

Canada

	2016	2017		
Internet Freedom Status	Free	Free	Population:	36.3 million
Obstacles to Access (0-25)	3	2	Internet Penetration 2016 (ITU):	89.8 percent
Limits on Content (0-35)	4	4	Social Media/ICT Apps Blocked:	No
Violations of User Rights (0-40)	9	9	Political/Social Content Blocked:	No
TOTAL* (0-100)	16	15	Bloggers/ICT Users Arrested:	No
			Press Freedom 2017 Status:	Free

* 0=most free, 100=least free

Key Developments: June 2016 – May 2017

- Canada's telecom regulator declared that high-speed internet should be a "basic telecommunications service" that all Canadians should receive, and pledged CAD \$750 million to ensure its goals are met (see "**Availability and Ease of Access**").
- For the first time, an individual (as opposed to a company) was fined a significant amount for violating Canada's tough anti-spam law (see "**Blocking and Filtering**").
- The Federal Court confirmed Canada's privacy laws have extra-territorial application and ordered a foreign website to remove personal information of Canadians (see "**Surveillance, Privacy, and Anonymity**").

Introduction

Canada's internet freedom environment continued to be generally free of government restrictions.

Internet access in Canada is reliable and affordable for a majority of the population. The goal of universal internet access for Canada was bolstered this year by the telecommunications regulator declaring high-speed internet a "basic telecommunications service" that should be available to all Canadians. Canadians enjoy strong protections for freedom of expression, as well as a well-developed set of rules regulating intermediary liability in cases of copyright infringement.

The Liberal Government, elected in October of 2015, continues to play a central role in many internet freedom issues. The government has confirmed its commitment to increase penetration of ultra-high speed internet access. On the other hand, the Liberal promise to look into some of the more onerous elements of certain laws affecting internet freedom passed under the previous Conservative government – specifically Bill C-51, the Anti-Terrorism Act – did not produce any significant results during the reporting period.

Obstacles to Access

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

Availability and Ease of Access

Key Access Indicators		
Internet penetration (ITU) ^a	2016	89.8%
	2015	88.5%
	2011	83.0%
Mobile penetration (ITU) ^b	2016	84%
	2015	82%
	2011	78%
Average connection speeds (Akamai) ^c	2017(Q1)	16.2 Mbps
	2016(Q1)	14.3 Mbps

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

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

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

Internet penetration rates continued to rise in 2016, in both fixed-line and mobile. Mobile carriers have deployed a number of newer technologies to provide mobile broadband service, including HSPA+ and LTE. However, mobile broadband data remain expensive compared to fixed-line. Costs of fixed-line high-speed internet access remain low because of more competition; this was bolstered in

October 2016 when the Canadian Radio-television and Telecommunications Commission (CRTC), an independent public regulator, reduced the price of wholesale high-speed internet access.¹

Broadband service of at least 5 megabits per second (Mbps) is available to almost 99 percent of Canadian households through a variety of technologies including fixed and wireless, according to the CRTC.² This represents a significant increase from 96 percent in the previous year, and has moved Canada closer to its goal of having 100 percent of Canadian households with access to internet connectivity and broadband speeds of at least 5 Mbps by the end of 2016, as announced in 2016,³ and reiterated in 2017.⁴

In a landmark policy decision released in December 2016,⁵ the CRTC recognized the importance of ultra-high speed (50 Gbps download speed and above) internet access for the future of the Canadian economy. In the policy, the CRTC put forward a universal access goal, that all residential and business fixed-line customers should be able to have access to speeds of at least 50 Gbps (download) with unlimited data. Furthermore, it declared that high-speed internet access should be considered a “basic telecommunications service” – a description previously attached only to landline telephones – and established a CAD \$750 million fund to reach its targets.⁶ This follows in the footsteps of the CRTC’s policy decision of July 2015,⁷ which required the largest internet and telecommunications providers in Canada to provide wholesale access of their emerging high-speed fiber-optic networks to smaller, independent internet service providers.

Perhaps the most important obstacle to availability and ease of access in Canada is geography. Canada is overwhelmingly urban, with 81 percent of the population living in urban areas.⁸ Furthermore, approximately 75 percent of the population lives within 160 kilometres of the border with the United States.⁹ While providing “reliable and affordable telecommunications services of high quality” to rural areas is enshrined in Canadian law,¹⁰ affordable high-speed internet services are lacking in rural areas, especially in Canada’s vast northern territories, which are underserved by infrastructure generally, and telecommunications services in particular.

The CRTC’s 2016 figures confirm rural internet access prices are higher than urban access prices. Also according to the CRTC, household broadband in the form of 5-9.99 Mbps services, was available in 100 percent of urban areas compared to 93 percent in rural areas. The 93 percent figure includes 12 percent where availability was only via wireless services (HSPA+ and LTE), which are generally more expensive, especially as data usage rates increase. Faster speeds, such as 30-49.99 Mbps, are only

1 Canadian Radio-television and Telecommunications Commission, Telecom Order CRTC 2106-396, October 6, 2016, <http://bit.ly/2ocClkt>.

2 Canadian Radio-television and Telecommunications Commission, “Communications Monitoring Report 2016,” October 2016, <http://bit.ly/2nnnr9S>.

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

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

5 CRTC Telecom Regulatory Policy 2016-496, “Modern telecommunications services – The path forward for Canada’s digital economy,” December 21, 2016, <http://bit.ly/2nnSjgS>.

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

7 CRTC Telecom Regulatory Policy 2015-326, July 22, 2015, <http://www.crtc.gc.ca/eng/archive/2015/2015-326.htm>.

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

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

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

available in 31 percent of rural households, compared to 99 percent of urban households. The gap is shrinking compared to previous years, albeit very slowly.¹¹

There is also a considerable gap in access related to income: the highest income bracket has a penetration rate of nearly 95 percent, while the penetration rate within the lowest income bracket is closer to 63 percent.¹² Internet connectivity is widely available in public spaces such as cafés, shopping malls, and libraries, generally free of charge. There is a wide range of content available in both of Canada's official languages (English and French) as well as many other languages.

The government, in its budget for 2017,¹³ has taken proactive positions in ensuring ease of access to the internet in a variety of ways. It has announced financial support for internet connectivity for low-income families, and has committed to supplying high-speed internet access for all Canadians, even in remote rural areas. The budget, however, was short on details on this last point, only pointing to the investments for rural connectivity announced in the 2016 budget, when it pledged CAD \$500 million over five years for a new program to "extend and enhance broadband service in rural and remote communities."¹⁴

Restrictions on Connectivity

There are no government restrictions on bandwidth, although the major access providers generally offer services that have caps on bandwidth that result in increased fees for users who exceed the limit. While reports of ISPs throttling its users during peak periods were widespread several years ago,¹⁵ such reports have dried up considerably.

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

ICT Market

To operate as a Canadian telecommunications carrier, a company must meet the requirements in section 16 of the Telecommunications Act. In 2015 (the most recent available data), Canadian retail telecommunications revenues (comprised of wireline, wireless, internet, and data and private lines) amounted to a total of \$47.8 billion, which represented a 4.1 percent increase from the previous year. The five largest companies (Bell, Québecor, Rogers, Shaw, and TELUS) accounted for 84 percent of total revenues, the same as the previous year. This number has remained steady over the last several years.¹⁶

11 Canadian Radio-television and Telecommunications Commission, "Communications Monitoring Report 2016," October 2016, <http://bit.ly/2nnnr9S>

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

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

14 See "Growing the Middle Class", federal government budget document, March 22, 2016, at page 106, <http://bit.ly/1UXygJ5> (PDF).

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

16 Canadian Radio-television and Telecommunications Commission, "Communications Monitoring Report 2016," *supra* note 9.

The growth in the market for internet services outpaces that of the ICT market generally. According to the CRTC's 2016 CMR, the revenues for the retail internet services sector were \$9.2 billion in 2015, representing a growth of approximately 10 percent from the previous year. The 10 percent growth has been seen every year since 2011.

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

For wireless services, three companies dominate the market: Bell, Telus, and Rogers. The wireless market is particularly concentrated with those three companies having 90 percent of Canadian wireless subscribers (Bell 28 percent, Telus 29 percent, and Rogers 33 percent).¹⁷ Those same companies are also leaders in the provision of wired internet services (whether via phone lines or cable), along with Shaw, Cogeco, and Vidéotron (owned by Québecor). While Canadians generally do enjoy a choice of wired internet providers, again this choice will vary from region to region, and often there is only one choice per technology type, leading to a public perception that there is not much choice and that prices are kept artificially high. The *Let's Talk Broadband Findings Report* from March 2016 indicated that only one in three Canadians is satisfied with the cost of their home internet service.¹⁸

Regulatory Bodies

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

CRTC's regulatory powers extend to *access* of the internet in Canada, but not to *content* of the internet in Canada; this is commonly called the New Media Exemption. The CRTC's position to not regulate internet content dates back to 1999 and has been reinforced numerous times since then,¹⁹ including by the Supreme Court of Canada.²⁰ This is in contrast to other industries, specifically television, where the CRTC does exert some control over content, most notably by requiring a minimum amount of Canadian content by Canadian broadcasters.

17 Ian Hardy, "Canada has 30 million wireless subscribers, 90 percent of market still controlled by Rogers, Bell and Telus," *Mobile Syrup*, October 27, 2016, <http://bit.ly/2rGjuje>.

18 EKOS Research Associates, "Let's Talk Broadband Findings Report," March 18, 2016, <http://bit.ly/2d7Aluv>.

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

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

Limits on Content

The Canadian government does not generally block websites or filter online content. Illegal content may be removed by legal action taken through the court system. YouTube, Facebook, Twitter, and international blog-hosting services are freely available.

Blocking and Filtering

The government does not generally block or filter online content, though there are a few legal mechanisms that may lead to the blocking or removal of online content in Canada. Canada's largest ISPs participate in Project Cleanfeed Canada, an initiative that allows ISPs to block access to child pornography images that are hosted outside of Canada (as opposed to content hosted within Canada, which is subject to removal).²¹ Accessing child pornography is illegal in Canada under section 163.1(4.1) of the criminal code,²² as well as under international human rights standards. The initiative is targeted at international sites that the Canadian government does not have the jurisdiction to shut down.

Bill 74, the province of Quebec's controversial law requiring ISPs to block access to online gambling sites, came into effect in May 2016.²³ The law came into serious question during the reporting period with a court challenge, and the CRTC twice informed the Quebec government that the government could not block access without the CRTC's permission, which was not forthcoming.²⁴

Canada's tough anti-spam law informally known as "CASL", which regulates commercial electronic messages ("CEMs"), has been in effect since July 1, 2014. CASL prescribes certain content requirements in electronic messages (such as unsubscribe mechanisms and contact information) and restricts sending such messages without appropriate consent. CASL places significant restrictions on email marketers, and violators can face fines. However, the government suspended the enactment of CASL's "private right of action" provision, which was due to come in to force in July 2017 and would have allowed individuals to sue CEMs for CASL violations.²⁵

There have been several enforcement actions involving CASL in the past year, including against some of Canada's largest corporations. In September 2016, Kellogg Canada Inc. agreed to pay AMPs of CAD \$60,000 for sending CEMs without consent.²⁶ More importantly, for the first time ever under CASL an *individual* was fined CAD \$15,000 for sending CEMs without the consent of the recipients.²⁷

Content Removal

With respect to removal of content due to copyright infringement, in 2004 the Supreme Court

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

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

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

24 The Canadian Press, "CRTC shoots down Quebec online gambling law," September 2, 2016, at <http://bit.ly/2bQSlyZ>; Emily Jackson, "CRTC says it holds power over website blocking in Quebec gambling case," *Financial Post*, December 9, 2016, <http://bit.ly/2ocDk86>.

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

26 See CRTC, *Undertaking: Kellogg Canada Inc.*, September 1, 2016, <http://bit.ly/2ocJyAS>.

27 *Compliance and Enforcement Decision CRTC 2017-65*, March 9, 2017, <http://bit.ly/2ocLPfK>.

of Canada ruled that ISPs are not liable for violations committed by their subscribers.²⁸ Canadian copyright law features a notice-and-notice provision in effect since January 2015, which, unlike a notice-and-takedown system, does not make intermediaries legally liable for removing content upon notification by the copyright owner. Rather, copyright owners are permitted to send notifications alleging infringement to ISPs. The ISPs are then required to forward the notifications to the implicated subscriber. Any further legal action is the responsibility of the copyright owner, and it is incumbent upon the person who uploaded the infringing content to remove it following a legal decision. No content is removed from the internet without a court order, and the ISP does not disclose subscriber information without court approval, although this has become increasingly common.²⁹ ISPs qualify for a legal safe harbour if they comply with the notice-and-notice requirements.

Despite the good intentions, the notice-and-notice system has been subject to considerable misuse. Several U.S.-based anti-piracy firms, including Rightscorp and CEG-TEK, have used the system to send notifications to subscribers that misstate Canadian law, citing U.S. damage awards and the possibility that their internet access will be terminated, in order to sow fear among Canadians so that they pay a settlement fee.³⁰ The author of this report, an attorney specializing in internet and technology law, continues to be contacted by panicked Canadians who have received such notices,³¹ the overwhelming majority from CEG-TEK.

Media companies have continued to use the courts to shut down websites and other online services that redistribute their content in violation of copyright laws. In March 2017, the Federal Court of Appeal upheld a lower court decision granting an injunction shutting down websites selling copyright-infringing set-top boxes.³² The set-top boxes came pre-loaded with software allowing users to stream copyrighted television content from Canada's major media players including Bell, Videotron, and Rogers.³³ In another case in March 2017, the Federal Court found a seller of "mod chips" for video games which allowed users to download Nintendo games for free had infringed copyright in several ways, and enjoined future sales and ordered substantial damages be paid.³⁴

The Supreme Court of Canada ("SCC") released its long-anticipated decision in the appeal from the judgment of the British Columbia Court of Appeal in *Google Inc. v. Equustek Solutions Inc.*,³⁵ a closely-watched case involving a court order requiring Google to remove links to websites that infringed on the plaintiffs' trademark from its global index. The SCC upheld the worldwide removal order, however its reasoning was strictly focused on the law of intellectual property and interlocutory injunctions, so it is unclear if such worldwide orders may be granted in other areas of law in the future.

Defamation claims may also result in the removal of content, as content hosts fear potential liability as a publisher of the defamatory content. Unlike legal protections against liability for copyright

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

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

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

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

32 *Wesley dba MTLFREETV.com v Bell Canada et al*, 2017 FCA 55, <http://bit.ly/2nkvTod>.

33 See Barry Sookman, "Alleged set-top box pirates lose Canadian Federal Court appeal," March 21, 2017, <http://bit.ly/2nv9Z1L>.

34 *Nintendo of America Inc. v. King*, 2017 FC 246 (CanLII), <http://bit.ly/2nSU6EG>.

35 2017 SCC 34, <http://bit.ly/2ttsDgi>. Please note this decision was released after the reporting period (in June 2017).

infringement by its users, platforms may face liability for alleged defamation once alerted to the publication. A court may also order the removal of the content. The Supreme Court of Canada has held that merely linking to defamatory content on the internet is not defamation in and of itself; it would only be defamation if it actually repeats the defamatory content, so simple links would not be removed.³⁶ The SCC in March 2017 granted leave to appeal in a highly-watched case involving publication of defamatory content on an Israeli website regarding a Canadian resident, and whether Canadian courts have jurisdiction to hear the matter.³⁷

In Quebec, Canada's French-speaking province, websites that are commercial in nature are required by law to be in French,³⁸ although they can be in other languages in addition to French. Violators may receive a warning from a government agency ordering the website be in French, and then be subject to fines if they do not comply. Some website operators may choose to take down their websites rather than face the expense of translation or the fines. National or international operators of websites who do business in Quebec (who would then be subject to the law) may block Quebec residents' access to their websites rather than comply.³⁹

Media, Diversity, and Content Manipulation

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

Canada continues to strengthen its commitment to net neutrality as a matter of national policy, ensuring that media is presented neutrally by ISPs. In April 2017, the CRTC released a pair of Telecommunications Policies that effectively ruled against differential pricing for certain ISP services and the "zero-rating" of certain media services, where ISPs would not have the use of certain preferred media charged against a user's data cap.⁴⁰ With these Policies, the CRTC substantively completed (in conjunction with several other Policies) a national framework that ensures net neutrality remains Canadian public policy. In its 2017 budget, the Canadian government made a significant statement on the subject, promising to review telecommunications legislation in Canada to ensure that "Canadians continue to benefit from an open and innovative internet" in the context of net neutrality and other digital policy considerations. However, it is unclear whether these reforms will have a positive or

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

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

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

39 Elysia Bryan-Baynes, "Quebec language police target English retail websites," November 13, 2014, <http://bit.ly/1Sr150Y>.

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

negative impact on online content,⁴¹ and especially Canadian content. The government's statement reflected a report from the Department of Canadian Heritage outlining the future of Canadian Content in the digital age, following extensive public consultations on the subject.⁴²

Digital Activism

Social media and communication applications have been widely used in Canada for the mobilization of political and social movements. After online digital activism played a significant role in the Liberal government's promise to repeal the problematic aspects of Bill C-51, online activism was again used to call out their failure to do so, and was undoubtedly partly responsible for the government's finally taking action (see "Surveillance, Privacy, and Anonymity"). Much online activism targeted at the ICT sector is spearheaded by a popular non-partisan, non-profit organization called Open Media, which advocates for three pillars of internet rights – free expression, access, and privacy.⁴³ Since the election of Donald Trump in the United States, many Canadians have turned to online activism in an effort to influence American politics and policy.⁴⁴

Violations of User Rights

Despite having a generally positive record for freedom of expression, Canada has taken some regressive steps in recent years with the introduction of several bills that could have negative implications for the protection of internet users' data. The government continued to promise reforms to controversial elements of the Anti-Terrorism Act passed in June 2015 which permits information-sharing across government agencies for an incredibly wide range of purposes, although changes did not fully materialize during the reporting period.

Legal Environment

The Canadian Constitution includes strong protections for freedom of speech and freedom of the press. Freedom of speech in Canada is protected as a "fundamental freedom" by section 2 of the Canadian Charter of Rights and Freedoms. Under the Charter, one's freedom of expression is "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."⁴⁵ These laws and protections apply to all forms of speech, whether online or offline.

Hate speech, along with advocating genocide, uttering threats and defamatory libel, are also regulated under the Canadian criminal code.⁴⁶ Punishment for defamatory libel, advocating genocide and uttering threats may include imprisonment for up to five years, and up to two years for hate speech. Human rights complaints regarding potentially defamatory statements could also be decided through the mechanisms provided by provincial human rights laws and the Canadian Human Rights

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

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

43 See <https://openmedia.org/>.

44 Ann Rosenfield, "Activism Without Borders Gives Canadians A Voice In U.S. Politics," *HuffPost Canada*, January 30, 2017, <http://huff.to/2kczp2t>.

45 Constitution Act, Canadian Charter of Rights and Freedoms, 1982, <http://bit.ly/1cjlVUc>.

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

Act ("CHRA");⁴⁷ however the controversial provision of the CHRA prohibiting hate speech (s. 13), which was perceived by many as being too broad, is currently not in force.

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

Prosecutions and Detentions for Online Activities

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

Surveillance, Privacy, and Anonymity

There were several developments in the area of privacy during the coverage period, although promised reforms to controversial elements of the Anti-Terrorism Act (also known as Bill C-51) passed in June 2015, did not fully materialize during the reporting period.

Bill C-51 permits information-sharing across government agencies for an incredibly wide range of purposes, many of which have nothing to do with terrorism. The bill was opposed by all Canadian privacy commissioners but ultimately passed and became law. While the Liberal government vowed during the 2015 election to "repeal the problematic elements of Bill C-51,"⁴⁸ only minimal momentum occurred during the reporting period. The Liberals introduced Bill C-22 in June 2016 that would establish a new a multi-party national security oversight committee, but it has not yet come into force. Bill C-22 has come under criticism from all sides of the political spectrum for being a relatively weak response.⁴⁹ The government continued to make promises to revamp the law, and finally introduced Bill C-59 which goes further in fixing some of the more serious problems with Bill C-51.⁵⁰ The Office of the Privacy Commissioner ("OPC"), in its annual report to Parliament,⁵¹ also expressed concerns with the Anti-Terrorism Act.⁵²

The OPC provides an important oversight function related to privacy of Canadians' information in the digital medium. The Privacy Commissioner of Canada, Daniel Therrien, is an officer of parliament who reports directly to the House of Commons and the Senate. The commissioner's mandate includes overseeing compliance with the Privacy Act,⁵³ which covers the personal information-handling

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

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

49 Nick Gamache, "Proposed security oversight committee 'shadow' of what it should be, opposition says," March 6, 2017, <http://bit.ly/2neX0iX>.

50 Craig Forcese and Kent Roach, "The roses and the thorns of Canada's new national security bill", *Macleans*, June 20, 2017, <http://bit.ly/2ttyLFk>. Bill C-59 was introduced to Canada's Parliament after the reporting period (on June 20, 2017) and as such the scores given in this heading do not reflect this development.

51 Daniel Therrien, "2015-2016 Annual Report to Parliament on the Personal Information Protection and Electronic Documents Act and the Privacy Act," September 2016, available at <http://bit.ly/2obtob9>.

52 Monique Scotti, "Does Bill C-51 violate your privacy? Watchdog says new law 'not properly evaluated'," September 27, 2016, <http://bit.ly/2obqKC5>.

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

practices of federal government departments and agencies, and the Personal Information Protection and Electronic Documents Act (PIPEDA),⁵⁴ Canada's private sector privacy law.⁵⁵

PIPEDA was modified by the Digital Privacy Act⁵⁶ passed in June 2015, which expanded the scope for companies to make voluntary warrantless disclosures of personal information under certain circumstances, by allowing for such disclosures to any organization, not just law enforcement. The Digital Privacy Act also established new mandatory security breach disclosure requirements, though this provision has yet to come into force.⁵⁷

In November 2016, a federal judge ruled that CSIS, Canada's national spy service, was illegally storing and analyzing metadata of Canadians who were no longer under investigation and where the information was no longer directly related to threats to Canadian security.⁵⁸ CSIS replied with an internal report that suggested the program did not pose any high privacy risks, but the government is looking into the matter.⁵⁹

During the reporting period, it was revealed that six reporters had their mobile phone calls and texts monitored by Quebec police in 2013,⁶⁰ however there is no indication of widespread spying on journalists in Canada.

The ability of Canadians to seek legal redress against foreign internet companies for privacy violations was significantly altered in the past year, with two decisions making it significantly easier for Canadian residents. In a landmark decision, the Supreme Court of Canada ruled that residents of the Canadian province of British Columbia could bring a class action suit against Facebook for the violation of certain privacy rights in a British Columbia court, despite Facebook's choice of forum clause specifying California.⁶¹ In another dramatic development, the Federal Court of Canada found that PIPEDA has extra-territorial application, and ordered a Romanian website to remove court decisions containing personal information of Canadian citizens that made them easily searchable through search engines, and never to post such information again.⁶² The Federal Court also ordered the Romanian website to pay damages to the plaintiff. Some commentators suggested the decision created something akin to Europe's "Right to be Forgotten",⁶³ while other commentators were more sceptical, though they still welcomed the decision.⁶⁴

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

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

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

57 Greg Meckbach, "Breach Notification," *Canadian Underwriter*, January 2, 2017, <http://bit.ly/2ob1rAa>.

58 Jim Bronskill, "CSIS broke law by keeping sensitive metadata, Federal Court rules," *CBC News*, November 3, 2016, <http://bit.ly/2rOy4oD>.

59 Alex Boutilier, "Goodale orders review into illegal CSIS metadata program," *The Star*, February 2, 2017, <http://bit.ly/2rOitWc>.

60 Sabrina Marandola, "6 reporters spied on by Quebec provincial police," *CBC News*, November 2, 2016, <http://bit.ly/2rOAJp9>.

61 *Douez v. Facebook*, 2017 SCC 33, <http://bit.ly/2tt7BhT>. Please note this decision was released after the reporting period (in June 2017).

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

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

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

Intimidation and Violence

There were no documented cases of violence or physical harassment of internet users in Canada for their online activities during the report period. Cyberbullying, cyberstalking, and general online harassment however, is on the increase, especially with young people as targets.⁶⁵ A recent study found that a quarter of Canadians have been subject to some form of online harassment.⁶⁶ The government has recognized the seriousness of the issue, and is set to release a coordinated strategy.⁶⁷

The legal precedence of Canada's "revenge porn" case took a significant hit this year. In a highly-praised landmark civil case in January 2016, a man who published revenge porn against his ex-girlfriend had been ordered to pay \$100,000 to the victim who suffered severe emotional distress.⁶⁸ In October 2016, however, that default judgment was set aside.⁶⁹ As a result, the new privacy tort of "public disclosure of private facts" established in the original decision is in a state of flux until the case is re-heard on the merits.

Technical Attacks

While there have been numerous cyberattacks and data breaches in Canada in recent years, very serious, widespread, systematic technical attacks have not been such a significant issue in Canada, although this may be changing. In May 2017 Bell, Canada's largest telecommunications provider, was the victim of a hack of their customer information as a hacker accessed almost two million active email addresses as well as names and phone numbers of 1700 customers.⁷⁰ Furthermore, various reports released during the reporting period indicated that smaller cyberattacks on private companies are on the rise in Canada.⁷¹ In April 2017, the Canadian Chamber of Commerce released a report indicating cyberattacks on companies were increasing and cybercrime was costing the Canadian economy billions of dollars a year.⁷² Finally, Canada's Privacy Commissioner reported that data breaches in the Federal government increased significantly in the past year.⁷³

In light of the alleged Russian hacking in the American elections, the Federal government has decided to seriously examine and be proactive in preventing such attacks on the electoral system in Canada.⁷⁴ Security experts believe that Canada could be targeted in a similar attack.⁷⁵

65 Canadian Press, "More than 1 million young Canadians victims of cyberbullying, cyberstalking: StatsCan," *CBC News*, December 19, 2016, <http://bit.ly/2nzVw4g>.

66 Victor Ferreira, "More than a quarter of Canadians are subjected to harassment on social media, new poll finds," *National Post*, October 21, 2016, <http://bit.ly/2nnO0IY>.

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

68 *Doe 464533 v N.D.*, 2016 ONSC 541 (CanLII), <http://canlii.ca/t/gn23z>.

69 *Doe v N.D.*, 2016 ONSC 4920 (CanLII), <http://bit.ly/2oCQxj5>.

70 "Bell Canada customer database hacked, 1.9 million email addresses and other information accessed," *Financial Post*, May 15, 2017, <http://bit.ly/2quOwXd>.

71 See e.g. Manufacturing.com Staff, "Cyberattacks on the rise in Canada, study finds", February 9, 2017, <http://bit.ly/2nfjVdQ>, and Amiri Zubairi, "Report: One in Three Cyberattacks on Canadian Companies In 2016 Resulted in A Security Breach," January 19, 2017 <http://bit.ly/2nfkhBc>.

72 Canadian Chamber of Commerce, "Cyber Security in Canada: Practical Solutions to a Growing Problem," April 2017, available at <http://bit.ly/2oCJMkQ>.

73 Howard Solomon, "Federal data breaches up 16 per cent, Canadian privacy commissioner reports," September 27, 2016, <http://bit.ly/2ofaDDG>.

74 Laura Stone, "Liberals to analyze risks of cyberattacks to protect Canada's electoral system," *The Globe and Mail*, February 2, 2017, <https://tgam.ca/2nf6ZET>.

75 Leslie Young, "Canada should worry about Russian interference in elections: former CSIS head," March 12, 2017, <http://bit.ly/2nfyY5>.

This year, Canada was also found to be a *source* of hackers, as a Canadian was arrested in March 2017 as a suspect in the well-publicised Yahoo hack of 500 million email addresses.⁷⁶

76 Tu Thanh Ha and Joe Friesen, "Russian agent hired alleged Yahoo hacker, Canadian Karim Baratov," *The Globe and Mail*, March 17, 2017, <https://tgam.ca/2nfeXhp>.