

to information not available to the public generally."¹⁰² In *Pell v. Procunier*, involving the question of whether the press has rights of access to prisons exceeding those of ordinary citizens, the Court rejected any "constitutional right of access to prisons or their inmates beyond that afforded the general public,"¹⁰³ and reiterated that "The Constitution does not . . . require government to accord the press special access to information not shared by members of the public generally."¹⁰⁴ In *Houchins v. KQED, Inc.*, the Court dealt specifically with the question of whether the First Amendment affords the press or the public any constitutional right of access to government, and Chief Justice Burger, writing for the majority, concluded: "Neither the First Amendment nor Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control."¹⁰⁵

With the Access to Information Act¹⁰⁶ in 1983, Canada joined the United States in providing a federal statutory right of access to government information. In addition, Manitoba, New Brunswick, Nova Scotia, Ontario and Quebec provide statutory access to government information in those provinces. All of the provinces but Prince Edward Island recognize a right to attend meetings of government bodies. The general, but unwritten, presumption in law in Canada is that the public should have access to meetings or hearings of official bodies acting on behalf of the public.¹⁰⁷ Except as concerns the right of the public to attend judicial proceedings and have access to court records, discussed in a previous section, the Supreme Court of Canada has, to date, issued no opinions commenting on a constitutional right of access to government by the press and public under Section 2(b) of the Charter of Rights and Freedoms. However, an important principle coming out of those decisions, well developed by the Supreme Court in the United States, is that the news media in Canada do not have any greater privileges than the average citizen, although the courts have recognized that the news media do serve as representatives of the public.¹⁰⁸

Differences in Journalistic Practice

In order to make some generalized comparisons of journalists and journalistic practice in the United States, English Canada and Quebec, it is necessary to indulge in some oversimplifications about groups which, in themselves, tend to be rather complex and diverse. Lysiane Gagnon, in her discussion of "Journalism and Ideologies in Quebec,"¹⁰⁹ offers a useful starting point by reviewing the classic work by Siebert, Peterson and Schramm on *The Four Theories of the Press*,¹¹⁰ which provides a framework for generalizing about differences between these three groups of journalists in North America.

¹⁰² 408 U.S. 665 (1972), at 684, citing several cases, including *Zemel v. Rusk*, 381 U.S. 1, 16-17 (1965) and *New York Times Co. v. United States* 403 U.S. 713, 728-730 (1971).

¹⁰³ 417 U.S. 817 (1974), at 834.

¹⁰⁴ *Ibid.* See, also, *Saxbe v. Washington Post Co.*, 417 U.S. 843 (1974), which follows the same reasoning used in *Pell*.

¹⁰⁵ 438 U.S. 1 (1978) at 15. In *Stahl v. Oklahoma*, 665 P.2d 839 (Okla.Cr. 1983), the Supreme Court let stand an Oklahoma Court of Criminal Appeals ruling that there is no First Amendment protection for newsgathering trespassers, and that journalists do not have a constitutional right of special access not available to the public generally. (464 U.S. 1069 (1984)).

¹⁰⁶ Access to Information Act, ch. 11, 1980-1982 Can. Stat. 3321.

¹⁰⁷ Crawford, *supra* note 71, at 153.

¹⁰⁸ *Id.*, at 3.

¹⁰⁹ Lysiane Gagnon, "Journalism and Ideologies in Québec," *The Journalists*, Volume 2, Royal Commission on Newspapers (Ottawa: Supply and Services, 1981) at 19-39.

¹¹⁰ Fred S. Siebert, Theodore Peterson, and Wilbur Schramm, *Four Theories of the Press* (Urbana: University of Illinois Press) 1956.