

# Canada

Canada's online environment is among the most open in the world, despite a concerning court decision that blocked websites hosting copyright-infringing content during the coverage period. Internet access is reliable and affordable for a majority of the population, although rural areas are underserved by infrastructure and telecommunications services. Users in Canada enjoy strong protections for free expression and press freedom.

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

## header2 Key Developments, June 1, 2019 - May 31, 2020

- In November 2019, a court ordered internet service providers (ISPs) to block websites that hosted copyright-infringing content for the first time in Canadian history, resolving a lawsuit brought by media companies (see B1).
- The pursuit of government plans to address the urban-rural divide in broadband access remains uncertain in light of the COVID-19 pandemic, with the government's budget being delayed in March and May 2020 (see A2).
- The Election Modernization Act, which in part regulates third-party online advertising and restricts political spending before the campaign period's official launch, went into effect in June 2019. While fewer public complaints were recorded ahead of the federal election that October, false information surrounding the contest still spread through social media (see B5).
- Parliament passed Bill C-59, which is meant to address some problematic provisions of the 2015 Anti-Terrorism Act, in June 2019. The original 2015 legislation facilitated the sharing of information about individuals across government agencies for a wide range of purposes (see C5).
- In February 2020, the government disclosed that cyberattacks on public agencies exposed the personal information of at least 144,000 Canadians in 2018 and 2019 (see C8).

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

A1 1.00-6.00 pts 0-6 pts

Do infrastructural limitations restrict access to the internet or the speed and quality of internet connections?	6.006 6.006
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Both fixed-line and mobile internet penetration rates have remained relatively steady in Canada. Mobile service providers continued to deploy a number of newer technologies to provide mobile broadband service, including Evolved High-Speed Packet Access (HSPA+) and LTE, yet penetration rates for new technologies are steady, as Canada is close to its saturation point. However, small increases in LTE access have occurred in remote regions.

Broadband service of at least 5 Mbps is available to 98 percent of Canadian households through a variety of fixed-line and wireless technologies, according to the regulatory body that oversees the communications industry, the Canadian Radio-television and Telecommunications Commission (CRTC).<sup>1</sup> The country narrowly missed its goal of a 100-percent penetration rate for 5-Mbps-or-faster service in 2016,<sup>2</sup> though access to high-speed service has continued to expand.<sup>3</sup> 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.<sup>4</sup>

In a landmark policy decision released in 2016,<sup>5</sup> the CRTC recognized the importance of ultra-high-speed (50 Mbps download speeds and above) internet access for the future of the economy. That year, the CRTC set a universal access goal for all residential and business fixed-line customers to have access to download speeds of at least 50 Mbps without data caps. Furthermore, it declared high-speed internet access a “basic telecommunications service” and established a C\$750 million (\$559 million) fund to reach those targets.<sup>6</sup> In September 2018, the CRTC announced criteria for the fund’s use.<sup>7</sup> A second round of calls for project applications was opened in November 2019;<sup>8</sup> however, the regulator did not disburse funds by the end of the coverage period.

A2 1.00-3.00 pts0-3 pts

Is access to the internet prohibitively expensive or beyond the reach of certain segments of the population for geographical, social, or other reasons?	2.002 3.003
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Internet access is not prohibitively expensive or beyond the reach of most segments of the population, although a digital divide in terms of geography persists, and poorer people struggle to afford access. The government named universal access as the first of ten draft principles for a digitally connected Canada in its October 2019 Digital Charter.<sup>9</sup>

Mobile broadband data remains expensive compared to fixed-line broadband data. High-speed, fixed-line access remains affordable due to robust competition; prices became even more competitive in 2016 when the CRTC reduced the price of wholesale high-speed internet access.<sup>10</sup>

Perhaps the most important obstacle to availability and ease of access is geography. Canada is overwhelmingly urban,

with 81 percent of the population living in urban areas.<sup>11</sup> Furthermore, approximately 75 percent of the population lives within 160 kilometers of the border with the United States.<sup>12</sup> While providing “reliable and affordable telecommunications services of high quality” to rural areas is enshrined in law,<sup>13</sup> affordable high-speed internet service is less available in more isolated areas, especially in the vast northern territories.

High-speed internet access is also more expensive in rural areas than in cities, and rural customers have fewer choices of ISPs according to the CRTC’s 2019 figures.<sup>14</sup> 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.

According to the CRTC’s 2018 Communications Monitoring Report, household broadband service with speeds between 5 Mbps and 9.99 Mbps was available in 100 percent of urban areas, compared to 98 percent in rural areas (a small increase from the 97 percent rural rate the previous year). However, the 98 percent figure includes 10 percent of households where availability was only via wireless services, which are generally more expensive, especially as data usage rates increase. When considering the CRTC’s high-quality service definitions, the urban-rural divide is significantly more pronounced: 50 Mbps service is available to 97.7 percent of urban households but only 40.8 percent of rural households.<sup>15</sup>

The government has taken a patchwork approach to improving connectivity in remote communities, indicating a lack of a strong overall strategy. The 2018 government budget identified new technologies, specifically low-Earth orbit (LEO) satellites, to enhance rural connectivity.<sup>16</sup> While the plan was short on specifics, the government pledged C\$100 million (\$75 million) over five years for research and development. The 2019 budget took a more proactive approach, with the government pledging to spend C\$5 billion (\$3.8 billion) to C\$6 billion (\$4.5 billion) to improve rural broadband services over 10 years.<sup>17</sup> The 2020 budget was delayed due to the COVID-19 pandemic, with Parliament shutting down for five weeks that March; in May, Prime Minister Justin Trudeau said the budget’s release remained unscheduled, citing the pandemic.<sup>18</sup>

The pandemic has shed light on this continuing urban-rural disparity as work, school, and political affairs shift online.<sup>19</sup> Recent reports indicate the government may accelerate its broadband access plan, particularly in rural areas, as part of Canada’s pandemic response.<sup>20</sup>

There is also a considerable access gap in terms of income: as of 2012, the penetration rate for home internet access for the highest income quartile was nearly 98 percent, while the penetration rate for the lowest income quartile was only 58 percent.<sup>21</sup> Internet connections are 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 official languages (English and French) as well as many other languages.

A3 1.00-6.00 pts 0-6 pts

Does the government exercise technical or legal control over internet infrastructure for the purposes	6.006
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of restricting connectivity?	6.006
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The government does not exercise technical or legal control over the internet infrastructure for censorship. Authorities do not restrict access to any social media platforms or communications apps.

The government has not centralized the telecommunications infrastructure. However, given the vertical integration of the marketplace, the infrastructure is controlled by a small number of companies, which could theoretically facilitate greater control of content and the implementation of surveillance technologies. In October 2018, the CRTC rejected a proposal to limit access to websites on the basis of copyright infringement (see B1), which would have been easily implemented considering the small number of ISPs in Canada.

A4 1.00-6.00 pts0-6 pts

Are there legal, regulatory, or economic obstacles that restrict the diversity of service providers?	5.005 6.006
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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.

To operate as a Canadian telecommunications provider, a company must meet the requirements in Section 16 of the Telecommunications Act. The last available data showed that Canadian retail telecommunications revenue (comprised of wireline, wireless, internet, and data and private lines) totalled C\$53.1 billion (US\$39.9 billion) in 2018, a 5.5 percent increase over the previous year. The five largest companies (Bell, Québecor, Rogers, Shaw, and TELUS) accounted for 87.4 percent of total revenue, a very minor increase over the previous year. The five providers' market share has remained relatively steady in recent years.[22](#)

The growth in the market for internet service outpaces that of the ICT market generally. According to the CRTC's 2019 Communications Monitoring Report, revenue for the fixed retail internet services sector stood at C\$11.8 billion (US\$8.9 billion) in 2018, a 7.3 percent increase over 2017, while mobile revenues (voice and data) rose 10.7 percent over the previous year.[23](#)

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

Three mobile service providers dominate the market, with Bell, TELUS, and Rogers serving 90.7 percent of wireless subscribers.[24](#) Their market share has remained relatively steady over the years. These companies are also leaders in the provision of fixed-line internet service (via phone lines or cable), along with Shaw, Cogeco, and Vidéotron, which is

owned by Québecor. While Canadians generally enjoy a choice of fixed-line internet providers, the available choices vary from region to region. There is often only one choice per technology type, leading to a public perception that options are limited and prices are kept artificially high. This perception is not without merit when pertaining to wireless data, as a 2018 report determined that Canada's wireless data prices were among the world's highest.<sup>25</sup> This remains the case, though the federal government's efforts, including an opening of the wireless spectrum to foster competition, have caused prices to fall somewhat.<sup>26</sup>

A5 1.00-4.00 pts0-4 pts

Do national regulatory bodies that oversee service providers and digital technology fail to operate in a free, fair, and independent manner?	4.004 4.004
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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 to the courts, or a government review can be requested. The government has rarely overturned CRTC decisions.

The CRTC's regulatory powers extend to internet access, but not to internet content, a principle known as the "new media exemption." The CRTC's position to refrain from internet-content regulation dates to 1999 and has been reinforced on numerous occasions since,<sup>27</sup> including by the Supreme Court of Canada (SCC).<sup>28</sup> This contrasts with other industries, specifically television, where the CRTC exerts some control over content, most notably by requiring broadcasters to air a minimum amount of Canadian content.

*A Canadian court ordered ISPs to block websites involved in illegally distributing copyrighted content for the first time ever. One ISP, TekSavvy, appealed the decision on several grounds, including freedom of speech. Amendments to the notice-and-notice regime of the Copyright Act made in December 2018 continue to protect users by placing significant restrictions on what can be included in copyright infringement notices.*

B1 1.00-6.00 pts0-6 pts

Does the state block or filter, or compel service providers to block or filter, internet content?	5.005 6.006
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*Score Change: The score declined from 6 to 5 due to a landmark court decision that ordered ISPs to block websites for copyright infringement in November 2019.*

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

In November 2019, a court ordered all of Canada’s major ISPs to block several domains associated with a service that sold copyright-infringing programming. Several large media companies petitioned the Federal Court in *Bell Media Inc. v. GoldTV.Biz* to order the domains’ blocking for rebroadcasting their programming without permission. The court, holding that the plaintiffs would suffer irreparable harm, granted an injunction ordering ISPs to block users’ access to the websites via domain name system (DNS) and internet protocol (IP) blocking. Twelve domains and subdomains were blocked under the order, which permitted the media companies to seek to further blocking orders for websites infringing on their programming.<sup>29</sup> A subsequent January 2020 order required another 11 domains and subdomains to be blocked.<sup>30</sup> In June and July 2020, after the coverage period, many sites were unblocked and several new sites were added, leaving a total of six domains and subdomains blocked.<sup>31</sup>

Previously, in January 2018, a group of over 25 ISPs, media companies, creative companies, and other interested parties—including major entities like Bell, Rogers, and the Canadian Broadcasting Corporation (CBC)—banded together as “FairPlay Canada”<sup>32</sup> 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.”<sup>33</sup> Some commentators criticized the plan for possibly violating Canada’s net neutrality regime and for the potential to affect websites that did not engage in piracy.<sup>34</sup> Other commentators insisted it was a necessary tool to fight online piracy and protect copyright.<sup>35</sup> Ultimately, the CRTC rejected the proposal in October 2018 after determining that it lacked jurisdiction to implement the plan. However, the CRTC invited Parliament to examine the issue.<sup>36</sup>

B2 1.00-4.00 pts 0-4 pts

Do state or nonstate actors employ legal, administrative, or other means to force publishers, content hosts, or digital platforms to delete content?	3.003 4.004
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Nonstate actors, specifically large media companies, have used legal means to force digital platforms to delete content, generally for copyright infringement. However, a significant development in 2018 should reduce the misuse of the notice-and-notice regime under the Copyright Act.

The previous notice-and-notice regime required ISPs to forward notices from copyright holders claiming infringement to the alleged copyright violator (see B3). Several US-based antipiracy firms, including Rightscorp and CEG-TEK, used the system to send notifications to subscribers that misstated Canadian copyright law, citing US awards for damages and threatening the termination of internet access. The notifications sowed fear among Canadians, and many paid the settlement fees proposed in the notices.<sup>37</sup> In December 2018, Parliament passed amendments to the program to restrict the information that can be included in the notices, no longer allowing misstatements of Canadian law. Further, ISPs are no longer required to forward notices to subscribers if they contain an offer to settle the infringement claim, a request or demand for payment or personal information, or a URL linking to such offers or demands.<sup>38</sup>

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 2017, the Federal Court of Appeal upheld a lower court decision granting an injunction to shut down websites selling copyright-infringing set-top boxes.<sup>39</sup> During the coverage period, a group of media companies sought and obtained an order forcing ISPs to block certain websites that hosted copyright-infringing content (see B1).

In 2017, the SCC upheld the decision by the British Columbia Court of Appeals in *Google, Inc. v. Equustek Solutions, Inc.*,<sup>40</sup> ordering Google to remove URLs in its global index pointing to websites that infringed on the plaintiffs' trademark (see B3).

Defamation claims may also result in content removal, as content hosts fear potential liability as publishers of the defamatory content. Defamation claims may also prevent the posting of content, as the British Columbia Court of Appeal demonstrated in March 2018 when it ordered a defendant not to post anything about the plaintiff, as well as awarding damages.<sup>41</sup> In June 2018, the SCC ruled that a case involving the publication of defamatory content on an Israeli website against a Canadian resident should be heard in Israel rather than Canada, despite the fact that damages were incurred in Canada.<sup>42</sup>

In March 2020, the Law Commission of Ontario, Canada's largest province, proposed a new Defamation Act that would require internet platforms to remove defamatory content upon notification.<sup>43</sup> As of the end of the coverage period, the provincial government had not moved forward with the proposed reform.

In Quebec, Canada's French-speaking province, websites that are commercial in nature are legally required to be in French,<sup>44</sup> although they can also be in other languages. Violators may receive a warning from a government agency, and are then subject to fines, if they do not comply. Some website operators may choose to take their sites down rather than pay for translation or face fines. National or international operators of websites that do business in Quebec (and would therefore be subject to the law) sometimes block Quebec residents' access to their websites rather than comply.<sup>45</sup>

B3 1.00-4.00 pts 0-4 pts

Do restrictions on the internet and digital content lack transparency, proportionality to the stated aims, or an independent appeals process?	4.004 4.004
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Restrictions on the internet are generally fair and proportionate.

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).<sup>46</sup> Accessing child pornography is illegal in Canada under section 163.1(4.1) of the criminal code,<sup>47</sup> as well as under international human rights standards. The initiative targets international sites that the Canadian government does not have the jurisdiction to shut down.

Bill 74, Quebec's controversial law requiring ISPs to block access to gambling sites, came into effect in 2016,<sup>48</sup> but

remains inoperative. In July 2018, a Quebec court declared the law unconstitutional, ruling online gambling a federal rather than provincial matter.[49](#)

In 2004, the SCC ruled that ISPs are not liable for copyright infringement violations committed by their subscribers,[50](#) a principle now enshrined in law.[51](#) Copyright law includes a notice-and-notice provision, in effect since 2015, which was amended during the previous coverage period (see B2). Unlike a notice-and-takedown system, the program 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 able to forward the notifications to the implicated subscriber, though a December 2018 amendment to this system no longer requires ISPs to do so. 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. Content may be ordered blocked at the ISP level by a court, and ISPs do not disclose subscriber information without court approval, although approvals are more common in recent years.[52](#)

In November 2019, a court ordered Canada's major ISPs to block several domains associated for copyright infringement (see B1). Legal experts criticized the decision on numerous grounds: for example, as an overreach by the court in an area best left to Parliament or the CRTC,[53](#) and that the court relied too heavily on a British decision within a very different legal framework.[54](#) TekSavvy, the only ISP to contest the original decision, appealed later that month based on freedom-of-speech and other concerns.[55](#)

In the SCC's ruling in *Google, Inc. v. Equustek Solutions, Inc.*, the court's reasoning was strictly focused on the law of intellectual property and interlocutory injunctions, so it is unclear if such worldwide orders may be granted in other areas of law in the future. It is also unclear whether such worldwide orders can have effect in foreign jurisdictions. 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.[56](#) In April 2018, Google took the US judgment back to the British Columbia court that made the original ruling and asked for the injunction to be suspended, but the court denied Google's application.[57](#)

Although platforms are legally protected from liability for copyright infringement by their users, they may face liability for alleged defamation once alerted to the publication. A court may also order the removal of the content. The SCC has held that merely linking to defamatory content on the internet is not defamation in and of itself; it would only be defamation if a site actually repeats the defamatory content. Therefore, the URLs would not be removed.[58](#)

B4 1.00-4.00 pts 0-4 pts

Do online journalists, commentators, and ordinary users practice self-censorship?	3.003 4.004
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Online self-censorship is not widespread. However, certain individuals may self-censor for fear of potential government surveillance under Bill C-51 (see C5).

## B5 1.00-4.00 pts0-4 pts

Are online sources of information controlled or manipulated by the government or other powerful actors to advance a particular political interest?	4.004 4.004
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Online sources of information are not widely controlled or manipulated by the government or other powerful actors. While some sites are partisan in nature, a wide array of political viewpoints are available online.

The government advanced legislation to combat disinformation and foreign interference in advance of the October 2019 federal election. The Election Modernization Act, which went into effect in June 2019, provides for a number of reforms such as regulations on third-party online advertising and restrictions on how much campaigns can spend before a campaign season officially commences.<sup>59</sup> Anecdotally, the reforms appear to have had an early effect, as fewer complaints and questions about results were logged during the campaign period. However, an internal Elections Canada report completed in late October 2019 found numerous instances of false election information being spread on social media.<sup>60</sup> False information was also spread through social media platforms during the COVID-19 pandemic, with conspiracy theories gaining traction.<sup>61</sup>

## B6 1.00-3.00 pts0-3 pts

Are there economic or regulatory constraints that negatively affect users' ability to publish content online?	3.003 3.003
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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.<sup>62</sup> With these policies, the CRTC has substantively completed a national framework that ensures the continuation of net neutrality. In a May 2018 report, a parliamentary committee encouraged the government to strengthen net neutrality even further by enshrining the principle in the Telecommunications Act.<sup>63</sup> Canadians have expressed concerns, however, that the repeal of net neutrality in the United States will have a negative effect on Canadians' internet activities,<sup>64</sup> though some commentators have expressed doubts that these fears have come to pass.<sup>65</sup>

In January 2020, the government released a detailed report from a legislative review panel on the future of Canada's communications legislation, the result of a review of initiated in its 2017 budget.<sup>66</sup> Commentators have warned that the report, which focused heavily on content produced in Canada, may herald the weakening of net neutrality.<sup>67</sup> However, the report itself included a commitment to the net neutrality principle. <sup>68</sup>

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 (\$377 million) on Canadian productions over the next five years.<sup>69</sup> 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.<sup>70</sup> Numerous provinces including British Columbia, Quebec, and Saskatchewan already levy provincial sales taxes on out-of-province digital platforms, including Netflix, Google, Amazon, and, in Quebec’s case, Spotify.<sup>71</sup>

B7 1.00-4.00 pts 0-4 pts

Does the online information landscape lack diversity?	4.004 4.004
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The online environment in Canada is relatively diverse, and internet users have access to a wide range of news and opinions on a variety of topics. All major media organizations operate websites that feature articles and audio and video content. The public broadcaster maintains a comprehensive website that includes news articles and streamed video programming. Paywalls are increasingly used by newspapers publishing online, but many quality, independent news and commentary sites remain accessible for free.

B8 1.00-6.00 pts 0-6 pts

Do conditions impede users’ ability to mobilize, form communities, and campaign, particularly on political and social issues?	6.006 6.006
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Digital mobilization tools, including social media platforms and communication apps, are available and are used to build support for political and social movements. Online activism played a significant role in the Liberal government’s promise to repeal the problematic aspects of the Anti-Terrorism Act and influenced the government’s decision to introduce Bill C-59 to reform it (see C5). Much online activism that targets the ICT sector is spearheaded by a popular nonpartisan, nonprofit organization called Open Media, which advocates for three pillars of internet rights—free expression, access, and privacy.<sup>72</sup>

Canadians have been especially active in the online #MeToo movement,<sup>73</sup> which prompted the justice minister to consider updating laws to ensure victims of sexual violence are treated more compassionately in courtrooms.<sup>74</sup> This online activism also influenced the government to introduce Bill C-65,<sup>75</sup> which became law in October 2018 and dramatically updated the harassment legal framework as it applies to the federal government and federally regulated workplaces.<sup>76</sup> Online activism likely played a role in the decision to legalize cannabis countrywide,<sup>77</sup> which went into effect in October 2018. Canadians have also relied on the internet to mobilize in the wake of the COVID-19 pandemic, which made in-person protests more difficult. For example, protesters in Saskatchewan moved their demonstration for a higher-education tuition freeze online in March 2020.<sup>78</sup>

## C Violations of User Rights

*Freedom of expression online is largely respected. Users are not prosecuted for their online activity, and they can communicate anonymously and freely using encryption tools. Reforms to controversial elements of the 2015 Anti-Terrorism Act, which permits information sharing across government agencies for a wide range of purposes, were passed in June 2019.*

C1 1.00-6.00 pts0-6 pts

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?	5.005 6.006
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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.”<sup>79</sup> These protections apply to all forms of speech, whether online or offline. There are a few restrictions that apply to online speech (see C2).

C2 1.00-4.00 pts0-4 pts

Are there laws that assign criminal penalties or civil liability for online activities?	2.002 4.004
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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.<sup>80</sup> Punishment for defamatory libel, advocating genocide, and uttering threats may include imprisonment for up to five years. Hate speech is punishable by up to two years in prison. Human rights complaints regarding potentially defamatory statements can be decided through the mechanisms provided by provincial human rights laws and the Canadian Human Rights Act (CHRA).<sup>81</sup> However, the controversial provision of the CHRA prohibiting online hate speech (s. 13), which was criticized for being overly broad, was repealed in 2013.<sup>82</sup> In early 2018, the Liberal government considered reviving the provision in some form,<sup>83</sup> but the idea did not progress.

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.

C3 1.00-6.00 pts0-6 pts

Are individuals penalized for online activities?	6.006 6.006
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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.

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 (\$150,000) in damages.<sup>84</sup> In January 2018, the Court of Appeal of Ontario upheld a C\$700,000 (\$520,000) judgment issued in 2016.<sup>85</sup> In January 2020, an Ontario judge issued significant awards for defamation against anonymous online defendants for only the second time in Canadian legal history.<sup>86</sup>

C4 1.00-4.00 pts 0-4 pts

Does the government place restrictions on anonymous communication or encryption?	4.004 4.004
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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.<sup>87</sup> 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.<sup>88</sup>

C5 1.00-6.00 pts 0-6 pts

Does state surveillance of internet activities infringe on users’ right to privacy?	4.004 6.006
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*Score Change: The score improved from 3 to 4 due to legislative reforms that increased oversight of Canada’s national security surveillance operations.*

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

Bill C-59, an Act Respecting National Security Matters,<sup>89</sup> was introduced in June 2017 to address some of the more problematic provisions of the Anti-Terrorism Act,<sup>90</sup> and was passed in June 2019.<sup>91</sup> 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.<sup>92</sup> Bill C-59 still allows the government to engage in cyberoperations, but its powers to do so are more limited than in Bill C-51.<sup>93</sup> Civil society groups raised concerns that Bill C-59 does not fully address surveillance issues posed by the previous legislation,<sup>94</sup> and still grants too much power to the government, including the ability to engage in mass data collection.<sup>95</sup>

The Office of the Privacy Commissioner (OPC) provides an important oversight function concerning the privacy of users' data. The privacy commissioner, Daniel Therrien, is an officer of Parliament who reports directly to the House of Commons and the Senate. The commissioner's mandate includes overseeing compliance with the Privacy Act,<sup>96</sup> 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.<sup>97</sup> An OPC report released in December 2019 called for Parliament to legislate a right to privacy and affirm a human rights-based approach to federal privacy legislation.<sup>98</sup> That same month, Prime Minister Trudeau instructed the attorney general and justice minister to strengthen online rights.<sup>99</sup>

The SCC has also expanded privacy rights. Most recently, in December 2018, the court ruled that privacy rights are still protected when a computer is shared with others.<sup>100</sup> 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.<sup>101</sup> 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.<sup>102</sup>

The COVID-19 pandemic has provided authorities the opportunity to erode privacy rights. For example, the Ontario government's April 2020 emergency order allowed it to share personal information in their possession with emergency response personnel, including police officers and paramedics.<sup>103</sup> In August 2020, after the coverage period, Ontario ended police access to the information following a lawsuit from human rights organizations.<sup>104</sup>

C6 1.00-6.00 pts 0-6 pts

Are service providers and other technology companies required to aid the government in monitoring the communications of their users?	4.004 6.006
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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,[105](#) the Personal Information Protection and Electronic Documents Act (PIPEDA).[106](#) PIPEDA was modified by the Digital Privacy Act,[107](#) passed in 2015. The Digital Privacy Act expanded the scope for companies to make voluntary warrantless disclosures of personal information under certain circumstances, by allowing for such disclosures to any organization, not just law enforcement. The act also established new mandatory security breach disclosure requirements, which came into force in November 2018.[108](#) PIPEDA, however, remains relatively toothless.

A Standing Committee on Access to Information, Privacy, and Ethics (ETHI) report released in February 2018 called for significant changes to strengthen PIPEDA and better align it with the EU General Data Protection Regulation (GDPR),[109](#) as did the government's January 2020 report on legislative reform of the communications sector.[110](#)

The OPC has also called for changes to the Privacy Act, which has not been significantly amended since 1983. The commission argues that the act is outdated and does not reflect the privacy concerns of the digital age. The OPC also asserts that it allows the government too much latitude to collect personal information.[111](#)

The OPC shocked the legal community in January 2018 when it released a draft position paper concluding that PIPEDA contained a European-style "right to be forgotten" provision.[112](#) Commentators questioned the OPC's conclusions and reasoning.[113](#) In October 2018, the OPC submitted a reference question to the Federal Court to clarify whether indexing web pages and presenting results about a person's name in Google's search function fall under PIPEDA. If the Federal Court replies that these actions are subject to PIPEDA, it would support the right to be forgotten position.[114](#) It is unclear when the Federal Court will issue its decision.[115](#) The ETHI report called for the right to be forgotten to be included in future PIPEDA amendments. In December 2019, Prime Minister Trudeau[116](#) and the Privacy Commissioner[117](#) both called for reform to Canada's privacy laws, including the right to be forgotten.

The OPC conducts investigations into major data breaches to determine whether private companies comply with PIPEDA. In its investigation into the 2017 Equifax breach, the OPC found major PIPEDA violations. In response, Equifax took numerous corrective measures and signed a compliance agreement.[118](#) In the OPC's investigation into the Cambridge Analytica scandal, Facebook refused to take significant corrective measures or implement the OPC's recommendations.[119](#) In May 2019, Facebook CEO Mark Zuckerberg and COO Sheryl Sandberg ignored a subpoena from a parliamentary committee to testify on the scandal.[120](#) In February 2020, the OPC filed an application with the Federal Court seeking a declaration that Facebook violated PIPEDA and orders requiring Facebook to take corrective action.[121](#)

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.[122](#) 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.[123](#) While the choice-of-forum clause in the case chose another Canadian province (Ontario), it is clear that the same reasoning could apply internationally. In another dramatic

development, in 2017 the Federal Court found that PIPEDA has extraterritorial application, and ordered a Romanian website to remove court decisions that contained easily searchable personal information of Canadian citizens. The site was ordered to never post such information again,[124](#) and the court ordered the website to pay damages to the plaintiff.

C7 1.00-5.00 pts0-5 pts

Are individuals subject to extralegal intimidation or physical violence by state authorities or any other actor in retribution for their online activities?	5.005 5.005
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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.[125](#) A 2016 study found that a quarter of Canadians have been subjected to some form of online harassment,[126](#) while a 2018 report indicated that a third of Canadian parents know a child in their community who experienced cyberbullying.[127](#) The government has recognized the seriousness of the issue, and announced in 2017 that it would develop a coordinated strategy,[128](#) though there has been little progress.

The legal precedence of a noteworthy case involving the nonconsensual sharing of intimate material has taken on new significance. In a highly praised 2016 landmark civil court decision, a man who published intimate videos of his ex-girlfriend without her consent was ordered to pay C\$100,000 (\$75,000) to his former partner, who suffered severe emotional distress.[129](#) Later that year, however, the default judgment was set aside,[130](#) and an appeal of this decision was denied.[131](#) As a result, the new privacy tort of “public disclosure of private facts” established in the original decision was in a state of flux. Notwithstanding the procedural issues with the original case, the new tort was applied in a November 2018 case, in which an individual was found liable for posting a sexually explicit video of a person without their consent on a pornographic website, and was ordered to pay C\$100,000 (\$75,000) in damages.[132](#) In December 2019, a court cited the tort in awarding significant damages in a family law case involving a man cyberbullying his ex-wife and posting negative videos of their minor children online.[133](#) The 2016 case continues to be cited by other plaintiffs, authors, and courts.[134](#)

Additionally, many provinces, including Manitoba[135](#) and Alberta,[136](#) have passed laws that create civil torts for unauthorized distribution of intimate images and videos. Individuals are still prosecuted under Section 162.1 of the criminal code, which makes it a crime to publish, distribute, transmit, or sell intimate images without the consent of the person depicted.[137](#) By December 2019, Canadian police forces received nearly 5,000 complaints since nonconsensual sharing of intimate material was federally criminalized in December 2014.[138](#)

C8 1.00-3.00 pts0-3 pts

Are websites, governmental and private entities, service providers, or individual users subject to widespread hacking and other forms of cyberattack?	2.002 3.003
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Cyberattacks and data breaches are becoming a serious issue in Canada. With a new requirement that private companies report data breaches to the OPC, the number of reports of such breaches between November 2018 and October 2019 increased sixfold over the previous reporting period.<sup>139</sup> It is unclear whether the number of breaches is increasing or the mandatory reporting requirement has led to more reports. The OPC also reported that over 28 million Canadians were affected by data breaches during the 2018–19 reporting period.<sup>140</sup> Statistics Canada reported that 57 percent of internet users suffered some sort of cybersecurity incident during the 2018 calendar year.<sup>141</sup> During the coverage period, major Canadian companies were subject to numerous cyberattacks and data breaches, including Lifelabs, Canada’s largest healthcare lab testing company, and the Desjardins Group, one of Canada’s largest banking groups.<sup>142</sup>

Cyberattacks and data breaches have also affected federal government agencies. 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.<sup>143</sup> In late 2017, the Bank of Canada’s governor stated that cyberattacks are the most pressing concern for the financial system,<sup>144</sup> and the deputy privacy commissioner expressed similar concerns in April 2019.<sup>145</sup>

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