

Canada

	2020	2021	2022
Internet Freedom Status	F	F	F
A. Obstacles to Access (0-25pts)	23	23	23
B. Limits on Content (0-35pts)	32	32	32
C. Violations of User Rights (0-40pts)	32	32	32
TOTAL* (0-100)	87	87	87

*100=most free, 0=least free

**A total score of 100-70=Free, 69-40=Partly Free, 39-0=Not Free

Overview

Internet freedom in Canada remained robust during the coverage period. Internet access is reliable and affordable for a majority of the population, although rural areas are underserved by infrastructure and telecommunications services. Users in Canada enjoy strong protections for free expression and press freedom. However, state institutions and private actors continued to suffer cyberattacks during the reporting period.

Canada has a strong history of respect for political rights and civil liberties, though in recent years citizens have been concerned about the scope of government surveillance laws and privacy rights, as well as the increasing propensity for courts to issue website-blocking orders. While Indigenous peoples and other vulnerable populations still face discrimination and other economic, social, and political challenges, the federal government has acknowledged and made some moves to address these issues.

Key Developments, June 1, 2021 - May 31, 2022

- The Federal Court granted a “dynamic” site-blocking order that forced ISPs to block websites showing pirated content (live sporting events) in real time (see B1)
- The Federal Court determined that Google search falls under PIPEDA, the first step in determining that Canada has a right to be forgotten (see C6)

A. Obstacles to Access

	2020	2021	2022
A1: Do infrastructural limitations restrict access to the internet or the speed and quality of internet connections? (0–6 points)	6	6	6

Both fixed-line and mobile internet penetration rates have remained relatively steady in Canada. Mobile service providers continue to deploy a number of newer technologies to provide mobile broadband service, and 5G network coverage reached 53.3 percent as of 2020.¹

Broadband service of at least 5 Megabits per second (Mbps) reached over 98 percent household availability in 2019, according to the regulatory body that oversees the communications industry, the Canadian Radio-television and Telecommunications Commission (CRTC).²³ That year, the CRTC shifted its focus to “high-quality” internet service, defined as offering 50 Mbps download speeds, 10 Mbps upload speeds, and unlimited data transfers, with the goal of 90 percent household availability by 2021, and 100 percent availability by 2031,⁴ which was identified

¹ Canadian Radio-television and Telecommunications Commission, “Annual highlights of the telecommunications sector 2020,” December 15, 2021, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2021/tel.htm>, Infographic 6.

² Canadian Radio-television and Telecommunications Commission, “Communications Monitoring Report 2020,” December 10, 2020, <https://crtc.gc.ca/eng/publications/reports/policymonitoring/2020/index.htm>; Statistics taken from “LTE and Broadband Availability” (Table 4.2 Broadband service availability, by speed and province/territory)” at <https://crtc.gc.ca/eng/publications/reports/policyMonitoring/2020/cmr4.htm>.

³ *Ibid*, see figure 9.22.

⁴ Canadian Radio-television and Telecommunications Commission, “Departmental Plan 2022-2023,” March 2, 2022, <https://crtc.gc.ca/eng/publications/reports/dp2022/dp2022.htm> **Error! Hyperlink reference not valid.**

as Canada's "Universal Service Objective" in a landmark 2016 policy decision.⁵ Canada is making progress on that front, moving from 87.4 percent availability in 2019 to 89.5 percent availability in 2020, with 67.7 of all subscribers having such a service.⁶

In conjunction with the 2016 decision, the CRTC declared high-speed internet access a "basic telecommunications service" and established a \$750 million Canadian dollar (\$578 million) fund to reach those targets.⁷ In September 2018, the CRTC announced criteria for the fund's use.⁸ A second round of calls for project applications was opened in November 2019,⁹ and the distribution of these funds continued through 2021, with C\$206.1 million (\$148 million) awarded as of May 2022.¹⁰ The CRTC's fund is part of a larger commitment to broadband access in Canada called the Universal Broadband Fund, to the tune of C\$2.75 billion (\$1.87 billion).¹¹

	2020	2021	2022
A2: Is access to the internet prohibitively expensive or beyond the reach of certain segments of the population for geographical, social, or other reasons? (0–3 points)	2	2	2

Internet access is not prohibitively expensive or beyond the reach of most segments of the population, although a digital divide in terms of geography persists, and poorer people struggle to afford access. The government named universal access as the first of ten draft principles for a digitally connected Canada in its October 2019 Digital Charter.¹²

Mobile broadband data remains expensive compared to fixed-line broadband data. High-speed, fixed-line access remains affordable due to robust competition; prices became even more competitive in 2016 when the CRTC reduced the price of wholesale high-speed internet access.¹³

Perhaps the most important obstacle to availability and ease of access is geography. Canada is overwhelmingly urban, with over 82 percent of the population living in urban areas.¹⁴ While providing "reliable and affordable telecommunications services of high quality" to rural areas is enshrined in law,¹⁵ affordable high-speed internet service is less available in more isolated areas, especially in the vast northern territories.

High-speed internet access is also more expensive in rural areas than in cities, and rural customers have fewer choices of internet service providers (ISPs) according to the CRTC's 2020 figures.¹⁶ Major ISPs generally offer services with bandwidth caps, resulting in increased fees for users who exceed the limit. Such limits are much more restrictive for wireless connectivity than for wired connectivity, which further exacerbates the urban-rural divide in terms of cost.

When considering the CRTC's high-quality service definitions, the urban-rural divide is staggering: 50 Mbps service is available to 98.6 percent of urban households, but only 45.6 percent of rural households.¹⁷ Generally the

⁵ CRTC Telecom Regulatory Policy 2016-496, "Modern telecommunications services – The path forward for Canada's digital economy," December 21, 2016, <https://crtc.gc.ca/eng/archive/2016/2016-496.htm>.

⁶ Canadian Radio-television and Telecommunications Commission, "Annual highlights of the telecommunications sector 2020," December 15, 2021, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2021/tel.htm>, Infographic 7.

⁷ "CRTC establishes fund to attain new high-speed Internet targets," Government of Canada News Release, December 21, 2016,

<https://www.canada.ca/en/radio-television-telecommunications/news/2016/12/crtc-establishes-fund-attain-new-high-speed-internet-targets.html>.

⁸ Emily Jackson, "CRTC reveals criteria for \$750M broadband fund for rural internet access," *The National Post*, September 27, 2018,

<https://business.financialpost.com/telecom/crtc-reveals-criteria-for-750m-broadband-fund-for-rural-internet-access>.

⁹ CRTC Telecom Notice of Consultation CRTC 2019-372-2, April 27, 2020, <https://crtc.gc.ca/eng/archive/2019/2019-372-2.htm>.

¹⁰ CRTC, "Broadband Fund – Projects selected for funding," <https://crtc.gc.ca/eng/internet/select.htm>, updated to January 6, 2022.

¹¹ Government of Canada, "Universal Broadband Fund," November 25, 2021, https://www.ic.gc.ca/eic/site/139.nsf/eng/h_00006.html.

¹² "Canada's Digital Charter in Action: A Plan by Canadians, for Canadians," Innovation, Science and Economic Development Canada, October 23, 2019, https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00109.html.

¹³ Canadian Radio-television and Telecommunications Commission, Telecom Order CRTC 2016-396, October 6, 2016,

<https://crtc.gc.ca/eng/archive/2016/2016-396.htm>.

¹⁴ Statistics Canada, "Population growth in Canada's rural areas, 2016 to 2021," February 9, 2022, <https://www12.statcan.gc.ca/census-recensement/2021/as-sa/98-200-x/2021002/98-200-x2021002-eng.cfm>.

¹⁵ *Telecommunications Act*, S.C. 1993, c.38, section 7(b), <https://laws-lois.justice.gc.ca/eng/acts/T-3.4/FullText.html>.

¹⁶ Canadian Radio-television and Telecommunications Commission, "Communications Monitoring Report 2020," December 2020, "2019 Year-End Monthly Prices for Internet, Mobile, Landline and TV services," <https://crtc.gc.ca/eng/publications/reports/policyMonitoring/2020/cmr5.htm>.

¹⁷ CRTC, Broadband Fund, "Closing the Digital Divide in Canada," <https://crtc.gc.ca/eng/internet/internet.htm>.

divide does not appear to be shrinking, and may in fact be growing.¹⁸

The government has generally taken a patchwork approach to improving connectivity in remote communities. In 2019, the government pledged to spend C\$5 billion (\$3.8 billion) to C\$6 billion (\$4.6 billion) to improve rural broadband services over 10 years.¹⁹ The 2020 budget was never presented due to the COVID-19 pandemic, with Canada's first budget in two years presented in April 2021.²⁰ The 2021 budget included an additional C\$1 billion (\$770 million) that will in part go towards improving rural and remote broadband access.²¹ The 2022 budget did not add any additional funds to this initiative.²²

The urban-rural divide has only increased during the pandemic,²³ and a proposed merger between two of Canada's largest telecommunications companies is also expected to intensify the divide (see A4).²⁴

There is also a significant access gap in terms of income: as of 2021, the penetration rate for "excellent data quality" home internet access for the highest income quartile was 90.7 percent, while the equivalent penetration rate for the lowest income quartile was only 75.9 percent.²⁵

Internet connections are widely available in public spaces such as cafés, shopping malls, and libraries, generally free of charge.

	2020	2021	2022
A3: Does the government exercise technical or legal control over internet infrastructure for the purposes of restricting connectivity? (0–6 points)	6	6	6

The government does not exercise technical or legal control over the internet infrastructure for censorship. Authorities do not restrict access to any social media platforms or communications apps.

The government has not centralized the telecommunications infrastructure. However, given the vertical integration of the marketplace, the infrastructure is controlled by a small number of companies, which could theoretically facilitate greater control of content and the implementation of surveillance technologies.

	2020	2021	2022
A4: Are there legal, regulatory, or economic obstacles that restrict the diversity of service providers? (0–6 points)	5	5	5

There are some legal and economic obstacles that restrict the diversity of service providers, although the market remains relatively open. Specifically, the legal requirements for Canadian ownership of service providers, combined with the high costs of entry and infrastructure, has led to market concentration, especially for mobile service.

¹⁸ Charlotte Morritt-Jacobs, "New report on internet connectivity shows growing urban and rural divide in Canada," aptn National News, November 6, 2021, <https://www.aptnnews.ca/national-news/new-report-on-internet-connectivity-shows-growing-urban-and-rural-divide-in-canada/>.

¹⁹ Government of Canada (The Honourable William Francis Morneau, Finance Minister), "Budget 2019 – Investing in the Middle Class," March 19, 2019, <https://www.budget.gc.ca/2019/docs/plan/budget-2019-en.pdf>; See also: Government of Canada, "Connecting Canadians," Chapter 2, Part 3, <https://www.budget.gc.ca/2019/docs/plan/chap-02-en.html#Access-to-High-Speed-Internet-for-All-Canadians>.

²⁰ Government of Canada, "Budget 2021 – A Recovery Plan for Jobs, Growth, and Resilience," April 19, 2021, available at <https://www.budget.gc.ca/2021/home-accueil-en.html>.

²¹ David Paddon, "Ottawa adds \$1B to broadband fund for rural, remote communities," April 19, 2021, CTV News, <https://www.ctvnews.ca/politics/ottawa-adds-1b-to-broadband-fund-for-rural-remote-communities-1.5393610>.

²² Government of Canada, "Budget 2022 – A Plan to Grow Our Economy and Make Life More Affordable," April 7, 2022, available at <https://budget.gc.ca/2022/home-accueil-en.html>.

²³ See e.g. Kirk Starrat, "Digital divide: Gap between Canada's rural, urban internet speeds widens during COVID-19," *The Chronicle Herald*, August 14, 2021, <https://www.thechronicleherald.ca/news/provincial/digital-divide-gap-between-canadas-rural-urban-internet-speeds-widens-during-covid-19-485368/>.

²⁴ "Critics of Rogers-Shaw merger say government must mandate affordable internet in remote areas," *CBC News*, March 21, 2021, <https://www.cbc.ca/radio/checkup/are-you-satisfied-with-the-price-and-speed-of-your-internet-and-cell-phone-service-1.5955613/critics-of-rogers-shaw-merger-say-government-must-mandate-affordable-internet-in-remote-areas-1.5957779>.

²⁵ Statistics Canada, "Internet access locations by age group and family income quartile," Table 22-10-0144-01, released October 29, 2021, accessed March 24, 2022, <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=2210014401>.

To operate as a Canadian telecommunications provider, a company must meet the requirements in Section 16 of the Telecommunications Act. The telecommunications market is currently dominated by the five largest companies (Bell, Québecor, Rogers, Shaw, and TELUS), which accounted for 86.9% of total retail telecommunications market revenue in 2020.²⁶

The telecommunications market in Canada threatens to become even more concentrated as regulators are currently evaluating a potential merger of two of the five largest companies, Rogers and Shaw.²⁷ If approved, this will lead to less competition and higher prices for Canadians.²⁸ The CRTC approved the broadcasting portion of the merger in 2021;²⁹ the decisions on the internet and wireless portions of the merger, which have received pushback from at least one government committee and the Federal Industry Minister citing competition concerns, are still to be made.³⁰

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 vary region to region and some providers are restricted to urban areas. 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.

Three mobile service providers dominate the market, with Bell, TELUS, and Rogers accounting for 88.6% of the mobile market's revenue in 2020.³¹ Their market share has remained relatively steady over the years. These companies are also leaders in the provision of fixed-line internet service (via phone lines or cable), along with Shaw, Cogeco, and Vidéotron, which is owned by Québecor. While Canadians generally enjoy a choice of fixed-line internet providers, the available choices vary from region to region. There is often only one choice per technology type, leading to a public perception that options are limited and prices are kept artificially high. This perception is not without merit, as Canada's wireless prices continue to be rated amongst the highest in the world.³² However, in March 2020 the government took action, forcing the three largest wireless companies (Bell, TELUS, and Rogers) to lower their prices by 25 percent over the next two years.³³ This had been achieved for "mid-range" wireless plans by January 2022.³⁴

	2020	2021	2022
A5: Do national regulatory bodies that oversee service providers and digital technology fail to operate in a free, fair, and independent manner? (0–4 points)	4	4	4

The CRTC largely operates independently of the government. The government appoints the CRTC chairperson and commissioners without public consultation, but they are not subject to political pressure. In some cases, the government has provided guidance on policy expectations regarding telecommunications regulations, but its input is nonbinding. Moreover, CRTC decisions can be appealed, or a government review can be requested. The government has rarely overturned CRTC decisions.

The CRTC's regulatory powers extend to internet access, but not to internet content, a principle known as the "new media exemption." The CRTC's position to refrain from internet content regulation dates to 1999 and has

²⁶ CRTC, "Annual highlights of the telecommunications sector 2020," December 15, 2021, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2021/tel.htm>, Table 4 and accompanying text.

²⁷ Dwayne Winseck, "Rogers' bid for Shaw is bad news for competition in several media markets, and should be blocked," *The Toronto Star*, March 19, 2021, <https://www.thestar.com/opinion/contributors/2021/03/19/rogers-bid-for-shaw-is-bad-news-for-competition-in-several-media-markets-and-should-be-blocked.html>.

²⁸ Michael Geist, "Higher Prices, Less Competition: Some Reflections on the Proposed Rogers – Shaw Merger," March 16, 2021, <https://www.michaelgeist.ca/2021/03/higher-prices-less-competition/>.

²⁹ CRTC, Broadcasting Decision CRTC 2022-76, March 24, 2022, <https://crtc.gc.ca/eng/archive/2022/2022-76.htm>.

³⁰ *The Canadian Press*, "House committee says Rogers-Shaw deal should not proceed," *BNN Bloomberg*, March 4, 2022, <https://www.bnnbloomberg.ca/house-committee-says-rogers-proposed-takeover-of-shaw-should-not-proceed-1.1732805>; *The Canadian Press*, "Government won't allow Rogers to buy all of Shaw's wireless business," *CBC News*, March 3, 2022, <https://www.cbc.ca/news/business/rogers-shaw-industry-minister-champagne-1.6372102>.

³¹ CRTC, "Annual highlights of the telecommunications sector 2020," December 15, 2021, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2021/tel.htm>, Table 1 and accompanying text.

³² *Tristan Hopper*, "Canada's wireless costs 'continue to be the highest or among the highest in the world': Finnish report," *National Post*, October 10, 2021, <https://nationalpost.com/news/canada/canadas-wireless-costs-continue-to-be-the-highest-or-among-the-highest-in-the-world-finnish-report>.

³³ David Thurton, "Liberals give big 3 wireless providers two years to cut prices by 25 per cent," *CBC News*, March 5, 2020, <https://www.cbc.ca/news/politics/wireless-cellphone-fees-1.5484080>.

³⁴ *Government of Canada News Release*, "Government of Canada delivers on commitment to reduce cell phone wireless plans by 25%," January 28, 2022, <https://www.canada.ca/en/innovation-science-economic-development/news/2022/01/government-of-canada-delivers-on-commitment-to-reduce-cell-phone-wireless-plans-by-25.html>.

been reinforced on numerous occasions since,³⁵ including by the Supreme Court of Canada (SCC).³⁶ Amendments to Canada's Broadcasting Act in the form of Bill C-11, called the "Online Streaming Act", proposed in February 2022³⁷ threaten to dramatically alter Canada's media landscape. It would allow for regulation of the internet and its content in new and myriad ways, effectively discarding the new media exemption, and including regulation of internet content from non-Canadian sources.³⁸

B. Limits on Content

	2020	2021	2022
B1: Does the state block or filter, or compel service providers to block or filter, internet content, particularly material that is protected by international human rights standards? (0–6 points)	5	5	5

The government does not generally block or filter online content or require service providers to do so. Project Cleanfeed Canada allows ISPs to block child sexual abuse imagery hosted outside of Canada, restrictions that are permissible under international human rights standards (see B3).

In November 2019, a court ordered all of Canada's major ISPs to block several domains associated with a service that sold copyright-infringing programming. Several large media companies petitioned the Federal Court in *Bell Media Inc. v. GoldTV.Biz* to order the domains' blocking for rebroadcasting their programming without permission, and twelve domains and subdomains were blocked under the order, which permitted the media companies to seek further blocking orders for websites infringing on their programming.³⁹ Legal experts criticized the decision on numerous grounds: for example, as an overreach by the court in an area best left to Parliament or the CRTC.⁴⁰ The decision was appealed by ISP TekSavvy, which, the Federal Court of Appeal rejected in May 2021, concluding that the lower court judge did have the authority to grant website blocking orders (see B2).⁴¹ In March 2022, the Supreme Court of Canada declined to hear TekSavvy's appeal, ending the case.⁴²

The media companies took the next step in seeking site-blocking in October 2021, when they filed for a case seeking a "dynamic" site-blocking order. In May 2022, the Federal Court granted a preliminary injunction that required ISPs to block IP addresses of websites showing pirated content (live NHL hockey games) in real time.⁴³ Though the order is only temporary (lasting through the end of the 2021-22 NHL season) it is considered the first of its kind in North America.⁴⁴

Previously, in January 2018, a group of over 25 ISPs, media companies, creative companies, and other interested parties—including major entities like Bell, Rogers, and the Canadian Broadcasting Corporation (CBC)—banded together as "FairPlay Canada"⁴⁵ to petition the CRTC to establish an independent body that would recommend blocking access to "websites and services that are blatantly, overwhelmingly, or structurally engaged in piracy."⁴⁶

³⁵ *Broadcasting Regulatory Policy CRTC 2015-355 and Broadcasting Order CRTC 2015-356*, August 6, 2015, <https://crtc.gc.ca/eng/archive/2015/2015-355.htm>.

³⁶ "Reference re Broadcasting Act, 2012 SCC 4," February 9, 2012, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7989/index.do>.

³⁷ Bill C-11, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, first reading February 2, 2022, available at <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-11/first-reading>

³⁸ See e.g. Michael Geist, "The CRTC Provides an Advance Preview of Bill C-11 Regulation: Pretty Much Any Service, Anywhere, Any Terms and Conditions," March 9, 2022, <https://www.michaelgeist.ca/2022/03/the-crtc-provides-an-advance-preview-of-bill-c-11-regulation-pretty-much-any-service-anywhere-any-terms-and-conditions/>.

³⁹ 2019 FC 1432, November 15, 2019, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/424753/index.do>.

⁴⁰ Michael Geist, "Fool's Gold: Why a Federal Court Judge Was Wrong To Issue a Website Blocking Order Against GoldTV," November 19, 2019, <http://www.michaelgeist.ca/2019/11/fools-gold-why-a-federal-court-judge-was-wrong-to-issue-a-website-blocking-order-against-goldtv/>.

⁴¹ *Teksavvy Solutions Inc. v. Bell Media Inc.*, 2021 FCA 100, <https://decisions.fca-cf.gc.ca/fca-cf/decisions/en/item/497659/index.do>.

⁴² Supreme Court of Canada Docket, case # 39876, <https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=39876>.

⁴³ *Rogers Media Inc. v. John Doe 1*, 2022 FC 775, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/521629/index.do>.

⁴⁴ See e.g. Osler, "Canadian Federal Court issues dynamic website-blocking injunction to combat unauthorized hockey webcasts," June 9, 2022, <https://www.osler.com/en/resources/regulations/2022/canadian-federal-court-issues-dynamic-website-blocking-injunction-to-combat-unauthorized-hockey-web>.

⁴⁵ FairPlay Canada home page, <https://www.fairplaycanada.com/>.

⁴⁶ 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, https://assets.corusent.com/wp-content/uploads/2018/02/FairPlay_Canada_CRTC_Report_2018.pdf.

Ultimately, the CRTC rejected the proposal in October 2018 after determining that it lacked jurisdiction to implement the plan.

In January 2021, the CRTC launched a public consultation “to strengthen Canadians’ online safety” by blocking certain sites infected with botnets,⁴⁷ but this plan has come under fire by commentators.⁴⁸ The submissions to the consultation process from a broad range of industry actors almost universally opposed the plan.⁴⁹ In June 2022 (after the coverage period), the CRTC released an enforcement decision that confirmed botnets need to be regulated, provided a framework for doing so, and required a CRTC working group to present a plan to block such websites within 9 months.⁵⁰

	2020	2021	2022
B2: Do state or nonstate actors employ legal, administrative, or other means to force publishers, content hosts, or digital platforms to delete content, particularly material that is protected by international human rights standards? (0–4 points)	3	3	3

Nonstate actors, specifically large media companies, have used legal means to force digital platforms to delete content, generally for copyright infringement. However, a significant development in 2018 has reduced the misuse of the notice-and-notice regime under the Copyright Act.

The previous notice-and-notice regime required ISPs to forward notices from copyright holders claiming infringement to the alleged copyright violator (see B3). Several US-based antipiracy firms, including Rightscorp and CEG-TEK, used the system to send notifications to subscribers that misstated Canadian copyright law, citing US awards for damages and threatening the termination of internet access. The notifications sowed fear among Canadians, and many paid the settlement fees proposed in the notices.⁵¹ In December 2018, Parliament passed amendments to the program to restrict the information that can be included in the notices, no longer allowing misstatements of Canadian law. Further, ISPs are no longer required to forward notices to subscribers if they contain an offer to settle the infringement claim, a request or demand for payment or personal information, or a URL linking to such offers or demands.⁵²

In August 2021, the government released a technical paper for its forthcoming harmful online content legislation (see B3 and C6).⁵³ The proposed framework establishes a notice-and-takedown regime for Online Communications Services (OCS) and Online Communications Service Providers (OSCP) to limit the spread of child sexual exploitation content, terrorist content, content that incites violence, hate speech, and the nonconsensual sharing of intimate images. Penalties for non-compliance by OCS’s and OSCP’s include Administrative Monetary Penalties (AMPs) that would be in line with the AMPs in Canada’s new privacy law (see C5), i.e. in the millions of dollars.⁵⁴

Media companies have continued to 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 November 2019, a group of media companies sought and obtained an order forcing ISPs to block certain websites that hosted copyright-infringing content which was subsequently upheld by the Court of Appeal in May 2021 (see B1 and B3). In February 2022, a long-running case between all of Canada’s major media companies and an owner of a website that distributed software facilitating online piracy, known as TVAddons,

⁴⁷ “CRTC launches consultation to strengthen Canadians’ online safety,” CRTC News Release, January 13, 2021, <https://www.canada.ca/en/radio-television-telecommunications/news/2021/01/crtc-launches-consultation-to-strengthen-canadians-online-safety.html>.

⁴⁸ See e.g. Michael Geist, “Blocking is Back: Why Internet Blocking is the Next Big Canadian Policy Battle,” March 17, 2021, <https://www.michaelgeist.ca/2021/03/blocking-is-back/>. See also Dave Naylor, “Feds blasted for plans to block entire websites for safety reasons,” March 25, 2021, Western Standard Online, <https://westernstandardonline.com/2021/03/feds-blasted-for-plans-to-block-entire-websites-for-safety-reasons/>.

⁴⁹ Howard Solomon, “Canada’s big carriers, ISPs turn thumbs down on proposed mandatory botnet-fighting regime,” March 17, 2021, IT World Canada, <https://www.itworldcanada.com/article/canadas-big-carriers-isps-turn-thumbs-down-on-proposed-mandatory-botnet-fighting-regime/444050>.

⁵⁰ CRTC, “Compliance and Enforcement and Telecom Decision CRTC 2022-170 – Development of a network-level blocking framework to limit botnet traffic and strengthen Canadians’ online safety,” June 23, 2022, <https://crtc.gc.ca/eng/archive/2022/2022-170.htm>.

⁵¹ Jeremy Malcolm, “Canada Must Fix Rightsholder Abuse of its Copyright Notice System,” *Deeplinks Blog*, Electronic Frontier Foundation, April 23, 2015, <https://www.eff.org/deeplinks/2015/04/call-canada-fix-rightsholder-abuse-its-copyright-notice-system>.

⁵² “Bill C-86, Budget Implementation Act, 2018, No. 2, amending the *Copyright Act*,” December 13, 2018, <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10127729>.

⁵³ Government of Canada, Department of Canadian Heritage, “Harmful Online Content Technical Paper,” accessed September 2021, <https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content/technical-paper.html>.

⁵⁴ See *ibid*, sections 94 ff.

came to an end with a C\$25 million (\$19.5 million) settlement where the owner admitted liability, and the offending site was shut down.⁵⁵

In 2017, the SCC upheld the decision by the British Columbia Court of Appeals in *Google, Inc. v. Equustek Solutions, Inc.*,⁵⁶ ordering Google to remove URLs in its global index pointing to websites that infringed on the plaintiffs' trademark (see B3).

Defamation claims may also result in content removal, as content hosts fear potential liability as publishers of the defamatory content. Defamation claims may also prevent the posting of content, as the British Columbia Court of Appeal demonstrated in March 2018 when it ordered a defendant not to post anything about the plaintiff, as well as awarding damages.⁵⁷ In June 2018, the SCC ruled that a case involving the publication of defamatory content on an Israeli website against a Canadian resident should be heard in Israel rather than Canada, despite the fact that damages were incurred in Canada.⁵⁸ In 2021, a British Columbia court came to the opposite conclusion, specifically that a defamation case against Twitter could proceed in Canada.⁵⁹ In an October 2021 online defamation case where social media posts resulted in real-world consequences, an Ontario court ordered defendants to remove the posts, ordered that no future posts be made on the subject, and awarded \$100,000 to plaintiffs (see C3).⁶⁰

In March 2020, the Law Commission of Ontario, Canada's largest province, proposed a new Defamation Act that would require internet platforms to remove defamatory content upon notification.⁶¹ The provincial government has not yet moved forward with the proposed reform.

In Quebec, Canada's French-speaking province, websites that are commercial in nature are legally required to be in French,⁶² although they can also be in other languages. Violators may receive a warning from a government agency, and are then subject to fines, if they do not comply. Some website operators may choose to take their sites down rather than pay for translation or face fines. National or international operators of websites that do business in Quebec (and would therefore be subject to the law) sometimes block Quebec residents' access to their websites rather than comply.⁶³

	2020	2021	2022
B3: Do restrictions on the internet and digital content lack transparency, proportionality to the stated aims, or an independent appeals process? (0–4 points)	4	4	4

Restrictions on the internet are generally fair and proportionate.

In August 2021, the government released a technical paper for its forthcoming harmful online content legislation (see C6).⁶⁴ The proposed framework establishes a notice-and-takedown regime for Online Communications Services (OCS) and Online Communications Service Providers (OSCP) to limit the spread of child sexual exploitation content, terrorist content, content that incites violence, hate speech, and the nonconsensual sharing of intimate images. Additionally, the framework for the law enables ISPs to block websites that have not removed child sexual exploitation or terrorist content.⁶⁵ Following public consultations, the government announced in early

⁵⁵ Andy Maxwell, "TVAddons' Adam Lackman Admits TV Show Piracy, Agrees to Pay US\$19.5m," *TorrentFreak*, February 24, 2022, <https://torrentfreak.com/tvaddons-adam-lackman-admits-tv-show-piracy-agrees-to-pay-us14-5m-220224/>.

⁵⁶ "Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, Case Number 36602," June 28, 2017, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do>

⁵⁷ "Nazerali v. Mitchell, 2018 BCCA 104," March 19, 2018, <https://www.canlii.org/en/bc/bcca/doc/2018/2018bcca104/2018bcca104.html>

⁵⁸ "Haaretz.com, et al. v. Mitchell Goldhar, SCC," January 1, 2019, <https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=37202>; See also: "Appeal from the decision of the Court of Appeal for Ontario, 2016 ONCA 515," June 28, 2016,

<https://www.canlii.org/en/on/onca/doc/2016/2016onca515/2016onca515.html?autocompleteStr=haaretz&autocompletePos=2>.

⁵⁹ *Giustra v. Twitter, Inc.*, 2021 BCSC 54, January 14, 2021, <https://www.canlii.org/en/bc/bcsc/doc/2021/2021bcsc54/2021bcsc54.html>.

⁶⁰ *Lavallee et al. v. Isak*, 2021 ONSC 6661, October 7, 2021, <https://www.canlii.org/en/on/onsc/doc/2021/2021onsc6661/2021onsc6661.html>.

⁶¹ Law Commission of Ontario, "Defamation Law in the Internet Age," March 2020, <https://www.lco-cdo.org/en/our-current-projects/defamation-law-in-the-internet-age/>.

⁶² "Charter of the French Language, c. C-11, Article 52," June 1, 2020, <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/C-11>.

⁶³ Elysia Bryan-Baynes, "Quebec language police target English retail websites," November 13, 2014, <https://globalnews.ca/news/1671128/oqlf-targets-english-retail-websites/>.

⁶⁴ Government of Canada, Department of Canadian Heritage, "Harmful Online Content Technical Paper," accessed September 2021, <https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content/technical-paper.html>.

⁶⁵ Daphne Keller, "Five Big Problems with Canada's Proposed Regulatory Framework for 'Harmful Online Content'," Tech Policy Press, August 31, 2021, <https://techpolicy.press/five-big-problems-with-canadas-proposed-regulatory-framework-for-harmful-online-content/>.

2022 that they would work with experts to alter the approach, though the specifics have not yet been announced.⁶⁶

Canada's largest ISPs participate in Project Cleanfeed Canada, an initiative that allows ISPs to block access to child sexual abuse images that are hosted outside the country (as opposed to content hosted within Canada, which is subject to removal).⁶⁷ Accessing child pornography is illegal in Canada under section 163.1(4.1) of the criminal code,⁶⁸ as well as under international human rights standards.

Bill 74, Quebec's controversial law requiring ISPs to block access to gambling sites, came into effect in 2016,⁶⁹ but remains inoperative. In July 2018, a Quebec court declared the law unconstitutional, ruling online gambling a federal rather than provincial matter.⁷⁰ In 2021 the Quebec Court of Appeal upheld that ruling,⁷¹ and in 2022 the SCC declined to hear the matter.⁷²

In 2004, the SCC ruled that ISPs are not liable for copyright infringement violations committed by their subscribers,⁷³ a principle now enshrined in law.⁷⁴ Copyright law includes a notice-and-notice provision, in effect since 2015, which was amended in 2018 (see B2). No content is removed from the internet without a court order. Content may be ordered blocked at the ISP level by a court, and ISPs do not disclose subscriber information without court approval, although approvals are more common in recent years.⁷⁵

In the SCC's ruling in *Google, Inc. v. Equustek Solutions, Inc.*, the court's 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 in foreign jurisdictions.

Although platforms are legally protected from liability for copyright infringement by their users, they may face liability for alleged defamation once alerted to the publication. A court may also order the removal of the content. The SCC has held that merely linking to defamatory content on the internet is not defamation in and of itself; it would only be defamation if a site actually repeats the defamatory content. Therefore, the URLs would not be removed.⁷⁶

	2020	2021	2022
B4: Do online journalists, commentators, and ordinary users practice self-censorship? (0–4 points)	3	3	3

Online self-censorship is not widespread. However, certain individuals may self-censor for fear of potential government surveillance under Bill C-51, which was recently reformed (see C5).

	2020	2021	2022
B5: Are online sources of information controlled or manipulated by the government or other powerful actors to advance a particular political interest? (0–4 points)	4	4	4

⁶⁶ Rachel Aiello, "Feds' planned crackdown on harmful online content getting a revamp," *CTV News*, February 3, 2022, <https://www.ctvnews.ca/politics/feds-planned-crackdown-on-harmful-online-content-getting-a-revamp-1.5766306>.

⁶⁷ Cybertip!ca, "Cleanfeed Canada," <https://www.cybertip.ca/en/about/ccaice/>.

⁶⁸ Criminal Code, RSC 1985 c C-46 s 163.1(4.1).

⁶⁹ Michael Geist, "Government-Mandated Website Blocking Comes to Canada as Quebec's Bill 74 Takes Effect," May 26, 2016, <http://www.michaelgeist.ca/2016/05/bill74takeseffect/>.

⁷⁰ "Canadian Wireless Telecommunications Association c. Attorney General of Quebec, 2018 QCCS 3159 (CANLII) [*Association canadienne des télécommunications sans fil c. Procureure générale du Québec* 2018 QCCS 3159 (CanLII)],"

<https://www.canlii.org/fr/qc/qccs/doc/2018/2018qccs3159/2018qccs3159.html?searchUrlHash=AAAAAQATcHJvamVOIGRIIGxhGxvaSA3NAAAAAAB&resultIndex=26>.

⁷¹ *Procureur général du Québec c. Association canadienne des télécommunications sans fil*, 2021 QCCA 730, 2021 QCCA 730, <https://www.canlii.org/fr/qc/qcca/doc/2021/2021qcca730/2021qcca730.html>.

⁷² SCC case file # 39774, <https://scc-csc.lexum.com/scc-csc/scc-l-csc-a/en/item/19249/index.do>.

⁷³ *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn of Internet Providers*, [2004] SCC, 2 SCR 427.

⁷⁴ Copyright Act, R.S.C., 1985, c. C-42, section 31.1, July 1, 2020, <https://laws-lois.justice.gc.ca/eng/acts/c-42/FullText.html>.

⁷⁵ *Voltage Pictures, LLC v. John Doe*, 2016 FC 881, CanLII, <https://www.canlii.org/en/ca/fct/doc/2016/2016fc881/2016fc881.html>, 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.

⁷⁶ "Crookes v. Newton, 2011 SCC 47," October 19, 2011, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do>.

Online sources of information are not widely controlled or manipulated by the government or other powerful actors.

The government advanced legislation to combat disinformation and foreign interference in advance of the October 2019 federal election. The Election Modernization Act, which went into effect in June 2019, provides for a number of reforms such as regulations on third-party online advertising and restrictions on how much campaigns can spend before a campaign season officially commences.⁷⁷ An internal Elections Canada report completed in late October 2019 found numerous instances of false election information being spread on social media.⁷⁸ In March 2021, certain provisions of the Election Modernization Act prohibiting misinformation concerning criminal offenses committed by political candidates and their place of birth were struck down by an Ontario Court as unconstitutional, because they violated the right to freedom of speech.⁷⁹ False information was also spread through social media platforms during the COVID-19 pandemic, with conspiracy theories gaining traction,⁸⁰ including those about the COVID-19 vaccine,⁸¹ which had the effect of radicalizing certain Canadians.⁸²

	2020	2021	2022
B6: Are there economic, regulatory, or other constraints that negatively affect users' ability to publish content online? (0–3 points)	3	3	3

There are no economic or regulatory constraints on users' ability to publish legal content online, although the increasing willingness of provincial governments to tax internet services may have some effect in the future.

Canada has strengthened its commitment to net neutrality as a matter of national policy, ensuring that ISPs present web content neutrally. In 2017, the CRTC enacted a pair of telecommunications policies that effectively prohibited differential pricing for some data services offered by ISPs and the zero-rating of certain media services, barring ISPs from offering such preferred media free of charge.⁸³ With these policies, the CRTC has substantively completed a national framework that ensures the continuation of net neutrality. In a May 2018 report, a parliamentary committee encouraged the government to strengthen net neutrality even further by enshrining the principle in the Telecommunications Act.⁸⁴

In January 2020, the government released a detailed report from a legislative review panel on the future of Canada's communications legislation, the result of a review of initiated in its 2017 budget.⁸⁵ Commentators have warned that the report, which focused heavily on content produced in Canada, may herald the weakening of net neutrality.⁸⁶ However, the report itself included a commitment to the net neutrality principle.⁸⁷

⁷⁷ Elise von Scheel, "New rules for pre-election spending kick in Sunday," CBC News, June 29, 2019, <https://www.cbc.ca/news/politics/c76-election-pre-writ-rules-the-house-1.5193828>; See also: "Elections Modernization Act," December 13, 2018, https://laws-lois.justice.gc.ca/eng/annualstatutes/2018_31/page-1.html.

⁷⁸ Ashley Burke, "Social media users voiced fears about election manipulation during 2019 campaign, says Elections Canada," CBC News, January 30, 2020, <https://www.cbc.ca/news/politics/elections-canada-social-media-monitoring-findings-1.5444268>.

⁷⁹ Elizabeth Thomson, "Law prohibiting election misinformation struck down," CBC News, March 14, 2021, <https://www.cbc.ca/news/politics/elections-misinformation-court-free-speech-1.5948463>. See Canadian Constitution Foundation v. Canada (Attorney General), 2021 ONSC 1224, February 19, 2021, <https://www.canlii.org/en/on/onsc/doc/2021/2021onsc1224/2021onsc1224.html>.

⁸⁰ Sam Cooper, "Nearly half of Canadians can't tell coronavirus fact from conspiracy theory: survey," Global News, May 20, 2020, <https://globalnews.ca/news/6962870/coronavirus-misinformation-carleton-survey/>.

⁸¹ Barbara Ortutay and Amanda Seitz, "Defying rules, anti-vaccine accounts thrive on social media," CTV News, March 12, 2021, <https://www.ctvnews.ca/health/coronavirus/defying-rules-anti-vaccine-accounts-thrive-on-social-media-1.5344498>.

⁸² Ashleigh Stewart, "The great COVID-19 infodemic: How disinformation networks are radicalizing Canadians," *Global News*, December 18, 2021, <https://globalnews.ca/news/8450263/infodemic-covid-19-disinformation-canada-pandemic/>.

⁸³ Telecom Regulatory Policy CRTC 2017-104, "Framework for assessing the differential pricing practices of Internet service providers," April 20, 2017, <https://crtc.gc.ca/eng/archive/2017/2017-104.htm>; See also: *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, <https://crtc.gc.ca/eng/archive/2017/2017-105.htm>.

⁸⁴ House of Commons Canada, "The Protection of Net Neutrality in Canada, Report of the Standing Committee on Access to Information, Privacy and Ethics," May 2018, <https://www.ourcommons.ca/Content/Committee/421/ETHI/Reports/RP9840575/ethirp14/ethirp14-e.pdf>

⁸⁵ Government of Canada, "Innovation, Science and Economic Development Canada: Canada's communications future: Time to act," January 2020, <https://www.ic.gc.ca/eic/site/110.nsf/eng/00012.html>.

⁸⁶ Michael Geist, "Not Neutral: Why the Broadcast Panel Report Weakens Net Neutrality in Canada," February 5, 2020, <http://www.michaelgeist.ca/2020/02/not-neutral-why-the-broadcast-panel-report-weakens-net-neutrality-in-canada/>.

⁸⁷ Government of Canada, "Innovation, Science and Economic Development Canada: Canada's communications future: Time to act," January 2020, <https://www.ic.gc.ca/eic/site/110.nsf/eng/00012.html>.

The Department of Canadian Heritage, in the wake of its own report, announced a deal with Netflix in 2017, in which the streaming service pledged to spend a minimum of C\$500 million (\$385 million) on Canadian productions over the next five years.⁸⁸ In its January 2020 review, the legislative review panel recommended that the national Goods and Services Tax (GST) should apply to “media communications services provided by foreign online providers,” reversing a previous decision to exempt Netflix from the tax.⁸⁹ Measures to charge GST or Harmonized Sales Tax (HST) rates, depending on the province (a range of 5 percent to 15 percent) on digital businesses, including digital platform operators, came into effect in July 2021,⁹⁰ after having been proposed in the government’s April 2021 budget⁹¹ and passed into law in June.⁹²

In December 2021, the federal government proposed an additional “Digital Services Tax” (DST) where online companies with annual worldwide revenues of over €750,000,000 would have to pay a 3 percent tax on their Canadian revenues, if those Canadian revenues are greater than C\$20,000,000 (\$16,000,000).⁹³ The DST would not come into force before 2024, but would apply retroactively as of 2022 if passed.

Numerous provinces including British Columbia, Quebec, and Saskatchewan had already been levying provincial sales taxes for several years on out-of-province digital platforms, including Netflix, Google, Amazon, and, in Quebec’s case, Spotify.⁹⁴ In December 2021, the province of Manitoba was added to the list.⁹⁵

	2020	2021	2022
B7: Does the online information landscape lack diversity and reliability? (0–4 points)	4	4	4

The online environment in Canada is relatively diverse, and internet users have access to a wide range of news and opinions on a variety of topics. All major media organizations operate websites that feature articles and audio and video content. The public broadcaster maintains a comprehensive website that includes news articles and streamed video programming. Paywalls are increasingly used by newspapers publishing online, but many quality, independent news and commentary sites remain accessible for free. While some sites are partisan in nature, a wide array of political viewpoints are available online. Misinformation surrounding COVID-19 has been a significant issue in Canada throughout the pandemic.⁹⁶

There is a wide range of content available in both official languages (English and French) as well as many other languages.

⁸⁸ Daniel Leblanc, “Netflix deal the centrepiece of cultural policy,” *The Globe and Mail*, September 27, 2017,

<https://beta.theglobeandmail.com/news/politics/ottawa-to-unveil-500-million-netflix-deal-as-part-of-cultural-policy-overhaul/article36414401?ref=http://www.theglobeandmail.com&>.

⁸⁹ Government of Canada, “Innovation, Science and Economic Development Canada: Canada’s communications future: Time to act,” January 2020, <https://www.ic.gc.ca/eic/site/110.nsf/eng/00012.html>; See also: The Canadian Press, “Netflix tax not in the cards, Finance Minister Bill Morneau says,” *The Star*, December 10, 2017, <https://www.thestar.com/news/canada/2017/12/10/netflix-tax-not-in-the-cards-finance-minister-bill-morneau-says.html>.

⁹⁰ Government of Canada, “GST/HST for digital economy businesses: Overview,” last modified July 29, 2021, <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses/digital-economy.html>.

⁹¹ Government of Canada 2021 Budget (“A Recovery Plan for Jobs, Growth, and Resilience”) Annex 6, “Application of the GST/HST to E-commerce” subsection, April 21, 2021, <https://www.budget.gc.ca/2021/report-rapport/anx6-en.html#application-of-the-gst-hst-to-e-commerce>.

⁹² Bill C-30, “An Act to implement certain provisions of the budget tabled in Parliament on April 19, 2021 and other measures,” <https://www.parl.ca/LegisInfo/en/bill/43-2/C-30>.

⁹³ Deputy Prime Minister and Minister of Finance, “Notice of Ways and Means Motion to introduce an Act to implement a Digital Services Tax,” December 2021, <https://fin.canada.ca/drlég-apl/2021/bia-leb-1221-1-eng.html>.

⁹⁴ “What the new ‘Netflix tax’ means for B.C. users,” CBC News, February 19, 2020, <https://www.cbc.ca/news/canada/british-columbia/new-tax-on-streaming-services-1.5468709>

⁹⁵ Roger Smith et al, “Manitoba’s retail sales tax rules expand to online sales and streaming platforms,” *Osler*, December 13, 2021, <https://www.osler.com/en/resources/regulations/2021/manitoba-s-retail-sales-tax-rules-expand-to-online-sales-and-streaming-platforms>.

⁹⁶ Karine Gameau and Clémence Zossou, “Misinformation during the COVID-19 pandemic,” Statistics Canada, February 2, 2021, <https://www150.statcan.gc.ca/n1/pub/45-28-0001/2021001/article/00003-eng.htm>.

	2020	2021	2022
B8: Do conditions impede users' ability to mobilize, form communities, and campaign, particularly on political and social issues? (0–6 points)	6	6	6

Digital mobilization tools, including social media platforms and communication apps, are available and are used to build support for political and social movements. Online activism played a significant role in the Liberal government's promise to repeal the problematic aspects of the Anti-Terrorism Act and influenced the government's decision to introduce Bill C-59 to reform it (see C5). Much online activism that targets the ICT sector is spearheaded by a popular nonpartisan, nonprofit organization called Open Media, which advocates for three pillars of internet rights—free expression, access, and privacy.⁹⁷

Canadians were especially active in the online #MeToo movement,⁹⁸ which prompted the justice minister to consider updating laws to ensure victims of sexual violence are treated more compassionately in courtrooms.⁹⁹ This online activism also influenced the government to introduce Bill C-65,¹⁰⁰ which became law in October 2018 and dramatically updated the legal framework for harassment as it applies to the federal government and federally regulated workplaces.¹⁰¹ Online activism likely played a role in the decision to legalize cannabis countrywide,¹⁰² which went into effect in October 2018. Canadians have also relied on the internet to mobilize in the wake of the COVID-19 pandemic, which made in-person protests more difficult. For example, protesters in Saskatchewan moved their demonstration for a higher-education tuition freeze online in March 2020.¹⁰³ As the pandemic progressed, the internet helped organize in-person protests once again, around issues ranging from Black Lives Matter¹⁰⁴ to protests against mask mandates and other pandemic-related public health measures.¹⁰⁵ The so-called "Trucker Convoy" of early 2022 in Ottawa was fuelled by online activity, including crowdfunding efforts to financially support attendees.¹⁰⁶

C. Violations of User Rights

	2020	2021	2022
C1: Do the constitution or other laws fail to protect rights such as freedom of expression, access to information, and press freedom, including on the internet, and are they enforced by a judiciary that lacks independence? (0–6 points)	5	5	5

The constitution includes strong protections for freedom of speech and freedom of the press. Freedom of speech 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."¹⁰⁷ These protections apply to all forms of speech, whether online or offline. There are a few restrictions that apply to online speech (see C2).

⁹⁷ Open Media, <https://openmedia.org/>.

⁹⁸ Adina Bresge, "#MeToo movement prompting sexual-assault survivors to break silence to family," *National Post*, January 31, 2018, <https://nationalpost.com/pmnn/news-pmn/canada-news-pmn/metoo-movement-prompting-sexual-assault-survivors-to-break-silence-to-family>.

⁹⁹ Kate Taylor, "Where to go after #MeToo," *The Globe and Mail*, December 6, 2017, <https://tgam.ca/2GNPCW1>.

¹⁰⁰ "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, September 11, 2019, <https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=9220285&Language=E>.

¹⁰¹ Parliament of Canada, "Statutes of Canada, Chapter 22," October 25, 2018, <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-65/royal-assent>.

¹⁰² Ian Brown, "The new activism isn't about laws': Stigma lingers despite end of cannabis prohibition," *The Globe and Mail*, October 17, 2018, <https://www.theglobeandmail.com/cannabis/article-the-stigma-that-survives-will-determine-whether-cannabis-becomes-an/>

¹⁰³ Julia Peterson, "Post-secondary funding protest moves online amidst COVID-19 concerns," *CBC News*, March 20, 2020, <https://www.cbc.ca/news/canada/saskatchewan/budget-day-protest-online-saskatchewan-1.5504899>.

¹⁰⁴ "Canadians hold protests, vigils for black lives lost at the hands of police," *CBC News*, June 5, 2020, <https://www.cbc.ca/news/canada/canadian-floyd-anti-racism-rallies-1.5346328>.

¹⁰⁵ Adam Kovac, "10 arrested, over 140 tickets given as thousands protest in Montreal against pandemic public health measures," *CTV News*, March 13, 2021, <https://montreal.ctvnews.ca/10-arrested-over-140-tickets-given-as-thousands-protest-in-montreal-against-pandemic-public-health-measures-1.5346328>.

¹⁰⁶ Stephanie Carvin, "How the Freedom Convoy was fuelled by online activism," *National Post*, March 5, 2022, <https://nationalpost.com/opinion/stephanie-carvin-how-the-freedom-convoy-was-fuelled-by-online-activism>.

¹⁰⁷ "Constitution Act, Canadian Charter of Rights and Freedoms," 1982, <https://laws-lois.justice.gc.ca/eng/const/page-15.html>.

	2020	2021	2022
C2: Are there laws that assign criminal penalties or civil liability for online activities, particularly those protected under international human rights standards? (0–4 points)	2	2	2

Users can face significant criminal penalties for some forms of online expression, as well as civil liability for defamation emanating from common law principles. Some provincial defamation laws and the general civil liability regime in Quebec also limit freedom of expression online.

Hate speech, along with advocating genocide and uttering threats and defamatory libel, are also regulated under the criminal code.¹⁰⁸ Punishment for defamatory libel, advocating genocide, and uttering threats may include imprisonment for up to five years. Hate speech is punishable by up to two years in prison. Human rights complaints regarding potentially defamatory statements can be decided through the mechanisms provided by provincial human rights laws and the Canadian Human Rights Act (CHRA).¹⁰⁹ However, the controversial provision of the CHRA prohibiting online hate speech (s. 13), which was criticized for being overly broad, was repealed in 2013.¹¹⁰

In June 2021, the government introduced Bill C-36,¹¹¹ which would amend the criminal code to enable an individual to appear before a court if they are concerned that someone may commit an offense “motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, gender identity or expression, or any other similar factor.”¹¹² The bill reintroduced the controversial provision of the CHRA and would also allow victims of hate speech to send formal complaints to the Canadian Human Rights Tribunal. However, the bill did not advance by the closure of the 43rd parliament in August 2021.¹¹³ The re-elected Liberal government announced its intention to reintroduce similar legislation as soon as possible in February 2022.¹¹⁴

In January 2021, an Ontario court took the definition of defamation one step further when it recognized a common law tort of “internet harassment” to address the defendant’s online conduct and publications in *Caplan v. Atas* (see B2, C3, and C6). In this case, the court defined “internet harassment” as “serial publications of defamatory material,” which are used to “harass, harr, and molest” the victim.¹¹⁵

Antispam legislation enacted in 2014 requires opt-in consent to send commercial electronic messages. Critics of the legislation have argued that it is overly broad and overregulates commercial speech. After the Federal Court of Appeals upheld the constitutionality of the law in 2020,¹¹⁶ in March 2021, the SCC refused to hear an appeal, effectively ending any constitutional challenge.¹¹⁷

	2020	2021	2022
C3: Are individuals penalized for online activities, particularly those protected under international human rights standards? (0–6 points)	6	6	6

Individuals were not arrested or prosecuted for online activities that are protected under international human rights standards during the coverage period, though courts have recently increased awards in online defamation cases.

¹⁰⁸ R.S.C 1985 c. C-46, <https://laws-lois.justice.gc.ca/eng/acts/C-46/FullText.html>.

¹⁰⁹ R.S.C., 1985, c. H-6, <https://laws-lois.justice.gc.ca/eng/acts/H-6/FullText.html>.

¹¹⁰ Parliament of Canada, “Bill C-304, An Act to amend the Canadian Human Rights Act (protecting freedom), S.C. 2013, c. 37,” September 13, 2013, <https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=5124394&Language=E&Mode=1>.

¹¹¹ Parliament of Canada, Bill C-36, June 23, 2021, <https://parl.ca/DocumentViewer/en/43-2/bill/C-36/first-reading>.

¹¹² Eric Stober, “Liberals introduce bill to fight online hate with Criminal Code amendments,” *Global News*, June 23, 2021, <https://globalnews.ca/news/7976076/bill-c-36-online-hate-canada/>.

¹¹³ Dale Smith, “Here’s what died on the order paper,” *National Magazine*, August 17, 2021, <https://nationalmagazine.ca/en-ca/articles/law/hot-topics-in-law/2021/here-s-what-died-on-the-order-paper>.

¹¹⁴ Marie Woolf (Canadian Press), “Liberals to reintroduce anti-hate bill ‘as soon as possible,’ minister says,” *Global News*, February 4, 2022, <https://globalnews.ca/news/8595683/anti-hate-bill-c-36-liberals/>.

¹¹⁵ *Caplan v. Atas*, 2021 ONSC 670, January 28, 2021, <https://www.canlii.org/en/on/onpsc/doc/2021/2021onsc670/2021onsc670.html>.

¹¹⁶ *3510395 Canada Inc. v. Canada* (Attorney General), 2020 FCA 103, June 5, 2020, <https://www.canlii.org/en/ca/fca/doc/2020/2020fca103/2020fca103.html>.

¹¹⁷ Barry Sookman, “Supreme Court denies Compufinder leave to appeal in CASL Charter and constitutional challenge,” March 4, 2021, <https://www.barrysookman.com/2021/03/04/supreme-court-denies-compufinder-leave-to-appeal-in-casl-charter-and-constitutional-challenge/>.

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 risk of prosecution, unless the discourse violates the hate speech provisions in the criminal code, or rises to the level of harassment, which is both a criminal offense¹¹⁸ and now an actionable civil tort in Canada (see B2, C2, and C7).

Canadian courts take a proactive approach when hearing online defamation cases, and are increasingly willing to grant large monetary awards in some cases. In September 2019, a British Columbia court issued C\$200,000 (\$154,000) in damages.¹¹⁹ In January 2018, the Court of Appeal of Ontario upheld a C\$700,000 (\$539,000) judgment issued in 2016.¹²⁰ In January 2020, an Ontario judge issued significant awards for defamation against anonymous online defendants for only the second time in Canadian legal history.¹²¹ In October 2021, an Ontario court awarded C\$50,000 (\$40,000) each to two plaintiffs in a defamation suit against an individual who had initiated a social media campaign against them in 2020. The campaign began after the defendant saw screenshots from a Snapchat video that she assumed was mocking the May 2020 killing of George Floyd in the United States.¹²²

	2020	2021	2022
C4: Does the government place restrictions on anonymous communication or encryption? (0–4 points)	4	4	4

The government does not impose any restrictions on anonymous communication or encryption. Canadians are free to use encryption services and communicate anonymously online, without any fear of civil or criminal sanction. In August 2019, the Minister of Public Safety and Emergency Preparedness suggested that technology companies must actively combat the online exploitation of children, which he said is facilitated by encrypted communications.¹²³ The comments followed a July 2019 communiqué, and preceded an October 2019 communiqué, from ministers in the “Five Eyes alliance”—five countries that maintain an intelligence operations agreement, including Canada—that criticized technology companies for providing encrypted products and limiting law enforcement access to those products.¹²⁴ In October 2020, the Five Eyes joined the governments of Japan and India in requesting a “backdoor” for encrypted communications services.¹²⁵

	2020	2021	2022
C5: Does state surveillance of internet activities infringe on users’ right to privacy? (0–6 points)	4	4	4

State surveillance of internet users under limited circumstances may infringe on privacy rights. In 2015, the government passed Bill C-51, the Anti-Terrorism Act. Bill C-51 permitted information sharing across government agencies for a wide range of purposes, many of which are unrelated to terrorism. Several efforts to reform Canada’s antiterrorism laws have subsequently materialized, most recently with Bill C-59.

¹¹⁸ Criminal Code, R.S.C., 1985, c. C-46, section 264, <https://laws-lois.justice.gc.ca/eng/acts/c-46/FullText.html>.

¹¹⁹ “Rook v. Halcrow, 2019 BCSC 2253,” September 25, 2019, <https://www.bccourts.ca/jdb-txt/sc/19/22/2019BCSC2253.htm>.

¹²⁰ “Rutman v. Rabinowitz, 2018 ONCA 80,” CANLII, January 31, 2018, <https://www.canlii.org/en/on/onca/doc/2018/2018onca80/2018onca80.html>.

¹²¹ “Theralase Technologies Inc. v. Lanter, 2020 ONSC 205,” CANLII, January 13, 2020,

<https://www.canlii.org/en/on/onsc/doc/2020/2020onsc205/2020onsc205.html>.

¹²² Lavalée et al. v. Isak, 2021 ONSC 6661, <https://www.canlii.org/en/on/onsc/doc/2021/2021onsc6661/2021onsc6661.html>.

¹²³ Stuart Thomson, “We’re closer to the knife’s edge: Confrontation looming on encryption ‘backdoors’ as Goodale looks for balance,” National Post, August 7, 2019, <https://nationalpost.com/news/politics/were-closer-to-the-knifes-edge-confrontation-looming-on-encryption-backdoors-as-goodale-looks-for-balance>

¹²⁴ “Joint meeting of Five Country Ministerial and quintet of Attorneys-General: communiqué, London 2019,” gov.uk, 2019, <https://www.gov.uk/government/publications/five-country-ministerial-communique/joint-meeting-of-five-country-ministerial-and-quintet-of-attorneys-general-communique-london-2019>; See also: “Joint Meeting of FCM and Quintet of Attorneys-General,” 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822818/Joint_Meeting_of_FCM_and_Quintet_of_Attorneys-General_FINAL.pdf.

¹²⁵ “India joins Five Eyes, Japan in demanding backdoor into WhatsApp end-to-end encrypted chats,” India Today, October 12, 2020, <https://www.indiatoday.in/technology/news/story/india-joins-five-eyes-japan-in-demanding-backdoor-into-whatsapp-end-to-end-encrypted-chats-1730681-2020-10-12>.

Bill C-59, an Act Respecting National Security Matters,¹²⁶ was introduced in June 2017 to address some of the more problematic provisions of the Anti-Terrorism Act,¹²⁷ and was passed in June 2019.¹²⁸ The law limits the broad criminal-speech provisions originally seen in Bill C-51. Bill C-59 is also meant to enhance parliamentary oversight through the creation of a National Security and Intelligence Review Agency and an Office of the Intelligence Commissioner.¹²⁹ Bill C-59 still allows the government to engage in cyberoperations, but its powers to do so are more limited than in Bill C-51.¹³⁰ Civil society groups raised concerns that Bill C-59 does not fully address surveillance issues posed by the previous legislation,¹³¹ and still grants too much power to the government, including the ability to engage in mass data collection.¹³² In February 2021, judges began hearing related cases, and have set limits on the government's intelligence agency (CSIS) and its ability to spy on foreign countries.¹³³

The Office of the Privacy Commissioner (OPC) provides an important oversight function concerning the privacy of users' data. The privacy commissioner, 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,¹³⁴ which covers the practices of federal government departments and agencies related to the handling of personal information.

A general right to privacy is not enshrined in Canadian law, though the Canadian Charter of Rights and Freedoms includes protections against unreasonable search or seizure, which are often interpreted as a right to privacy.¹³⁵ This was demonstrated in 2020, when the Alberta Court of Appeal determined that a law that allowed for unrestricted searches of personal electronic devices by border agents violated this protection.¹³⁶

In December 2021, the Prime Minister announced his intention to propose legislation to strengthen privacy protections for users in the near future, and provide for significant monetary penalties for non-compliance and massive enforcement powers for the federal privacy authorities and a new privacy tribunal.¹³⁷ The government had introduced a bill to this effect in 2020, Bill C-11, but it did not advance after the August 2021 closure of the 43rd parliament.¹³⁸ The Federal government is seeking to catch up with provincial privacy law, notably Quebec, which passed GDPR-style privacy reforms in September 2021.¹³⁹ In June 2022, after the coverage period, the government introduced Bill C-27 which generally presented the identical framework as Bill C-11.¹⁴⁰

The SCC has also expanded privacy rights relating to technology. Most recently, in December 2018, the court ruled that privacy rights are still protected when a computer is shared with others.¹⁴¹ In 2017, the court extended the right to privacy to text messages in a pair of companion cases. First, the court held that there could be a reasonable expectation of privacy in received text messages, whereas previously, privacy protections only applied to sent messages.¹⁴² In the second case, the court held that the sender of text messages has a reasonable

¹²⁶ House of Commons of Canada, "1st session, 42nd Parl.," June 20, 2017, <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-59/first-reading>.

¹²⁷ Craig Forcese and Kent Roach, "The roses and the thorns of Canada's new national security bill," *Maclean's*, June 20, 2017, <https://www.macleans.ca/politics/ottawa/the-roses-and-thorns-of-canadas-new-national-security-bill/>.

¹²⁸ Catharine Tunney, "Canada's national security landscape will get a major overhaul this summer," *CBC News*, June 23, 2019, <https://www.cbc.ca/news/politics/bill-c59-national-security-passed-1.5182948>

¹²⁹ Catharine Tunney, "Canada gets its first-ever intelligence commissioner," *CBC News*, July 18, 2019, <https://www.cbc.ca/news/politics/intelligence-commissioner-plouffe-1.5216443>; See also: International Civil Liberties Monitoring Group, "Bill C-59: Changes to C-51," January 2020, <https://iclmg.ca/issues/bill-c-59-the-national-security-act-of-2017/bill-c-59s-changes-to-c-51/>; See also: Preston Lim, "Canada Considers Most Far-Reaching Intell Reforms in Decades," *Just Security*, May 13, 2019, <https://www.justsecurity.org/64030/canada-considers-most-far-reaching-intell-reforms-in-decades/>.

¹³⁰ Victoria Henry, "C-59: A Promise Not Kept," *OpenMedia*, July 11, 2019, <https://openmedia.org/en/c-59-promise-not-kept>.

¹³¹ Canadian Civil Liberties Association, "Read CCLA's Submissions on Bill C-59," January 19, 2018, <https://ccla.org/read-cclas-submissions-bill-c-59/>.

¹³² International Civil Liberties Monitoring Group, "Bill C-59, The National Security Act, 2017, is now law. Parliamentarians have failed to protect Canadians' rights and freedoms," June 18, 2019, <https://iclmg.ca/c59-is-law/>; See also: Victoria Henry, "C-59: A Promise Not Kept," *OpenMedia*, July 11, 2019, <https://openmedia.org/en/c-59-promise-not-kept>.

¹³³ Jim Bronskill, "Judge denies CSIS request to collect foreign intelligence," *CTV News*, February 3, 2021, <https://www.ctvnews.ca/politics/judge-denies-csis-request-to-collect-foreign-intelligence-1.5294826>.

¹³⁴ "R.S.C., 1985, c. P-21," August 28, 2019, <https://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>

¹³⁵ "Canadian Charter of Rights and Freedoms," 1982, <https://laws-lois.justice.gc.ca/eng/const/page-15.html>.

¹³⁶ R. v. Canfield, 2020 ABCA 383, <https://www.canlii.org/en/ab/abca/doc/2020/2020abca383/2020abca383.html>.

¹³⁷ Prime Minister of Canada, "Minister of Innovation, Science and Industry Mandate Letter," December 16, 2021, <https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-innovation-science-and-industry-mandate-letter>.

¹³⁸ House of Commons of Canada, Bill C-11, An Act to enact the Consumer Privacy Protection Act and the Personal Information and Data Protection Tribunal Act and to make consequential and related amendments to other Acts, First Reading November 17, 2020, <https://parl.ca/DocumentViewer/en/43-2/bill/C-11/first-reading>.

¹³⁹ Fasken, "The Beginning of a New Era for the Private Sector: Bill 64 on the Protection of Personal Information Has Been Adopted," September 23, 2021, <https://www.fasken.com/en/knowledge/projet-de-loi-64/2021/09/23-debut-temps-nouveau-secteur-prive-pl-64-adopte>.

¹⁴⁰ Government of Canada, "New laws to strengthen Canadians' privacy protection and trust in the digital economy", News Release, June 16, 2022, <https://www.canada.ca/en/innovation-science-economic-development/news/2022/06/new-laws-to-strengthen-canadians-privacy-protection-and-trust-in-the-digital-economy.html>. See legislative information and text of the Bill at <https://www.parl.ca/legisinfo/en/bill/44-1/c-27>.

¹⁴¹ "R. v. Reeves, 2018 SCC 56," December 13, 2018, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17405/index.do>.

¹⁴² "R. v. Marakah, 2017 SCC 59," December 8, 2017, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16896/index.do>.

expectation of privacy, even when they are stored on the telecommunications provider's computers.¹⁴³ On the other hand, sometimes the Supreme Court does not find a reasonable expectation of privacy on the internet in more egregious circumstances, for example in exchanges of Facebook messages and emails in relation to a police sting regarding the criminal luring of minors.¹⁴⁴

The COVID-19 pandemic has provided authorities the opportunity to erode privacy rights. For example, the Ontario government's April 2020 emergency order allowed it to share personal information in their possession with emergency response personnel, including police officers and paramedics.¹⁴⁵ In August 2020, Ontario officials ended this information sharing practice following a lawsuit from human rights organizations.¹⁴⁶ The OPC's annual report released in December 2021 reiterated the previous year's report's emphasis on the need for heightened privacy during the pandemic and reform of privacy laws as a result.¹⁴⁷ The OPC is currently investigating whether the Federal government's health authorities overreached when analysing Canadian's cell phone location data during the pandemic.¹⁴⁸ On the other hand, privacy concerns about the government's COVID-19 tracing app, COVID Alert, were minimized, as privacy watchdogs found little reason for concern.¹⁴⁹

	2020	2021	2022
C6: Does monitoring and collection of user data by service providers and other technology companies infringe on users' right to privacy? (0–6 points)	4	4	4

Both ISPs and mobile service providers may be legally required to aid the government in monitoring communications of their users.

The OPC and the Privacy Commissioner oversee compliance with the private-sector privacy law,¹⁵⁰ the Personal Information Protection and Electronic Documents Act (PIPEDA).¹⁵¹ PIPEDA was modified by the Digital Privacy Act,¹⁵² passed in 2015. The Digital Privacy Act 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 act also established new mandatory security breach disclosure requirements, which came into force in November 2018.¹⁵³ PIPEDA, however, remains relatively toothless. The new CPPA bill (see C5) which would replace PIPEDA, has significant fines and penalties on the order of those found in the European Union's General Data Protection Regulation (GDPR), though this development occurred outside the coverage period.

The OPC continues to call for changes to the Privacy Act,¹⁵⁴ which has not been significantly amended since 1983. The commission argues that the act is outdated, does not reflect current digital privacy concerns, and allows the government too much latitude to collect personal information.¹⁵⁵ There was no progress on this reform during the coverage period.

The OPC shocked the legal community in January 2018 when it released a draft position paper concluding that

¹⁴³ "R. v. Jones, 2017 SCC 60," December 8, 2017, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16897/index.do>.

¹⁴⁴ R v. Mills, 2019 SCC 22, April 18, 2019, <https://www.canlii.org/en/ca/scc/doc/2019/2019scc22/2019scc22.html>.

¹⁴⁵ Beatrice Britneff, "Privacy experts raise red flags as Ontario first responders get access to COVID-19 info," Global News, April 7, 2020, <https://globalnews.ca/news/6788234/privacy-experts-red-flags-covid-19-info/>.

¹⁴⁶ "Ontario ends police access to COVID-19 database after legal challenge," CBC News, August 17, 2020, <https://www.cbc.ca/news/canada/toronto/covid-ont-police-database-1.5690220>

¹⁴⁷ OPC, "Projecting our values into laws," https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202021/ar_202021/ **Error! Hyperlink reference not valid.** (the "2020-2021 OPC Report").

¹⁴⁸ Alex Boutilier, "Canada's privacy watchdog probing health officials' use of cellphone location data," *Global News*, January 11, 2022, <https://globalnews.ca/news/8503895/watchdog-probing-officials-cell-location-data/>.

¹⁴⁹ Alexandra Mae Jones, "Canadian privacy watchdogs support COVID-19 exposure app," CTV News, August 3, 2020, <https://www.ctvnews.ca/health/coronavirus/canadian-privacy-watchdogs-support-covid-19-exposure-app-1.5049847>.

¹⁵⁰ Office of the Privacy Commissioner of Canada, "About the OPC," September 14, 2016, <https://web.archive.org/web/20170330201210/https://www.priv.gc.ca/en/about-the-opc/>.

¹⁵¹ "Personal Information Protection and Electronic Documents Act (PIPEDA), S.C. 2000, c. 5," June 21, 2019, <https://laws-lois.justice.gc.ca/eng/acts/P-86/index.html>.

¹⁵² "Digital Privacy Act, S.C. 2015, c. 32," June 18, 2015, https://laws-lois.justice.gc.ca/eng/annualstatutes/2015_32/page-1.html.

¹⁵³ Government of Canada, "Breach of Security Safeguards Regulations, published in the Canada Gazette SOR/2018-64, Part II," March 27, 2018, <http://www.gazette.gc.ca/rp-pr/p2/2018/2018-04-18/html/sor-dors64-eng.html>.

¹⁵⁴ See the 2020-2021 OPC Report, *supra* note 160.

¹⁵⁵ Alex Boutilier, "Ottawa is 'blurring' lines on privacy as it looks for new ways to collect data: watchdog," *The Star*, February 21, 2018, <https://www.thestar.com/news/canada/2018/02/21/ottawa-is-blurring-lines-on-privacy-as-it-looks-for-new-ways-to-collect-data-watchdog.html>.

PIPEDA contained a European-style “right to be forgotten” provision.¹⁵⁶ Commentators questioned the OPC’s conclusions and reasoning.¹⁵⁷ In October 2018, the OPC submitted a reference question to the Federal Court to clarify whether indexing web pages and presenting results about a person’s name in Google’s search function fall under PIPEDA, which would support their right to be forgotten position. In July 2021, the Federal Court finally issued its decision and stated that indeed Google search falls under PIPEDA;¹⁵⁸ Google appealed the decision in September 2021].¹⁵⁹

The OPC conducts investigations into major data breaches and other matters to determine whether private companies comply with PIPEDA. In its investigation into the 2017 Equifax breach, the OPC found major PIPEDA violations. In response, Equifax took numerous corrective measures and signed a compliance agreement.¹⁶⁰ In the OPC’s investigation into the Cambridge Analytica scandal, Facebook refused to take significant corrective measures or implement the OPC’s recommendations.¹⁶¹ In February 2020, the OPC filed an application with the Federal Court seeking a declaration that Facebook violated PIPEDA and orders requiring Facebook to take corrective action,¹⁶² which continues to proceed through the court and while a final decision is far from being rendered,¹⁶³ a preliminary ruling on certain procedural matters was released in June 2021.¹⁶⁴ While the OPC had found that Clearview AI had violated PIPEDA and the privacy of Canadians when scraping images from the internet without consent and sharing the with law enforcement, it was forced to rely on its provincial counterparts for enforcement,¹⁶⁵ demonstrating the weakness of PIPEDA.

Numerous court decisions have made it easier for Canadians to seek legal redress against foreign internet companies for privacy violations. In a landmark 2017 decision, the SCC ruled that residents of British Columbia could bring a class action suit against Facebook for violating certain privacy rights in a British Columbia court, despite Facebook’s choice-of-forum clause specifying California.¹⁶⁶ Other courts followed up on this decision, with a Quebec court deciding that Yahoo’s choice-of-forum clause was inoperative, as its terms and conditions were deemed to be a consumer contract that granted jurisdiction to Quebec.¹⁶⁷ 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, in 2017 the Federal Court found that PIPEDA has extraterritorial application, and ordered a Romanian website to remove court decisions that contained easily searchable personal information of Canadian citizens. The site was ordered to never post such information again,¹⁶⁸ and the court ordered the website to pay damages to the plaintiff.

The technical paper for harmful online content (see B3),¹⁶⁹ which was introduced in August 2021, mandates that Online Communications Service Providers (OCSPs) retain data about individuals who might have shared harmful content and may be obligated to share this data with law enforcement.¹⁷⁰

¹⁵⁶ Office of the Privacy Commissioner of Canada, “Draft OPC Position on Online Reputation,” January 28, 2018, https://www.priv.gc.ca/en/about-the-opc/what-we-do/consultations/completed-consultations/consultation-on-online-reputation/pos_or_201801/.

¹⁵⁷ Michael Geist, “Why the Canadian Privacy Commissioner’s Proposed Right to be Forgotten Creates More Problems Than it Solves,” January 29, 2018, <http://www.michaelgeist.ca/2018/01/privacycommishrtbf/>; See also: Allen Mendelsohn, “Surprise! Canada has had a Right To Be Forgotten all along!,” January 30, 2018, <http://allenmendelsohn.com/2018/01/surprise-canada-has-had-a-right-to-be-forgotten-all-along/>.

¹⁵⁸ Reference re Subsection 18.3(1) of the Federal Courts Act, 2021 FC 723, <https://www.canlii.org/en/ca/fct/doc/2021/2021fc723/2021fc723.html>.

¹⁵⁹ Case A-250-21 (Google LLC v. The Privacy Commissioner of Canada et al) case information, https://apps.fca-caf.gc.ca/pq/IndexingQueries/infp_RE_info_e.php?select_court=All&court_no=A-250-21, accessed March 28, 2022.

¹⁶⁰ OPC, “Investigation into Equifax Inc. and Equifax Canada Co.’s compliance with PIPEDA in light of the 2017 breach of personal information - PIPEDA Report of Findings #2019-001,” April 9, 2019, <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2019/pipeda-2019-001/>.

¹⁶¹ OPC, “Joint investigation of Facebook, Inc. by the Privacy Commissioner of Canada and the Information and Privacy Commissioner for British Columbia - PIPEDA Report of Findings #2019-002,” April 25, 2019, <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2019/pipeda-2019-002/>.

¹⁶² OPC, “Privacy Commissioner files Notice of Application with the Federal Court against Facebook, Inc.,” February 6, 2020, https://www.priv.gc.ca/en/opc-news/news-and-announcements/2020/an_200206/.

¹⁶³ See case information T-190-20 and T-473-20 at <https://www.fct-cf.gc.ca/en/court-files-and-decisions/court-files#cont>; see also the 2020-2021 OPC Report, supra note 160.

¹⁶⁴ Canada (Privacy Commissioner) v. Facebook, Inc., 2021 FC 599, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/499490/index.do>.

¹⁶⁵ OPC Announcement, “Clearview AI ordered to comply with recommendations to stop collecting, sharing images,” December 14, 2021, https://www.priv.gc.ca/en/opc-news/news-and-announcements/2021/an_211214/.

¹⁶⁶ “Douce v. Facebook, Inc., 2017 SCC 33,” June 23, 2017, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16700/index.do>.

¹⁶⁷ “Demers c. Yahoo! Inc., 2017 QCCS 4154,” CANLII, September 19, 2017, <https://www.canlii.org/en/qc/qccs/doc/2017/2017qccs4154/2017qccs4154.html>.

¹⁶⁸ “A.T. v. Globe24h.com, 2017 FC 114,” CanLII, January 30, 2017, <https://www.canlii.org/en/ca/fct/doc/2017/2017fc114/2017fc114.html>.

¹⁶⁹ Government of Canada, Department of Canadian Heritage, “Harmful Online Content Technical Paper,” accessed September 2021, <https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content/technical-paper.html>.

¹⁷⁰ Daphne Keller, “Five Big Problems with Canada’s Proposed Regulatory Framework for ‘Harmful Online Content,’” Tech Policy Press, August 31, 2021, <https://techpolicy.press/five-big-problems-with-canadas-proposed-regulatory-framework-for-harmful-online-content/>.

	2020	2021	2022
C7: Are individuals subject to extralegal intimidation or physical violence by state authorities or any other actor in relation to their online activities? (0–5 points)	5	5	5

There were no documented cases of violence or physical harassment in retaliation for online activities during the reporting period. However, cyberbullying, cyberstalking, and general online harassment, particularly affecting young people, is on the rise.¹⁷¹ A 2020 survey found that 62 percent of Canadian women aged 15–25 have been harassed or abused online.¹⁷²

The legal precedence of a noteworthy case involving the nonconsensual sharing of intimate material has taken on new significance. In a highly praised 2016 landmark civil court decision, a man who published intimate videos of his ex-girlfriend without her consent was ordered to pay C\$100,000 (\$77,000) to his former partner, who suffered severe emotional distress.¹⁷³ Later that year, however, the default judgment was set aside,¹⁷⁴ and an appeal of this decision was denied.¹⁷⁵ As a result, the new privacy tort of “public disclosure of private facts” established in the original decision was in a state of flux, but has since been adopted in several courts. The new tort was applied in a November 2018 case, in which an individual was found liable for posting a sexually explicit video of a person without their consent on a pornographic website, and was ordered to pay C\$100,000 (\$77,000) in damages.¹⁷⁶ The new tort was also applied in a different province for the first time in September 2021, when the Alberta Court of Queen’s Bench used the tort in awarding \$185,000 in damages to a victim of non-consensual distribution of intimate images.¹⁷⁷

In December 2019, a court cited the tort in awarding significant damages in a family law case involving a man cyberbullying his ex-wife and posting negative videos of their children, who were minors, online.¹⁷⁸ The 2016 case continues to be cited by other plaintiffs, authors, and courts.¹⁷⁹ The newly established tort of “internet harassment” (see B2, C2, and C3) could in theory also find relevance in these cases. There are also increasing calls for tech companies to take aggressive action in removing such material,¹⁸⁰ and to face criminal penalties.¹⁸¹ Pornhub, a Montreal-based pornography platform, has faced numerous lawsuits in Canada and the United States accusing them of profiting from underage nonconsensual intimate images,¹⁸² and in October 2021 settled one lawsuit featuring 50 female plaintiffs who alleged that the platform had knowingly partnered with a pornography provider that uploaded sexually explicit videos of the plaintiffs without their consent.¹⁸³

Additionally, many provinces, including Manitoba¹⁸⁴ and Alberta,¹⁸⁵ have passed laws that create civil torts for unauthorized distribution of intimate images and videos. Individuals are still prosecuted 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.¹⁸⁶ By December 2019, Canadian police forces received nearly 5,000 complaints

¹⁷¹ “More than 1 million young Canadians victims of cyberbullying, cyberstalking: StatsCan,” *CBC News*, December 19, 2016, <https://www.cbc.ca/news/technology/million-canadians-cyberbullying-cyberstalking-statcan-1.3903435>.

¹⁷² News release, “Online harassment is silencing girls online, driving them from Facebook, Instagram and Twitter,” October 5, 2000, <https://www.newswire.ca/news-releases/online-harassment-is-silencing-girls-online-driving-them-from-facebook-instagram-and-twitter-802561885.html>.

¹⁷³ “Doe 464533 v N.D., 2016 ONSC 541,” CanLII, January 21, 2016, <http://canlii.ca/t/gn23z>.

¹⁷⁴ “Doe v N.D., 2016 ONSC 4920,” CanLII, September 16, 2016, <https://www.canlii.org/en/on/onsc/doc/2016/2016onsc4920/2016onsc4920.html>.

¹⁷⁵ “Doe 464533 v N.D., 2017 ONSC 127,” CanLII, January 9, 2017, <https://www.canlii.org/en/on/onsc/doc/2017/2017onsc127/2017onsc127.html>.

¹⁷⁶ Jane Doe 72511 v. Morgan, 2018 ONSC 6607; See also: Omar Ha-Redeye, “Public Disclosure of Private Facts – Redux,” *Slaw.ca*, November 11, 2018, <http://www.slaw.ca/2018/11/11/public-disclosure-of-private-facts-redux/>.

¹⁷⁷ *ES v. Shillington*, 2021 ABQB 739, <https://www.canlii.org/en/ab/abqb/doc/2021/2021abqb739/2021abqb739.html>.

¹⁷⁸ “Yenovkian v. Gulian, 2019 ONSC 7279,” CanLII, December 17, 2019, <https://www.canlii.org/en/on/onsc/doc/2019/2019onsc7279/2019onsc7279.html>.

¹⁷⁹ Omar Ha-Redeye, “Public Disclosure of Private Facts – Redux,” *Slaw.ca*, November 11, 2018, <http://www.slaw.ca/2018/11/11/public-disclosure-of-private-facts-redux/>.

¹⁸⁰ Karen Pauls, “Woman who spent years scrubbing explicit video from internet urges tech firms to make it easier to remove,” *CBC News*, December 1, 2020, <https://www.cbc.ca/news/canada/manitoba/canada-internet-children-abuse-pornography-1.5822042>.

¹⁸¹ Christopher Reynolds, “Survivors, NGOs call for criminal investigation of porn giant MindGeek,” *CBC News*, March 4, 2021, <https://www.cbc.ca/news/politics/calls-for-criminal-investigation-mindgeek-1.5937117>.

¹⁸² Selena Ros, “New lawsuit against Pornhub alleges improvements to the site don’t go far enough,” *CTV News*, February 13, 2021, <https://montreal.ctvnews.ca/new-lawsuit-against-pornhub-alleges-improvements-to-the-site-don-t-go-far-enough-1.5308001>.

¹⁸³ Joe Lofaro, “Pornhub owner settles lawsuit with 50 women, including four Canadians,” *CTV News*, October 20, 2021, <https://montreal.ctvnews.ca/pornhub-owner-settles-lawsuit-with-50-women-including-four-canadians-1.5630651>.

¹⁸⁴ “Intimate Image Protection Act, C.C.S.M. c. I87,” October 1, 2020, <https://web2.gov.mb.ca/laws/statutes/ccsm/pdf.php?cap=i87>.

¹⁸⁵ “Protecting Victims of Non-Consensual Distribution of Intimate Images Act, S.A. 2017 ch. P-26.9,” August 4, 2017, <http://www.qp.alberta.ca/documents/Acts/P26p9.pdf>.

¹⁸⁶ “R. v. P.S.D., 2016 BCPC 400,” CanLII, December 12, 2016, <https://www.canlii.org/en/bc/bcpc/doc/2016/2016bcpc400/2016bcpc400.html>; See also: “R. v. A.C., 2017 ONCJ 129,” CanLII, February 16, 2017, <https://www.canlii.org/en/on/oncj/doc/2017/2017oncj129/2017oncj129.html?resultIndex=1>.

since nonconsensual sharing of intimate material was federally criminalized in December 2014.¹⁸⁷ In 2020 alone there were 2217 criminal incidents of non-consensual distribution of intimate images.¹⁸⁸

	2020	2021	2022
C8: Are websites, governmental and private entities, service providers, or individual users subject to widespread hacking and other forms of cyberattack? (0–3 points)	2	2	2

Cyberattacks and data breaches have become a serious issue in Canada, continuing to rise every year. During the 2020–2021 period, the OPC received 782 data breach reports under PIPEDA, an increase of 15 percent from the previous period, that affected over 9 million Canadian accounts.¹⁸⁹ Since a PIPEDA requirement that private companies report data breaches to the OPC came into effect in 2018, the number of reports of such breaches has increased by 600 percent.¹⁹⁰ It is unclear whether the number of breaches is increasing or the mandatory reporting requirement has led to more reports.

Statistics Canada reported that 57 percent of internet users suffered some sort of cybersecurity incident during the 2018 calendar year,¹⁹¹ and about one-fifth of Canadian businesses were impacted by cybersecurity incidents in 2019.¹⁹² A recent study indicated that one-quarter of Canadian businesses suffered a cyberattack in 2021,¹⁹³ and the financial cost of data breaches to businesses hit an all-time high in 2021.¹⁹⁴

Major Canadian companies have recently been subject to cyberattacks and data breaches, including Lifelabs, Canada's largest healthcare lab testing company, and the Desjardins Group, one of Canada's largest banking groups.¹⁹⁵ An OPC investigation found Desjardins violated numerous provisions of PIPEDA.¹⁹⁶ In September 2020, major Canadian e-commerce company Shopify was a victim of data theft by its own employees.¹⁹⁷

In 2020, a survey released by the Canadian Internet Registration Authority (CIRA) indicated that one-third of respondents said their organization was targeted by a pandemic-related cyberattack.¹⁹⁸ Experts warn that increased online activities such as shopping during the pandemic has led to a massive increase in vulnerable online personal data,¹⁹⁹ which was also stressed in a report by the government's Canadian Centre for Cyber Security.²⁰⁰ The report also cited state-sponsored actors from China, Russia, Iran, and North Korea, as the greatest

¹⁸⁷ Bonnie Allen, "Revenge porn and sext crimes: Canada sees more than 5,000 police cases as law marks 5 years," CBC News, December 24, 2019, <https://www.cbc.ca/news/canada/saskatchewan/revenge-porn-and-sext-crimes-canada-sees-more-than-5-000-police-cases-as-law-marks-5-years-1.5405118>.

¹⁸⁸ Statistics Canada, "Incident-based crime statistics, by detailed violations, Canada, provinces, territories and Census Metropolitan Areas," accessed March 27, 2022,

<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510017701&pickMembers%5B0%5D=1.1&pickMembers%5B1%5D=2.257&cubeTimeFrame.startYear=2000&cubeTimeFrame.endYear=2020&referencePeriods=20000101%2C20200101>.

¹⁸⁹ See the 2020–2021 OPC Report, *supra* note 160.

¹⁹⁰ *Ibid.*

¹⁹¹ Statistics Canada, "Cybercrime in Canada," December 2, 2019, <https://www150.statcan.gc.ca/n1/pub/89-28-0001/2018001/article/00015-eng.htm>.

¹⁹² Statistics Canada The Daily, "About one-fifth of Canadian businesses were impacted by cyber security incidents in 2019," October 20, 2020, <https://www150.statcan.gc.ca/n1/daily-quotidien/201020/dq201020a-eng.htm>.

¹⁹³ Canadian Press, "A quarter of Canadian companies have been victims of a cyber attack in 2021: survey," *CTV News*, February 7, 2022, <https://montreal.ctvnews.ca/a-quarter-of-canadian-companies-have-been-victims-of-a-cyber-attack-in-2021-survey-1.5770718>.

¹⁹⁴ Amanda Stephenson, "Cost of data breaches in Canada hit new record in 2021: IBM," *CTV News*, July 28, 2021, <https://calgary.ctvnews.ca/cost-of-data-breaches-in-canada-hit-new-record-in-2021-ibm-1.5526127>.

¹⁹⁵ Aidan Wallace, "Major data breaches in 2019," January 1, 2020, *Toronto Sun*, <https://torontosun.com/news/world/major-data-breaches-in-2019>.

¹⁹⁶ PIPEDA Report of Findings #2020-005, December 14, 2020, <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2020/pipeda-2020-005/>.

¹⁹⁷ "Shopify fires 2 employees for stealing customer data from up to 200 merchants," CBC News, September 23, 2020, <https://www.cbc.ca/news/business/shopify-data-breach-1.5735191>.

¹⁹⁸ Sarah Cole, "Canada Bombarded with COVID-19-Themed Cyber-attacks," info security magazine, October 6, 2020, <https://www.infosecurity-magazine.com/news/canada-bombarded-with-covid19/>. Original CIRA report at <https://www.cira.ca/cybersecurity-report-2020>.

¹⁹⁹ "Pandemic online shopping boom has generated bumper crop of vulnerable personal data, e-commerce experts warn," CBC News, January 22, 2021, <https://www.cbc.ca/radio/spark/pandemic-online-shopping-boom-has-generated-bumper-crop-of-vulnerable-personal-data-e-commerce-experts-warn-1.5883949>.

²⁰⁰ Canadian Centre for Cyber Security, "National Cyber Threat Assessment 2020," November 16, 2020, <https://cyber.gc.ca/en/guidance/national-cyber-threat-assessment-2020>.

strategic cybersecurity threats to Canada.²⁰¹ Ransomware attackers have increasingly targeted critical infrastructure, emergency medical services, and law enforcement agencies throughout the pandemic.²⁰²

Cyberattacks and data breaches have also affected federal government agencies and actors. In August 2020, the Canada Revenue Agency (CRA,) the federal department that oversees taxation and other financial services, suffered multiple significant cyberattacks that compromised the usernames and passwords of thousands of online accounts,²⁰³ which led the CRA to lock out 800,000 Canadians from their accounts as a precautionary measure in March 2021.²⁰⁴ In February 2020, the government disclosed that agencies suffered thousands of privacy breaches affecting the personal information of at least 144,000 Canadians in 2018 and 2019; the actual figure may be higher due to underreporting.²⁰⁵ While the OPC saw the number of data breaches reported from government agencies fall in 2020-2021, it "remain(s) convinced that under-reporting by federal government organizations represents a systemic problem."²⁰⁶ Even the IT system of the Governor General (Canada's official head of state) was hacked during the coverage period.²⁰⁷

²⁰¹ News release, "Canadian Centre for Cyber Security Releases the Canadian National Cyber Threat Assessment 2020," November 18, 2020, <https://www.canada.ca/en/communications-security/news/2020/11/canadian-centre-for-cyber-security-releases-the-canadian-national-cyber-threat-assessment-2020.html>.

²⁰² Canadian Centre for Cyber Security, "Cyber threat bulletin: The ransomware threat in 2021," December 9, 2021, <https://cyber.gc.ca/en/guidance/cyber-threat-bulletin-ransomware-threat-2021>.

²⁰³ Rachel D'Amore, "What to know (and do) about the CRA breach and shutdown," Global News, August 17, 2020, <https://globalnews.ca/news/7281074/cra-hack-online-services/>.

²⁰⁴ Rachel Aiello, "CRA locking 800K Canadian taxpayers out of accounts," CTV News, March 12, 2021, <https://www.ctvnews.ca/canada/cra-locking-800k-canadian-taxpayers-out-of-accounts-1.5345069>.

²⁰⁵ Catharine Tunney, "Personal information belonging to 144,000 Canadians breached by federal departments and agencies," *CBC News*, February 14, 2020, <https://www.cbc.ca/news/politics/privacy-breach-canada-1.5457502>.

²⁰⁶ See the 2020-2021 OPC Report, *supra* note 160, "Privacy Act breaches" section.

²⁰⁷ Raisa Patel, "Gov. Gen. Mary Simon's office says its internal network was hacked," *The Toronto Star*, December 2, 2021, <https://www.thestar.com/politics/federal/2021/12/02/gov-gen-mary-simons-office-says-its-internal-network-was-hacked.html>.