CENTRE FOR LAW AND DEMOCRACY

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Introduction[1]

This Submission was prepared by the Centre for Law and Democracy (CLD) and supported by OpenMedia. It has been prepared to assist the Human Rights Committee with its seventh periodic review of Canada, which will take place during its 145th session in March 2026. We raise a number of key concerns in respect of Canada's record on freedom of expression, freedom of assembly and the right to information (RTI). The Submission does not purport to be an exhaustive list of issues of concern to the endorsing organisations but aims to draw attention to several pressing issues in respect of these rights.

Bill C-9 (Arts. 19, 20(2) and 21)

On 19 September 2025, the government introduced Bill C-9, An Act to amend the Criminal Code (hate propaganda, hate crime and access to religious or cultural places).[2] The Bill, which is still being considered by parliament's Standing Committee on Justice and Human Rights, would introduce several changes to the Criminal Code with negative ramifications for freedom of expression and assembly in Canada. The Bill was met with significant concern by many civil society groups, as evidenced by a joint letter signed by 37 civil society groups, including prominent Canadian civil liberties groups, urging the withdrawal of the bill,[3] as well as multiple critical submissions which since have been submitted to the parliamentary committee considering the bill.[4]

There are a number of problems with the Bill C-9. First, it would remove an existing requirement found in sections 318(3) and 319(6) of the Criminal Code which Attorney General consent be secured before instituting proceedings for hate speech offences. This

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[2] See https://www.parl.ca/DocumentViewer/en/45-1/bill/C-9/first-reading.

[3] "CIVIL SOCIETY JOINT LETTER: Bill C-9 Threatens Freedom of Peaceful Assembly and Freedom of Expression in Canada", 6 October 2025, https://bccla.org/wp-content/uploads/2025/10/2025-10-06-Bill-C-9-Civil-Society-Joint-Letter.pdf.

[4] See, for example, Canadian Civil Liberties Association, "Submission to the Standing Committee on Justice and Human Rights Regarding Bill C-9, An Act to Amend the Criminal Code (Hate Propaganda, Hate Crime and Access to Religious or Cultural Places)", 21 October 2025, https://www.ourcommons.ca/Content/Committee/451/JUST/Brief/BR13696025/br-external/CanadianCivilLibertiesAssociation-e.pdf; and Ligue des droits et libertés, "Brief submitted to the Standing Committee on Justice and Human Rights", 6 November 2025, https://www.ourcommons.ca/Content/Committee/451/JUST/Brief/BR13761256/br-external/LigueDesDroitsEtLibertes-067-251105-029-e.pdf. Other submissions to parliament are available here: https://www.ourcommons.ca/Committees/en/JUST/StudyActivity?studyActivityId=13154115.

would remove an important safety valve against charges being initiated by the police and potentially facilitating vexatious private prosecutions. This is particularly concerning given that hate speech prosecutions raise complex freedom of expression concerns, that without this protection, hate speech rules are ripe for strategic litigation against private prosecutions (SLAPPs) and that hate speech prosecutions are very politically sensitive and can even lead to giving the accused martyr-like status.

Second, Bill C-9 would create a new intimidation offence, section 423.3(1), applicable where someone "engages in any conduct with the intent to provoke a state of fear in a person in order to impede their access" to buildings/structures which are primarily used: for "religious worship"; by an "identifiable group"[5] for "administrative, social, cultural or sports activities or events", as an educational (including daycare) institution or as a residence for seniors; or as a cemetery. Bill C-9 would also proscribe the intentional obstruction or interference with another's lawful access to these buildings or locations. This second offence is subject to a limited exception for persons who attend, near or approach the buildings/structures "for the purpose only of obtaining or communicating information" (section 423.4). Both offences would attract steep custodial sentences of up to ten years' imprisonment (section 423.3(3)(a)).

A key problem with these offences is the limited nature of the exceptions. They would, for example, apply to picket lines by striking employees at those buildings or locations, which are almost by definition held with the intent to prevent other employees from entering those buildings. And, because both focus on the "primary" use of the buildings, apart from in their application to cemeteries, they would apply to activities held at those buildings which are unrelated to their religious function, such as demonstrations which have been held against real estate events in Canadian synagogues which allegedly promote the purchase of real estate in Israeli settlements in occupied Palestine.[6] It is not a proportionate restriction on freedom of expression to prevent protesters from gathering to express opposition to political activities such as this. As a result, additional exceptions to these offences are needed to protect these legitimate expression and assembly-related activities.

Another problem is the very harsh sentences proposed for these offences, of up to ten years' imprisonment, five times as long as the maximum penalties for hate speech in section 319 of the Criminal Code and twice as long as those for incitement to genocide (section 318). This is disproportionate.

[5] The relevant Criminal Code provision, section 318(4), defines "identifiable group" as "any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability".

[6] Vanessa Balintec, "Pro-Palestinian supporters decry real estate events at synagogues over allegations occupied land being sold", 4 March 2024, CBC News, https://www.cbc.ca/news/canada/toronto/real-estate-thornhill-event-1.7133251.

The disproportionate sentences under these provisions are aggravated for permanent residents of Canada due to the collateral effects a conviction would have on immigration status. Under section 36(1)(a) of the Immigration and Refugee Protection Act,[7] inadmissibility for serious criminality applies to those convicted of an offence "punishable by a maximum term of imprisonment of at least 10 years", irrespective of the actual sentence received. This applies to both foreigners and permanent residents of Canada.

Third, Bill C-9 would introduce a new "wilful promotion of hatred—terrorism and hate symbols offence" (proposed section 319(2.2)), which would criminalise anyone who "wilfully promotes hatred against any identifiable group" by displaying certain Nazi symbols, symbols of designated terrorist groups or symbols which resemble these symbols. Exceptions are provided for displays for a "legitimate purpose" not contrary to the "public interest", including those related to "journalism, religion, education or art" or if the symbol is intended to "point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada" (proposed section 319(3.2)).

Formally, this is simply a specific case falling within the scope of the existing hate speech provision, in section 319(2) which criminalises anyone who "wilfully promotes hatred against any identifiable group" via the communication of any statement. As such, it is entirely duplicative and its only purpose seems to be to single out the use of the designated symbols when promoting hatred. It is not appropriate to use the criminal law in this sort of signalling manner. Furthermore, it is likely to have a chilling effect on those who might otherwise seek to use these symbols for purposes other than to promote hatred against an identifiable group.

Fourth, Bill C-9 would introduce a definition of hatred into section 319(7) of the Criminal Code which appears aimed at codifying existing Supreme Court of Canada jurisprudence on hate speech, defining it as "the emotion that involves detestation or vilification and that is stronger than disdain or dislike". However, this definition appears to water down this jurisprudence, which defined hatred as an "emotion of an intense and extreme nature that is clearly associated with vilification and detestation".[8] While the Supreme Court's existing jurisprudence would still formally remain the law of the land, the statutory definition of hatred should better reflect this standard, given that laypeople will more likely refer to it than the jurisprudence (which is, indeed, the only benefit of adding the definition into the Criminal Code).

[7] S.C. 2001, c. 27, https://laws.justice.gc.ca/eng/acts/I-2.5/.
[8] See *R. v. Keegstra*, [1990] 3 SCR 697, https://www.canlii.org/en/ca/scc/doc/1990/1990canlii24/1990canlii24.html.

Recommendations

- The requirement, currently found in sections 318(3) and 319(6) of the Criminal Code, that the consent of the Attorney General be secured before instituting proceedings for hate speech offences, should be maintained.
- Additional exceptions should be added for the new proposed section 432.3 offences, so as to protect legitimate expression activities, including those which it would be disproportionate to prohibit.
- The maximum penalty for breach of the new, proposed section 432.3 offences should be reduced substantially, ideally to the same level as for hate speech offences.
- The new, proposed "wilful promotion of hatred—terrorism and hate symbols offence" (new section 319(2.2) of the Criminal Code) should be removed from Bill C-9.
- The proposed new definition of "hatred: (new section 319(7) of the Criminal Code) should be amended to align better with the jurisprudential definition adopted by the Supreme Court of Canada.

Other Freedom of Assembly Concerns (Art. 21)

While freedom of peaceful assembly is a constitutional right in Canada, there have been unfortunate recent developments at municipal and provincial levels which threaten the effective exercise of this right in practice. One concerning trend has been the proliferation since 2024 of municipal 'bubble zone' bylaws in the province of Ontario establishing broad restrictions on demonstrations occurring near a wide array of infrastructure. The first such bylaw was adopted by the city of Vaughan prohibiting "nuisance demonstrations" within 100 metres of "vulnerable social infrastructure" (defined as a childcare centre, a long-term Care Facility, a hospital, a school or a place of worship) and providing for fines of up to CAD 100,000.[9] This is the subject of an ongoing constitutional challenge by the Canadian Civil

[9] Protecting Vulnerable Social Infrastructure By-law 143-2024, https://www.vaughan.ca/sites/default/files/2024-06/143-2024.pdf?file-verison=1769456234637.

Liberties Association.[10] Other bubble zone bylaws have been adopted in the Ontario cities of Oakville,[11] Brampton[12] and Toronto.[13]

Due to the size of Toronto, their municipal bylaw, which was adopted in 2025, impacts a particularly large number of people. The bylaw imposes broad restrictions on demonstrations occurring within 50 meters of social infrastructure – defined as a childcare centre, a place of worship or a school – should the relevant institutions opt into this regime. Prohibitions include acts of discouragement to attend such institutions and attempts to obstruct, hinder or interfere with access to relevant institutions. Although, in practice, fewer than 50 facilities have been listed in Toronto as social infrastructure to date,[14] the potential scope of this bylaw is broad due to the large number of buildings which could qualify as social infrastructure. The bylaw also unduly limits demonstrations against policies of or activities occurring within such buildings, contrary to the need for participants to "as far as possible be enabled to conduct assemblies within sight and sound of their target audience".[15]

The trend of excessively curtailing freedom of assembly is also playing out in the province of Quebec. There, proposed legislation in the form of the Act to Promote Peace, Order and Public Security in Québec, which is contained in Bill 13[16] and is currently before the province's National Assembly, would introduce new, broad restrictions on demonstrations. Article 3 would altogether ban protests within 50 metres of residences of members of parliament or of municipal officers or elected wardens. Also included in the Bill is a broad

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[10] Rochelle Raveendran, "CCLA launches Charter challenge against bubble zone protest bylaw in Vaughan, Ont.", CBC, 24 June 2025, https://www.cbc.ca/news/canada/toronto/ccla-charter-challenge-vaughan-bubble-zone-protest-bylaw-1.7569358.

[11] The Corporation of the Town of Oakville Bylaw Number 2025-088, 12 May 2025, https://bylaws.oakville.ca/bylaws-all/2025-088.

[12] The Corporation of the City of Brampton, Protecting Places of Worship from Nuisance Demonstrations By-law 173-2024, 20 November 2024, https://www.brampton.ca/EN/City-Hall/Bylaws/All%20Bylaws/Protecting%20Places%20of%20Worship%20from%20Public%20Nuisance%20Demonstrations%20By-law%20173-2024.pdf.

[13] City of Toronto By-law 488-2025 to amend City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, to provide access to Social Infrastructure, 27 May 2025, Section 743-55 A(1) and 743-55 A(2), https://www.toronto.ca/legdocs/bylaws/2025/law0488.pdf.

[14] See Kathryn Mannie, "Number of 'bubble zones' in Toronto grows to nearly 50", 4 September 2025, Toronto Today, https://www.torontotoday.ca/local/city-hall/bubble-zones-map-toronto-september-11168049. The list of social infrastructure is available at City of Toronto, "Safe Access to Social Infrastructure", https://www.toronto.ca/community-people/public-safety-alerts/safe-access-to-social-infrastructure.

[15] UN Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), para 22, https://docs.un.org/CCPR/C/GC/37.

[16] See https://www.assnat.qc.ca/Media/Process.aspx?MediaId=ANQ.Vigie.Bll.DocumentGenerique_216759en&process=Default&token=ZyMoxNwUn8ikQ+TRKYwPCjWrKwg+vIv9rjij7p3xLGTZDmLVSmJLoqe/vG7/YWzz.

prohibition on possessing during a demonstration "an object or substance that may be used to interfere with the physical integrity of a person or to threaten or intimidate a person or that may cause damage to property, in particular a tool, billiard ball, piece of pavement or weapon, such as an airgun, bow, cross-bow, knife or chemical agent" (Article 3(1)). The first part of this provision is so broadly worded with such a low nexus to harm (as indicated by the phrases "may be used" or "may cause damage to property") as to potentially capture a vast array objects, including, for example, protest signs or other props used for expressive purposes, which could theoretically be wielded to cause physical harm to others or property damage (for example, to break a window).

In its 2015 Concluding observations on the sixth periodic report of Canada, the UN Human Rights Committee expressed concerns "about reports of the excessive use of force by law enforcement officers during mass arrests in the context of protests at the federal and provincial levels, with particular reference to indigenous land-related protests, G-20 protests in 2010 as well as student protests in Quebec in 2012" and also expressed concern about "increased repression of mass protests".[17] Unfortunately, in recent years there has continued to be a pattern of law enforcement showing insufficient tolerance of the right to freedom of assembly and violating the rights of demonstrators. There also have been reports of violence by law enforcement in Canada directed against journalists, as well as attempting to prevent journalists from photographing officers.[18]

One example of a pattern of abusive law enforcement actions directed at demonstrators occurred after a group of protestors set up encampments and barricades to prevent logging of an old growth forest in British Columbia in 2020. Teal Cedar Products Ltd. obtained a civil injunction against *inter alia* the obstruction of forest service roads while the injunction allowed the participation in lawful, peaceful protests. Officers with the Royal Canadian Mounted Police (RCMP) were alleged to have used brutal tactics against protestors in enforcing the injunction, including dragging individuals by the hair and "ripping off protesters' masks to pepper-spray them".[19] In 2024, the Civilian Review and Complaints Commission for the RCMP ultimately found a number of violations arising out of the RCMP's enforcement of the injunction, including resorting to unlawful searches and seizures, an unreasonable arrest of a man for obstruction, simply for not answering questions or

[17] 13 August 2015, paras. 11 and 15, https://undocs.org/CCPR/C/CAN/CO/6.

[18] See, for example, Canadian Association of Journalists, "CAJ calls for investigation into Montreal police's brutal assaults on journalists", 23 September 2025, https://caj.ca/caj-calls-for-investigation-into-montreal-polices-brutal-assaults-on-journalists; and Leyland Cecco, "Canadian police arrest activists at Wet'suwet'en anti-pipeline camp", 6 February 2020, The Guardian, https://www.theguardian.com/world/2020/feb/06/canadian-police-arrest-activists-blocking-gas-pipeline-indigenous-land-wetsuweten?utm_source=chatgpt.com.

[19] Leyland Cecco, "Canada: inquiry into police unit accused of excessive force against green activists", 10 March 2023, https://www.theguardian.com/world/2023/mar/10/canada-police-unit-excessive-force-environmental-activists.

identifying himself, allowing RCMP members to remove their name tags and the broad use of exclusion zones and checkpoints.[20] A systemic investigation by this Commission into RCMP "activities and enforcement operations" in respect of this and at least two other incidents is ongoing.[21]

Indigenous land defenders and their supporters have continued to be subject to excessive uses of force.[22] In addition, abusive police tactics, including excessive use of force, have repeatedly been directed against participants in Palestine-focused protests in many Canadian cities.[23] In the aftermath of one such incident, the Vancouver Police Board has agreed to investigate complaints about alleged breaches of privacy and excessive uses of force against members gathered at a blockade of a railroad, which included "deploying military grade pepper spray; standing on the backs of cuffed people and placing knees on necks (in contravention of VPD's [Vancouver Police Department] own policy on restraints); and strangling and choking a person".[24]

Recommendations

- Municipal 'bubble zone' bylaws which impose overbroad restrictions on freedom of assembly should be repealed.
- Quebec's Bill C-13 should be amended to remove the Act to Promote Peace, Order and Public Security in Québec.

[20] See CRCC, "CRCC Releases Summary of a Public Complaint Review of RCMP C-IRG Enforcement Actions at Fairy Creek, BC", 11 September 2024, https://www.crcc-ccetp.gc.ca/en/newsroom/crcc-releases-summary-public-complaint-review-rcmp-c-irg-enforcement-actions-fairy-creek-bc. The full summary is available here: https://www.crcc-ccetp.gc.ca/pdf/cirg_gisci-en.pdf.

[21] Civilian Review and Complaints Commission for the RCMP, "Systemic Investigation of the RCMP "E" Division Community-Industry Response Group (C-IRG): Terms of Reference", 24 March 2025, https://www.crcc-ccetp.gc.ca/en/decisions/strategic-investigations/crcc-systemic-investigation-rcmp-e-division-community-Industry-Response-Group.

[22] See, for example, Amnesty International, *Removed from Land for Defending It: Criminalization, Intimidation and Harassment of Wet'suwet'en Land Defenders*, 2023, p. 58, https://amnesty.ca/wp-content/uploads/2023/12/wetsuweten-report.pdf.

[23] See, for example, CBC News, "Video appears to show officer with knee on protestor's neck, police say it didn't happen", 12 December 2023, https://www.cbc.ca/news/canada/toronto/palestinian-rally-arrest-1.7054978; David Gray-Donald and Nur Dogan, "Violent Crackdown at Land Day March", 31 March 2024, The Grind, https://www.thegrindmag.ca/violent-crackdown-at-land-day-march; and UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and repression, *Global threats to freedom of expression arising from the conflict in Gaza*, 23 August 2024, para. 35, https://undocs.org/A/79/319.

[24] BC Civil Liberties Association, "Legal groups file complaints against VPD for excessive use of force and surveillance of Palestine movement", 18 September 2024, https://bccla.org/2024/09/press-release-legal-groups-file-complaints-against-vpd-for-excessive-use-of-force-and-surveillance-of-palestine-movement/.

- Canadian provinces and municipalities should refrain from imposing overbroad restrictions on freedom of assembly.
- All levels of Canadian government should put in place effective measures to improve respect for freedom of assembly by addressing patterns of law enforcement abuses during demonstrations, including reviewing and improving training and protocols, and addressing systemic biases.

Proposed Digital Rights Legislation (Arts. 19 and 20)

The growth of online communications, including social media, has transformed the way individuals receive and impart information. While many benefits have accrued from these technologies, they have also led to new challenges due to the volume and rapidity of spread of harmful online content. In recent years, there has been an increasing understanding that it is necessary to regulate online platforms in the public interest, focusing in part on addressing some of the structural factors which artificially promote the spread of harmful content.[25] Significant developments have occurred at the national level in several countries, as well as at the supranational level in Europe, with the adoption of the European Union's Digital Services Act.[26] At the international level, UNESCO has elaborated guidelines for platform regulation.[27]

Canada has recognised the need to take action to address online harms through platform regulation and, in 2024, introduced draft legislation in the form of Bill C-63.[28] As first introduced, the bulk of this proposed legislation, consisting of the Online Harms Bill, would have taken an approach which was similar to initiatives in other jurisdictions by requiring platforms to mitigate the risks users would be exposed to certain types of online harms. However, likely in part due to complications relating to the division of powers between federal and provincial governments in Canada, the kinds of online harms addressed through the Bill would have been more limited than, for example, those found in the EU's Digital

[25] See Centre for Law and Democracy, Background Paper: Legal Regulation of Platforms to Promote Information as a Public Good, January 2023, https://www.law-democracy.org/wp-content/uploads/2023/04/Report.Reg-of-Platforms.23-04-26.pdf.
[26] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC, https://eur-lex.europa.eu/eli/reg/2022/2065/oj/eng.
[27] UNESCO, *Guidelines for the governance of digital platforms: safeguarding freedom of expression and access to information through a multi-stakeholder approach*, 2023, https://unesdoc.unesco.org/ark:/48223/pf0000387339.
[28] An Act to enact the Online Harms Act, to amend the Criminal Code, the Canadian Human Rights Act and An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service and to make consequential and related amendments to other Acts, introduced 26 February 2024, https://www.parl.ca/DocumentViewer/en/44-1/bill/C-63/first-reading.

Services Act.[29] While several aspects of the Online Harms Bill should have been improved to better reflect international standards on freedom of expression, such as more tailored definitions of some of the harmful content it addressed, and the consultation process leading up to the introduction of the Bill was insufficient,[30] the overall approach largely reflected the need to adopt forward-thinking legislation to more effectively regulate online platforms.

However, Bill C-63 also included certain controversial changes to hate crimes provisions in Canada's Criminal Code and would have expanded the mandate of Canada's Human Rights Commission in a controversial manner. Following calls from civil society to split the less contentious Online Harms Bill from these more contentious accompanying amendments, the federal government acquiesced.[31] However, Bill C-63 was not passed before the pre-election dissolution of parliament in March 2025. Since the formation of the current government under Prime Minister Carney, replacement legislation has not yet been introduced into parliament, although new legislation is expected soon.[32]

Another unrealised attempt to regulate the digital space was a proposed Artificial Intelligence and Data Act, which was the subject of significant criticism from civil society groups and ultimately failed to become law before the last federal election.[33] Canada now has its first Minister of Artificial Intelligence and Digital Innovation, who has indicated that the previous bill will not be reintroduced but that a new AI bill is forthcoming.[34]

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[29] Specifically, "harmful content" was defined in section 2 of Bill C-63 as referring to: intimate content communicated without consent, content which sexually victimises a child or revictimises a survivor, content which induces a child to harm themselves, content used to bully a child, content which foments hatred, content which incites violence and content which incites violent extremism or terrorism.

[30] The only public consultation on this Bill prior to it being tabled in parliament was in 2021, when the government published, for purposes of public consultation, a very general proposed framework for regulating online harms, which bore little resemblance to the bill which was ultimately introduced. See Canadian Heritage, "Have your say: The Government's proposed approach to address harmful content online", https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content.html.

[31] Peter Zimonjic, "Liberals split online harms bill to postpone debate over policing hate speech", 4 December 2024, https://www.cbc.ca/news/politics/liberal-government-split-online-harms-bill-1.7400882; Amnesty International Canada, "Canadian Government's Decision to Split Bill C-63 a 'Step in the Right Direction'", 4 December 2024, https://amnesty.ca/human-rights-news/decision-to-split-online-harms-bill-c-63-welcomed.

[32] Insauga/The Canadian Press, "Government to bring forward online harms bill, AI minister says", 23 January 2026, https://www.insauga.com/government-to-bring-forward-online-harms-bill-ai-minister-says.

[33] Blair Attard-Frost, "The Death of Canada's Artificial Intelligence and Data Act: What Happened, and What's Next for AI Regulation in Canada?", 17 January 2025, https://montrealethics.ai/the-death-of-canadas-artificial-intelligence-and-data-act-what-happened-and-whats-next-for-ai-regulation-in-canada.

[34] David Legree, "Liberal AI legislation won't address copyright questions, says Solomon", 3 December 2025, https://www.ipolitics.ca/2025/12/03/liberal-ai-legislation-wont-address-copyright-questions-says-solomon.

Recommendation

- Canada should, in a timely manner, introduce new online harms legislation and legislation to regulate artificial intelligence, while ensuring that this reflects international standards and best practices, and is subject to a robust consultation process.

Criminal Defamation (Art. 19)

As noted in its State party report, Canada still has criminal defamation prohibitions.[35] Section 300(a) of the Criminal Codes provides for imprisonment of up to five years for publishing defamatory libel which the perpetrator knows to be false while section 301(a) provides for up to two years' imprisonment for publishing defamatory libel. The previous version of section 300 was upheld as constitutional by the Supreme Court of Canada,[36] although provincial courts in several provinces have held section 301 to be unconstitutional.[37] At the same time, the Criminal Code's retention of the latter provision has led to confusion, including an Alberta case where a woman was charged under section 301 despite it having been struck down as unconstitutional in that province, which resulted in her voluntarily entering into a peace bond (a kind of protection order restricting her rights).[38] When Canada updated its Criminal Code in 2019,[39] instead of repealing section 301, sections 300 and 301 were modified to make them hybrid offences, meaning they could be charged as either indictable offences (more serious offences) or summary offences, while retaining the substance of the provisions.

Contrary to the practice in some States, criminal libel charges have been rare in Canada, such that these provisions do not appear to have been a major source of abuse. Nonetheless, these criminal defamation provisions run contrary to the UN Human Rights Committee's position

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[35] See Criminal Code of Canada, R.S.C., 1985, c. C-46, sections 298-317, https://laws-lois.justice.gc.ca/eng/acts/C-46/page-44.html#h-121030.

[36] *R. v. Lucas*, [1998] 1 SCR 439, https://www.canlii.org/en/ca/scc/doc/1998/1998canlii815/1998canlii815.html?resultId=db024aa96ac94e119bfeaca1e3d02554&searchId=2026-01-22T12:49:39:412/1e4d8b51f1fa4ea2ba04e2370d60680b.

[37] See *R. v. Finnegan* (Alberta QB 1992); *R. v. Lucas* (Sask QB 1995); *R. v. Gill* (Ont CJ 1996); *R. v. Osborne* (NB QB 2004); and *R. v. Prior* (Nfld/Lab SupCt 2008).

[38] *R. v MacKinnon*, 2017 ABCA 93, paras. 5-6, https://www.canlii.org/en/ab/abca/doc/2017/2017abca93/2017abca93.html?resultId=b11c7828420c4afead5a3862db74accc&searchId=2026-01-22T12:59:41:815/217cbc4cb0fc4e229bf11043de58aa65&searchUrlHash=AAAAAQAWQ3ludGhpYSBLYXJlbiBNY0tpbm5vbgAAAAAB.

[39] An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, R.S., c. C-46, 21 June 2019, https://www.parl.ca/DocumentViewer/en/42-1/bill/C-75/royal-assent.

encouraging States to decriminalise defamation and indicating that "imprisonment is never an appropriate penalty".[40] The four international special mandates on freedom of expression have declared that the criminalisation of defamation is inherently disproportionate given the possibility of protecting reputations adequately through a less invasive, civil law remedy.[41]

Recommendation

- Canada should fully repeal its criminal defamatory provisions.

Anti-SLAPP Laws (Art. 19)

Abusive legal cases which are initiated with the goal of silencing speech on matters of public interest, known as "strategic lawsuits against public participation" (SLAPPs), pose a threat to freedom of expression throughout the globe, including in Canada. An important way to help address this phenomenon is through adopting dedicated anti-SLAPP laws. While the details of such laws vary from jurisdiction to jurisdiction, a key thrust of them is to provide for the expedited dismissal of these cases so as to mitigate their chilling effect on freedom of expression, while some laws also include other features to dissuade SLAPPs, such as the possibility of awarding costs to defendants. The importance of anti-SLAPP laws has garnered increasing international attention in recent years, as highlighted by recommendations by the UN's Office of the High Commissioner for Human Rights,[42] and the adoption of an anti-SLAPP directive by the European Union[43] and an anti-SLAPP recommendation by the

[40] General Comment No. 34, 12 September 2011, CCPR/G/GC/34, para. 47, https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf.
[41] See, for example, the 2002 Joint Declaration of the special international mandates on freedom of expression, https://www.osce.org/sites/default/files/f/documents/8/f/39838.pdf.
[42] Office of the High Commissioner for Human Rights, "The impact of SLAPPs on human rights & how to respond", 2024, https://www.ohchr.org/en/documents/brochures-and-leaflets/impact-slapps-human-rights-and-how-respond.
[43] Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation'), PE/88/2023/REV/1, 16 April 2024, https://eur-lex.europa.eu/eli/dir/2024/1069/oj/eng.

Council of Europe.[44] In Canada, the provinces of British Columbia[45], Ontario,[46] and Quebec[47] have adopted anti-SLAPP legislation. However, this leaves the remaining 10 provinces and territories without dedicated anti-SLAPP legislation.

Recommendation

- All provinces and territories which currently lack anti-SLAPP laws should adopt them.

Right to Information (RTI) (Art. 19)

The rights to "seek" and "receive", and not just to "impart" information, are part of the guarantee of freedom of expression found in Article 19 of the *International Covenant on Civil and Political Rights*,[48] which Canada ratified in 1976. It is now widely recognised that this entails that everyone has a right to access information held by public authorities (the right to information), subject only to limited exceptions to protect overriding public and private interests.[49]

For many years, Canadian civil society groups, parliamentary committees and the federal Information Commissioner have been calling on Canada to live up to its human rights obligations by enacting major reforms to the federal Access to Information Act (ATIA), which provides a weak guarantee of the right to information vis-à-vis federal public authorities.[50]

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[44] Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs), 5 April 2024, CM/Rec(2024)2, https://rm.coe.int/0900001680af2805.

[45] Protection of Public Participation Act, B.C. 2019, c. 3, 25 March 2019, https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19003.

[46] Protection of Public Participation Act, 2015, S.O. 2015, c. 23, 3 November 2015, https://www.ontario.ca/laws/statute/s15023.

[47] An Act to amend the Code of Civil Procedure to prevent improper use of the courts and promote freedom of expression and citizen participation in public debate, 2009, c. 12, 4 June 2009, https://www.publicationsduquebec.gouv.qc.ca/fileadmin/Fichiers_client/lois_et_reglements/LoisAnnuelles/en/2009/2009C12A.PDF.

[48] Adopted 16 December 1966, entered into force 23 March 1976, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.

[49] The right has been recognised by the UN Human Rights Committee in its General Comment No. 34, 12 September 2011, CCPR/G/GC/34, paras. 18 and 19, https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf.

[50] R.S.C., 1985, c. A-1, https://laws-lois.justice.gc.ca/eng/acts/a-1/. See, for example, CLD, Lawyers' Rights Watch Canada, Canadian Journalists for Free Expression, the British Columbia Freedom of Information and Privacy Association and PEN Canada, *Submission to the 16th Session of the Universal Periodic Review on the State of Freedom of Expression in Canada*, October 2012, http://www.law-democracy.org/canada-un-

For just as long, successive Canadian governments, of different political stripes, have refused to enact such reforms. Change seemed to be on the horizon when the Liberal Party made bold promises to reform the ATIA during the 2015 federal election, including giving binding order-making powers to the Information Commissioner of Canada, eliminating all fees for responding to requests, providing written responses within 30 days where access was being refused, and extending coverage of the Act to the offices of the Prime Minister and Ministers and the administrative institutions which support Parliament and the courts.[51]

Unfortunately, the ATIA reform process initiated by the Liberal Party after they entered government and the resultant Bill C-58 did not live up to their promises, as CLD pointed out in a series of publications between 2016 and 2018.[52] When C-58 entered into force in 2019, the only major promises it delivered on were fee waivers for responding to requests, which had already been implemented at a policy level,[53] and giving the Information Commissioner binding order-making power. In advance of a review of the ATIA, which is legally mandated to occur every five years, in 2025, several civil society organisations, including CLD, urged the government to undertake a thorough review, which would address the structural flaws of previous reviews, including that it be undertaken by an independent panel.[54] However, no response was received to this letter, and it is anticipated that the review will again be a *pro forma* exercise resulting in few if any meaningful reforms.

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universal-periodic-review-submission/; *Report of the Standing Committee on Access to Information, Privacy and Ethics*, June 2016, 42nd Parliament, 1st Session, https://www.ourcommons.ca/Content/Committee/421/ETHI/Reports/RP8360717/ETHIrp02/ETHIrp02-e.pdf; Office of the Information Commissioner of Canada, *Striking the Right Balance for Transparency – Recommendations to modernize the Access to Information Act*, March 2015, https://www.oic-ci.gc.ca/en/resources/reports-publications/striking-right-balance-transparency; and CLD, Centre for Free Expression, Canadian Institute for Information and Privacy Studies, Democracy Watch, *Submission to Session 44 of the Universal Periodic Review on the Right to Information in Canada*, April 2023, https://www.law-democracy.org/wp-content/uploads/2023/04/Canada-UPR-Submission.final_.pdf.

[51] See the Liberal Party election manifesto, *Real Change: A Fair and Open Government*, August 2015, p. 4, https://web.archive.org/web/20170209033208/https://www.liberal.ca/wp-content/uploads/2015/08/a-fair-and-open-government.pdf.

[52] CLD, Lawyers' Rights Watch Canada and the British Columbia Freedom of Information and Privacy Association, *Canada: Recommendations for Reforming Canada's Access to Information Act*, June 2016, http://www.law-democracy.org/wp-content/uploads/2016/07/Canada.RTI_.Jun16.pdf; CLD, *Canada: Note on Bill C-58 Amending the Access to Information Act*, June 2017, https://www.law-democracy.org/wp-content/uploads/2017/06/Canada.RTI-Note.Jun17.pdf; and CLD, *Canada: Note on Bill C-58 Amending the Access to Information Act*, February 2018, https://www.law-democracy.org/wp-content/uploads/2026/01/Canada.RTI_.18-02.pdf.

[53] See Interim Directive on the Administration of the Access to Information Act, 5 May 2016, https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=18310.

[54] See Letter to Prime Minister Carney re: Reform of the Access to Information Act, 9 June 2025, https://www.law-democracy.org/wp-content/uploads/2025/06/25.06.ATIA-letter.EN_.final_.pdf.

There is an unfortunate continuity to the key problems which have plagued the ATIA since before CLD's first dedicated report on it, published in 2013, *Canada: Response to the OIC Call for Dialogue: Recommendations for Improving the Right to Information in Canada*.[55] Indeed, most of the concerns outlined in that report remain at issue in 2026: a problematically narrow scope which exempts too many public authorities from the scope of the law; a significantly overbroad regime of exceptions which does not respect human rights standards; and procedures which are anything but user friendly, including the power to extend the time limit for responding to requests, without a set limit, which is frequently abused.

CLD runs the RTI Rating, a globally recognised tool for assessing the strength of legal frameworks for access to information, which is based on a methodology developed following extensive consultations with international experts.[56] As the table below shows, Canada currently achieves a score of 93 out of a possible total of 150 points, putting it in a lacklustre 52nd position globally from among the 141 countries currently assessed on the RTI Rating.

Section	Max Points	ATIA	Percentage
1. Right of Access	6	5	83%
2. Scope	30	14	47%
3. Requesting Procedures	30	20	67%
4. Exceptions and Refusals	30	13	43%
5. Appeals	30	26	87%
6. Sanctions and Protections	8	6	75%
7. Promotional Measures	16	9	56%
Total score	**150**	**93**	**65%**

The remainder of this submission focuses on key deficiencies in the federal Access to Information Act. However, most of Canada's provincial and territorial laws suffer from many similar systemic flaws, with 9 of the 13 earning an even lower score on the RTI Rating than the federal law.[57] As a result, they should likewise undertake independent and robust reviews of their respective legislation with an eye to bringing them into line with international standards. The experience of the province of Newfoundland and Labrador illustrates the potential for such reviews to bear fruit when there is political will. In 2015, following a thorough review by an independent panel, which proved attentive to many

[55] January 2013, http://www.law-democracy.org/wp-content/uploads/2012/08/Canada.RTI_.Jan13.pdf.
[56] See www.RTI-Rating.org.
[57] Ratings for all provinces and territories are available on the Centre for Law and Democracy's main website. See "Canadian RTI Rating", https://www.law-democracy.org/rti-rating/canada.

inputs from stakeholders, this province's law became the highest ranked Canadian jurisdiction based on the RTI Rating, with a score of 111 points.[58]

Recommendations

- Canada should have an independent authority undertake a thorough review of its Access to Information Act, following which amendments should be adopted to bring the law into line with international standards and best practices.
- All provinces and territories should do the same.

1.1. Scope

One of the most serious problems with the ATIA is the narrow range of public authorities it covers. Under international standards, openness obligations should apply to all information held by all authorities which engage the responsibility of the State.[59] In other words, all information held by the executive, legislative and judicial branches of government; constitutional, statutory and oversight bodies; crown corporations; and any entity, private or public, which is owned, controlled or substantially funded by a public authority or which performs a statutory or public function should be covered. This should include both proactive disclosure obligations (i.e. obligations to publish certain kinds of information even in the absence of a request) and the right to make requests (i.e. reactive disclosure).

The ATIA only applies to records under the control of a "government institution (section 4.1), defined in section 3 as any ministry or department, any body listed in Schedule I and "any parent Crown corporation, and any wholly-owned subsidiary of such a corporation". As a result, it does not apply to several types of public authorities. Its scope is limited by the definition in terms of commercial entities which are controlled by government (as it only covers a subset of those). It does not apply to the Prime Minister, ministers, parliament or courts. A wide range of information relating to Cabinet and affiliated committees is explicitly excluded by section 69, while section 68.2 excludes non-administrative information held by Atomic Energy of Canada Limited. More importantly, a large number of public authorities are not listed in Schedule I. By and large, no private bodies which receive public funding or perform public functions are included in Schedule I.

[58] Centre for Law and Democracy, "Canadian RTI Rating", https://www.law-democracy.org/rti-rating/canada.
[59] See, for example, *Claude-Reyes et al. v. Chile*, 16 September 2006, Series C No. 151, para 77 (Inter-American Court of Human Rights), https://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf.

Despite a 2015 Liberal election promise that the Prime Minister's Office, ministers' offices and administrative bodies which support Parliament and the courts would be made subject to the ATIA,[60] this never happened. The 2019 reforms, via Bill C-58, only imposed proactive disclosure practices on these bodies, largely relating to information they were already publishing (see sections 90.01-90.24). Proactive publication obligations are an important part of any RTI regime, as this helps ensure access to at least a minimum common platform of information from all public authorities. However, the essence of an RTI system, and of any claim to be "open by default",[61] is the right of individuals to request whatever information they want from government. That is fundamentally different from proactive disclosure, which only grants access to specific and therefore inherently limited categories of information, as determined by the government.

These proactive disclosure obligations are also excluded from the oversight functions of Canada's federal Information Commissioner, who does not exercise any powers or perform any duties or functions in relation to proactive disclosure, including receiving and investigating complaints (section 91(1) of ATIA).

In terms of who is covered, the ATIA only applies to citizens, permanent residents, other persons residing in Canada[62] and legal entities, thus excluding foreign citizens who are not physically present in the country. This formally discriminates against foreign nationals in terms of the human right to information and is not in line with international better practice.[63]

Recommendations

- The offices of the Prime Minister, offices of Ministers and the administrative institutions which support Parliament and the courts should be subject to reactive disclosure obligations under the ATIA, and all other public authorities, as well as private bodies which undertake public functions or operate with public funding, should be subject to both reactive and proactive disclosure obligations.
- Everyone, including foreigners, wherever they happen to be, should be able to make requests for information under the ATIA.

[60] See the Liberal Party election manifesto, *Real Change: A Fair and Open Government*, August 2015, pg. 4, https://web.archive.org/web/20170209033208/https://www.liberal.ca/wp-content/uploads/2015/08/a-fair-and-open-government.pdf.
[61] See the Liberal Party election manifesto, *Real Change: A Fair and Open Government*, August 2015, pg. 4, https://web.archive.org/web/20170209033208/https://www.liberal.ca/wp-content/uploads/2015/08/a-fair-and-open-government.pdf.
[62] See section 4(1) of the ATIA and section 2 of the Access to Information Extension Order, No. 1, SOR/89-207, https://laws-lois.justice.gc.ca/eng/regulations/SOR-89-207/page-1.html.
[63] More than 70 countries extend the right to information to everyone. See the RTI Rating, as sorted by Indicator 4 on universal access, https://www.rti-rating.org/country-data/by-indicator/4/.

1.2. Requesting Procedures

1.2.1. Unreasonable Delays

One of the most serious problems with the ATIA, about which users have consistently complained, is that it allows public authorities to claim long delays in responding to requests, a power which is frequently used. The ATIA, in broad conformity with international law and practice, imposes a primary obligation on public authorities to respond to requests within 30 days (section 7). However, it also allows authorities to extend the 30-day period by "a reasonable period of time" by giving notice to the requester (section 9(1)) and, if the extension runs to longer than 30 additional days, by giving notice to the Information Commissioner (section 9(2)). These extensions are only supposed to apply in exceptional cases where requests are voluminous or compliance with a request requires consultations which cannot reasonably be completed within the original time limit. In practice, however, public authorities very frequently take advantage of this highly discretionary power to create long delays in responding to requests. This seriously undermines RTI. Indeed, it can render time sensitive requests entirely moot, for example where journalists are working on tight deadlines.

There are a number of practical ways to reduce the scope of this discretion to delay. For example, public authorities could be required to obtain prior permission from the Information Commissioner for delays beyond the initial 30-day deadline, as is the case in some other Canadian jurisdictions.[64] Alternatively, an absolute maximum limit, for example of 60 days, could be imposed for responding to requests. Slovenia, for example, allows for extensions of no more than 30 additional days[65] and Sri Lanka requires responses within 14 working days, with an option to extend for no more than 21 additional working days.[66]

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[64] See, for example, the Nova Scotian Freedom of Information and Protection of Privacy Act, Chapter 5 of the Acts of 1993, section 9, https://nslegislature.ca/sites/default/files/legc/statutes/freedom%20of%20information%20and%20protection%20of%20privacy.pdf.

[65] *Access to Public Information Act*, Official Gazette of RS. No. 24/2003, Article 24(1), https://www.rti-rating.org/wp-content/uploads/Slovenia.pdf.

[66] *Right to Information Act*, No. 12 of 2016, section 25(5), https://www.rti-rating.org/wp-content/uploads/Sri-Lanka.pdf.

Bold measures, such as penalties for failures to respect time limits, are needed to address the serious problem of unreasonable delays. In India, for example, information commissions can impose sanctions on officials who have, in bad faith, unduly delayed in responding to requests.[67]

Another missing element from the ATIA is a legislated duty to respond to requests as soon as practicable. This would encourage simple requests to be processed more quickly instead of waiting until near the legislated maximum timelines to respond.

1.2.2. Fees

The ATIA also falls short of international standards in terms of fees, although this problem used to be far more serious before the waiver of all fees for accessing information, which was imposed by the May 2016 Interim Directive on the Administration of the Access to Information Act.[68] Since RTI is a human right, no fees should be imposed simply for exercising that right through making a request for information. However, the ATIA allows for charges of up to $25 for making requests (section 11(1); currently set at $5). The underlying rationale for the fee – the deterrence of requests – is unnecessary, unfounded and undemocratic. It is unnecessary because the ATIA already contains a mechanism by which frivolous or vexatious requests can summarily be rejected (section 6.1(1)). It is unfounded because countries which do not impose fees for making requests have not found that this leads to groundless requests. Finally, it is wrong as a matter of principle because fees should not be imposed for exercising a human right.

Recommendations

- Extensions beyond the 30-day initial deadline for RTI requests should be subject either to a requirement to obtain prior permission from the Information Commissioner or, ideally, to a hard overall maximum limit, such as of 60 days.
- Effective measures should be put in place to deter officials from unduly delaying in responding to requests for information, such as by empowering the Information Commissioner to impose administrative fines on them.
- The ATIA should abolish fees for lodging requests.

[67] *The Right to Information Act*, No. 22 of 2005, Articles 19(8)(a), 20(2) and 20(5), https://www.rti-rating.org/wp-content/uploads/India.pdf.
[68] See Interim Directive on the Administration of the Access to Information Act, 5 May 2016, https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=18310.

1.3. Exceptions

1.3.1. International Standards for Exceptions

An RTI law should create a presumption in favour of access to all information held by public authorities, subject only to a narrow regime of exceptions. Under international standards, RTI may be subject to certain exceptions but only where they are: 1) set out in law and protect only legitimate interests; 2) apply only where disclosure would pose a risk of harm to a protected interest; and 3) do not apply where, notwithstanding a risk of harm, the public interest in disclosure outweighs that harm, otherwise known as the public interest override.[69] Finally, all exceptions which protect public interests (excluding private interests such as privacy) should be subject to sunset clauses, which invalidate the exception once sufficient time has passed such that the information is no longer sensitive. Sunset clauses should be set at no longer than 20 years, in line with international practice.[70]

The list of legitimate interests is well established under international law and is limited to: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs, the fair administration of justice and legal advice privilege; privacy; legitimate commercial and other economic interests; management of the economy; conservation of the environment; and legitimate policy making and other operations of public authorities.[71]

1.3.2. Complete Exclusions

As noted above, the ATIA completely excludes "confidences of the Queen's Privy Council for Canada", also known as Cabinet confidences, from its scope (section 69). Section 69 defines these confidences broadly to cover a very wide range of information. The same complete exclusion applies to information held by the Atomic Energy of Canada Limited other than general administration information or information about the operation of regulated nuclear facilities (section 68.2). As a result, these exceptions are not subject to a harm test, a public interest override, review by the Information Commissioner and, other than Cabinet confidences, a sunset clause.

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[69] See Recommendation No. R(2002)2 of the Committee of Ministers of the Council of Europe on access to official documents, 21 February 2002, clause IV, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804c6fcc.

[70] See the better practice countries listed under Indicator 32 of the RTI Rating, https://www.rti-rating.org/country-data/by-indicator/32/.

[71] Recommendation No. R(2002)2 of the Committee of Ministers of the Council of Europe on access to official documents, 21 February 2002, clause IV, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804c6fcc.

1.3.3. Overbroad Exceptions

Some of the exceptions in the ATIA are drafted so broadly that even if they do cover certain legitimate confidentiality interests, they go much further to also cover material which should not be secret. For example, a series of exceptions cover information which was obtained during different sorts of investigations, such as law enforcement investigations (section 16(1)(a)), investigations conducted by various public authorities (section 16.1(1)), investigations conducted by the Commissioner of Lobbying (section 16.2(1)) and investigations under the Canada Elections Act (section 16.3). Such investigations may include information which is exempt by virtue of other exceptions, such as privacy, and in some cases releasing information might harm the investigation, but this is not a condition for the withholding of information pursuant to these exceptions. Section 21(1) includes a number of vastly overbroad exceptions, including sub-section (a) which covers all advice developed by or for a public authority.

Another oft-abused exception is section 23, which provides an overbroad definition of solicitor-client privilege which extends to "the professional secrecy of advocates and notaries". The ordinary role of solicitor-client privilege is to protect the frank exchange of information between individuals and their solicitors, including on topics which may be sensitive such as marital infidelity or criminal behaviour. However, no such sensitivity exists in the communications between government lawyers and public officials which pertain to policy development or other (regular) forms of government decision-making. In the government context, we suggest that the scope of this exception be limited to "litigation privilege", which is also specifically mentioned in that section. This is of course without prejudice to the possibility that other exceptions might cover advice provided by government lawyers.

1.3.4. Harm-tested Exceptions

A number of exceptions protect legitimate interests but lack the necessary harm test and therefore allow for information to be withheld even when disclosure would cause no harm. These include provisions protecting information received in confidence from other States or governments (section 13(1)), information related to law enforcement investigative techniques (section 16(1)(b)), information treated as confidential by crown corporations (section 18.1(1)), financial or commercial information which is treated as confidential by a third party (section 20(1)(b)) and internal working papers relating to government audits (section 22.1). A number of other exceptions also lack harm tests. Some of these are "category-based" exceptions which protect entire classes of documents, such as "all draft reports related to government audits," rather than protecting an interest against harm. Class exceptions can never be legitimate since some records covered by the category will not be sensitive.

1.3.5. Public Interest Override

One step which would go a long way in terms of ameliorating problems with the regime of exceptions would be to enact a blanket public interest override. Currently, the ATIA contains only a limited public interest override which applies to third-party trade secrets and financial, scientific or technical information, allowing for disclosure if it "would be in the public interest as it relates to public health, public safety or protection of the environment" or where "the public interest in disclosure clearly outweighs in importance any financial loss or gain to a third party…" (section 20(6)). The scope of this was effectively extended by the Supreme Court of Canada in *Criminal Lawyers' Association v. Ontario (Public Safety and Security)*, which held that the public interest must be taken into account when deciding whether or not to apply discretionary exceptions.[72] As a result, all discretionary exceptions are now subject to some form of public interest override, but this still leaves out mandatory exceptions (such as those found in sections 13, 16(3), 16.1, 16.2, 16.4, 16.5, 19(1), 20.1, 20.2 and 20.4).

Should the government have concerns about a lack of consistency in the application of the public interest override, it could include within the ATIA a non-exhaustive list of considerations to be taken into account in assessing the public interest. Recommendation No. 17 of a 2016 parliamentary committee report on reforming the ATIA suggested that this list could include open government objectives; impact on the environment, health or public safety; and whether the information reveals human rights abuses or would safeguard the right to life, liberty or security of the person.[73] Additional factors, such as facilitating public participation and exposing corruption, should also be included in the list.

1.3.6. Secrecy Provisions in Other Laws

Schedule II of the ATIA contains a list of 65 secrecy provisions in other laws which apply notwithstanding its provisions (section 24(1)). Not all of these protect legitimate interests, are harm tested, and include public interest overrides and sunset clauses (for those which protect public interests) of 20 years or less. For example, section 107 of the Customs Act prohibits the disclosure of any information obtained by or on behalf of either the Minister of Public Safety and Emergency Preparedness or the Minister of National Revenue involving customs or the collection of public debts. This renders an entire category of information secret (class exceptions) rather than narrowly protecting a legitimate interest against harm, and it also lacks a public interest override and sunset clause. A number of other provisions in this list are similarly problematical.

1.3.7. Sunset Clauses

[72] 2010 SCC 23, para. 48, http://www.canlii.org/en/ca/scc/doc/2010/2010scc23/2010scc23.html.
[73] *Report of the Standing Committee on Access to Information, Privacy and Ethics*, June 2016, 42nd Parliament, 1st Session, p. 67, https://www.ourcommons.ca/Content/Committee/421/ETHI/Reports/RP8360717/ETHIrp02/ETHIrp02-e.pdf.

The ATIA currently has only a few sunset clauses. For example, section 16(1)(a) creates a sunset clause of 20 years for information prepared or obtained by a public investigative body for purposes of a lawful investigation pertaining to a breach of the law or a threat to national security. Better practice would be to create a standalone provision which subjects every exception in the ATIA which protects a public interest to a sunset clause, whereby the information is no longer exempt from disclosure after 20 years.

If necessary, a provision could be added to the ATIA to allow, highly exceptionally, for extensions to be made to sunset clauses, through a special procedure, where the information really did remain sensitive beyond 20 years, which might sometimes be the case for national security information.

Recommendations

- The ATIA should be amended to protect only those interests which are recognised as legitimate under international law.
- All exceptions to disclosure under the ATIA should be harm-tested and subject to a clear public interest override.
- All exceptions to disclosure under the ATIA which protect public interests should be subject to sunset clauses so that they no longer apply after a maximum of 20 years.
- All the provisions in Schedule II of the Act should be reviewed and retained in that Schedule only if they protect legitimate interests, are harm-tested, subject to a public override and, where they protect public interests, subject to a sunset clause of not more than 20 years, if necessary following amendment.

1.4. The Powers of the Information Commissioner

Very positively, with the adoption of Bill C-58, the Information Commissioner now has order-making powers (section 36.1 of the ATIA). However, clear procedures should be added for certifying the orders of the Information Commissioner as orders of the Federal Court, or for these orders otherwise to be enforced through the courts. Such procedures exist, for example,

in British Columbia,[74] Alberta,[75] Quebec[76] and Prince Edward Island,[77] where public authorities must comply with the relevant information commissioner's orders or face a contempt of court order. In Ontario, wilfully defying an order of the Information Commissioner is a criminal offence punishable by a $5,000 fine.[78] While a binding order from the Information Commissioner will often carry sufficient weight to compel compliance from public authorities, better practice is to provide for an enforcement mechanism so as to limit the risk of non-compliance.

Recommendation

- The ATIA should be amended to provide for an enforcement mechanism for orders of the Information Commissioner.

1.5. Sanctions and Protections

1.5.1. Sanctions for Breaching RTI

Poor implementation of the ATIA has long been a significant challenge in Canada. For example, the timeliness of responses has been deteriorating in recent years. In 2024-2025, only 64.5% of access to information requests were responded to within legislated timelines (which include extensions), down from 69.9% in 2023-2024 and 72.3% in 2022-2023.[79]

A proper system of accountability and redress is key to ensuring respect for the ATIA. While the Act provides for sanctions for obstructing the Information Commissioner (section 67), and for unauthorised destruction, altering, mutilation, concealment or falsification of records, as well as directing, proposing, counselling or causing others to commit these offences

[74] *Freedom of Information and Protection of Privacy Act*, RSBC 1996, Chapter 165, sections 59 and 59.01, https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96165_05#section59.
[75] Access to Information Act, SA 2024, c A-1.4, sections 64-66, https://www.canlii.org/en/ab/laws/astat/sa-2024-c-a-1.4/latest/sa-2024-c-a-1.4.html.
[76] *Act respecting Access of documents held by public bodies and the Protection of personal Information*, Chapter A-2.1, section 144, http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/A-2.1.
[77] Freedom of Information and Protection of Privacy Act, RSPEI 1988, c F-15.01, sections 66(6) and 68(1), https://www.princeedwardisland.ca/sites/default/files/legislation/f-15-01-freedom_of_information_and_protection_of_privacy_act.pdf.
[78] Freedom of Information and Protection of Privacy Act, RSO. 1990, c. F.31, section 61(1)(f), https://www.canlii.org/en/on/laws/stat/rso-1990-c-f31/latest/rso-1990-c-f31.html.
[79] Treasury Board Secretariat, "Access to Information and Privacy Statistical Report for 2024–2025 Fiscal Year", https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/statistics-atip/information-privacy-statistical-report-2024-2025.html.

(section 67.1), other more routine forms of obstruction, such as by failing to respect time limits, do not attract any sanction. Further missing from the ATIA is any system to address systemic failures to implement RTI obligations, which could be accomplished, for example, by empowering the Information Commissioner to order public authorities which are regularly failing to respect their obligations to put in place structural changes to address this.

1.5.2. Protections for Whistle-blowers

To give full effect to the public's right to know, RTI legislation should be accompanied by robust protections for whistleblowers, so as to protect unauthorised but justified disclosures. This is needed generally to support transparent and accountable democratic institutions, but the need for such protection acquires even more salience where the regime for authorised disclosures is deficient, as is the case in Canada.

Canada's current whistleblowing regime is set out in the Public Servants Disclosure Protection Act (PSDPA), which came into effect in 2007. Unfortunately, this legislation has proven to be ineffective at protecting whistleblowers. Its poor performance was highlighted in a 2021 global study by the Government Accountability Project and the International Bar Association which ranked Canada, Lebanon and Norway's whistleblowing laws as tied for last place from among the 49 countries they assessed.[80]

In 2017, the shortcomings of Canada's whistleblowing laws were extensively analysed in a report by Canadians for Free Expression and also in a report by a Parliamentary Committee, which recommended sweeping changes to Canada's whistleblowing rules.[81] Despite this clear evidence of the need for reform, along with concrete recommendations for how to do this, Canada has yet to act in this area.

Recommendations

[80] Government Accountability Project and International Bar Association, "Are whistleblowing laws working? A global study of whistleblower protection litigation", 2021, pp. 10 and 75, https://s3.documentcloud.org/documents/21189854/are-whistleblowing-laws-working-report_02march21.pdf,

[81] Centre for Free Expression, *What's Wrong with Canada's Federal Whistleblowing System: An analysis of the* Public Servants Disclosure Protection Act *(PSDPA) and its implementation*, 14 June 2017, https://cfe.torontomu.ca/publications/whats-wrong-canadas-federal-whistleblower-legislation; and Report of the Standing Committee on Government Operations and Estimates, *Strengthening the Public Interest within the* Public Servants Disclosure Protection Act, 42nd Parliament, First Session, June 2017, https://www.ourcommons.ca/Content/Committee/421/OGGO/Reports/RP9055222/oggorp09/oggorp09-e.pdf.

- An effective regime of sanctions for failing to respect its provisions should be added to the ATIA, along with allocating the power to the Information Commissioner to order, as needed, public authorities to put in place structural measures to improve their compliance with the Act.
- Canada's whistleblowing laws should be comprehensively reviewed and amended to bring them into line with international standards and best practice.

1.6. Promotional Measures

1.6.1. Mandates to Promote RTI

For individuals to be able to exercise their right to information successfully, they must be informed of the right and how to exercise it. To this end, better practice is for independent oversight bodies to have a specific mandate to undertake promotional activities in support of RTI, such as by raising public awareness through user-friendly guides on RTI and/or through schools.[82] The mandate of Canada's federal Information Commissioner does not include any duty to promote RTI generally or to raise public awareness.

1.6.2. Duty to Document

The ATIA fails to impose any duty on public authorities to document important decision-making processes. Such a duty would address the problem of officials conducting business in ways which create no paper trail, such as orally, and the use of private devices to conduct official decision-making business. Although the ATIA technically covers the latter, it can be very difficult to capture this information for purposes of responding to requests. A duty to document would ensure that key decision-making information was maintained in official records as a matter of course.

1.6.3. Records Management

For an RTI system to function properly, institutional records management should meet certain minimum standards. Under section 70(1)(c) and 70(1)(d) of the ATIA, the designated Minister is required to prepare directives and guidelines for government institutions and to cause statistics to be collected on an annual basis on ATIA implementation. However, other than these minimal requirements, the ATIA does not establish substantive records management requirements. Better practice is to legislate minimum standards of records

[82] See RTI Rating, Indicators 55 and 56 for examples of better practices in this respect, https://www.rti-rating.org/country-data/by-indicator/55/; https://www.rti-rating.org/country-data/by-indicator/56/.

management for public authorities to follow, as is the approach in the RTI laws of many other States.[83]

Recommendations

- The ATIA should be amended to provide the Information Commissioner with a mandate to promote RTI.
- Public authorities should be under a duty to document key decision-making processes.
- An effective records management system should be added to the ATIA.

[83] See RTI Rating, Indicator 57, https://www.rti-rating.org/country-data/by-indicator/57/.