

## Canada

	2017	2018
<b>Internet Freedom Status**</b>	<b>Free</b>	<b>Free</b>
Obstacles to Access (0-25)	2	<b>2</b>
Limits on Content (0-35)	4	<b>4</b>
Violations of User Rights (0-40)	9	<b>9</b>
<b>TOTAL* (0-100)</b>	<b>15</b>	<b>15</b>

\*0=most free, 100=least free

\*\*A total score of 0-30=Free, 31-60=Partly Free, 61-100=Not Free

### Key Developments, June 1, 2017 - May 31, 2018

- A broad coalition of ISPs, media companies and creative and production organizations petitioned Canada's telecom regulator to create a website-blocking system to tackle online piracy (see "Blocking and Filtering").
- The Supreme Court of Canada upheld a worldwide removal order requiring Google to de-index websites that infringed on the plaintiffs' trademark from its search engine globally (see "Content Removal").
- The government took steps to revamp the controversial 2015 Anti-Terrorism Act and improve oversight of intelligence activities with Bill C-59, which seeks to address some of the most controversial aspects of the law (see "Surveillance, Privacy, and Anonymity").

## Introduction

Canada's internet freedom environment continued to be generally free of government restrictions during the reporting period.

Internet access in Canada is reliable and affordable for a majority of the population. The goal of universal internet access for Canada was bolstered by a landmark policy decision in 2016 declaring high-speed internet a "basic telecommunications service" that should be available to all Canadians – described as the "universal service objective."

Canadians enjoy strong protections for freedom of expression, as well as a well-developed set of rules regulating intermediary liability in cases of copyright infringement. Notwithstanding the existing copyright infringement mechanisms, in January 2018, a broad coalition of ISPs, media companies and creative and production organizations petitioned the CRTC to implement a system to block Canadians' access to piracy websites. A parliamentary committee report suggested that the government should encourage the regulator to reconsider its decision if it were to accept the proposal, as it would have a negative impact on net neutrality.

The government continued to promise reforms to controversial elements of the Anti-Terrorism Act passed in June 2015 which permits information-sharing across government agencies for an incredibly wide range of purposes. Bill C-59, *An Act respecting national security matters*, was introduced to replace certain laws affecting internet freedom passed under the previous Conservative government.

## Obstacles to Access

There are very few infrastructural or regulatory obstacles to internet access in Canada. In a landmark policy decision released in December 2016, Canada's telecom regulator declared that high-speed internet should be a "basic telecommunications service" that all Canadians should receive. Internet and mobile phone penetration rates continue to grow, although there are still geographic disparities related to internet access, reliability, and cost that especially affect more rural and remote areas.

## Availability and Ease of Access

Key Access Indicators		
Internet penetration (ITU) <sup>1</sup>	2017	<b>Update when available</b>
	2016	89.8%
	2011	83.0%
Mobile penetration (ITU) <sup>2</sup>	2017	<b>Update when available</b>
	2016	84%
	2011	78%
Average connection speeds (Akamai) <sup>3</sup>	2018(Q1)	<b>Update when available</b>
	2017(Q1)	16.2 Mbps

Internet penetration rates continued to rise in 2017, in both fixed-line and mobile. Mobile carriers continue to deploy a number of newer technologies to provide mobile broadband service, including HSPA+ and LTE. However, mobile broadband data remains expensive compared to fixed-line. Costs of fixed-line high-speed internet access remain low because of more competition; this was bolstered in October 2016 when the Canadian Radio-television and Telecommunications Commission (CRTC), an independent public regulator, reduced the price of wholesale high-speed internet access.<sup>4</sup>

Broadband service of at least 5 megabits per second (Mbps) is available to just over 99 percent of Canadian households through a variety of technologies including fixed and wireless, according to the CRTC.<sup>5</sup> There was only a minor increase from the previous year, and has left Canada short of its goal of having 100 percent of Canadian households with access to internet connectivity and broadband speeds of at least 5 Mbps by the end of 2016, which was announced in 2016,<sup>6</sup> and reiterated in 2017.<sup>7</sup>

In a landmark policy decision released in December 2016,<sup>8</sup> the CRTC recognized the importance of ultra-high speed (50 Gbps download speed and above) internet access for the future of the Canadian economy. In the policy, the CRTC put forward a universal access goal, that all residential and business fixed-line customers should be able to have access to speeds of at least 50 Gbps (download) with unlimited data. Furthermore, it declared that high-speed internet access should be considered a "basic telecommunications service" – a description previously attached only to landline telephones – and established a CAD \$750 million fund to reach its targets.<sup>9</sup> More than a year later, however, the funds had not yet been distributed, though a plan for doing so is expected sometime in 2018.<sup>10</sup>

Perhaps the most important obstacle to availability and ease of access in Canada is geography. Canada is overwhelmingly urban, with 81 percent of the population living in urban areas.<sup>11</sup> Furthermore,

<sup>1</sup> International Telecommunication Union, "Percentage of Individuals Using the Internet, 2000-2016," <http://bit.ly/1cblxxY>.

<sup>2</sup> International Telecommunication Union, "Mobile-Cellular Telephone Subscriptions, 2000-2016," <http://bit.ly/1cblxxY>.

<sup>3</sup> Akamai, "State of the Internet - Connectivity Report, Q1 2017," <https://goo.gl/TQH7L7>.

<sup>4</sup> Canadian Radio-television and Telecommunications Commission, Telecom Order CRTC 2016-396, October 6, 2016, <http://bit.ly/2ocClkt>.

<sup>5</sup> Canadian Radio-television and Telecommunications Commission, "Communications Monitoring Report 2017," October 2017, <http://bit.ly/2GDqj94>.

<sup>6</sup> Canadian Radio-television and Telecommunications Commission, "Report on Plans and Priorities for 2016-2017," March 2016, <http://bit.ly/1Mo0awn>.

<sup>7</sup> Canadian Radio-television and Telecommunications Commission, "Departmental Plan 2017-2018", March 2017, <http://bit.ly/2obg6LF> (replacing the title "Report on Plans and Priorities" of the previous years).

<sup>8</sup> CRTC Telecom Regulatory Policy 2016-496, "Modern telecommunications services – The path forward for Canada's digital economy," December 21, 2016, <http://bit.ly/2nnSJgS>.

<sup>9</sup> "CRTC establishes fund to attain new high-speed Internet targets," Government of Canada News Release, December 21, 2016, <http://bit.ly/2nw8S1M>.

<sup>10</sup> Emily Jackson, "Ottawa spends \$108M on high-speed internet in rural areas even as \$750M fund remains dormant", The National Post, January 17, 2018, <http://bit.ly/2GJgeYc>.

<sup>11</sup> From the 2011 census. See Statistics Canada data at <http://bit.ly/1pHhdjd>, accessed March 20, 2017.

approximately 75 percent of the population lives within 160 kilometres of the border with the United States.<sup>12</sup> While providing “reliable and affordable telecommunications services of high quality” to rural areas is enshrined in Canadian law,<sup>13</sup> affordable high-speed internet services are lacking in rural areas, especially in Canada’s vast northern territories, which are underserved by infrastructure generally, and telecommunications services in particular.

The urban-rural gap for higher-speed internet access remains pronounced. The CRTC’s 2017 figures confirm rural internet access prices are higher than urban access prices. Also according to the CRTC, household broadband in the form of 5-9.99 Mbps services, was available in 100 percent of urban areas compared to 97 percent in rural areas, though this does represent a significant increase from 93 percent the previous year. The 97 percent figure however includes 10 percent where availability was only via wireless services (HSPA+ and LTE), which are generally more expensive, especially as data usage rates increase. Faster speeds, such as 30-49.99 Mbps, are only available in 42 percent of rural households, compared to 100 percent of urban households.<sup>14</sup>

There is also a considerable gap in access related to income: the highest income bracket has a penetration rate of nearly 95 percent, while the penetration rate within the lowest income bracket is closer to 63 percent.<sup>15</sup> Internet connectivity is widely available in public spaces such as cafés, shopping malls, and libraries, generally free of charge. There is a wide range of content available in both of Canada’s official languages (English and French) as well as many other languages.

The government, in its budget for 2017,<sup>16</sup> took proactive positions in ensuring ease of access to the internet in a variety of ways. It has announced financial support for internet connectivity for low-income families, and has committed to supplying high-speed internet access for all Canadians, even in remote rural areas. The budget, however, was short on details on this last point, only pointing to the investments for rural connectivity announced in the 2016 budget, when it pledged CAD \$500 million over five years for a new program to “extend and enhance broadband service in rural and remote communities;”<sup>17</sup> at least these funds have begun to be spent.<sup>18</sup>

## Restrictions on Connectivity

There are no government restrictions on bandwidth, although the major access providers generally offer services that have caps on bandwidth that result in increased fees for users who exceed the limit. Such limits are much more restrictive for wireless connectivity than for wired connectivity, which further accentuates the urban-rural divide for connectivity costs in Canada. While reports of ISPs throttling its users during peak periods were widespread several years ago,<sup>19</sup> such reports have dried up considerably.

The government has not centralized the telecommunications infrastructure in Canada. However, given the vertical integration of the Canadian marketplace, the telecom infrastructure is controlled by a small number of companies, which in theory could facilitate greater control of content and the implementation of surveillance technologies, although this has never materialized. The government does not restrict access to any social media or communications apps.

## ICT Market

To operate as a Canadian telecommunications carrier, a company must meet the requirements in section 16 of the Telecommunications Act. In 2016 (the most recent available data), Canadian retail telecommunications revenues (comprised of wireline, wireless, internet, and data and private lines) amounted to a total of \$48.7 billion, which represented a 2 percent increase from the previous year. The five largest companies (Bell,

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<sup>12</sup> National Geographic “Canada Facts”, accessed March 20, 2017, <http://on.natgeo.com/1pHhpPv>.

<sup>13</sup> See the *Telecommunications Act*, S.C. 1993, c.38, section 7(b), <http://bit.ly/1ZpuSrg>.

<sup>14</sup> All figures in this paragraph from the Canadian Radio-television and Telecommunications Commission, “Communications Monitoring Report 2017,” *supra* note 5.

<sup>15</sup> Statistics Canada, “Canadian Internet use by age group and household income for Canada, provinces, and metropolitan areas,” CANSIM, Table 358-0154, accessed March 27, 2017, <http://bit.ly/2obEXza>. Data is from 2012, the most recent available.

<sup>16</sup> “Building a Strong Middle Class”, The Honourable William Francis Morneau, March 22, 2017, at <http://bit.ly/2neJqfC>.

<sup>17</sup> See “Growing the Middle Class”, federal government budget document, March 22, 2016, at page 106, <http://bit.ly/1UXyqJ5> (PDF).

<sup>18</sup> See *supra* note 10.

<sup>19</sup> See e.g. Michael Geist, “When it comes to net neutrality, Canada’s going at half-throttle,” *The Toronto Star*, August 7, 2015, <http://on.thestar.com/2nwgBwH>.

Québecor, Rogers, Shaw, and TELUS) accounted for 85 percent of total revenues. This is up 1 percent from the last several years when it had remained steady at 84 percent, but it remains to be seen whether this trend will continue.<sup>20</sup>

The growth in the market for internet services outpaces that of the ICT market generally. According to the CRTC's 2017 CMR, the revenues for the retail internet services sector were \$10.2 billion in 2016, representing a growth of approximately 10 percent from the previous year. This growth has been seen every year since 2011.

Canadians have a choice of wireless internet providers, all of which are privately owned. There are at least three providers to choose from in all markets, although providers may vary region to region. Restrictions on foreign investment impose some limits, though a few foreign companies have entered the marketplace in recent years. The provision of access services is subject to regulation with rules on tower sharing, domestic roaming agreements, and a consumer regulator to address consumer concerns.

For wireless services, three companies dominate the market: Bell, Telus, and Rogers. The wireless market is particularly concentrated with those three companies having 91 percent of Canadian wireless subscribers (Bell 29 percent, Telus 28 percent, and Rogers 34 percent) as of the third quarter in 2017.<sup>21</sup> Those same companies are also leaders in the provision of wired internet services (whether via phone lines or cable), along with Shaw, Cogeco, and Vidéotron (owned by Québecor). While Canadians generally do enjoy a choice of wired internet providers, again this choice will vary from region to region, and often there is only one choice per technology type, leading to a public perception that there is not much choice and that prices are kept artificially high. This perception is not without merit as it pertains to wireless data, as a 2018 report determined that Canada's wireless data prices were some of the most expensive in the world.<sup>22</sup>

## Regulatory Bodies

The Canadian Radio-television and Telecommunications Commission (CRTC), the regulatory body that oversees the communications industry, operates largely independently from the government. The government appoints the CRTC chair and commissioners without public consultation, but they are not subject to political pressure. The government has, in some cases, provided guidance on their policy expectations regarding telecommunication regulations, but these are non-binding. Moreover, CRTC decisions can be appealed to the courts, or a government review can be requested. The government has overturned CRTC decisions and directed it to reconsider the issue in the past, but this has been rare.

CRTC's regulatory powers extend to *access* of the internet in Canada, but not to *content* of the internet in Canada; this is commonly called the New Media Exemption. The CRTC's position to not regulate internet content dates back to 1999 and has been reinforced numerous times since then,<sup>23</sup> including by the Supreme Court of Canada.<sup>24</sup> This is in contrast to other industries, specifically television, where the CRTC does exert some control over content, most notably by requiring a minimum amount of Canadian content by Canadian broadcasters.

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<sup>20</sup> Canadian Radio-television and Telecommunications Commission, "Communications Monitoring Report 2017," *supra* note 5.

<sup>21</sup> Canadian Wireless Telecommunications Association, "Facts and Figures", data available at <http://bit.ly/2GFAPN1>.

<sup>22</sup> Michael Geist, "World's Worst Wireless Pricing?: Report Finds Canadian Wireless Broadband Pricing Offers Least Bang for the Buck in Developed World", May 4, 2018, <http://www.michaelgeist.ca/2018/05/worldsworstpricing/>

<sup>23</sup> See most recently *Broadcasting Regulatory Policy CRTC 2015-355 and Broadcasting Order CRTC 2015-356*, August 6, 2015, <http://bit.ly/22HBQx9>.

<sup>24</sup> Reference re Broadcasting Act, 2012 SCC 4, <http://bit.ly/22HDXRm>.

## Limits on Content

The Canadian government does not generally block websites or filter online content. Illegal content may be removed by legal action taken through the court system. YouTube, Facebook, Twitter, and international blog-hosting services are freely available. In January 2018, digital rights activists raised concerns when an anti-piracy coalition called FairPlay Canada petitioned the Canadian regulator to implement a system to block websites hosting pirated content.

## Blocking and Filtering

The government does not generally block or filter online content, though there are a few legal mechanisms that may lead to the blocking or removal of online content in Canada. Canada's largest ISPs participate in Project Cleanfeed Canada, an initiative that allows ISPs to block access to child pornography images that are hosted outside of Canada (as opposed to content hosted within Canada, which is subject to removal).<sup>25</sup> Accessing child pornography is illegal in Canada under section 163.1(4.1) of the Criminal Code,<sup>26</sup> as well as under international human rights standards. The initiative is targeted at international sites that the Canadian government does not have the jurisdiction to shut down.

Bill 74, the province of Quebec's controversial law requiring ISPs to block access to online gambling sites, came into effect in May 2016,<sup>27</sup> but remains inoperative. The law came into serious question during the previous reporting period with a court challenge, and the CRTC twice informed the Quebec government that the government could not block access without the CRTC's permission, which was not forthcoming.<sup>28</sup> On July 18, 2018, a Quebec court declared the law unconstitutional as the subject matter (telecommunications and criminal law) are federal, not provincial matters.<sup>29</sup>

A serious effort to block Canadians' access to certain websites emerged in January of 2018. A group of more than 25 of Canada's ISPs, media companies, creative companies and other interested parties – including major players such as Bell, Rogers and Canada's national broadcaster the CBC – grouped together as "FairPlay Canada"<sup>30</sup> to petition the CRTC to set up an independent body that would recommend blocking access to "websites and services that are blatantly, overwhelmingly, or structurally engaged in piracy."<sup>31</sup> The plan was heavily criticized by some commentators for a variety of reasons, including for possibly violating Canada's net neutrality regime and its potential extension to non-piracy sites.<sup>32</sup> Other commentators insisted it was a necessary tool to fight online piracy and protect copyright.<sup>33</sup> In May 2018, a Parliamentary Committee report recommended that if the CRTC were to accept the FairPlay proposal, the government should use its power to encourage the CRTC to reconsider such a decision, as it would have a negative impact on net neutrality.<sup>34</sup>

Canada's tough anti-spam law informally known as "CASL", which regulates commercial electronic messages ("CEMs"), has been in effect since July 1, 2014. CASL prescribes certain content requirements in electronic messages (such as unsubscribe mechanisms and contact information) and restricts sending such messages without appropriate consent. CASL places significant restrictions on email marketers, and violators can face fines. However, the government suspended the enactment of CASL's "private right of action" provision, which was due to come in to force in July 2017 and would have allowed individuals to sue CEMs for CASL violations.<sup>35</sup>

<sup>25</sup> Cybertip!ca, "Cleanfeed Canada," <http://bit.ly/1jy5ws4>.

<sup>26</sup> *Criminal Code*, RSC 1985 c C-46 s 163.1(4.1).

<sup>27</sup> Michael Geist, "Government-Mandated Website Blocking Comes to Canada as Quebec's Bill 74 Takes Effect", May 26, 2016, <http://bit.ly/22r74ET>.

<sup>28</sup> The Canadian Press, "CRTC shoots down Quebec online gambling law," September 2, 2016, at <http://bit.ly/2bQSlY7>; Emily Jackson, "CRTC says it holds power over website blocking in Quebec gambling case," *Financial Post*, December 9, 2016, <http://bit.ly/2ocDkB6>.

<sup>29</sup> *Association canadienne des télécommunications sans fil c. Procureure générale du Québec*, 2018 QCCS 3159 (CanLII), <http://bit.ly/2BFrabw>. Please note this decision was released outside the reporting period.

<sup>30</sup> See FairPlay Canada home page at <https://www.fairplaycanada.com/>.

<sup>31</sup> FairPlay Canada, *Application pursuant to sections 24, 24.1, 36, and 70(1)(a) of the telecommunications act, 1993 to disable on-line access to piracy sites*, January 29, 2018, PDF available at <http://bit.ly/2HKQUSJ>.

<sup>32</sup> See e.g. Michael Geist's nine-part series, "The Case Against the Bell Coalition's Website Blocking Plan", February 2018, available at <http://www.michaelgeist.ca/>.

<sup>33</sup> See e.g. Barry Sookman, "Why the CRTC should endorse FairPlay's website-blocking plan: a reply to Michael Geist", February 12, 2018, <http://bit.ly/2HN9XvN>.

<sup>34</sup> *The Protection of Net Neutrality in Canada*, Report of the Standing Committee on Access to Information, Privacy and Ethics, May 2018, PDF report at <http://bit.ly/2KgvBZP>. See also Michael Geist, "House of Commons Ethics Committee Recommends Rejecting Bell Coalition Website Blocking Plan", May 10, 2018, <http://bit.ly/2lyDo85>.

<sup>35</sup> "Government of Canada suspends lawsuit provision in anti-spam legislation", Government of Canada news release, June 7, 2017, <http://bit.ly/2tZrZnM>. Please note this development occurred outside the coverage period.

There were few new enforcement decisions involving CASL in the past year, though there were several interesting developments. CompuFinder had its \$1.1 million fine levied in 2015 reduced to \$200,000 by the CRTC upon appeal.<sup>36</sup> In conjunction with that decision, CompuFinder challenged the constitutionality of CASL, but this was rejected by the CRTC.<sup>37</sup> Even while a parliamentary committee recommended certain significant changes to CASL,<sup>38</sup> the enforcement did in fact continue, and for the first time the law was applied to text messages, with a company receiving a \$100,000 fine.<sup>39</sup>

## Content Removal

With respect to removal of content due to copyright infringement, in 2004 the Supreme Court of Canada ruled that ISPs are not liable for violations committed by their subscribers,<sup>40</sup> and this safe harbour has now been enshrined in Canadian law.<sup>41</sup> Canadian copyright law features a notice-and-notice provision in effect since January 2015, which, unlike a notice-and-takedown system, does not make intermediaries legally liable for removing content upon notification by the copyright owner. Rather, copyright owners are permitted to send notifications alleging infringement to ISPs. The ISPs are then required to forward the notifications to the implicated subscriber. Any further legal action is the responsibility of the copyright owner, and it is incumbent upon the person who uploaded the infringing content to remove it following a legal decision. No content is removed from the internet without a court order, and the ISP does not disclose subscriber information without court approval, although this has become increasingly common.<sup>42</sup> The issue of who should pay for the ISP's work in delivering this subscriber information worked its way through the courts during the reporting period, with plaintiffs winning an appeal rejecting them to pay the costs,<sup>43</sup> though the Supreme Court of Canada has agreed to hear an appeal of that decision.<sup>44</sup>

Despite the good intentions, the notice-and-notice system has been subject to considerable misuse. Several U.S.-based anti-piracy firms, including Rightscorp and CEG-TEK, have used the system to send notifications to subscribers that misstate Canadian law, citing U.S. damage awards and the possibility that their internet access will be terminated, in order to sow fear among Canadians so that they pay a settlement fee.<sup>45</sup> The author of this report, an attorney specializing in internet and technology law, continues to be contacted by panicked Canadians who have received such notices,<sup>46</sup> the overwhelming majority from CEG-TEK.

Media companies have continued to successfully use the courts to shut down and penalize operators of websites and other online services that redistribute their content in violation of copyright laws, or that offer services facilitating such activities. In March 2017, the Federal Court of Appeal upheld a lower court decision granting an injunction shutting down websites selling copyright-infringing set-top boxes.<sup>47</sup> In January of 2018, the Defendant in that case was found in contempt of the Court's orders by continuing to be involved in with the sale of set-top boxes.<sup>48</sup> In a decision released in February 2018, the Federal Court of Appeal found that there was a strong *prima facie* case against an operator of a website which facilitated the operation of such set-top boxes by offering software to obtain access to copyright-infringing material; therefore an injunction should be granted.<sup>49</sup> The Court rejected the operator's argument that he was merely acting as an intermediary.

The Supreme Court of Canada ("SCC") in June 2017 released its long-anticipated decision in the appeal from the judgment of the British Columbia Court of Appeal in *Google Inc. v. Equustek Solutions Inc.*,<sup>50</sup> a closely-

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<sup>36</sup> *Compliance and Enforcement Decision CRTC 2017-368*, October 19, 2017, <http://bit.ly/2HN7qBY>.

<sup>37</sup> *Compliance and Enforcement Decision CRTC 2017-367*, October 19, 2017, <http://bit.ly/2HL4dCN>.

<sup>38</sup> Canada's Anti-Spam Legislation: Clarifications Are in Order, Report of the Standing Committee on Industry, Science and Technology, December 2017, <http://bit.ly/2G5wamM>.

<sup>39</sup> *Undertaking: 9118-9076 QUÉBEC INC. and 9310-6359 QUÉBEC INC. (514-BILLETS)*, March 15, 2018, <http://bit.ly/2jQBq56>.

<sup>40</sup> *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn of Internet Providers*, [2004] SCC, 2 SCR 427.

<sup>41</sup> *Copyright Act*, R.S.C., 1985, c. C-42, section 31.1, <http://bit.ly/2HOICuv>.

<sup>42</sup> See e.g. *Voltage Pictures, LLC v. John Doe*, 2016 FC 881 (CanLII), at <http://bit.ly/2oA7RFo>, where the Federal Court ordered an ISP to divulge subscriber information of a representative defendant in a so-called "reverse class action" copyright infringement lawsuit.

<sup>43</sup> *Voltage Pictures, LLC v. John Doe*, 2017 FCA 97 (CanLII), <http://bit.ly/2HMOvau>.

<sup>44</sup> See case information at Supreme Court of Canada, <http://bit.ly/2HN0y7k>.

<sup>45</sup> Jeremy Malcolm, "Canada Must Fix Rightsholder Abuse of its Copyright Notice System," *DeepLinks Blog*, Electronic Frontier Foundation, April 23, 2015, <http://bit.ly/29hzJGZ>.

<sup>46</sup> Sophia Harris, "U.S. cancels internet piracy notices while Canadians still get notices demanding settlement fees," *CBC News*, February 1, 2017, <http://bit.ly/2nxcMr8>.

<sup>47</sup> *Wesley dba MTLFREEV.com v Bell Canada et al*, 2017 FCA 55, <http://bit.ly/2nvcTod>.

<sup>48</sup> *Bell Canada v. Vincent Wesley dba MtlFreeTV.com*, 2018 FC 66, <http://bit.ly/2HNjl2v>.

<sup>49</sup> *Bell Canada v. Lackman*, 2018 FCA 42, <http://bit.ly/2HMMhHS>.

<sup>50</sup> 2017 SCC 34, <http://bit.ly/2ttsDgi>.

watched case involving a court order requiring Google to remove links to websites that infringed on the plaintiffs' trademark from its global index. The SCC upheld the worldwide removal order, however its reasoning was strictly focused on the law of intellectual property and interlocutory injunctions, so it is unclear if such worldwide orders may be granted in other areas of law in the future. It is also unclear whether such worldwide orders can have effect, as an American court has already granted a preliminary injunction against the operation of the Equustek decision in the United States based on the long-standing principle of Google simply acting as an intermediary, and questioning Canadian courts' jurisdiction to make such an order.<sup>51</sup> In April 2018, Google took the American judgment back to the original BC Court and asked for the injunction to be suspended, but the BC Court denied Google's application.<sup>52</sup>

Defamation claims may also result in the removal of content, as content hosts fear potential liability as a publisher of the defamatory content. Unlike legal protections against liability for copyright infringement by its users, platforms may face liability for alleged defamation once alerted to the publication. A court may also order the removal of the content. The Supreme Court of Canada has held that merely linking to defamatory content on the internet is not defamation in and of itself; it would only be defamation if it actually repeats the defamatory content, so simple links would not be removed.<sup>53</sup> The SCC in November 2017 heard an appeal in a highly-watched case involving the publication of defamatory content on an Israeli website regarding a Canadian resident, and whether Canadian courts have jurisdiction to hear the matter.<sup>54</sup> In a decision released in June 2018, the Court held that Israel was a more appropriate forum for a defamation lawsuit, despite damages having been incurred in Canada, thus declining the Canadian court's jurisdiction.<sup>55</sup> In June 2018, the Supreme Court ruled that the suit must be tried in Israel to ensure fairness and efficiency.<sup>56</sup>

In Quebec, Canada's French-speaking province, websites that are commercial in nature are required by law to be in French,<sup>57</sup> although they can be in other languages in addition to French. Violators may receive a warning from a government agency ordering the website be in French, and then be subject to fines if they do not comply. Some website operators may choose to take down their websites rather than face the expense of translation or the fines. National or international operators of websites who do business in Quebec (who would then be subject to the law) may block Quebec residents' access to their websites rather than comply.<sup>58</sup>

## Media, Diversity, and Content Manipulation

The online environment in Canada is relatively diverse, and internet users have access to a wide range of news, content, and opinions. There does not appear to be widespread self-censorship in Canadian online publications, and there is no evidence of government manipulation of online content. Some sites are affiliated with a particular partisan interest, but there are representative sites from all sides of the political spectrum available online. All major media organizations feature extensive websites with articles, audio, and video. The public broadcaster maintains a very comprehensive website that includes news articles and streamed video programming. Paywalls have become increasingly popular among newspaper organizations, but there remains considerable choice (including alternate, independent media) that is freely available.

Canada continues to strengthen its commitment to net neutrality as a matter of national policy, ensuring that media is presented neutrally by ISPs. In April 2017, the CRTC released a pair of Telecommunications Policies that effectively ruled against differential pricing for certain ISP services and the "zero-rating" of certain media services, where ISPs would not have the use of certain preferred media charged against a user's data cap.<sup>59</sup> With these Policies, the CRTC substantively completed (in conjunction with several other Policies) a national framework that ensures net neutrality remains Canadian public policy. In a May 2018 report a Parliamentary

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<sup>51</sup> *Google Inc. v. Equustek Solutions Inc.*, United States District Court, N.D. California, San Jose Division, Docket No. 5:17-cv-04207-EJD, November 2, 2017, <http://bit.ly/2HKVvVe>.

<sup>52</sup> *Equustek Solutions Inc. v. Jack*, 2018 BCSC 610, <http://bit.ly/2G7GqLq>.

<sup>53</sup> *Crookes v. Newton*, 2011 SCC 47, <http://bit.ly/1SrcV8P>.

<sup>54</sup> *Haaretz.com, et al. v. Mitchell Goldhar*, SCC case information at <http://bit.ly/2HMShAw>, leave to appeal from the decision of the Court of Appeal for Ontario, 2016 ONCA 515, <http://bit.ly/2nvkYls>.

<sup>55</sup> *Haaretz.com v. Goldhar*, 2018 SCC 28, <http://bit.ly/2M0YMBQ>. Please note this decision was released outside the reporting period.

<sup>56</sup> <https://scc-csc.lexum.com/scc-csc/scc-csc/en/17115/1/document.do>

<sup>57</sup> See the *Charter of the French Language*, c. C-11, article 52, <http://bit.ly/1Srh2Sm>.

<sup>58</sup> Elysia Bryan-Baynes, "Quebec language police target English retail websites," November 13, 2014, <http://bit.ly/1Srl50Y>.

<sup>59</sup> *Telecom Regulatory Policy CRTC 2017-104*, "Framework for assessing the differential pricing practices of Internet service providers", April 20, 2017, <http://bit.ly/2quuyfj>, and *Telecom Decision CRTC 2017-105*, "Complaints against Quebecor Media Inc., Videotron Ltd., and Videotron G.P. alleging undue and unreasonable preference and disadvantage regarding the Unlimited Music program," April 20, 2017, <http://bit.ly/2rOe99A>.



Committee encouraged the government to strengthen net neutrality in Canada even further, by recommending it enshrine the principle in the *Telecommunications Act*.<sup>60</sup> Canadians have expressed concerns, however, that repeal of net neutrality in the United States will have negative effects on Canadians' internet activities.<sup>61</sup>

In its 2017 budget, the Canadian government made a significant statement on the subject, promising to review telecommunications legislation in Canada to ensure that "Canadians continue to benefit from an open and innovative internet" in the context of net neutrality and other digital policy considerations. However, it is unclear whether these reforms will have a positive or negative impact on online content,<sup>62</sup> and especially Canadian content. The government's statement reflected a report from the Department of Canadian Heritage outlining the future of Canadian Content in the digital age, following extensive public consultations on the subject.<sup>63</sup> The Department of Canadian Heritage, in the wake of the report, announced a deal with Netflix that would see Netflix spend a minimum of \$500 million on Canadian production over the next five years.<sup>64</sup> Shortly thereafter, the government stated that Netflix services would not be subject to the national Goods and Services Tax,<sup>65</sup> a position repeated by the Prime Minister during a Parliamentary debate on the subject.<sup>66</sup> Some provinces had other ideas however; for example Quebec had already announced a plan to apply its provincial sales tax on all foreign online services, including Netflix,<sup>67</sup> which is expected to be in effect in 2019.<sup>68</sup> It is unclear at this time what the long-term effect on online content of these moves will be.

Finally, the CRTC launched a full consultation process on the future of content distribution in Canada following a request from the government.<sup>69</sup> In May 2018, the CRTC unveiled a comprehensive report on the matter,<sup>70</sup> but it offered little in the way of innovative strategies.

## Digital Activism

Social media and communication applications have been widely used in Canada for the mobilization of political and social movements. Online digital activism played a significant role in the Liberal government's promise to repeal the problematic aspects of the Anti-Terrorism Act, Bill C-51, and played a part in ultimately forcing the government to introduce a new bill, Bill C-59 to fix it (see "Surveillance, Privacy, and Anonymity"). Much online activism targeted at the ICT sector is spearheaded by a popular non-partisan, non-profit organization called Open Media, which advocates for three pillars of internet rights – free expression, access, and privacy.<sup>71</sup>

Canadians have been especially active in the online #MeToo movement,<sup>72</sup> prompting Canada's Justice Minister to consider updating certain laws, for example to ensure victims of sexual violence are treated more compassionately in courtrooms.<sup>73</sup> This online activism also prompted the federal government to introduce

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<sup>60</sup> *The Protection of Net Neutrality in Canada*, Report of the Standing Committee on Access to Information, Privacy and Ethics, May 2018, PDF report at <http://bit.ly/2KgvBZP>.

<sup>61</sup> "Q&A: What would a U.S. repeal of net neutrality mean for Canadians?", CBC Radio News, December 8, 2017, <http://bit.ly/2GKjMt3>.

<sup>62</sup> See e.g. Michael Geist, "Budget 2017: Why Canada's Digital Policy Future Is Up For Grabs," March 22, 2017, <http://bit.ly/2nf3Chd>.

<sup>63</sup> Ipsos Public Affairs for the Department of Canadian Heritage, "What we Heard Across Canada: Canadian Culture in the Digital World", February 21, 2017, <http://bit.ly/2nfa8o4>.

<sup>64</sup> Daniel Leblanc, "Netflix deal the centrepiece of cultural policy", *The Globe and Mail*, September 27, 2017, <https://tgam.ca/2GNA4S9>.

<sup>65</sup> The Canadian Press, "Netflix tax not in the cards, Finance Minister Bill Morneau says", *The Star*, December 10, 2017, <http://bit.ly/2GLknuC>.

<sup>66</sup> Rose Behar, "Prime Minister Trudeau reiterates government's firm opposition to 'Netflix Tax'", Mobile Syrup, February 8, 2018, <http://bit.ly/2GNGXCZ>.

<sup>67</sup> The Canadian Press, "Quebec passes unanimous motion to impose provincial sales tax on Netflix", CTV News, October 3, 2017, <http://bit.ly/2GMBn3s>. See *Bill n°997: An Act to regulate e-commerce and ensure tax fairness for traditional and local businesses*, available at <http://bit.ly/2HMQU4M>.

<sup>68</sup> Jonathan Montpetit, "What the Quebec budget means for you: Netflix tax, home renos and craft beer", CBC News, March 27, 2018, <http://bit.ly/2L10UZF>.

<sup>69</sup> *Broadcasting Notice of Consultation CRTC 2017-359*, October 12, 2017, <http://bit.ly/2GM1hET>. See also background reference document from the CRTC, "Consultation on the future of program distribution in Canada", at <http://bit.ly/2GLVT4k>.

<sup>70</sup> *Harnessing Change: The Future of Programming Distribution in Canada*, CRTC, May 31, 2018, <http://bit.ly/2NoVMQ0>.

<sup>71</sup> See <https://openmedia.org/>.

<sup>72</sup> Adina Bresge, "#Metoo movement prompting sexual-assault survivors to break silence to family", *National Post*, January 31, 2018, <http://bit.ly/2GLj4f9>.

<sup>73</sup> Kate Taylor, "Where to go after #MeToo", *The Globe and Mail*, December 9, 2017, <https://tgam.ca/2GNPCW1>.

Bill C-65<sup>74</sup> which would dramatically update harassment laws as they apply to federal government and federally-regulated workplaces.<sup>75</sup>

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<sup>74</sup> *An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017*, No. 1, 42nd Parliament, 1st Session, <http://bit.ly/2HJV4dP>.

<sup>75</sup> Amanda Connelly, "Bill C-65: Here's what the anti-harassment bill does and how it will affect you", *Global News*, January 29, 2018, <http://bit.ly/2HPwlzd>.

## Violations of User Rights

Despite having a generally positive record for freedom of expression, Canada has taken some regressive steps in recent years with the introduction of several bills that could have negative implications for the protection of internet users' data. Promised reforms to controversial elements of the Anti-Terrorism Act passed in June 2015, which permits information-sharing across government agencies for a wide range of purposes, began to materialize.

### Legal Environment

The Canadian Constitution includes strong protections for freedom of speech and freedom of the press. Freedom of speech in Canada is protected as a "fundamental freedom" by section 2 of the Canadian Charter of Rights and Freedoms. Under the Charter, one's freedom of expression is "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."<sup>76</sup> These laws and protections apply to all forms of speech, whether online or offline.

Hate speech, along with advocating genocide, uttering threats and defamatory libel, are also regulated under the Canadian criminal code.<sup>77</sup> Punishment for defamatory libel, advocating genocide and uttering threats may include imprisonment for up to five years, and up to two years for hate speech. Human rights complaints regarding potentially defamatory statements could also be decided through the mechanisms provided by provincial human rights laws and the Canadian Human Rights Act ("CHRA");<sup>78</sup> however the controversial provision of the CHRA prohibiting hate speech (s. 13), which was perceived by many as being too broad, is currently not in force. The current government, however, is looking into bringing back the provision in some different form.<sup>79</sup>

There are no specific online restrictions on sensitive topics. Anti-spam legislation, enacted in July 2014, requires opt-in consent to send commercial electronic messages. Critics of the legislation have argued that it is overly broad and seeks to overregulate commercial speech.

### Prosecutions and Detentions for Online Activities

Individuals were not arrested or prosecuted for online activities under Canadian law during the coverage period. Generally, writers, commentators, and bloggers are not subject to legal sanction for content that they post on the internet. Internet users are free to discuss any political or social issues without concern for prosecution, with the exception of the hate speech provisions discussed above.

### Surveillance, Privacy, and Anonymity

There were several developments in the area of privacy during the coverage period, as promised reforms to controversial elements of the Anti-Terrorism Act (also known as Bill C-51) passed in June 2015, finally began to materialize.

The Liberal government has begun to make good on their 2015 election promise to "repeal the problematic elements of Bill C-51."<sup>80</sup> Bill C-51 permits information-sharing across government agencies for an incredibly wide range of purposes, many of which have nothing to do with terrorism. The bill was opposed by all Canadian privacy commissioners but ultimately passed and became law. The Liberals introduced Bill C-22 in June 2016 to establish a new a multi-party national security oversight committee, which became law in June 2017 as the *National Security and Intelligence Committee of Parliamentarians Act*.<sup>81</sup> The government continued to take steps to revamp the law, and finally introduced Bill C-59, *An Act Respecting National Security Matters*,<sup>82</sup> which goes further in fixing some of the more serious problems with the Anti-Terrorism Act.<sup>83</sup> Some

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<sup>76</sup> Constitution Act, Canadian Charter of Rights and Freedoms, 1982, <http://bit.ly/1cijVUc>.

<sup>77</sup> R.S.C 1985 c C-46, <http://bit.ly/22YUNYE>.

<sup>78</sup> R.S.C., 1985, c. H-6, <http://bit.ly/1qjY3zS>.

<sup>79</sup> Brain Platt, "Liberals reviewing option to revive controversial internet hate speech law repealed in 2013", *National Post*, January 22 2018, <http://bit.ly/2GQm0af>.

<sup>80</sup> Liberal Party platform on Bill C-51, <http://www.liberal.ca/realchange/bill-c-51/>.

<sup>81</sup> S.C. 2017, c. 15. <http://bit.ly/2HMZQXW>.

<sup>82</sup> 1<sup>st</sup> sess, 42<sup>nd</sup> Parl., June 20, 2017, <http://bit.ly/2GNI4Hq>.

<sup>83</sup> Craig Forcese and Kent Roach, "The roses and the thorns of Canada's new national security bill", *Macleans*, June 20, 2017, <http://bit.ly/2ttyLFk>.

civil liberties groups, however, believe that Bill C-59 does not go far enough in fixing those issues,<sup>84</sup> and that it possibly grants Canada's Communications Security Establishment too many powers, albeit against foreign actors not Canadians. A government committee doing a clause by clause review of the bill has made some amendments to alleviate some of its outstanding issues;<sup>85</sup> however the legislation is only slowly working its way through the legislative process, so more changes are expected.

The Office of the Privacy Commissioner (the "OPC") provides an important oversight function related to privacy of Canadians' information in the digital medium. The Privacy Commissioner of Canada, Daniel Therrien, is an officer of parliament who reports directly to the House of Commons and the Senate. The commissioner's mandate includes overseeing compliance with the Privacy Act,<sup>86</sup> which covers the personal information-handling practices of federal government departments and agencies, and the Personal Information Protection and Electronic Documents Act (PIPEDA),<sup>87</sup> Canada's private sector privacy law.<sup>88</sup>

PIPEDA was modified by the Digital Privacy Act<sup>89</sup> passed in June 2015, which expanded the scope for companies to make voluntary warrantless disclosures of personal information under certain circumstances, by allowing for such disclosures to any organization, not just law enforcement. The Digital Privacy Act also established new mandatory security breach disclosure requirements, , the government finalised the related regulations, and the provisions will come into force November 1st.<sup>90</sup> PIPEDA, however, remains relatively toothless. In its 2016-2017 Report,<sup>91</sup> the OPC itself called for an updated regime which includes "a model that emphasizes proactive enforcement and is backed by order-making authorities and administrative monetary penalties", to be more in line with regimes in the United States and Europe. The government would seem to agree, as the Standing Committee on Access to Information, Privacy and Ethics ("ETHI") released a report that called for a significant number of changes in order to strengthen PIPEDA and make it more in line with the European GDPR.<sup>92</sup>

The OPC has also called for changes to the Privacy Act, which has not seen significant changes since 1983, saying that it is outdated in this digital age and is too permissive, allowing the government to too easily collect the personal information of Canadians.<sup>93</sup>

The OPC shocked the Canadian legal community in January 2018 when it released a draft position paper that concluded that PIPEDA actually contained a European-style "Right to be Forgotten" or "Right to Erasure," though this was called a "De-indexing Right."<sup>94</sup> Commentators questioned the OPC's conclusions and reasoning.<sup>95</sup> The ETHI Report called for the Right to be Forgotten to be included in future PIPEDA amendments.

The ability of Canadians to seek legal redress against foreign internet companies for privacy violations has been significantly altered recently, with numerous decisions making it easier for Canadian residents. In a landmark decision, the Supreme Court of Canada ruled that residents of the Canadian province of British Columbia could bring a class action suit against Facebook for the violation of certain privacy rights in a British Columbia court, despite Facebook's choice of forum clause specifying California.<sup>96</sup> Other courts followed up on this decision, with a Quebec court deciding that Yahoo!'s choice of forum clause was inoperative, as its

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<sup>84</sup> "Read CCLA's Submissions on Bill C-59," Canadian Civil Liberties Association, January 19, 2018, <http://bit.ly/2EDWQPG>.

<sup>85</sup> *Study - Bill C-59, An Act respecting national security matters*, 19<sup>th</sup> Report, Standing Committee on Public Safety and National Security (SECU), April 25, 2018, <http://bit.ly/2lvZ0BZ>.

<sup>86</sup> R.S.C., 1985, c. P-21, <http://bit.ly/2oeXpH8>.

<sup>87</sup> Personal Information Protection and Electronic Documents Act (PIPEDA), S.C. 2000, c. 5, <http://bit.ly/1hVRkBe>.

<sup>88</sup> Office of the Privacy Commissioner of Canada, "Mandate and Mission," <http://bit.ly/1LlfhTx>.

<sup>89</sup> Bill S-4, S.C. 2015, c. 32, <http://bit.ly/2ofe25y>.

<sup>90</sup> *Breach of Security Safeguards Regulations*, published in the Canada Gazette, Part II: Volume 152, Number 8, on March 27, 2018, <http://bit.ly/2BZpmdQ>.

<sup>91</sup> Daniel Therrien, "2016-17 Annual Report to Parliament on the Personal Information Protection and Electronic Documents Act and the Privacy Act.", September 2017, <http://bit.ly/2EDj48I>.

<sup>92</sup> *Towards Privacy by Design: Review of the Personal Information Protection and Electronic Documents Act*, February 2018, <http://bit.ly/2lwSY49> (the "ETHI Report"). See also Allen Mendelsohn (this report's author), "Privacy! Privacy! Privacy!", March 28, 2018, <http://bit.ly/2GeYrr2>.

<sup>93</sup> Alex Boutilier, "Ottawa is 'blurring' lines on privacy as it looks for new ways to collect data: watchdog", *The Star*, February 21, 2018, <http://bit.ly/2HN4G7I>.

<sup>94</sup> "Draft OPC Position on Online Reputation," January 28, 2018, <http://bit.ly/2Hu0M39>.

<sup>95</sup> See e.g. Michael Geist, "Why the Canadian Privacy Commissioner's Proposed Right to be Forgotten Creates More Problems Than it Solves," January 29, 2018, at <http://bit.ly/2HsX1ew>; and Allen Mendelsohn (this report's author), "Surprise! Canada has had a Right To Be Forgotten all along!", January 30, 2018, at <http://bit.ly/2EGzbht>.

<sup>96</sup> *Douez v. Facebook*, 2017 SCC 33, <http://bit.ly/2tt7BhT>.

Terms and Conditions were deemed to be a consumer contract which granted the Quebec court jurisdiction.<sup>97</sup> While the choice of forum clause in the case chose another Canadian province (Ontario), it is clear that the same reasoning could apply internationally. In another dramatic development, the Federal Court of Canada found that PIPEDA has extra-territorial application, and ordered a Romanian website to remove court decisions containing personal information of Canadian citizens that made them easily searchable through search engines, and never to post such information again.<sup>98</sup> The Federal Court also ordered the Romanian website to pay damages to the plaintiff. Some commentators suggested the decision created something akin to Europe's Right to be Forgotten,<sup>99</sup> while other commentators were more sceptical, though they still welcomed the decision.<sup>100</sup>

The Supreme Court of Canada extended the right to privacy in text (SMS) messages in a pair of companion cases released in December 2017. In one case, the Court held that there could be a reasonable expectation of privacy in *received* text messages, where previously there had only been held to be such protection for sent messages.<sup>101</sup> In the other, the Court held that the sender of text messages has a reasonable expectation of privacy in those texts, even when they are stored on the telecom provider's computers.<sup>102</sup>

## Intimidation and Violence

There were no documented cases of violence or physical harassment of internet users in Canada for their online activities during the report period. Cyberbullying, cyberstalking, and general online harassment however, is on the increase, especially with young people as targets.<sup>103</sup> A recent study found that a quarter of Canadians have been subject to some form of online harassment,<sup>104</sup> and a recent report indicated that 37 percent of schoolchildren in one Canadian province had been subjected to cyberbullying.<sup>105</sup> The government has recognized the seriousness of the issue, and announced it would release a coordinated strategy,<sup>106</sup> though there has been little development on that front.

The legal precedence of Canada's most noteworthy "revenge porn" case remained in limbo. In a highly-praised landmark civil case in January 2016, a man who published revenge porn against his ex-girlfriend had been ordered to pay \$100,000 to the victim who suffered severe emotional distress.<sup>107</sup> In October 2016, however, that default judgment was set aside,<sup>108</sup> and leave to appeal from this decision was denied.<sup>109</sup> As a result, the new privacy tort of "public disclosure of private facts" established in the original decision is in a state of flux until the case is re-heard on the merits. Fortunately, to fill the gap, many provinces are passing laws that create civil torts for unauthorized distribution of intimate images and videos, such as Manitoba<sup>110</sup> and Alberta.<sup>111</sup> There also continue to be prosecutions under section 162.1 of the Criminal Code which makes it a crime to publish, distribute, transmit or sell intimate images without the consent of the person depicted.<sup>112</sup>

## Technical Attacks

While there have been numerous cyberattacks and data breaches in Canada in recent years, very serious, widespread, systematic technical attacks have not been such a significant issue in Canada, although indications show this is changing. Private sector data breaches are certainly on the rise, as some of the largest data breaches of the past year were certainly felt in Canada, at very significant levels. The Uber hack

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<sup>97</sup> Demers c. Yahoo! Inc., 2017 QCCS 4154, <http://bit.ly/2GIQxXM>.

<sup>98</sup> A.T. v. Globe24h.com, 2017 FC 114 (CanLii), <http://bit.ly/2oalk9l>.

<sup>99</sup> See e.g. Michael Geist, "Did a Canadian Court Just Establish a New Right to be Forgotten?" February 7, 2017, <http://bit.ly/2oaWYxn>.

<sup>100</sup> See e.g. Allen Mendelsohn (this report's author), "Forget the right to be forgotten in Canada (for now)," February 28, 2017, <http://bit.ly/2oaVumV>.

<sup>101</sup> R. v. Marakah, 2017 SCC 59, <http://bit.ly/2GOgJjf>.

<sup>102</sup> R. v. Jones, 2017 SCC 60, <http://bit.ly/2GLIREc>.

<sup>103</sup> Canadian Press, "More than 1 million young Canadians victims of cyberbullying, cyberstalking: StatsCan," CBC News, December 19, 2016, <http://bit.ly/2nzVw4q>.

<sup>104</sup> Victor Ferreira, "More than a quarter of Canadians are subjected to harassment on social media, new poll finds," National Post, October 21, 2016, <http://bit.ly/2nnO0lY>.

<sup>105</sup> "Nearly 4 in 10 schoolkids cyberbullied, B.C. government warns," Metro, February 6, 2018, <http://bit.ly/2HOCNMq>.

<sup>106</sup> "Feds eye sexting, cyber violence strategy," CBC News, March 27, 2017, <http://bit.ly/2nzX4LX>.

<sup>107</sup> Doe 464533 v N.D., 2016 ONSC 541 (CanLii), <http://canlii.ca/t/gn23z>.

<sup>108</sup> Doe v N.D., 2016 ONSC 4920 (CanLii), <http://bit.ly/2oCQxj5>.

<sup>109</sup> Doe 464533 v N.D., 2017 ONSC 127 (CanLii), <http://bit.ly/2HP3UGX>.

<sup>110</sup> Intimate Image Protection Act, C.C.S.M. c. I87, <http://bit.ly/2HKmdNE>.

<sup>111</sup> Protecting Victims of Non-Consensual Distribution of Intimate Images Act, S.A. 2017 ch. P-26.9, <http://bit.ly/2HOPczO>.

<sup>112</sup> See e.g. R. v. P.S.D., 2016 BCPC 400 (CanLii), <http://bit.ly/2HMQVG0>, and R. v. A.C., 2017 ONCJ 317, <http://bit.ly/2HNqQ9H>.

announced in November 2017 involved data of 815,000 Canadians.<sup>113</sup> The Equifax hack and data breach of September 2017 involved the loss of data of 19,000 Canadians,<sup>114</sup> and a December 2017 data breach at Nissan Canada may have involved personal and financial information of up to 1.1 million Canadians.<sup>115</sup> The Office of the Privacy Commissioner has opened investigations in to all of these breaches.<sup>116</sup>

Government officials and departments continue to sound the alarm on the threat of cyberattacks in a number of areas. The governor of the Bank of Canada has stated that cyberattacks are the most pressing concern for the financial system.<sup>117</sup> In September 2017, the department of Public Safety Canada reported that between 2013 and 2015, there were more than 2500 “state-sponsored cyber activities” against Government of Canada systems per year.<sup>118</sup> The government has a 5-year strategic plan in place that in part is designed to address some of these issues,<sup>119</sup> though the Public Safety Canada Report was highly critical of the strategy.<sup>120</sup> The Communications Security Establishment (CSE) continues to warn Canadians about potential cyber interference in future federal elections.<sup>121</sup>

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<sup>113</sup> The Canadian Press, “Uber says 815,000 Canadians affected by data breach as investigation launched”, *CBC News*, December 12, 2017, <http://bit.ly/2HPitu7>.

<sup>114</sup> The Canadian Press, “Equifax says more than 19,000 Canadians affected by security breach”, *CBC News*, November 28, 2017, <http://bit.ly/2HOFNZh>.

<sup>115</sup> Pete Evans, “Nissan Canada breach may have exposed data of up to 1.1 million customers”,

<sup>116</sup> OPC, “OPC launches investigation into Equifax breach”, September 15, 2017, <http://bit.ly/2HPDgOa>; Alicja Siekierska, “Canada’s privacy commissioner opens formal investigation into Uber hack”, *The Financial Post*, December 11, 2017, <http://bit.ly/2HNmP5b>; and OPC, “Privacy Commissioner launches investigation into Nissan breach”, February 13, 2018, <http://bit.ly/2HQcaXy>.

<sup>117</sup> Andy Blatchford, “Threat of cyberattacks ‘more worrisome than all the other stuff’: Bank of Canada governor”, *The Star*, October 26, 2017, <http://bit.ly/2HN05IN>.

<sup>118</sup> September 29, 2017, <http://bit.ly/2HPkaYS>.

<sup>119</sup> Government of Canada, “Government of Canada Strategic Plan for Information Management and Information Technology 2017-2021”, <http://bit.ly/2HMTM1F>.

<sup>120</sup> Dean Beeby, “State-sponsored cyberattacks on Canada successful about once a week”, *CBC News*, October 20, 2017, <http://bit.ly/2HPKK42>.

<sup>121</sup> Lee Berthiaume, “Canada’s spy agency expects cyberattacks during 2019 federal election”, *CBC News*, June 16, 2017, <http://bit.ly/2GlrQuv>. Full report of the CSE entitled “Cyber Threats to Canada’s Democratic Process”, June 2017, available at <http://bit.ly/2HMhcEe>.