

CJFE'S REPORT CARD 2011–2012: CONNECTED DISCONNECT

We have never been more connected. The Internet has blown open the doors of communication and access to information, and Canadians rank highest in the world in online engagement. Yet our freedom of information and free expression track record is nose-diving, threatening the very connections we've come to rely on.

Access to information at the federal level continues to be marred by secrecy and delays. While there were some very small improvements this year, the government is largely continuing its stonewalling tactics in hopes that journalists and other interested parties will simply give up and move on to something else.

The same could be said for the muzzling of scientists. In perhaps its most openly brash act of control, the government has continued to prevent federally funded scientists from speaking with the media about their research, even after the findings are published and available to the public. This undermines public understanding of issues, limits debate and runs roughshod over the rights of the scientists, as individuals, to speak freely.

Even the Internet—a game-changing tool when it comes to free expression—is facing challenges. We are in the midst of sweeping changes in the way information is shared and controlled. Understanding these issues is vital to developing a strong position against policies that curtail free expression in the cyber sphere.

Here is CJFE's assessment of the key issues and major institutions.

ACCESS TO INFORMATION AND THE FEDERAL GOVERNMENT:

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On the heels of last year's shameful F- grade, we've given the federal government just the slightest bump up due to some marginal improvements in access to information. In the past year, the number of federal ATI requests was up by just less than 1 per cent, and the number of requests denied for security reasons was slightly down; nevertheless, the number of ATI requests denied on security grounds has tripled since 2002–2003. It's certainly no surprise that Canada remains at the mid-to-low end of the international spectrum when it comes to our right to information. *For more on access to information, see page 11.*

FEDERAL SCIENTISTS' FREEDOM OF EXPRESSION:

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Canada's control over the communications of federally funded scientists is an extreme example of a federal fixation on controlling the message that is bad for our country and its citizens. After the policy was adopted in 2007, climate change science coverage in the media plummeted by 80 per cent, drastically reducing information available to Canadians. Perhaps the most puzzling of restrictions, some scientists have been told they are not allowed to discuss their research even when it has been published in peer-reviewed journals. Recent efforts to bring this situation to the attention of the public, spearheaded by the Canadian Science Writers' Association, have elicited support from journalists, scientists and the general public, both at home and abroad. Meanwhile, Peter Kent, minister of the environment, has simply dismissed concerns about the issue. As a former award-winning journalist, Kent should know better. *For more on the muzzling of scientists, see page 8.*

THE SUPREME COURT:

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The Supreme Court of Canada ruled that emergency wiretapping by police without a warrant is unconstitutional—but gave the government 12 months to redraft the provision, so stay tuned. In *Crookes v. Newton*, the Court upheld a lower court's ruling that hyperlinking is not the same as publication in alleged cases of libel, and noted the potential chilling effect on the Internet had the decision gone the other way. Both decisions were welcomed by free expression advocates, but a Supreme Court decision barring access to records held in cabinet ministers' offices did bring down the overall grade. *For more on the legal cases that are shaping free expression in Canada, see the Appendix, starting on page 36.*

MEDIA OWNERSHIP:

It seems every time the dust settles from one massive media buy, another is announced. Over the past year alone, BCE Inc. purchased Astral Media (pending approval), including its 84 licensed radio stations; Transcontinental Inc. scooped up Quebec World's Canadian assets, as well as *Le Canada Français* (the oldest weekly newspaper in Québec) and 10 other Québec weeklies; and Rogers Communications Inc. bought Saskatchewan Communications Network, a Regina-based TV station. As media concentration grows more pervasive, the number of people deciding what constitutes information the public needs to know shrinks, as does our access to varied ideas and opinions, essential to a healthy democracy. *For diagram of media ownership in Canada, see page 28.*

THE CANADIAN PUBLIC:

While it seems free expression is tested at every turn, Canadians have been actively exercising and protecting this right, making their voices and opinions heard—whether through commenting on media websites, blogging, tweeting or participating in online petitions via sites such as openmedia.ca (which ran a forceful campaign against usage-based billing for Internet services). Canadians have also been taking advantage of new opportunities to collaborate with media: OpenFile, based on a model where the public pitches story ideas that journalists then develop, expanded into several new markets in the past year. (*For more on openfile.ca, see page 25.*) And while Canadian Occupy protests were small in comparison to some south of the border, people across Canada added their voices to a global protest against greed and irresponsibility in the financial sector. But it's not all sunny skies. Our performance when it comes to the cornerstone of free expression—voting—has been lackluster. In fact, voter turnout for the 41st General Election, held May 2, 2011, was a dismal 61 per cent. Could the potential to vote on the Internet in the future help turn this around?

FEDERAL PROTECTION OF DIGITAL RIGHTS AND INTERNET ACCESS:

Bill C-30 is at the heart of our concerns over free expression online in Canada. Bill C-30 would allow law enforcement access to Internet subscriber information; the potential for observation and the lack of privacy would have a chilling effect on all uses of the Internet. And Internet access is apparently no longer a priority. Industry Canada has completely cut federal funding for the Community Access Program, which provides low-cost or free Internet access via libraries and community centres, meaning fewer Canadians will have access to the Internet—vital for both access to information and free expression. Combined with the fact that Canada seems to be missing the boat altogether when it comes to playing a role in international Internet governance policy, there is certainly cause for concern. *For more on free expression and the Internet, see articles beginning on page 18.*

While it's our role to highlight causes for concern, we also wish to recognize individuals and organizations for their contributions in advancing free expression rights:

- The Canadian Science Writers' Association, for its sustained efforts to inform the public of the muzzling of scientists.
- The Canadian Newspaper Association, for its singular and essential work on Access to Information.
- Dan Burnett, lead counsel, and Robert Anderson and Ludmilla Herbst, for their pro bono work and representing the media coalition in the *Crookes v. Newton* case.
- Phil Tunley, lead counsel, and Paul Jonathan Saguil, for their pro bono work and representing CJFE in the *Whatcott v. Saskatchewan Human Rights Commission* case.
- The provincial and territorial information and privacy commissioners, who voiced strong objections to the proposed Bill C-30 which, if passed, would allow police to obtain personal information from Internet service providers without a warrant.
- The Canadian Centre for Law and Democracy, for their work in right to information, both globally and in Canada.

We have never been more connected, more able to share information and ideas, than we are today. Safeguarding this connection against new policies and uses of technology that could have a chilling effect are key to protecting free speech—whether it's online, in parliament, in our workplaces or in our homes.