

CJFE's Report Card 2012-13

Free speech rights should be robust, comprehensive and equally enjoyed in all parts of Canada

Parents faced with a child's report card featuring both A's and F's might understandably think the teacher had mixed up the grades with those of another student. But free expression in Canada truly does span the spectrum from head of the class to flunking out.

As always, we look at one of the most important components of free expression: access to information, where it is obvious that Canada is falling behind, not only when measured against the standards we set for ourselves, but also in international studies that compare us to others.

The vital link between free expression and access to information was underlined this year by the information commissioner's significant decision to investigate seven federal departments because of alleged muzzling of government scientists.

But it is clear in other areas—for instance, Quebec's anti-SLAPP law or the federal government's creation

of the Parliamentary Budget Office—that we understand what should be done. We need only look within our borders for solid examples of best practices in every area of free expression. And yet, just as one province moves forward, another one takes a step back, and we are left with a patchwork of laws and policies across the country.

CJFE believes Canadians deserve the same robust

rights, no matter which part of the country they live in. It only makes sense to strive for greater consistency and implement our best legislation and policies in every province and territory. After all, it was not just one province or territory that spoke out against the Internet surveillance bill, C-30—it was Canadians across the country working together. We can and should learn from each other.

ACCESS TO INFORMATION & THE FEDERAL GOVERNMENT

D- It's somewhat of a balancing act this year. There are good reasons to go even lower than last year's failing F: Canada's increasingly archaic Access law was ranked 55th out of 93 countries with such laws; the muzzling of government scientists was so bad that Information Commissioner Suzanne Legault had to launch an investigation; the statistics on delays and redactions/exemptions got worse; and the Harper government's culture of secrecy did not improve. But there were also a few tiny signs of hope: in 2014, the government plans to make summaries of completed requests searchable across all departments; 13 of 18 federal institutions that were performing poorly are now doing better; a pilot project will test the value of offering online requests and payment; and Legault is pushing for the reform of the 30-year-old Act. We could have given another failing grade, but rather than repeating this dismal year, we hope the federal government will heed the many voices calling for change. *For more on access to information, see page 8.*

THE FEDERAL GOVERNMENT

C- Another middle-of-the-pack grade here. On the one hand, the federal government withdrew its controversial Internet surveillance bill under pressure from digital activists. A huge victory for privacy advocates in Canada, this decision could be seen as a positive step toward a government that's willing to listen to its citizens' concerns. *For an analysis of Bill C-30, see page 32.*

On the other hand, there was nothing to applaud in the government's response to Edgar Schmidt, a Justice Department lawyer who blew the whistle on his employer, claiming that it was acting unlawfully by setting the bar ridiculously low when assessing whether a piece of legislation is inconsistent with the Charter. The government suspended Schmidt without pay and attempted to have his case dismissed before even filing a defence. Whether or not Schmidt is correct in his analysis, surely the federal government's duty is to listen to its counsel and respond if warranted. *For more on whistleblowers, see page 28.*

F**THE DEPARTMENT OF FISHERIES AND OCEANS (DFO)**

This department deserves special mention for its zeal in muzzling scientists, controlling its message and keeping critical information away from the public. The DFO would not allow Kristi Miller, a DFO researcher and peer-reviewed author of a study about salmon diseases, to speak to the media about her work for two full years. The DFO is also one of the departments under investigation by the information commissioner for muzzling its scientists, and international researchers might pull out of collaborative research with DFO scientists because of severe limits on publication.

For more on the muzzling of scientists, see page 14.

A**THE PARLIAMENTARY BUDGET OFFICE**

At the opposite end of the classroom spectrum was the Parliamentary Budget Office (PBO). For the past five years, former parliamentary budget officer Kevin Page and his staff—in particular Mostafa Askari, Chris Matier and Sahir Khan—made an important contribution to the discourse in Canada about access to information, transparency and accountability of government. At a time when many who work for the government have been muzzled or forced to speak only the official line, Page made it his duty to tackle difficult and controversial issues with integrity and conviction, and to communicate to Canadians much-needed information about these issues. Unfortunately, despite the excellent work, Page’s appointment has not been renewed. Instead, the government has appointed an interim parliamentary budget officer with far less experience. Nor is there any evidence the government is willing to give the PBO the status of an independent officer of Parliament, like the auditor general, which would enable it to truly hold the government to account.

C**THE SUPREME COURT**

A middling grade for a middling year for a court that appears intent on finding and sticking to the middle of the road. No new ground was broken for free expression, and in at least one major hate speech case, *Saskatchewan (Human Rights Commission) v. William Whatcott*, the Court had a real opportunity to bring important change to how hate speech cases are adjudicated, but instead rendered a disappointingly timid decision that changed very little. A powerful institution with the opportunity to implement strong protections for free expression rights in this country, the Supreme Court is failing to live up to its potential. *For more on hate speech, see page 21.*

A**ANTI-SLAPP AND THE GOVERNMENT OF QUEBEC**

SLAPPs (strategic lawsuits against public participation) are used to silence dissent by consuming the energy and financial resources of critics. For instance, developers have used them to silence people objecting to a proposed project. That is what’s clear about the subject. The rest is more complex. Four years ago, the Quebec National Assembly, citing the importance of free expression, passed a law prohibiting the use of such legal manoeuvres. **For that, Quebec politicians deserve a belated grade of A.** Unfortunately, a study of the first two years of the new law shows that Quebec courts have been reluctant to dismiss SLAPP cases at an early stage.

Meanwhile, the rest of the country lags far behind. There is no anti-SLAPP legislation in any other province or territory. Four provinces have had discussions about the problem and one, Ontario, even struck an advisory panel, which recommended the creation of legislation, but three years on there has been no progress. **Legislatures in the rest of Canada receive a grade of F for their lack of action.**

For more about anti-SLAPP legislation, see page 28. ☞

F**ANTI-SLAPP AND THE REST OF CANADA****KUDOS & MUZZLES****Kudos**

■ **Democracy Watch and the Environmental Law Clinic of the University of Victoria** for their report *Muzzling Civil Servants: A Threat to Democracy?*, which asked federal Information Commissioner Suzanne Legault to look into the government’s muzzling of scientists. Legault has agreed to investigate.

■ **Elizabeth Denham, British Columbia’s information and privacy commissioner**, for her work in pushing the provincial government to document key decisions and keep a record of its actions, and furthermore, to make this “duty to document” a requirement through legislation. She has spoken out against the widespread practice of “oral government” and the use of private email and phones for public business.

**Muzzles**

■ **The legislature of Prince Edward Island**, for turning down a request for any information about its own \$6-million budget, which covers spending by the offices of the speaker, government members and the opposition (the legislature is not covered by P.E.I.’s Freedom of Information and Protection of Privacy Act). Perhaps the politicians believe that their spending is a private matter.

■ **Jean Charest and Quebec’s Bill 78**, for a draconian approach to handling student protests over tuition increases. Stripping citizens of their rights to free assembly and free expression is no way to respond to public protests and outrage.