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## FREEDOM OF THE PRESS

# Canada

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Canada's 1982 constitution guarantees freedom of expression and freedom of the press. The government may legally restrict free speech with the aim of ending discrimination, ensuring social harmony, or promoting gender equality, but the definition of hate speech, which is punishable by law, remains vague. In November 2010, the Supreme Court began hearing the case *Saskatchewan Human Rights Commission v. William Whatcott*, in which a local human rights tribunal found Christian activist William Whatcott's flyers and messages against homosexuality to be in violation of the Saskatchewan Human Rights Code. Whatcott's lawyer has argued that defining "hate" is extremely difficult. The Supreme Court continued to review the issue in 2012, and the case was ongoing at year's end. In previous cases, the Supreme Court has ruled that inciting hatred is a criminal offense, but the threshold for guilt is high: It must be proven that the person engaged in hate speech willfully and publicly.

In 2009, the Supreme Court attempted to strike a balance between freedom of expression and protection of reputation, allowing journalists to avoid liability for alleged defamation if they are able to show that they acted responsibly in reporting a matter of public interest, even if the statements were untrue. Despite this rule, in April 2011 a criminal libel complaint was filed against three Canadian Broadcasting Corporation (CBC) journalists over an allegedly defamatory documentary about fashion mogul Peter Nygard that aired in April 2010. If found guilty, the journalists could face prison sentences. In April 2012, Nygard filed a civil defamation suit against CBC employees related to the documentary. These cases, along with a string of additional civil suits by Nygard against the CBC, were ongoing at year's end.

The right of journalists to protect the confidentiality of their sources continued to be tested in 2012. There are no specific laws that protect confidential sources, and the courts often decide whether or not to respect source confidentiality on a case-by-case basis. In February, Maurice Giroux, a journalist with the online newspaper *MediaSud*, was ordered by a judge to reveal his sources for a story on the leak of a confidential report by the president of Max Aviation and Cargair. In March, Éric-Yvan Lemay, a journalist with *Le Journal de Montréal*, had his home raided by police, who took forensic samples and confiscated his computer in response to claims by Honoré-Mercier Hospital that he had stolen medical documents while conducting an investigation into medical confidentiality in Montreal-area hospitals. That case was dropped in April.

In February 2012, the government introduced Bill C-30, which would permit law enforcement agencies to monitor the digital activity of internet users via their service providers without a warrant. In response to heavy backlash, the bill was sent to the Committee on Justice and Human Rights for revision and appeared to be permanently shelved at year's end.

Canada's 1983 Access to Information (ATI) Act is in serious need of reform and falls far short of international standards. Efforts to obtain information from the federal government typically involve long waits, and requests are hampered by the federal bureaucracy as well as the governing party. In September 2012, the Centre for Law and Democracy ranked Canada's ATI law 56th among access to

## 2013 SCORES

PRESS STATUS

**Free**

PRESS FREEDOM SCORE

**20**

LEGAL ENVIRONMENT

**5**

POLITICAL ENVIRONMENT

**9**

ECONOMIC ENVIRONMENT

**6**

information laws in 93 countries, based on criteria such as right of access, scope, request procedures, refusals, appeals, and sanctions and protections. The Canadian Journalists for Free Expression (CJFE) reported in 2012 that only half of the requests for official information were being fulfilled within the statutory 30-day deadline. Canada's information commissioner initiated a consultation in September to solicit national input on how to update the ATI Act, and this process was ongoing at year's end. In a separate hindrance on access to official information, the Supreme Court in 2011 upheld Quebec court rules that prohibit media outlets from broadcasting the audio recordings of court proceedings or using cameras and recording equipment beyond designated areas of courthouses.

Journalists in Canada are generally free from violence or harassment. However, *Toronto Star* reporter Daniel Dale accused the mayor of Toronto, Rob Ford, of physically threatening him and taking his telephone and video recorder as he photographed a piece of land next to the mayor's home in May 2012. In response, the mayor requested that the police bring charges against Dale and that he be removed from the city hall beat. However, no charges were filed against the reporter. Also in May, the Office of the Independent Police Review Director released a report that heavily criticized police conduct during protests surrounding the Group of 20 summit meeting in Toronto in 2010, including police treatment of the media. Journalists had reported having their possessions searched and equipment damaged, and being detained, arrested, and physically assaulted. There were also instances of police abuse during student protests against proposed tuition hikes in Quebec in the spring of 2012. Journalists reported being arrested, subjected to excessive force, or hit with rubber bullets. Some were told to stop filming or had their equipment confiscated or damaged.

Both print and broadcast media, including the public broadcaster CBC, are free to express diverse views. The CBC broadcasts in French and English. Broadcasting rules stipulate that 30 to 35 percent of programming must be Canadian. Concentration of media ownership remains an issue, with around half of the network media market owned by four corporations: Bell, Shaw, Rogers, and Quebecor Media Inc. Bell Canada, the country's largest telecommunications company, has important stakes in many sectors, including television and radio broadcasting, wireless internet, and mobile service. In March 2012, Astral Media agreed to a C\$3.38 billion (US\$3.38 billion) takeover offer by Bell, which would have thereby acquired control over 42 percent of the English-language television market and 33 percent of the French. However, the Canadian Radio-television and Telecommunications Commission (CRTC) rejected the proposed deal in October based on concerns related to competition, ownership concentration, and vertical integration. Bell and Astral Media submitted a revised proposal in November that would give Bell control of 35 percent of the English-language television viewership and 23 percent of the French. The proposal was still being considered at year's end.

Internet use is widespread and unrestricted in general, with 87 percent of the population accessing the internet in 2012.

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