.com/opinion/commentary/2014/04/15/ontario_needs_clarity_on_role_of_political_staffers.html>.

Every member of Parliament in every Canadian province and territory is required to file a financial disclosure statement with their ethics commissioner once per year.⁶⁸ The Commissioner then meets with the member and discusses their assets and liabilities in order to provide them with advice about how to manage their personal interests so that they do not conflict with their public duties. A public disclosure statement is then prepared by the Commissioner and made available to the public. The rules dictating what must be included in a public disclosure statement are found in the legislation that each commissioner administers. These legislative rules generally allow commissioners a significant amount of discretion as well. In Alberta, for example, section 14(5) of the *Conflict of Interest Act* states that:

The Ethics Commissioner may from time to time establish other categories of matters to be excluded from public disclosure statements on the grounds that they are of little or no importance and are not likely to be material to the determination of whether a Member is or is likely to be in breach of this Act.⁶⁹

These "other categories" ought to be made public, along with the rationale for establishing them. Every commissioner should be required to explain what types of assets and/or interests they have decided to exclude from or including in public disclosure statements, and why.

3) Engage with the media more.

Commissioners prepare annual reports and investigation reports that they file with the Clerk or Speaker of their Assembly. For some bizarre reason, these reports are expected to "speak for themselves" or "stand on their own," even when they are about technical issues and written in technical language that most regular people would not understand. Commissioners should be eager to help the public, including the media, understand their work. It should be unheard of that a Commissioner does not answer questions about a report, regardless of who asks them.

4) Open up CCOIN and/or co-sponsor a larger annual conference.

CCOIN is the Canadian Conflict of Interest Network, which is basically a meeting that takes place once or twice a year and includes all the provincial and territorial ethics commissioners, as well as the federal commissioners for Parliament and for Senate. They set an agenda before every meeting and discuss matters that are of interest to them. These meetings always include staff members from each commissioner's office and they also

⁶⁸ Some Canadian jurisdictions allow members to simply file a declaration that very little (or nothing) has changed year-over-year. The declaration would simply note what those minimal changes are instead of requiring the member to completely fill out the form anew. See e.g. *The Members' Conflict of Interest Act*, SS 1993, C M-11.11, s 11(6).

⁶⁹ *Conflicts of Interest Act*, RSA 2000, c C-23, s 14(5).

often include at least one invited guest from industry or academia. As more municipal ethics/conflict of interest/integrity commissioners are appointed, the community of people interested in government ethics is growing. CCOIN ought to consider hosting a general assembly/conference either before or after their customary meetings in order to help grow the community of interest. This would also allow stronger connections to form between ethics commissioners, academics, industry partners, media, and even members of parliament. This larger meeting could be held on a cost-recovery basis, and CCOIN could still meet in confidence either before or after the larger conference. Ontario's Conflict of Interest Commissioner has a very lean office with very few staff and was able to partner with local academics and other ethics commissioners in 2016 in order to plan an excellent conference that could serve as a model for this proposed idea.⁷⁰

5) Be unafraid to test the limits of their independence.

Ethics Commissioners are considered to be independent officers of their respective legislatures.⁷¹ Paul Thomas argues that there are five structural features that we must consider when assessing the level of independence of parliamentary agencies, including officers of parliament:

- the nature of the mandate of the agency, including how it is defined initially and how it is updated periodically;
- the provisions respecting the appointment, tenure and removal of the leadership of the agency;
- the processes for deciding budgets and staffing for the agency;
- whether the agency is free to identify issues for study and whether it can compel the production of information; and
- the reporting requirements for the agency and whether its performance is monitored.⁷²

It seems clear that most items on this list are very hard for a commissioner to assume any real control over. To be more specific, Commissioners don't set their own mandates, broadly construed. Mandates are set by the governing legislation that is passed by legislators, which also sets out appointment, tenure and removal rules, as well as how budgeting is approved. What commissioners do seem to have the most control over is whether they can identify issues for study. They ought to therefore be using their

⁷⁰ Ontario, Conflict of Interest Commissioner, "'Building Trust in Government - Publication of Ethics Conference Proceedings" (24 January 2017), online: <<http://www.coicommissioner.gov.on.ca/?p=3354>>.

⁷¹ *Honest Politics*, *supra* note 2 at 144 (for a discussion about the fact that Nova Scotia is an exception to this general rule).

⁷² Paul G Thomas, "The Past Present and Future of Officers of Parliament" (2003) 46:3 *Can Pub Admin* 287 at 297.

independence in this area to more regularly study matters of interest and do things like write op-eds for major newspapers⁷³ or add further analysis to their regular reports.

Ontario's Commissioner made an important comment in his 2016 report re: The Honourable Bob Chiarelli and the Honourable Charles Sousa when he said:

Given the language in the Act, I do not have the authority to conclude that an apparent conflict of interest is prohibited under the Act. I would encourage the Legislature to review the Act with a view to clarifying whether it should apply to the *appearance* of conflicts of interest.⁷⁴

Commissioner Wake was not fooling anybody with his gentle language asking parliament to clarify whether the *Members' Integrity Act*⁷⁵ should apply to apparent conflicts of interest. Having just taken office on February 1, 2016, he was relatively new to the position and was simply making sure to deliver his message in a manner that was more likely to be well received. It is my hope that he, and other ethics commissioners across this country who are asking for changes and getting nowhere, will consider writing op-eds, giving talks at academic and industry events,⁷⁶ writing articles for academic publications, or publishing research reports about topics of interest,⁷⁷ that call attention to their good ideas that parliamentarians have otherwise ignored. Although eliciting outrage would be counter-productive, getting the public interested in an idea by involving them in an informative conversation can be an effective way to get politicians to take notice. If the public is interested then they are probably learning something and will hopefully be willing to engage in discussions about matters of ethics and accountability without having to be provoked to do so.

VII. Conclusion

Outrage is a tool. It is used within the modern media landscape to draw people in and to get them to click on content. It is influential, addictive, and profitable, but it has

⁷³ See *supra*, note 67 (for an example of an op-ed written for the Toronto Star by Ontario's Integrity Commissioner, Lynn Morrison).

⁷⁴ Ontario, Office of the Integrity Commissioner, *Report of the Honourable J David Wake, Integrity Commissioner Re: The Honourable Bob Chiarelli and the Honourable Charles Sousa* (Toronto: Office of the Integrity Commissioner, 2016) at 1.

⁷⁵ *MIA*, *supra* note 22.

⁷⁶ See e.g. Office of the Conflict of Interest and Ethics Commissioner, "Presentations to Others", (accessed 22 May 2017), online: <<http://ciecccic.parl.gc.ca/EN/ReportsAndPublications/Presentations/Pages/PresentationstoOthers.aspx>> (for a list of transcripts of speeches and presentations that have been given).

⁷⁷ See e.g. Office of the Integrity Commissioner, "A Report on a Consultation Into The Role of Ministers' Staff at Queen's Park" (10 March 2015), online: <<http://www.oico.on.ca/docs/default-source/default-document-library/ministers-staff-consultation-report.pdf?sfvrsn=2>>.

limited value at capturing meaningful nuance. One way that we can push back against the growing emphasis on emotion at the cost of deeper examination is to think about whether tools exist in our democratic parliamentary system that have retained the public's trust while not having also maximized their own potential influence. This paper proposes that independent parliamentary ethics commissioners are one such tool and that ethics commissioners' influence can be leveraged to help push back against growing public cynicism and what seems like deteriorating public discourse.