

Canada

	2021	2022	2023
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

[TO BE UPDATED IN FINAL DRAFT]

Internet freedom in Canada remained robust during the coverage period. Internet access is reliable and affordable for most 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 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 laws relating to government surveillance laws and personal privacy. While Indigenous and other marginalized Canadians still face discrimination and economic, social, and political challenges, the federal government has acknowledged and made some moves to address these issues.

Key Developments, June 1, 2022 - May 31, 2023

- [TO BE UPDATED IN FINAL DRAFT]
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A. Obstacles to Access (0-25 points)

	2021	2022	2023
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 several newer technologies to provide mobile broadband service, and fifth-generation (5G) technology network coverage reached 87.8 percent as of 2021, up almost 35 percentage points from its introduction in 2020.¹ According to 2021 data from the International Telecommunications Union (ITU), Canada has a 42 percent fixed broadband penetration rate and a 75 percent mobile broadband penetration rate.²

Broadband service of at least 25 megabits per second (Mbps) reached 96.6 percent household availability in 2021, according to the regulatory body that oversees the communications industry, the Canadian Radio-television and Telecommunications Commission (CRTC).³ In 2019, 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

GUIDELINES

Score Table

FOTN 2023 scores reflect the internet freedom environment within the 12-month coverage period between June 1, 2022 and May 31, 2023.

In the table to the left, please add all points from the sub-question tables below for each category and the total.

Please update the report using Track Changes

A1 sub-questions:

- Do individuals have access to high-speed internet services at their home, place of work, libraries, schools, and other venues, as well as on mobile devices?
- Does poor infrastructure (including unreliable electricity) or catastrophic damage to infrastructure (caused by events such as natural disasters or armed conflicts) limit residents' ability to access the internet?

¹ Canadian Radio-television and Telecommunications Commission, "Current trends - Mobile wireless," accessed March 2023, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/mob.htm>.

² International Telecommunications Union, "Digital Development Dashboard (Canada)," accessed March 2023, <https://www.itu.int/en/ITU-D/Statistics/Dashboards/Pages/Digital-Development.aspx>.

³ Canadian Radio-television and Telecommunications Commission, "Current trends - High-speed broadband," accessed May 2023, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/mob.htm>.

⁴ Canadian Radio-television and Telecommunications Commission, "Departmental Plan 2022-2023," March 2, 2022, <https://crtc.gc.ca/eng/publications/reports/dp2022/dp2022.htm>

identified as Canada's "Universal Service Objective" in a landmark 2016 policy decision.⁵ Canada is making progress on this front, moving from 89.7 percent availability in 2020 to 91.4 percent availability in 2021 (thus achieving the first objective), with 75.0 percent of all subscribers having service at such speeds as of the third quarter of 2022.⁶

In conjunction with the 2016 decision, the CRTC declared high-speed internet access a "basic telecommunications service" and established a C\$750 million dollar (\$587 million) fund to reach those targets.⁷ In 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 2022, with C\$226.5 million (\$161.3 million) awarded as of March 2023.¹⁰ A third round of calls for project applications opened in November 2022, with a focus on small, rural, and Indigenous communities.¹¹ The CRTC's fund is part of a larger commitment to broadband access in Canada through the C\$3.225 billion (\$2.15 billion) Universal Broadband Fund.¹²

While robust infrastructure generally safeguards against power shortages or blackouts that limit Canadians' internet access, a failure following a maintenance update caused a country-wide mobile and internet outage for customers of one of the major ISPs, Rogers, that lasted 15 hours in July 2022.¹³

	2021	2022	2023
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 10 draft principles for a digitally connected Canada in its October 2019 Digital Charter.¹⁴

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 when the CRTC reduced the price of wholesale high-speed internet access in 2016,¹⁵ and again in March 2023.¹⁶ According to 2021 ITU data, a 5 gigabyte (GB) fixed broadband connection costs 1.2 percent of gross national income (GNI) per capita, while a 1.5

A2 sub-questions:

- Do financial constraints—such as high prices for internet services, excessive taxes imposed on such services, or state manipulation of the relevant markets—make internet access prohibitively expensive for large segments of the population?
- Are there significant differences in internet penetration and access based on geographical area, or for certain ethnic, religious, gender, LGBT+, migrant, and other relevant groups?
- Do pricing practices, such as zero-rating plans, by service providers

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, "Current trends - High-speed broadband," accessed March 2023, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/ban.htm>.

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 March 7, 2023.

¹¹ CRTC Telecom Notice of Consultation CRTC 2022-325, November 30, 2022, <https://crtc.gc.ca/eng/archive/2022/2022-325.htm>.

¹² Government of Canada, "Universal Broadband Fund," November 8, 2022, <https://ised-isde.canada.ca/site/high-speed-internet-canada/en/universal-broadband-fund>.

¹³ Malu Cursino, "Canada's internet outage caused by 'maintenance'," BBC, July 10, 2022, <https://www.bbc.com/news/world-us-canada-62110358>.

¹⁴ "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.

¹⁵ Canadian Radio-television and Telecommunications Commission, Telecom Order CRTC 2016-396, October 6, 2016, <https://crtc.gc.ca/eng/archive/2016/2016-396.htm>.

¹⁶ CRTC news release, "CRTC launches review of approach to Internet services competition and lowers some wholesale rates effectively immediately," March 8, 2023, <https://www.canada.ca/en/radio-television-telecommunications/news/2023/03/crtc-launches-review-of-approach-to-internet-services-competition-and-lowers-some-wholesale-rates-effectively-immediately.html>.

GB mobile broadband connection costs 0.6 percent GNI per capita.¹⁷

Perhaps the most important obstacle to availability and ease of access is geography: 82 percent of Canada's population lives in urban areas.¹⁸ While providing "reliable and affordable telecommunications services of high quality" to rural areas is enshrined in law,¹⁹ affordable high-speed internet service is less available in more isolated areas, especially in the vast northern territories. The most recent call for projects under the CRTC's Broadband Fund, however, could help to lessen this divide (see A1).

High-speed internet access is also more expensive in rural areas than in cities, and rural customers have fewer choices of ISPs, according to the CRTC's 2020 figures.²⁰ In 2021, rural customers paid on average C\$7.47 per month more than urban customers for a CRTC-defined "high-quality" fixed-broadband package with 50 Mbps download speeds, 10 Mbps upload speeds, and unlimited data transfers.²¹ 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. The Federal government's 2023 budget promised a crackdown on "junk fees" including internet overage charges, which may help lower prices for both wireless and wired connectivity.²²

When considering the CRTC's high-quality service definitions, the urban-rural divide is extremely significant: 50 Mbps service is available to 99.2 percent of urban households, but only 62.0 percent of rural households.²³ The divide may finally be shrinking however, as the 53 percentage point spread from 2019 is down to 37 in 2021.²⁴

The government has generally taken a patchwork approach to improving connectivity in remote communities, with differing government departments providing funds and strategies seemingly without a central, detailed plan. In 2019, the government pledged to spend between C\$5 billion (\$3.9 billion) to C\$6 billion (\$4.7 billion) to improve rural broadband services over 10 years.²⁵ The 2021 budget—presented in April as the first budget in two years due the COVID-19 pandemic²⁶—included an additional C\$1 billion (\$783 million) that will in part go towards improving rural and remote broadband access.²⁷ The 2022 and 2023 budgets did not add any additional funds to this initiative.²⁸ While the Minister of Rural Economic Development proposed a comprehensive strategy for improving connectivity in 2019,²⁹ it has produced few tangible results.

The urban-rural divide increased during the COVID-19 pandemic,³⁰ and a merger between two

and digital platforms contribute to a digital divide in terms of what types of content individuals with different financial means can access?

¹⁷ International Telecommunications Union, "Digital Development Dashboard (Canada)," accessed March 2023, <https://www.itu.int/en/ITU-D/Statistics/Dashboards/Pages/Digital-Development.aspx>.

¹⁸ 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>.

¹⁹ *Telecommunications Act*, S.C. 1993, c.38, section 7(b), <https://laws-lois.justice.gc.ca/eng/acts/T-3.4/FullText.html>.

²⁰ 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>.

²¹ Canadian Radio-television and Telecommunications Commission, "Current trends - High-speed broadband," accessed March 2023, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/ban.htm>.

²² Government of Canada, "Budget 2023 A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future," Chapter 1, Section 1.1, <https://www.budget.canada.ca/2023/report-rapport/chap1-en.html#a2>.

²³ Canadian Radio-television and Telecommunications Commission, "Current trends - High-speed broadband," accessed March 2023, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/ban.htm>.

²⁴ *Ibid.*

²⁵ 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>.

²⁶ 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>.

²⁷ 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>.

²⁸ 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>. Government of Canada, "Budget 2023 A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future," March 23, 2023, available at <https://www.budget.canada.ca/2023/home-accueil-en.html>.

²⁹ Innovation, Science and Economic Development Canada, "High-Speed Access for All: Canada's Connectivity Strategy," April 11, 2022, <https://ised-isde.canada.ca/site/high-speed-internet-canada/en/canadas-connectivity-strategy/high-speed-access-all-canadas-connectivity-strategy>.

³⁰ 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/>.

of Canada's largest telecommunications companies is also expected to intensify the divide (see A4).³¹

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.³²

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

	2021	2022	2023
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, except for the Federal government and several provincial governments banning TikTok from government-issued phones in 2023 over security and privacy concerns (see B1).³³

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.

	2021	2022	2023
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.

A3 sub-questions:

- Does the government (or the de-facto government in a given area) restrict, or compel service providers to restrict, internet connectivity by slowing or shutting down internet connections during specific events (such as protests or elections), either locally or nationally?
- Does the government centralize internet infrastructure in a manner that could facilitate restrictions on connectivity?
- Does the government block, or compel service providers to block, social media platforms and communication apps that serve in practice as major conduits for online information?
- Does the government block, or compel service providers to block, certain protocols, ports, and functionalities within such platforms and apps (e.g., Voice-over-Internet-Protocol or VoIP, video streaming, multimedia messaging, Secure Sockets Layer or SSL), either permanently or during specific events?
- Do restrictions on connectivity disproportionately affect marginalized communities, such as inhabitants of certain regions or those belonging to different ethnic, religious, gender, LGBT+, migrant, diaspora, and other relevant groups?

A4 sub-questions:

- Is there a legal or de facto monopoly on the provision of fixed-line, mobile, and public internet access?
- Does the state place extensive legal, regulatory, or economic requirements on the establishment or operation of service providers?
- Do operational requirements, such as retaining customer data or

³¹ "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>.

³² 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>.

³³ Joey Chini, "Most Canadian provinces banning or considering banning TikTok from government-issued phones," *CTV News*, March 1, 2023, <https://www.ctvnews.ca/canada/most-canadian-provinces-banning-or-considering-banning-tiktok-from-government-issued-phones-1.6294870>.

To operate as a Canadian telecommunications provider, a company must meet the requirements in Section 16 of the Telecommunications Act. The telecommunications market has been dominated in recent years by the five largest companies (Bell, Québecor, Rogers, Shaw, and TELUS), which accounted for approximately 91 percent of total retail telecommunications market in 2023, based on market capitalization.³⁴

The telecommunications market in Canada is set to become even more concentrated with the merger of two of the five largest companies, Rogers and Shaw. After the CRTC approved the broadcasting portion of the merger in 2021,³⁵ the government, through the Minister of Innovation, Science and Industry, gave final approval to the merger, valued at C\$26 billion, on March 31, 2023;³⁶ the deal was finalized three days later, on April 3.³⁷ On orders of the government as a condition to the merger, the merger excluded Shaw's wireless division, Freedom Mobile, which will be purchased by Québecor's Vidéotron. The government claimed this act will actually increase competition and affordability in the telecommunications sector,³⁸ but commentators remain unconvinced.³⁹

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 and ownership impose barriers to entry limiting competitions.⁴⁰ The provision of access services is subject to regulation, with rules on tower-sharing and 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 88.3 percent of the mobile market's revenue in 2021.⁴¹ 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. 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 kept artificially high. This perception is not without merit, as Canada's wireless prices continue to be rated amongst the highest in the world.⁴² However, in March 2020 the government ordered the three largest wireless companies (Bell, TELUS, and Rogers) to lower their prices by 25 percent over the next two years.⁴³ This was achieved for "mid-range" wireless plans by January 2022.⁴⁴ Wireless prices fell by 2.6 percent on average in 2022.⁴⁵

preventing access to certain content, place an onerous financial burden on service providers?

³⁴ Floella Church, "Most Popular Canadian Telecommunication Companies in 2023," Canada Telecommunications, <https://www.ctca.ca/most-popular-canadian-telecommunication-companies/>.

³⁵ CRTC, Broadcasting Decision CRTC 2022-76, March 24, 2022, <https://crtc.gc.ca/eng/archive/2022/2022-76.htm>.

³⁶ Anja Karadeglija, "Liberal government approves Rogers-Shaw, wireless assets to go to Quebecor," National Post, March 31, 2023 <https://nationalpost.com/news/politics/liberal-government-approves-rogers-shaw-wireless-assets-quebecor>.

³⁷ "Rogers takeover of Shaw finalized, deal now official," CBC News, April 3, 2023, <https://www.cbc.ca/news/business/rogers-shaw-merger-official-1.6799566>.

³⁸ Canada (Department of Innovation, Science and Economic Development Canada), "Statement from Minister Champagne concerning competition in the telecommunication sector, March 31, 2023, <https://www.canada.ca/en/innovation-science-economic-development/news/2023/03/statement-from-minister-champagne-concerning-competition-in-the-telecommunication-sector.html>.

³⁹ Michael Geist, "Competition in Canada Takes Another Hit: Government Gives Go Ahead for Rogers – Shaw Merger," March 31, 2023, <https://www.michaelgeist.ca/2023/03/competition-in-canada-takes-another-hit-government-gives-go-ahead-for-rogers-shaw-merger/>.

⁴⁰ Emily Jackson, "Canada has one of the world's most protected telecom sectors — and the rates to show for it," *Toronto Star*, July 24, 2018, <https://financialpost.com/telecom/tight-reins-leaves-our-telecom-sector-open-to-criticism-but-sadly-not-competition>.

⁴¹ CRTC, "Data – Retail mobile," November 2022, <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/cmrd.htm>, Tab MB-15.

⁴² 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>. Katie Pederson, "Why are Canadians' cellphone bills higher than other countries?" CBC News, January 13, 2023, <https://www.cbc.ca/news/business/marketplace-high-cell-phone-bills-1.6711205>.

⁴³ 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>.

⁴⁴ 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>.

⁴⁵ Government of Canada News Release, "Government of Canada continues to deliver on more affordable telecom services," March 10, 2023, <https://www.canada.ca/en/innovation-science-economic-development/news/2023/03/government-of-canada-continues-to-deliver-on-more-affordable-telecom-services.html>.

	2021	2022	2023
A5: Do national regulatory bodies that oversee service providers, digital platforms, and the internet more broadly 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 traditionally 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 been reinforced on numerous occasions since,⁴⁶ including by the Supreme Court of Canada (SCC).⁴⁷ Amendments to Canada's Broadcasting Act in the form of Bill C-11, called the "Online Streaming Act," proposed in February 2022⁴⁸ and ultimately made law in April 2023,⁴⁹ threaten to dramatically alter Canada's media landscape. It potentially allows for regulation of the internet and its content in new and myriad ways, effectively discarding the new media exemption and regulating content from non-Canadian sources.⁵⁰ The law empowers the CRTC to impose regulations on streaming platforms regarding "the proportion of programs to be broadcast that shall be Canadian programs" and requires those services to "make expenditures to support the Canadian broadcasting system."⁵¹ The final law as passed did not include Senate amendments that would have explicitly shielded user-generated content from the law, instead allowing for the CRTC to potentially regulate such content.⁵² The law also extends the potential regulation of internet programs (both audio streams and video) by the CRTC to foreign companies, through its addition of a new class of "online undertakings" to be regulated, which would include providers and hosts of programs as well as social media companies.⁵³ The effects of such regulations in practice remained unclear during the coverage period.

B. Limits on Content (0-35 points)

	2021	2022	2023
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).

A5 sub-questions:

- Are there explicit legal guarantees that protect the independence and autonomy of regulatory bodies overseeing the internet (exclusively or as part of a broader mandate) from political or commercial interference?
- Is the process for appointing members of regulatory bodies transparent and representative of different stakeholders' legitimate interests?
- Are decisions taken by regulatory bodies relating to the internet seen to be fair and to take meaningful notice of comments from stakeholders in society?
- Are decisions taken by regulatory bodies seen to be apolitical and independent from changes in government?
- Are decisions taken by regulatory bodies seen to be protecting internet freedom, including by ensuring service providers, digital platforms, and other content hosts behave fairly?

B1 sub-questions:

- Does the state use, or compel service providers to use, technical means to restrict freedom of opinion and expression, for example by blocking or filtering websites and online content featuring journalism, discussion of human rights, educational materials, or political, social, cultural, religious, and artistic expression?
- Does the state use, or compel service providers to use, technical means to block or filter access to websites that may be socially or

⁴⁶ *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>.

⁴⁷ "Reference re Broadcasting Act, 2012 SCC 4," February 9, 2012, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7989/index.do>.

⁴⁸ 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>

⁴⁹ Richard Raycraft, "Controversial bill to regulate online streaming becomes law," *CBC News*, April 27, 2023, <https://www.cbc.ca/news/politics/c11-online-streaming-1.6824314>.

⁵⁰ 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/>.

⁵¹ Bill C-11, "Online Streaming Act," Parliament of Canada, April 27, 2023, <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-11/royal-assent>.

⁵² See e.g. Michael Geist, "The Bill C-11 Compromise That Never Came," April 27, 2023, <https://www.michaelgeist.ca/2023/04/billc11end/>.

⁵³ See e.g. Allen Mendelsohn (this report's author), "Welcome (?) to the Online Streaming Act Era," April 30, 2023, <https://allenmendelsohn.com/2023/04/welcome-to-the-online-streaming-act-era/>.

In February and March 2023, the Federal government⁵⁴ and all Canadian provinces⁵⁵ banned the use and download of TikTok on government-issued devices, citing cybersecurity and privacy concerns over the Chinese-owned video platform. The actions followed similar bans in the United States and European Union.

Previously, 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. 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.⁵⁶ Legal experts criticized the decision on numerous grounds, including by calling it an overreach by the court into a policy issue that should be decided by Parliament or the CRTC.⁵⁷ 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).⁵⁸ In March 2022, the SCC declined to hear TekSavvy's second appeal, ending the case.⁵⁹

The media companies from the *Bell Media* case 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 internet protocol (IP) addresses of websites showing pirated content (specifically, live streamed professional hockey games) in real time.⁶⁰ The temporary order, which lasted the duration of the professional hockey season, is considered the first of its kind in North America.⁶¹ The order was quietly renewed in November 2022 for the 2022-23 National Hockey League (NHL) season.⁶² Bell Media also secured a similar site-blocking order during the 2022 FIFA World Cup.⁶³

In 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"⁶⁴ 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."⁶⁵ Ultimately, the CRTC rejected the proposal that year 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.⁶⁶ The plan has come under fire by commentators,⁶⁷ and submissions to the consultation process from a broad range of industry actors almost universally opposed it.⁶⁸ In June 2022, the CRTC released an enforcement decision that confirmed botnets need to be regulated, provided a framework for doing so, and

legally problematic (e.g., those related to gambling, pornography, copyright violations, illegal drugs) in lieu of more effective remedies, or in a manner that inflicts collateral damage on content and activities that are protected under international human rights standards?

- Does the state block or order the blocking of entire social media platforms, communication apps, blog-hosting platforms, discussion forums, and other web domains for the purpose of censoring the content that appears on them?
- Is there blocking of tools that enable individuals to bypass censorship, such as virtual private networks (VPNs)?
- Does the state procure, or compel services providers to procure, advanced technology to automate censorship or increase its scope?

⁵⁴ "Citing security concerns, Canada bans TikTok on government devices," NPR, February 28, 2023,

<https://www.npr.org/2023/02/28/1160004862/citing-security-concerns-canada-bans-tiktok-on-government-devices>.

⁵⁵ "Ontario bans TikTok on government devices," CBC News, March 9, 2023, <https://www.cbc.ca/news/canada/toronto/ontario-tiktok-ban-1.6773742>.

⁵⁶ 2019 FC 1432, November 15, 2019, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/424753/index.do>.

⁵⁷ 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/>.

⁵⁸ TekSavvy Solutions Inc. v. Bell Media Inc., 2021 FCA 100, <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/497659/index.do>.

⁵⁹ Supreme Court of Canada Docket, case # 39876, <https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=39876>.

⁶⁰ Rogers Media Inc. v. John Doe 1, 2022 FC 775, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/521629/index.do>.

⁶¹ 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>.

⁶² Rogers Media Inc. v. John Doe 1, Docket T-955-21 order dated November 21, 2022, available in PDF at https://www.bellmedia.ca/lede/wp-content/uploads/2023/03/T-955-21_Public_Order_21-NOV-2022.pdf.

⁶³ Bell Media Inc. v. John Doe 1, 2022 FC 1432, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/522339/index.do>.

⁶⁴ FairPlay Canada home page, <https://www.fairplaycanada.com/>.

⁶⁵ 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.

⁶⁶ "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>.

⁶⁷ 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/>.

⁶⁸ 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>.

required a CRTC working group to present a plan to block such websites within nine months.⁶⁹ After several months of gathering submissions,⁷⁰ the working group presented a draft of this plan in April 2023, which limited the blocking framework to the specific task of blocking botnets for command and control, but not for any other purpose (criminal, political, etc.). The framework did not provide specifics on how the blocking system would work, but only general principles⁷¹

	2021	2022	2023
B2: Do state or nonstate actors employ legal, administrative, or other means to force publishers, digital platforms, or other content hosts 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, 2018 legal amendments to the Copyright Act reduced the misuse of the law's notice-and-notice regime.

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.⁷² In 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.⁷³

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 a 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, came to an end with a C\$25 million (\$19.6 million) settlement in which the owner admitted liability, and the offending site was shut down.⁷⁴

In April 2022, the government introduced Bill C-18, the Online News Act,⁷⁵ which would require companies like Google and Facebook to compensate Canadian media companies for providing their news content on the platforms. Google reportedly blocked certain news content in February 2023, allegedly to test ways to comply with the potential law.⁷⁶ In March, Meta announced that it would prohibit all news content on Facebook in Canada if the bill becomes

B2 sub-questions:

- Are administrative, judicial, or extralegal measures used to order the deletion of content from the internet, particularly journalism, discussion of human rights, educational materials, or political, social, cultural, religious, and artistic expression, either prior to or after its publication?
- Do publishers, digital platforms, and content hosts (including intermediaries such as app stores and content delivery networks) arbitrarily remove such content due to informal or formal pressure from government officials or other powerful political actors?
- Do publishers, digital platforms, content hosts, and other intermediaries face excessive or improper legal responsibility for opinions expressed by third parties transmitted via the technology they supply, incentivizing them to remove such content?

⁶⁹ 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>.

⁷⁰ See CRTC Network Working Group: Contributions at <https://crtc.gc.ca/cisc/eng/cisf3d0b.htm>.

⁷¹ CRTC Interconnection Steering Committee's Network Working Group, "Development of a network-level blocking framework to limit botnet traffic and strengthen Canadians' online safety" draft report, April 22, 2023, <https://crtc.gc.ca/public/cisc/nt/NTRE080.pdf>.

⁷² 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>.

⁷³ "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>.

⁷⁴ 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-20224/>.

⁷⁵ See <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-18/first-reading>.

⁷⁶ Daniel Otis, "What is Bill C-18, and how do I know if Google is blocking my news content?" CTV News, February 23, 2023, <https://www.ctvnews.ca/politics/what-is-bill-c-18-and-how-do-i-know-if-google-is-blocking-my-news-content-1.6286816>.

law,⁷⁷ a position the company reiterated in May.⁷⁸ On June 22, 2023 (after the coverage period), the Bill became law, receiving royal assent after passing the House of Commons and the Senate.⁷⁹

In 2017, the SCC upheld the decision by the British Columbia Court of Appeal in *Google, Inc. v. Equustek Solutions, Inc.*,⁸⁰ 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 (see C3). Defamation claims may also prevent the posting of content, as the British Columbia Court of Appeal demonstrated in a 2018 case when it ordered a defendant not to post anything about the plaintiff and awarded damages.⁸¹ In 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.⁸² In 2021, a British Columbia court came to the opposite conclusion, specifically that a defamation case against Twitter could proceed in Canada.⁸³

In Quebec, where French is recognized as the only official language, websites that are commercial in nature are legally required to be in French,⁸⁴ 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. Recent updates to the Quebec language law in the form of Bill 96, which became law in June 2022, intended to strengthen use of the French language, have imposed even more onerous obligations on the use of French online, and provide for much harsher fines.⁸⁵ 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,⁸⁶ and at least one company temporarily halted e-commerce in Quebec as a result of Bill 96.⁸⁷

	2021	2022	2023
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	3

Restrictions on the internet are generally fair and proportionate. Exceptionally, the new Online Streaming Act (see A5) has the potential to seriously restrict internet content given its lack of transparency and proportionality.

In August 2021, the government released a technical paper for its forthcoming harmful online content legislation (see C6).⁸⁸ The proposed framework establishes a notice-and-takedown

B3 sub-questions:

- Are there national laws, independent oversight bodies, and other democratically accountable procedures in place to ensure that decisions to restrict access to certain content abide by international human rights standards and are proportional to their stated aim?
- Do specific laws or binding legal decisions require publishers, digital

⁷⁷ "Meta to end news access for Canadians if Online News Act becomes law," Reuters, March 13, 2023, <https://www.reuters.com/technology/meta-end-news-access-canadians-if-online-news-act-becomes-law-2023-03-11/>.

⁷⁸ Meta, "Meta's position on Canada's Online News Act," May 8, 2023, <https://about.fb.com/news/2023/05/metass-position-on-canadas-online-news-act/>.

⁷⁹ Government of Canada, Department of Canadian Heritage, "Online News Act receives Royal Assent," News Release June 22, 2023, <https://www.canada.ca/en/canadian-heritage/news/2023/06/online-news-act-receives-royal-assent.html>.

⁸⁰ "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>

⁸¹ "Nazerali v. Mitchell, 2018 BCCA 104," March 19, 2018, <https://www.canlii.org/en/bc/bcca/doc/2018/2018bcca104/2018bcca104.html>

⁸² "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>.

⁸³ Giustra v. Twitter, Inc., 2021 BCSC 54, January 14, 2021, <https://www.canlii.org/en/bc/bcsc/doc/2021/2021bcsc54/2021bcsc54.html>.

⁸⁴ "Charter of the French Language, c. C-11, Article 52," June 1, 2020, <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/C-11>.

⁸⁵ *An Act respecting French, the official and common language of Québec*, SQ 2022, c 14, available at <https://www.canlii.org/en/qc/laws/astat/sq-2022-c-14/latest/sq-2022-c-14.html>. See e.g. Dentons "The main impacts of Québec's Bill 96 on companies," June 23, 2022, <https://www.dentons.com/en/insights/articles/2022/june/22/the-main-impacts-of-quebecs-bill-96-on-companies>.

⁸⁶ Elysia Bryan-Baynes, "Quebec language police target English retail websites," November 13, 2014, <https://globalnews.ca/news/1671128/oqlf-targets-english-retail-websites/>.

⁸⁷ See e.g. Simon Nakonechny, "American company says it will stop shipping products to Quebec over new language law," CBC News, September 21, 2022, <https://www.cbc.ca/news/canada/montreal/otterbox-bill-96-1.6590501>.

⁸⁸ 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>.

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.⁸⁹ Significant monetary penalties for noncompliance by OCSs and OSCP include administrative monetary penalties (AMPs) in line with Canada's new privacy law (see C5).⁹⁰ In 2022, the government undertook consultations on the topic which were criticized for a lack of transparency,⁹¹ assembled an expert advisory panel,⁹² and held cross-country roundtables,⁹³ but as of March 2023, no legislation has yet been introduced.

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).⁹⁴ Accessing child sexual abuse imagery is illegal in Canada under section 163.1(4.1) of the criminal code,⁹⁵ 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 2016,⁹⁶ but remains inoperative as a Quebec court declared the law unconstitutional in 2018, ruling online gambling a federal rather than provincial matter.⁹⁷ In May 2021, the Quebec Court of Appeal upheld that ruling,⁹⁸ and in March 2022, the SCC declined to hear the matter.⁹⁹

In 2004, the SCC ruled that ISPs are not liable for copyright infringement violations committed by their subscribers,¹⁰⁰ a principle now enshrined in law.¹⁰¹ 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 (see B1), and ISPs do not disclose subscriber information without court approval, although the granting of such approvals have become more common in recent years.¹⁰²

The SCC's ruling in *Google, Inc. v. Equustek Solutions, Inc.*—wherein Google was ordered to remove URLs in its global index pointing to websites that infringed on the plaintiffs' trademark—was strictly focused on the law of intellectual property and interlocutory injunctions. Whether such worldwide orders may be granted in other areas of the law in the future, or whether they will have effect in foreign jurisdictions, is unclear.¹⁰³

platforms, ISPs, content hosts, and other intermediaries to restrict access to online material, particularly that which is protected under international human rights standards?

- Are those that restrict content—including state authorities, ISPs, content hosts, digital platforms, and other intermediaries—transparent about what content is blocked, deleted, or otherwise limited, including to the public and directly to the impacted user?
- Are rules for the restriction of content clearly defined, openly available for users to view, and implemented in a consistent and nondiscriminatory manner?
- Do individuals whose content is subjected to censorship have access to efficient and timely avenues of appeal with the actor responsible for restricting that content?
- Are self-regulatory mechanisms and oversight bodies effective at ensuring content protected under international human rights standards is not removed?

⁸⁹ 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/>.

⁹⁰ See sections 94 ff, 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>.

⁹¹ Priscilla Ki Sun Hwang, "Groups surprised at government 'secrecy' over online harm bill consultation," CBC News, May 04, 2022, <https://www.cbc.ca/news/canada/ottawa/internet-proposed-online-harm-legislation-consultation-canada-1.6431141>.

⁹² Canada (Department of Canadian Heritage), "Government of Canada announces expert advisory group on online safety," March 30, 2022, <https://www.canada.ca/en/canadian-heritage/news/2022/03/government-of-canada-announces-expert-advisory-group-on-online-safety0.html>.

⁹³ Canada (Department of Canadian Heritage), "What We Heard: 2022 Roundtables on Online Safety," January 31, 2023, <https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content/what-we-heard/report.html>.

⁹⁴ Cybertip!ca, "Cleanfeed Canada," <https://www.cybertip.ca/en/about/ccaice/>.

⁹⁵ Criminal Code, RSC 1985 c C-46 s 163.1(4.1).

⁹⁶ 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/>.

⁹⁷ "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=AAAAAQATcHJvamV0IGRlIGxhIGxvaSA3NAAAB&resultIndex=26>.

⁹⁸ 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>.

⁹⁹ SCC case file # 39774, <https://scc-csc.lexum.com/scc-csc/scc-l-csc-a/en/item/19249/index.do>.

¹⁰⁰ Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn of Internet Providers, [2004] SCC, 2 SCR 427.

¹⁰¹ 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>.

¹⁰² *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.

¹⁰³ For example, a US court has questioned whether Canadian courts have jurisdiction to make such an order, and has already granted a preliminary injunction against the implementation of the Equustek decision in the United States based on the long-standing principle of Google as an intermediary. See, *Google Inc. v. Equustek Solutions Inc.*, United States District Court, N.D. California, San Jose Division, Docket No. 5:17-cv-04207-EJD, November 2, 2017, <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?referer=https://www.google.ca/&httpsredir=1&article=2589&context=historical>; *Equustek Solutions Inc. v. Jack*, 2018 BCSC 610, April 16, 2018, <https://www.canlii.org/en/bc/bcsc/doc/2018/2018bcsc610/2018bcsc610.html>; *Equustek Solutions Inc. v. Jack*, 2020 BCSC 793, May 29, 2020, <https://www.canlii.org/en/bc/bcsc/doc/2020/2020bcsc793/2020bcsc793.html>.

Although platforms are legally protected from liability for copyright infringement by their users, they may face liability for alleged defamation once they have been alerted to the publication of the ostensibly defamatory content.¹⁰⁴ A court may also order the removal of such 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 material. URLs in such cases would not be removed.¹⁰⁵

	2021	2022	2023
B4: Do online journalists, commentators, and ordinary people practice self-censorship online? (0–4 points)	3	3	4

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

	2021	2022	2023
B5: Are online sources of information controlled or manipulated by the government or other powerful actors to advance a favored interest? (0–4 points)	4	4	4

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 of that year, 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.¹⁰⁶ An internal Elections Canada report completed in late October 2019 found numerous instances of false election information being spread on social media.¹⁰⁷ In March 2021, certain provisions of the Election Modernization Act prohibiting misinformation about political candidates' past criminal offenses and their place of birth were struck down by an Ontario Court as unconstitutional, because they violated the right to freedom of speech.¹⁰⁸ While an academic report concluded there was widespread misinformation during the 2021 Canadian federal election, it also concluded the overall election was minimally impacted by mis- and disinformation.¹⁰⁹

B4 sub-questions:

- Do internet users in the country engage in self-censorship on important political, social, or religious issues, including on public forums and in private communications?
- Does fear of retribution, censorship, state surveillance, or data collection practices have a chilling effect on online speech or cause individuals to avoid certain online activities of a civic nature?
- Where widespread self-censorship online exists, do some journalists, commentators, or ordinary individuals continue to test the boundaries, despite the potential repercussions?

B5 sub-questions:

- Do political leaders, government agencies, political parties, or other powerful actors directly manipulate information or disseminate false or misleading information via state-owned news outlets, official social media accounts/groups, or other formal channels?
- Do government officials or other actors surreptitiously employ or encourage individuals, companies, or automated systems to artificially amplify political narratives or smear campaigns on social media?
- Do government officials or other powerful actors pressure or coerce online news outlets, journalists, or other online commentators to follow a particular editorial direction in their reporting and commentary?
- Do authorities issue official guidelines or directives on coverage to online media outlets, including instructions to downplay or amplify certain comments or topics?

¹⁰⁴ See e.g. *Canoë Inc. c. Corriveau*, 2012 QCCA 109, *Baglow v. Smith*, 2015 ONSC 1175.

¹⁰⁵ "Crookes v. Newton", 2011 SCC 47, October 19, 2011, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do>.

¹⁰⁶ 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.

¹⁰⁷ 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>.

¹⁰⁸ 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>.

¹⁰⁹ McGill University Centre for Media, Technology and Democracy, "Mis- and Disinformation During the 2021 Canadian Federal Election," March 31, 2022, <https://www.mediatechdemocracy.com/all-work/mis-and-disinformation-during-the-2021-canadian-federal-election>.

False information was also spread through social media platforms during the COVID-19 pandemic as conspiracy theories gained traction,¹¹⁰ including those about the COVID-19 vaccine.¹¹¹ Reporting from April 2022 also revealed the presence of Russian-backed troll farms on Facebook and other social media platforms that used disinformation to target Canadians who distrusted the government's COVID-19 response.¹¹²

In recent years, the Government of Canada has advanced several proposals and taken some action to target disinformation online, especially in the areas of COVID-19 and Russia's invasion of Ukraine, notably through its Digital Citizen Initiative – "a multi-component strategy that aims to support democracy and social inclusion in Canada by building citizen resilience against online disinformation."¹¹³

	2021	2022	2023
B6: Are there economic, regulatory, or other constraints that negatively affect individuals' 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.¹¹⁴ With these policies, the CRTC has substantively completed a national framework that ensures the continuation of net neutrality. In a 2018 report, a parliamentary committee encouraged the government to strengthen net neutrality even further by enshrining the principle in the Telecommunications Act.¹¹⁵

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 initiated in its 2017 budget.¹¹⁶ Commentators have warned that the report, which focused heavily on content produced in Canada, may herald the weakening of net neutrality.¹¹⁷ However, the report itself included a commitment to the net neutrality principle.¹¹⁸

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 (\$391 million) on Canadian productions over the next five years.¹¹⁹ Furthermore, the Online

- Do government officials or other actors bribe or use close economic ties with online journalists, commentators, or website owners in order to influence the content they produce or host?
- Does disinformation, coordinated by foreign or domestic actors for political purposes, have a significant impact on public debate?

B6 sub-questions:

- Are favorable informal connections with government officials or other powerful actors necessary for online media outlets, content hosts, or digital platforms (e.g., search engines, email applications, blog-hosting platforms) to be economically viable?
- Does the state limit the ability of online media or other content hosts to accept advertising or investment, particularly from foreign sources, or does it discourage advertisers from conducting business with disfavored online media or other content hosts?
- Do onerous taxes, regulations, or licensing fees present an obstacle to participation in, establishment of, or management of digital platforms, news outlets, blogs, or social media groups/channels?
- Do ISPs manage network traffic and bandwidth availability in a manner that is transparent, is evenly applied, and does not discriminate against users or producers of content based on the nature or source of the content itself (i.e., do

¹¹⁰ 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/>.

¹¹¹ 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>; 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/>.

¹¹² Tom Blackwell, "Russian troll farms aiming disinformation war at Canadian anti-vaxxers: Global Affairs expert," *SaltWire*, April 19, 2022, <https://www.saltwire.com/atlantic-canada/news/russian-troll-farms-aiming-disinformation-war-at-canadian-anti-vaxxers-global-affairs-expert-100719536/>.

¹¹³ Canada, "Digital Citizen Initiative – Online disinformation and other online harms and threats," March 20, 2023, <https://www.canada.ca/en/canadian-heritage/services/online-disinformation.html>.

¹¹⁴ 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>.

¹¹⁵ 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>.

¹¹⁶ 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>.

¹¹⁷ 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/>.

¹¹⁸ 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>.

¹¹⁹ 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&>.

Streaming Act (see A5) will require online undertakings to contribute to Canadian content. 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.¹²⁰ 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 2021,¹²¹ after having been proposed in the government’s April 2021 budget¹²² and passed into law that June.¹²³

In December 2021, the federal government proposed an additional “Digital Services Tax” (DST) where online companies with annual worldwide revenues of over €750 million (\$849 million) would have to pay a 3 percent tax on their Canadian revenues, if those Canadian revenues are greater than C\$20 million (\$15.7 million).¹²⁴ The DST would not come into force before 2024, but would apply retroactively as of 2022 if passed. The government appears to be moving forward with the tax, despite complaints from American tech industry groups and opposition from U.S. trade officials.¹²⁵

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.¹²⁶ In December 2021, the Manitoba provincial government also added a sales tax,¹²⁷ and in July 2022, British Columbia began to apply sales taxes to online marketplaces such as eBay.¹²⁸

	2021	2022	2023
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 high-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. For example, there are online outlets dedicated to Canada’s First Nations peoples,¹²⁹ LGBTQ+ issues,¹³⁰ and feminist perspectives.¹³¹ Misinformation surrounding the COVID-19 virus was a significant issue in Canada throughout the pandemic,¹³² and Russian disinformation about the war in Ukraine has reportedly

they respect “net neutrality” with regard to content)?

B7 sub-questions:

- Are people able to access a range of local, regional, and international news sources that convey independent, balanced views in the main languages spoken in the country?
- Do online media outlets, social media pages, blogs, and websites represent diverse interests, experiences, and languages within society, for example by providing content produced by different ethnic, religious, gender, LGBT+, migrant, diaspora, and other relevant groups?

¹²⁰ 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>.

¹²¹ 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>.

¹²² 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/annx6-en.html#application-of-the-gst-hst-to-e-commerce>.

¹²³ 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>.

¹²⁴ 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/drleng-apl/2021/bia-leb-1221-1-eng.html>.

¹²⁵ See e.g. Michael Geist, “The Biden Visit to Canada: Why Digital Policy is Emerging as a Serious Trade Tension,” March 22, 2023, <https://www.michaelgeist.ca/2023/03/the-biden-visit-to-canada-why-digital-policy-is-emerging-as-a-serious-trade-tension/>; United States Trade Representative, “USTR Opposes Canada’s Digital Services Tax Act Proposal,” February 22, 2022, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/february/ustr-opposes-canadas-digital-services-tax-act-proposal>.

¹²⁶ “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>.

¹²⁷ 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>.

¹²⁸ See e.g. Gordon Hoekstra, “New B.C. sales tax rules go into effect July 1 for online marketplaces like Amazon, eBay,” *Vancouver Sun*, June 26, 2022, <https://vancouversun.com/business/local-business/new-bc-sales-tax-rules-go-into-effect-canada-day-for-online-marketplaces>.

¹²⁹ See e.g. APTN News, <https://www.aptnnews.ca/>.

¹³⁰ See e.g. The ArQuives, <https://arquives.ca/>.

¹³¹ See e.g. Feminist Current, <https://www.feministcurrent.com/>.

¹³² Karine Garneau 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>.

undermined Canadians' ability to obtain accurate information about the war.¹³³ There is a wide range of content available in both official federal languages (English and French), as well as many other languages.

	2021	2022	2023
B8: Do conditions impede individuals' ability to form communities, mobilize, and campaign online, 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 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 information and communications technology (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.¹³⁴

Canadians were especially active in the online #MeToo movement,¹³⁵ which prompted the justice minister to consider updating laws to ensure victims of sexual violence are treated more compassionately in courtrooms.¹³⁶ This online activism also influenced the government to introduce Bill C-65,¹³⁷ which became law in 2018 and dramatically updated the legal framework for harassment as it applies to the federal government and federally regulated workplaces.¹³⁸ Online activism likely played a role in the decision to legalize cannabis countrywide,¹³⁹ which also went into effect in 2018. Canadians 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 2020.¹⁴⁰ As the pandemic progressed, the internet helped organize in-person protests once again, around issues ranging from Black Lives Matter¹⁴¹ to protests against mask mandates and other pandemic-related public health measures.¹⁴² The so-called "Trucker

- Does a lack of competition among digital platforms, content hosts, and other intermediaries undermine the diversity of information to which people have access?
- Does the presence of misinformation undermine users' ability to access independent, credible, and diverse sources of information?
- Does false or misleading content online significantly contribute to offline harms, such as harassment, property destruction, physical violence, or death?
- If there is extensive censorship, do users employ VPNs and other circumvention tools to access a broader array of information sources?

B8 sub-questions:

- Can people freely participate in civic life online and join online communities based around their political, social, or cultural identities, including without fear of retribution or harm?
- Do civil society organizations, activists, and communities organize online on political, social, cultural, and economic issues, including during electoral campaigns and nonviolent protests, including without fear of retribution or harm?
- Do state or other actors limit access to online tools and websites (e.g., social media platforms, messaging groups, petition websites) for the purpose of restricting free assembly and association online?
- Does the state place legal or other restrictions (e.g. criminal provisions, detentions, surveillance) for the purpose of restricting free assembly and association online?

¹³³ David Akin, "Russian disinformation fogs up view of Ukraine war for many Canadians," Global News, February 24, 2023, <https://globalnews.ca/news/9510264/russian-disinformation-view-ukraine-war-canadians/>.

¹³⁴ Open Media, <https://openmedia.org/>.

¹³⁵ Adina Bresge, "#MeToo movement prompting sexual-assault survivors to break silence to family," *National Post*, January 31, 2018, <https://nationalpost.com/pm-news-pmn/canada-news-pmn/metoo-movement-prompting-sexual-assault-survivors-to-break-silence-to-family>.

¹³⁶ Kate Taylor, "Where to go after #MeToo," *The Globe and Mail*, December 6, 2017, <https://tgam.ca/2GNPCW1>.

¹³⁷ "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>.

¹³⁸ Parliament of Canada, "Statutes of Canada, Chapter 22," October 25, 2018, <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-65/royal-assent>.

¹³⁹ 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-anti-racism-rallies-1.5599792>.

¹⁴⁰ 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>.

¹⁴¹ "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-1.5599792>.

¹⁴² 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>.

Convoy” of early 2022 in Ottawa was fueled by online activity, including crowdfunding efforts to financially support attendees.¹⁴³

In March 2022, the Ontario Superior Court of Justice granted a temporary injunction against TikTok user Brooke Dietrich, ordering her to stop all activist activities on the platform against the anti-abortion group 40 Days for Life; the case is ongoing.¹⁴⁴

C. Violations of User Rights (0-40 points)

	2021	2022	2023
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.”¹⁴⁵ These protections apply to all forms of speech, whether online or offline. There are a few restrictions that apply to online speech (see C2).

	2021	2022	2023
C2: Are there laws that assign criminal penalties or civil liability for online activities, particularly those that are 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.¹⁴⁶ 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

C1 sub-questions:

- Does the constitution contain language that provides for freedom of expression, access to information, and press freedom generally?
- Are there laws or binding legal decisions that specifically protect online modes of expression and access to information?
- Do executive, legislative, and other governmental authorities comply with these legal decisions, and are these decisions effectively enforced?
- Are online journalists and commentators accorded strong rights and protections to perform their work?
- Is the judiciary independent, and do senior judicial bodies and officials support free expression, access to information, and press freedom online?

C2 sub-questions:

- Do specific laws—including penal codes and those related to the media, defamation, cybercrime, cybersecurity, and terrorism—criminalize online expression and activities that are protected under international human rights standards (e.g., journalism, discussion of human rights, educational materials, or political, social, cultural, religious, and artistic expression)?
- Are restrictions on online activities defined by law, narrowly

¹⁴³ 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>.

¹⁴⁴ Canadian Civil Liberties Association (Cara Zwibel), “CCLA Intervening in Tik Tok Injunction Appeal to Protect Space for Digital Activism,” January 11, 2023, <https://ccla.org/fundamental-freedoms/ccla-intervening-in-tik-tok-injunction-appeal-to-protect-space-for-digital-activism/>.

¹⁴⁵ “Constitution Act, Canadian Charter of Rights and Freedoms,” 1982, <https://laws-lois.justice.gc.ca/eng/const/page-15.html>.

¹⁴⁶ R.S.C 1985 c. C-46, <https://laws-lois.justice.gc.ca/eng/acts/C-46/FullText.html>.

defamatory statements can be decided through the mechanisms provided by provincial human rights laws and the Canadian Human Rights Act (CHRA).¹⁴⁷ However, the controversial provision of the CHRA prohibiting online hate speech (section 13), which was criticized for being overly broad, was repealed in 2013.¹⁴⁸

In June 2021, the government introduced Bill C-36,¹⁴⁹ which would have amended 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.”¹⁵⁰ The bill reintroduced the controversial provision of the CHRA prohibiting online hate speech 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 2021.¹⁵¹ In February 2022, the reelected Liberal government announced its intention to reintroduce similar legislation,¹⁵² but as of March 2023 no such legislation has been proposed.

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.¹⁵³

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 Appeal upheld the constitutionality of the law in 2020,¹⁵⁴ in March 2021, the SCC refused to hear an appeal, effectively ending any constitutional challenge.¹⁵⁵

	2021	2022	2023
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.

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 offense¹⁵⁶ 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 (\$157,000) in damages.¹⁵⁷ In 2018, the Court of Appeal of

circumscribed, and both necessary and proportionate to address a legitimate aim?

C3 sub-questions:

- Are writers, commentators, bloggers, or social media users subject to civil liability, imprisonment, arbitrary detention, police raids, or other legal sanction for publishing, sharing, or accessing material on the internet in contravention of international human rights standards?
- Are penalties for defamation; spreading false information or “fake news”; cybersecurity, national security, terrorism, and extremism; blasphemy; insulting state institutions and officials; or harming foreign relations applied unnecessarily and disproportionately?

¹⁴⁷ R.S.C., 1985, c. H-6, <https://laws-lois.justice.gc.ca/eng/acts/H-6/FullText.html>.

¹⁴⁸ 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>.

¹⁴⁹ Parliament of Canada, Bill C-36, June 23, 2021, <https://parl.ca/DocumentViewer/en/43-2/bill/C-36/first-reading>.

¹⁵⁰ 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/>.

¹⁵¹ 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>.

¹⁵² 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/>.

¹⁵³ Caplan v. Atas, 2021 ONSC 670, January 28, 2021, <https://www.canlii.org/en/on/onsc/doc/2021/2021onsc670/2021onsc670.html>.

¹⁵⁴ 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>.

¹⁵⁵ 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/>.

¹⁵⁶ Criminal Code, R.S.C., 1985, c. C-46, section 264, <https://laws-lois.justice.gc.ca/eng/acts/c-46/FullText.html>.

¹⁵⁷ *Rook v. Halcrow*, 2019 BCSC 2253, September 25, 2019, <https://www.bccourts.ca/jdb-txt/sc/19/22/2019BCSC2253.htm>.

Ontario upheld a C\$700,000 (\$548,000) judgment issued in 2016.¹⁵⁸ In January 2020, an Ontario judge issued significant awards for defamation against anonymous online defendants for only the second time in Canadian legal history.¹⁵⁹ In October 2021, an Ontario court awarded C\$50,000 (\$39,000) 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 the plaintiffs' Snapchat video that the defendant assumed mocked the May 2020 murder of George Floyd in the United States.¹⁶⁰

Most recently, in April 2023 an Ontario Court awarded a total of C\$75,000 (\$xx,000) to a union because an ex-member defamed them on Facebook.¹⁶¹ Also in April 2023, an Alberta court awarded C\$300,000 (\$xx,000) in general damages for defamation, C\$100,000 (\$xx,000) in general damages for harassment, and a further C\$250,000 (\$xx,000) in aggravated damages to an employee of a regional health authority who had been defamed and harassed by a candidate for mayor of Calgary on his online talk show.¹⁶²

	2021	2022	2023
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.¹⁶³ 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.¹⁶⁴ In October 2020, the Five Eyes joined the governments of Japan and India in requesting a "backdoor" for encrypted communications services.¹⁶⁵ That month, the governments released a joint statement expressing support for strong encryption while expressing concerns that end-to-end encryption without a backdoor for law enforcement could undermine public safety.¹⁶⁶

C4 sub-questions:

- Are website owners, bloggers, or users in general required to register with the government?
- Does the government require that individuals use their real names or register with the authorities when posting comments or purchasing electronic devices, such as mobile phones?
- Do specific laws or binding legal decisions require digital platforms, content hosts, or other intermediaries to identify or verify their customers' real names?
- Are individuals prohibited from using encryption services to protect their communications?
- Do specific laws or binding legal decisions undermine strong encryption protocols, such as mandates for traceability or real-time monitoring, or requirements that decryption keys be turned over to the government?

¹⁵⁸ "Rutman v. Rabinowitz, 2018 ONCA 80," CANLII, January 31, 2018, <https://www.canlii.org/en/on/onca/doc/2018/2018onca80/2018onca80.html>.

¹⁵⁹ "Therlase Technologies Inc. v. Lanter, 2020 ONSC 205," CANLII, January 13, 2020,

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

¹⁶⁰ Lavallee et al. v. Isak, 2021 ONSC 6661, <https://www.canlii.org/en/on/onsc/doc/2021/2021onsc6661/2021onsc6661.html>.

¹⁶¹ Seafarers' International Union of Canada v. Mitchelitis, 2023 ONSC 2456, April 24, 2023,

<https://www.canlii.org/en/on/onsc/doc/2023/2023onsc2456/2023onsc2456.html>.

¹⁶² Alberta Health Services v Johnston, 2023 ABKB 209, April 12, 2023, <https://www.canlii.org/en/ab/abkb/doc/2023/2023abkb209/2023abkb209.html>.

¹⁶³ 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>

¹⁶⁴ "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.

¹⁶⁵ "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>.

¹⁶⁶ Canada (Department of Public Safety), "International Statement: End-To-End Encryption And Public Safety," December 23, 2022, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2020-jnt-stmnt-ncrptn-pblc-sfty/index-en.aspx>.

	2021	2022	2023
C5: Does state surveillance of internet activities infringe on individuals' 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, permitting 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.

Bill C-59, an Act Respecting National Security Matters,¹⁶⁷ was introduced in 2017 to address some of the more problematic provisions of the Anti-Terrorism Act,¹⁶⁸ and was passed in June 2019.¹⁶⁹ 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.¹⁷⁰ It still allows the government to engage in cyberoperations, but its powers to do so are more limited than what was provided for in Bill C-51.¹⁷¹ Civil society groups raised concerns that Bill C-59 does not fully address surveillance issues posed by previous legislation¹⁷² and still grants too much power to the government, including the ability to engage in mass data collection.¹⁷³ In February 2021, judges began hearing related cases and have set limits on the government's intelligence agency (CSIS), including its ability to spy on foreign countries.¹⁷⁴

The Office of the Privacy Commissioner (OPC) provides an important oversight function concerning the privacy of users' data. The privacy commissioner, Philippe Dufresne, 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,¹⁷⁵ 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.¹⁷⁶ 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.¹⁷⁷

In December 2021, Prime Minister Justin Trudeau announced his intention to propose legislation to strengthen privacy protections for users in the near future, provide for significant monetary penalties for noncompliance, and enable massive enforcement powers for the federal privacy authorities and a new privacy tribunal.¹⁷⁸ 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

C5 sub-questions:

- Does the constitution, specific laws, or binding legal decisions protect against government intrusion into private lives?
- Do state actors comply with these laws or legal decisions, and are they held accountable, including by an independent judiciary or other forms of public oversight, when they do not?
- Do state authorities engage in the blanket collection of communications metadata and/or content transmitted within the country?
- Are there legal guidelines and independent oversight on the collection, retention, and inspection of surveillance data by state security agencies, and if so, do those guidelines adhere to international human rights standards regarding transparency, necessity, and proportionality?
- Do state authorities monitor publicly available information posted online (including on websites, blogs, social media, and other digital platforms), particularly for the purpose of deterring activities protected under international human rights standards such as independent journalism, community building and organizing, and political, social, cultural, religious, and artistic expression?
- Do authorities have the technical capacity to regularly monitor or intercept the content of private communications, such as email and other private messages, including through spyware and extraction technology?

¹⁶⁷ 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>.

¹⁶⁸ 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/>.

¹⁶⁹ 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>.

¹⁷⁰ 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/>.

¹⁷¹ Victoria Henry, "C-59: A Promise Not Kept," *OpenMedia*, July 11, 2019, <https://openmedia.org/en/c-59-promise-not-kept>.

¹⁷² Canadian Civil Liberties Association, "Read CCLA's Submissions on Bill C-59," January 19, 2018, <https://ccla.org/read-cclas-submissions-bill-c-59/>.

¹⁷³ 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>.

¹⁷⁴ 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>.

¹⁷⁵ "R.S.C., 1985, c. P-21," August 28, 2019, <https://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>.

¹⁷⁶ "Canadian Charter of Rights and Freedoms," 1982, <https://laws-lois.justice.gc.ca/eng/const/page-15.html>.

¹⁷⁷ R. v. Canfield, 2020 ABCA 383, <https://www.canlii.org/en/ab/abca/doc/2020/2020abca383/2020abca383.html>.

¹⁷⁸ 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>.

parliament.¹⁷⁹ The federal government is seeking to catch up with provincial privacy laws, notably the privacy reforms passed in September 2021 in Quebec that are similar to the General Data Protection Regulation (GDPR) of the European Union (EU).¹⁸⁰

In June 2022 the government introduced Bill C-27, the Digital Charter Implementation Act, which generally presented the same framework as Bill C-11.¹⁸¹ In addition to the new privacy protections, Bill C-27 also includes the Artificial Intelligence and Data Act to regulate AI systems, which was not found in Bill C-11. The House of Commons completed a second reading of Bill C-27 in April 2023, which puts the passage of the bill relatively far in the future.¹⁸²

The SCC has also expanded privacy rights relating to technology. Most recently, in 2018, the court ruled that privacy rights are still protected when a computer is shared with others.¹⁸³ 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.¹⁸⁴ In the second case, the court held that the sender of text messages has a reasonable expectation of privacy, even when they are stored on the telecommunications provider's computers.¹⁸⁵ However, the SCC has not found 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.¹⁸⁶

In June 2022, the national police force disclosed its use of spyware to hack a suspect's phones or laptop and collect data, including by turning on device cameras and microphones remotely. According to the Royal Canadian Mounted Police, spyware is only used during serious criminal and national security investigations when less intrusive techniques are unsuccessful; its use always requires authorization from a judge. The force reported deploying spyware in 10 investigations between 2018 and 2020.¹⁸⁷

The COVID-19 pandemic 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.¹⁸⁸ In August 2020, Ontario officials ended this information-sharing practice following a lawsuit from human rights organizations.¹⁸⁹ The OPC's annual report released in September 2022 reiterated the emphasis of the two previous years' reports on the need for heightened privacy during the pandemic and the necessary reforms to privacy laws.¹⁹⁰ In January 2022 the OPC began investigating whether the federal government's health authorities overreached when analyzing Canadians' cell phone location data during the pandemic.¹⁹¹ On May 29, 2023, the OPC released its findings and concluded that the combination of de-identification measures and the safeguards against re-identification implemented by the public health authorities meant that the public's privacy complaints were

- Do local authorities such as police departments surveil residents (including through International Mobile Subscriber Identity-Catchers or IMSI catcher technology), and if so, are such practices subject to rigorous guidelines and judicial oversight?
- Do state actors use artificial intelligence and other advanced technology for the purposes of online surveillance without appropriate oversight?
- Do state actors manually search people's electronic devices, including while in detention, for the purposes of ascertaining their online activities or their personal data, without appropriate oversight?
- Do government surveillance measures target or disproportionately affect dissidents, human rights defenders, journalists, or certain ethnic, religious, gender, LGBT+, migrant, diaspora, and other relevant groups?

¹⁷⁹ 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>.

¹⁸⁰ 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>.

¹⁸¹ 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>.

¹⁸² Parliament of Canada, "44th Parliament, 1st session: C-27," accessed May 2023, <https://www.parl.ca/legisinfo/en/bill/44-1/c-27>.

¹⁸³ "R. v. Reeves, 2018 SCC 56," December 13, 2018, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17405/index.do>.

¹⁸⁴ "R. v. Marakah, 2017 SCC 59," December 8, 2017, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16896/index.do>.

¹⁸⁵ "R. v. Jones, 2017 SCC 60," December 8, 2017, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16897/index.do>.

¹⁸⁶ R v. Mills, 2019 SCC 22, April 18, 2019, <https://www.canlii.org/en/ca/scc/doc/2019/2019scc22/2019scc22.html>.

¹⁸⁷ Maura Forrest, "Canada's national police force admits use of spyware to hack phones," Politico, June 29, 2022, <https://www.politico.com/news/2022/06/29/canada-national-police-spyware-phones-00043092>

¹⁸⁸ 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/>.

¹⁸⁹ "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>

¹⁹⁰ OPC, "A pivotal time for privacy," September 29, 2022, https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202122/ar_202122/.

¹⁹¹ 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/>.

unfounded and the Privacy Act had not been violated.¹⁹² Privacy watchdogs expressed little concern about the government's COVID-19 tracing app, COVID Alert,¹⁹³ which was decommissioned in June 2022.¹⁹⁴

	2021	2022	2023
C6: Does monitoring and collection of user data by service providers and other technology companies infringe on individuals' 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,¹⁹⁵ the Personal Information Protection and Electronic Documents Act (PIPEDA).¹⁹⁶ PIPEDA was modified by the Digital Privacy Act,¹⁹⁷ passed in 2015, which expanded the scope for companies to make voluntary warrantless disclosures of personal information under certain circumstances by allowing for such disclosures to be made to any organization, not just law enforcement. The act also established new mandatory security breach disclosure requirements, which came into force in 2018.¹⁹⁸ PIPEDA, however, remains relatively powerless. A privacy protection bill presented in June 2022 (see C5), which would create a new Consumer Privacy Protection Act to replace PIPEDA, has significant fines and penalties on the order of those found in the GDPR.

The OPC continues to call for changes to the Privacy Act, notably to require mandatory data breach reporting by the government,¹⁹⁹ 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.²⁰⁰ There was no progress on this reform during the coverage period.

The OPC shocked the legal community in 2018 when it released a draft position paper concluding that PIPEDA contained a European-style "right to be forgotten" provision.²⁰¹ Commentators questioned the OPC's conclusions and reasoning.²⁰² In 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 issued its decision and stated that indeed Google search falls under PIPEDA.²⁰³ Google appealed the decision in September 2021 and the appeal was heard in October 2022; as of March 2023, the

C6 sub-questions:

- Do specific laws or binding legal decisions enshrine the rights of individuals over personal data, including biometric information, generated, collected, or processed by public or private entities?
- Do regulatory bodies, such as a data protection agency, effectively protect people's privacy, including through investigating companies' mismanagement of data and enforcing relevant laws or legal decisions?
- Can the government obtain user information from companies (e.g., service providers, providers of public access, internet cafés, digital platforms, email providers, device manufacturers, data brokers) without a legal process, including by purchasing it?
- Are these companies required to collect and retain data about their users?
- Are these companies required to store users' data on servers located in the country, particularly data related to online activities and expression that are protected under international human rights standards (i.e., are there "data localization" requirements)?
- Do these companies monitor users and supply information about their digital activities to the government or other powerful actors (either

¹⁹² OPC, "Investigation into the collection and use of de-identified mobility data in the course of the COVID-19 pandemic – Complaints under the Privacy Act," May 29, 2023, https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-federal-institutions/2022-23/pa-20230529_phac/.

¹⁹³ 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>.

¹⁹⁴ Health Canada, "Statement from Health Canada on Decommissioning COVID Alert," June 17, 2022, <https://www.canada.ca/en/health-canada/news/2022/06/statement-from-health-canada-on-decommissioning-covid-alert.html>.

¹⁹⁵ 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/>.

¹⁹⁶ "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-8.6/index.html>.

¹⁹⁷ "Digital Privacy Act, S.C. 2015, c. 32," June 18, 2015, https://laws-lois.justice.gc.ca/eng/annualstatutes/2015_32/page-1.html.

¹⁹⁸ 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>.

¹⁹⁹ See the 2021-2022 OPC Report, *supra* note 177.

²⁰⁰ 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>.

²⁰¹ 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/.

²⁰² 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/privacycommishrntbf/>; 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/>.

²⁰³ 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>.

court has not yet rendered a decision.²⁰⁴

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 data breach, the OPC found major PIPEDA violations. In response, Equifax took numerous corrective measures and signed a compliance agreement.²⁰⁵ In the OPC's investigation into the Cambridge Analytica scandal—wherein Cambridge Analytica improperly accessed the personal data of Facebook users—Facebook refused to take significant corrective measures or implement the OPC's recommendations.²⁰⁶ In February 2020, the OPC filed an application with the Federal Court seeking a declaration that Facebook had violated PIPEDA and an order requiring Facebook take corrective action.²⁰⁷ In April of 2023, the Federal Court ruled that Facebook had not violated PIPEDA,²⁰⁸ however the OPC is appealing the decision.²⁰⁹ In another case from December 2021, the OPC found that Clearview AI had violated PIPEDA by scraping images from the internet without consent and sharing them with law enforcement. However, the OPC passed on enforcement of the relevant provisions of PIPEDA to provincial counterparts,²¹⁰ demonstrating the law's weakness. In January 2023, the OPC found that Home Depot had disclosed emails and purchase habits to Facebook without individuals' consent, contrary to PIPEDA.²¹¹ Previously, in June 2022, the OPC determined that coffee chain Tim Hortons had violated PIPEDA with illegal location tracking through its app.²¹²

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.²¹³ 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.²¹⁴ While Yahoo's choice-of-forum clause specified another Canadian province (Ontario) and not another country, the court's reasoning could clearly apply internationally. In a significant 2017 decision, 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,²¹⁵ and the court ordered the website to pay damages to the plaintiff.

The technical paper for harmful online content (see B3),²¹⁶ which was introduced in August 2021, mandates that OCSOs retain data about individuals who might have shared harmful content and may be obligated to share this data with law enforcement.²¹⁷

through technical interception, data sharing, or other means)?

- Does the state attempt to impose similar requirements on these companies through less formal methods, such as codes of conduct, threats of censorship, legal liability for company employees, or other economic or political consequences?
- Are government requests for user data from these companies transparent, and do companies have a realistic avenue for appeal, for example via independent courts?

²⁰⁴ Case A-250-21 (Google LLC v. The Privacy Commissioner of Canada et al) case information, https://apps.fca-caf.gc.ca/pq/IndexingQueries/info_e.php?select_court=All&court_no=A-250-21, accessed March 28, 2022.

²⁰⁵ 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/>.

²⁰⁶ 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/>.

²⁰⁷ 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/.

²⁰⁸ Canada (Privacy Commissioner) v. Facebook, Inc., 2023 FC 533, April 13, 2023, <https://www.canlii.org/en/ca/fct/doc/2023/2023fc533/2023fc533.html>.

²⁰⁹ Allen Mendelsohn (this report's author), "Facebook wins in privacy court (for now)," May 31, 2023, <https://allenmendelsohn.com/2023/05/facebook-wins-in-privacy-court-for-now/>.

²¹⁰ 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/.

²¹¹ OPC, "Investigation into Home Depot of Canada Inc.'s compliance with PIPEDA," PIPEDA Findings 2023-01, January 26, 2023, <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2023/pipeda-2023-001/>.

²¹² OPC, "Joint investigation into location tracking by the Tim Hortons App," PIPEDA Findings #2022-001, June 1, 2022, <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2022/pipeda-2022-001/>.

²¹³ "Doe v. Facebook, Inc., 2017 SCC 33," June 23, 2017, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16700/index.do>.

²¹⁴ "Demers c. Yahoo! Inc., 2017 QCCS 4154," CANLII, September 19, 2017, <https://www.canlii.org/en/qc/qccs/doc/2017/2017qccs4154/2017qccs4154.html>.

²¹⁵ "A.T. v. Globe24h.com, 2017 FC 114," CanLII, January 30, 2017, <https://www.canlii.org/en/ca/fct/doc/2017/2017fc114/2017fc114.html>.

²¹⁶ 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>.

²¹⁷ 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/>.

	2021	2022	2023
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.²¹⁸ A government study released in February 2023 found that one-quarter of Canadian teenagers were victims of cybervictimization, with non-binary teens facing it at a rate of over 50 percent.²¹⁹

Women, including journalists, activists, and politicians, have also reported facing online intimidation and misogynistic messages. A 2020 survey found that 62 percent of Canadian women aged 15 to 25 have been harassed or abused online.²²⁰ Reporting from August 2022, noted an intensification in such threats against women. Women journalists, especially of colour, shared anonymous emails they had received containing threats of violence and sexual assault and misogynistic and racist language.²²¹

The highly praised 2016 landmark civil court decision—in which a man was ordered to pay C\$100,000 (\$78,000) to his former partner for publishing intimate videos of her without her consent, causing severe emotional distress—has grown in significance in recent years.²²² Though the details of this case remained in flux following the early 2016 decision,²²³ the privacy tort of “public disclosure of private facts” that the judge’s original decision established has since been adopted in several courts. The new tort was applied in a 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; they were ordered to pay C\$100,000 (\$78,000) in damages.²²⁴ The new tort was also applied in a different province for the first time in September 2021, when the Court of King’s Bench of Alberta (then the Court of the Queen’s Bench) used the tort in awarding C\$185,000 (\$145,000) in damages to a victim of non-consensual distribution of intimate images.²²⁵

The 2016 case continues to be cited by other plaintiffs, authors, and courts.²²⁶ In December 2019, a court cited the “public disclosure of private facts” 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.²²⁷ Further, the recently 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 private material

C7 sub-questions:

- Are individuals subject to physical violence—such as murder, assault, torture, sexual violence, or enforced disappearance—in relation to their online activities, including membership in certain online communities?
- Are individuals subject to other intimidation and harassment—such as verbal threats, travel restrictions, nonconsensual sharing of intimate images, doxing, or property destruction or confiscation—in relation to their online activities?
- Are individuals subject to online intimidation and harassment specifically because they belong to a certain ethnic, religious, gender, LGBT+, migrant, diaspora, or other relevant group?
- Have online journalists, commentators, or others fled the country, gone into hiding, or undertaken other drastic actions to avoid such consequences?
- Have the online activities of dissidents, journalists, bloggers, human rights defenders, or other individuals based outside the country led to repercussions for their family members or associates based in the country?

²¹⁸ “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-statscan-1.3903435>.

²¹⁹ Statistics Canada (Darcy Hango), “Online harms faced by youth and young adults: The prevalence and nature of cybervictimization,” February 21, 2023, <https://www150.statcan.gc.ca/n1/pub/75-006-x/2023001/article/00003-eng.htm>.

²²⁰ 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>.

²²¹ Christian Paas-Lang, “Chrystia Freeland latest target of public threats, intimidation against women in Canadian politics,” *CBC News*, August 27, 2022, <https://www.cbc.ca/news/politics/harassment-women-public-life-journalists-politicians-1.6564376>.

²²² “Doe 464533 v N.D., 2016 ONSC 541,” *CanLII*, January 21, 2016, <http://canlii.ca/t/gn23z>.

²²³ “Doe v N.D., 2016 ONSC 4920,” *CanLII*, September 16, 2016, <https://www.canlii.org/en/on/onsc/doc/2016/2016onsc4920/2016onsc4920.html>; “Doe 464533 v N.D., 2017 ONSC 127,” *CanLII*, January 9, 2017, <https://www.canlii.org/en/on/onsc/doc/2017/2017onsc127/2017onsc127.html>.

²²⁴ 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/>.

²²⁵ ES v. Shillington, 2021 ABQB 739, <https://www.canlii.org/en/ab/abqb/doc/2021/2021abqb739/2021abqb739.html>.

²²⁶ 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/>.

²²⁷ Yenovkian v. Gulian, 2019 ONSC 7279,” *CanLII*, December 17, 2019, <https://www.canlii.org/en/on/onsc/doc/2019/2019onsc7279/2019onsc7279.html>.

published without consent²²⁸ and to face criminal penalties should they not do so.²²⁹ Pornhub, a Montreal-based pornography platform, has faced numerous lawsuits in Canada and the United States accusing it of profiting from underage nonconsensual intimate images.²³⁰ In October 2021, the company settled one lawsuit in the United States brought forward by 50 women plaintiffs who alleged that the platform had knowingly partnered with a pornography provider that uploaded sexually explicit videos of the plaintiffs without their consent.²³¹ These issues have been brought to the forefront again in light of Pornhub's March 2023 sale to a Canadian private equity firm,²³² as well as a Netflix documentary released around the same time as the sale.²³³

Additionally, many provinces, including Manitoba²³⁴ and Alberta,²³⁵ have previously passed laws that create civil torts for unauthorized distribution of intimate images and videos, and British Columbia passed legislation to do so in March 2023.²³⁶ 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.²³⁷ By December 2019, Canadian police forces received nearly 5,000 complaints since nonconsensual sharing of intimate material was federally criminalized in 2014.²³⁸ In 2021 alone there were 2444 criminal incidents of nonconsensual distribution of intimate images.²³⁹

	2021	2022	2023
C8: Are websites, governmental and private entities, service providers, or individuals 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, generally rising in number every year. During the 2021-22 period, the OPC received 645 data breach reports under PIPEDA, a decrease from the previous reporting period—the first in several years—that affected at least 1.9 million Canadian accounts.²⁴⁰ Despite the decrease, the OPC still considers data breaches a “significant area of concern.”²⁴¹ 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.²⁴² Whether the number of breaches is actually increasing or the mandatory reporting requirement has led to more accurate data is unclear, however it is generally felt that cybercrime is still a bigger problem than the statistics reveal due to underreporting.²⁴³

C8 sub-questions:

- Have websites belonging to opposition, news outlets, or civil society groups in the country been temporarily or permanently disabled due to cyberattacks, particularly at politically sensitive times?
- Are websites, news outlets, blogs, or social media accounts subject to targeted technical attacks as retribution for posting certain content, for example on political and social topics?
- Are financial, commercial, and governmental entities subject to

²²⁸ 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>.

²²⁹ 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>.

²³⁰ 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>.

²³¹ 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>.

²³² Reuters, “French minister to raise protection of minors with Pornhub's new owners,” Yahoo! Finance, March 17, 2023, <https://finance.yahoo.com/news/french-minister-raise-protection-minors-142451061.html>.

²³³ Ellie Muir, “Netflix's Pornhub documentary glosses over one major thing: the fetishisation of childlike bodies,” The Independent, March 18, 2023, <https://www.independent.co.uk/life-style/money-shot-netflix-pornhub-b2303558.html>.

²³⁴ “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>.

²³⁵ “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>.

²³⁶ Legislative Assembly of British Columbia, Bill No. 12, “Intimate Images Protection Act,” March 30, 2023, <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/4th-session/bills/progress-of-bills>.

²³⁷ “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>.

²³⁸ 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>.

²³⁹ Statistics Canada, Table 35-10-0177-01, “Incident-based crime statistics, by detailed violations, Canada, provinces, territories, Census Metropolitan Areas and Canadian Forces Military Police,” <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510017701&pickMembers%5B0%5D=1.1&pickMembers%5B1%5D=2.257&cubeTimeFrame.startYear=2021&cubeTimeFrame.endYear=2021&referencePeriods=20210101%2C20210101>.

²⁴⁰ See the 2021-2022 OPC Report, *supra* note 177.

²⁴¹ *Ibid.*

²⁴² OPC 2020-21 Annual Report, “Projecting our values into laws,” December 9, 2021, https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202021/ar_202021/.

²⁴³ See e.g. Jad Saliba, “Cybercrime is bigger in Canada than we know — and that's the problem,” Financial Post, December 9, 2022, <https://financialpost.com/fp-finance/cybercrime-underreported-canada>.

Certain federally-regulated industries such as telecommunications are not covered by the mandatory data breach reporting found in PIPEDA. To fill this hole and provide for a more secure infrastructure generally, the Federal government in June 2022 advanced Bill C-26, *An Act respecting cyber security, amending the Telecommunications Act and making consequential amendments to other Acts*.²⁴⁴ The legislation would create new cybersecurity regulations, such as mandatory breach reporting and requirements for cybersecurity programs, for federally-regulated infrastructure industries, including telecommunications, energy, finance, and transportation, some of which were not covered by the mandatory breach reporting in PIPEDA.²⁴⁵ The bill is slowly moving through the legislative process.

Statistics Canada reported that 57 percent of internet users suffered some sort of cybersecurity incident during the 2018 calendar year,²⁴⁶ and about one-fifth of Canadian businesses were impacted by cybersecurity incidents in 2021.²⁴⁷ A recent study indicated that one-quarter of Canadian businesses suffered a cyberattack in 2021,²⁴⁸ when the financial cost of data breaches to businesses hit an all-time high.²⁴⁹

In March 2022, a University of Toronto-based Citizen Lab report on digital transnational repression in Canada found that foreign dissidents and activists living in Canada, after fleeing their countries of origin to evade repression, had increasingly been the targets of hacking and phishing attempts and experienced takeovers of their social media and email accounts in recent years. Some reported having cut off contact with friends and relatives in their countries of origin out of concern for their safety in the face of such attempts.²⁵⁰

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.²⁵¹ An OPC investigation found that Desjardins had violated numerous provisions of PIPEDA in their treatment of customers' personal data.²⁵² In September 2020, major Canadian e-commerce company Shopify was a victim of data theft by its own employees.²⁵³ In early 2022, an IKEA Canada data breach affected almost 100,000 Canadians.²⁵⁴ The OPC continues to find that Canadians are affected by international data breaches, including most recently by MGM Resorts International and Marriot International.²⁵⁵

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.²⁵⁶ The 2022 CIRA survey indicated that 29 percent of respondent organizations had experienced a breach of customer and/or employee data.²⁵⁷ Experts warn that increased online activity during the pandemic, such as shopping, led to a massive increase in vulnerable

significant and targeted cyberattacks meant to steal data or disable normal operations, including attacks that originate outside the country?

- Do specific laws, policies, or independent bodies prevent and protect against cyberattacks (including systematic attacks by domestic nonstate actors)?

²⁴⁴ See legislative information at <https://www.parl.ca/legisinfo/en/bill/44-1/c-26>.

²⁴⁵ See e.g. Fasken Cyber-Bulletin, "Bill C-26: New Cybersecurity Requirements in Critical Infrastructure," June 23, 2022, <https://www.fasken.com/en/knowledge/2022/06/23-new-cybersecurity-requirements-in-critical-infrastructure>.

²⁴⁶ Statistics Canada, "Cybercrime in Canada," December 2, 2019, <https://www150.statcan.gc.ca/n1/pub/89-28-0001/2018001/article/00015-eng.htm>.

²⁴⁷ Statistics Canada, "Impact of cybercrime on Canadian businesses, 2021," October 18, 2022, <https://www150.statcan.gc.ca/n1/daily-quotidien/221018/dq221018b-eng.htm>.

²⁴⁸ 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>.

²⁴⁹ 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>.

²⁵⁰ Noura Al-Jizawi, Siena Anstis, Sophie Barnett, Sharly Chan, Niamh Leonard, Adam Senft, and Ron Deibert, "Psychological and Emotional War: Digital Transnational Repression in Canada," CitizenLab, March 1, 2022, https://citizenlab.ca/wp-content/uploads/2022/03/Report151-dtr_022822.pdf.

²⁵¹ Aidan Wallace, "Major data breaches in 2019," January 1, 2020, *Toronto Sun*, <https://torontosun.com/news/world/major-data-breaches-in-2019>.

²⁵² 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/>.

²⁵³ "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>.

²⁵⁴ Tomasia DaSilva, "Internal data breach discovered at Ikea Canada impacts 95,000 Canadians," Global News, May 5, 2022, <https://globalnews.ca/news/8812708/ikea-canada-internal-data-breach-95000-records/>.

²⁵⁵ See the 2021-2022 OPC Report, supra note 177, PIPEDA "Breach investigations" section.

²⁵⁶ 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>.

²⁵⁷ CIRA, "2022 CIRA Cybersecurity Survey," August 2022, <https://www.cira.ca/resources/cybersecurity/report/2022-cira-cybersecurity-survey>.

online personal data,²⁵⁸ which was also stressed in a report by the government's Canadian Centre for Cyber Security.²⁵⁹ The Centre for Cyber Security report also cited state-sponsored actors from China, Russia, Iran, and North Korea as the greatest strategic cybersecurity threats to Canada.²⁶⁰ Ransomware attackers increasingly targeted critical infrastructure, emergency medical services, and law enforcement agencies throughout the pandemic.²⁶¹

In November 2022, the Ontario Court of Appeal released a trio of cases heard together that, in effect, made it slightly harder for individuals to claim damages in data breach cases, including the Equifax data breach (see C6) and the Marriott breach (see above).²⁶² The Court held that the plaintiffs could not use the "intrusion upon seclusion" tort often used in privacy cases because the defendants had not *intentionally* committed any acts that led to the breaches; furthermore there were other torts available to use.

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,²⁶³ which led the CRA to lock out 800,000 Canadians from their accounts as a precautionary measure in March 2021.²⁶⁴ In August 2022, a federal court granted the certification of a class of victims of the data breach, allowing a class action lawsuit against the CRA and other government departments to move forward.²⁶⁵ Previously, 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.²⁶⁶ The OPC reported that breach reports received from the public sector increased by 65 percent during the 2021-22 fiscal year, rising from 280 in 2020-21 to 463 the next year.²⁶⁷ Even the computer system of the governor general (Canada's official head of state) was hacked during the previous coverage period.²⁶⁸

²⁵⁸ "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>.

²⁵⁹ Canadian Centre for Cyber Security, "National Cyber Threat Assessment 2020," November 16, 2020, <https://cyber.gc.ca/en/guidance/national-cyber-threat-assessment-2020>.

²⁶⁰ 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>.

²⁶¹ 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>.

²⁶² *Owsianik v. Equifax Canada Co.*, 2022 ONCA 81; *Obodo v. Trans Union of Canada, Inc.*, 2022 ONCA 814; *Winder v. Marriott International, Inc.*, 2022 ONCA 815. The substantive reasoning is mostly found in the Equifax case available at <https://www.canlii.org/en/on/onca/doc/2022/2022onca813/2022onca813.html>.

²⁶³ 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/>.

²⁶⁴ 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>.

²⁶⁵ *Sweet v. Canada*, 2022 FC 1228, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/522064/index.do>.

²⁶⁶ 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>.

²⁶⁷ See the 2021-2022 OPC Report, *supra* note 177, "Privacy Act breaches" section.

²⁶⁸ 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>.

