



# Protecting Freedom of Expression in an Age of Social Media

## Statements on Government's Social Media Sites

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### Background

- **The use of social media in promoting the public's right to free expression and as a tool for critiquing government policy and action.**

Social Media is a tool for communications, which has become an integral part of the daily lives of people of all ages. Social media accounts for 22 percent of all time spent on the internet<sup>1</sup> and even among people age 65 and older - who are not generally considered prime users of new technologies - one in four are now active on social media websites.<sup>2</sup> Facebook claimed to have 955 million monthly active users worldwide at the end of June 2012.<sup>3</sup>

Many groups and individuals have used social media as a tool for criticizing all levels of government as it relates to policy and action. Social media platforms such as Facebook, Twitter, YouTube, Snapchat, texting, etc., are merely another avenue for freedom of expression which allows individuals to exercise free speech. The right to free speech is protected by Section 2(b) of the *Canadian Charter of Rights and Freedoms* (Charter). Section 2(b) of the Charter states:

Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

Charter rights and freedoms, such as the right to freedom of expression, are subject to limits prescribed by law as can be reasonably justified in a free and democratic society pursuant to Section 1 of the Charter which states:

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Case law has set out some limits to the right to freedom of expression in accordance with Section 1 of the Charter, including, for example, expressions which promote hatred (R. v.

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<sup>1</sup> <http://blog.nielsen.com/nielsenwire/global/social-media-accounts-for-22-percent-of-time-online/>

<sup>2</sup> See [www.cbsnews.com/stories/2010/11/15/national/main7055992.shtml](http://www.cbsnews.com/stories/2010/11/15/national/main7055992.shtml)

<sup>3</sup> See <http://newsroom.fb.com/content/default.aspx?NewsAreaId=22>

Keegstra 1990 CarswellAlta 192 (S.C.C.)), violence as a form of expression (Irwin Toy Ltd. V. Quebec (Attorney General) 1989 CarswellQue 115 (S.C.C.), para. 43), speech which constitutes defamation (eg. King v. Power 2015 NLTD (G) 32, para. 28); and threats (R. v. Clement (1994) 2 S.C.R., 758)

Freedom of expression as protected by Section 2(b) of the Charter is an important component of a fully functioning democratic society, and remains a protected right in this age of social media, but, this right is subject to some reasonable limits pursuant to Section 1 of the Charter as defined by case law in this area.

- **The monitoring of and response to social media by Government or the RNC and, specifically, the potential risk of such activities having a chilling effect on freedom of expression.**

Law enforcement agencies like the RNC are finding ways to use social media to disseminate information to the public. In fact, police services are finding their communities expect them to have an online presence on platforms such as Facebook, Twitter and YouTube.

The RNC, like most other police services throughout Canada, has started exploring social media to obtain information, especially for tactical purposes such as gathering information and intelligence about threats, violence, protests, or isolated criminal activity.

Social media has now given protesters and criminals the ability to informally and very quickly organize and communicate with each other in real time. Police must, as a part of its mandate to serve and protect, know how to assess whether threats of criminal activity are developing and stay apprised of these criminal activities.

Criminal activities such as child luring, human trafficking, fraud, drug trafficking, blackmail, and intimidation are constant activities that are found on social media sites throughout Newfoundland and Labrador, Canada and North America.

Another consideration is that crime victims and witnesses can quickly transmit information about a crime scene or a criminal act to the world impeding an investigator's ability to control the release of information about a case. Similarly, social media sites in the aftermath of an incident/crime are used to identify victims, witnesses and perpetrators. Witnesses to crime and even perpetrators often post photographs, videos, and other information about these incidents/crimes which can be used as investigative leads or evidence.

In a democratic country like Canada and a province like Newfoundland and Labrador, most social media users, we believe, support the monitoring of social media by policing agencies to curtail and investigate criminal activity offered on these sites. We believe that most

law-biding users of social media believe that the potential risk to freedom of expression is small when compared to their need for safe and secure communities.

**Recommendation:**

It is recommended that both the Government of Newfoundland and Labrador and the Royal Newfoundland Constabulary, as part of an initiative to ensure openness and transparency, should affix a statement on their social media sites to the effect that these social media sites are monitored for criminal activity and anything that is suspected of being criminal in nature, will be referred to the appropriate policing agency for investigation.