



CANADA

Canada

Author: James L. Turk, Centre for Free Expression, Toronto Metropolitan University

James L. Turk is Director of the Centre for Free Expression at Toronto Metropolitan University. Previously, he was Executive Director of the Canadian Association of University Teachers, an Associate Professor of Sociology at the University of Toronto, and has held several senior positions in the Canadian trade union movement. He received his B.A. from Harvard University, his M.A. from the University of California at Berkeley, his Ph.D. from the University of Toronto, and was a Knox Fellow at the University of Cambridge.

Country Summary

From 2015 to 2022, the governments of Canada and of ten Canadian provinces introduced at least 8 laws that restricted expressive rights. While Canada has consistently been ranked highly in human rights indexes, concern was raised over the government's decision to invoke the Emergencies Act for the first time in Canadian history to end protests in 2022. Other restrictive laws included: one restricting religious expression by prohibiting public servants in Quebec from wearing religious symbols in their place of work; two limiting political discourse through election-related laws and one adopted in Quebec in 2022 which tightens French language requirements on businesses and professional services, restricts access to education in languages other than French, and provides a new private right of action for all Québec residents to seek injunctive relief or damages against those who do not comply. In 2021 and 2022, 5 Canadian provinces adopted laws prohibiting demonstrations and protests around health service facilities where Covid-19-related services were being performed. Four non-legislative developments related to antisemitism, academic freedom, students' expression, and compelled speech were also introduced. Canadian courts blocked speech restrictive legislation, including Ontario's extreme limit on pre-election political advertising and Canada's attempt to criminalize making false statements about political candidates, even if they were

not done knowingly. Two provincial governments – Ontario in 2015 and British Columbia in 2019 – introduced anti-SLAPP (Strategic Lawsuits against Public Participation) laws that are the most speech protective in the world in providing an effective means for dismissal of strategic lawsuits against public participation (SLAPPs) – legal actions launched to stop discussion and critical commentary on issues of public interest.

Introduction

From 2015 to 2022, the governments of Canada and of the ten Canadian provinces introduced a good deal of legislation that restricted expressive rights. Most of the legislation was in response to disparate issues and political pressures. The exception was a pattern of legislative actions responding to protests against COVID public health measures. The most serious was not new legislation but the 2022 invocation by the federal government of the Emergencies Act for the first time in Canadian history. The Act gives the federal government broad powers in the event of “emergencies” that affect public welfare (natural disasters, disease outbreaks), public order (civil unrest), international emergencies or war emergencies. It allows the federal cabinet to “take special temporary measures that may not be appropriate in normal times” to cope with an “urgent and critical situation.” Those powers were used to end widespread protests and blockades in cities and at borders against the vaccine and mask mandates. While Canada has consistently been ranked highly in freedom of expression indexes (see Reporters without Borders, ranking) 15th out of 180 countries, and 19th out of 161 countries in Article 19’s Global Expression Report 2023) grave concern was raised with the government’s decision to invoke the Emergencies Act to end the protests (Canadian Civil Liberties Association⁶³ and Amnesty International⁶⁴).

1. Legislation

Restricting Religious Expression

The government of Quebec adopted Bill 21 in 2019. Titled “An Act Respecting the Laicity of the State,”⁶⁵ the law prohibits public servants in Quebec from wearing religious symbols, including head coverings such as a hijab, turban, or kippah, in their place of work. The bill applies to public employees at all levels, including public transit operators, teachers, prosecutors, police officers, health care providers, and judges. Because the law clearly violated the Canadian Charter of Rights and Freedoms⁶⁶ provisions on freedom of expression, conscience, and religion, the Quebec government pre-emptively invoked the Charter’s “notwithstanding clause,”⁶⁷ a provision unique among the constitutions of countries with

⁶³ <https://ccla.org/major-cases-and-reports/emergencies-act/>

⁶⁴ <https://www.amnesty.ca/human-rights-news/amnesty-statement-on-emergencies-act-inquiry/>

⁶⁵ <https://canlii.ca/t/53mg1>

⁶⁶ <https://www.laws-lois.justice.gc.ca/eng/Const/page-12.html>

⁶⁷ <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd1/check/art33.html>

constitutional democracies, which gives the Canadian parliament and provincial legislatures the power to override certain sections of the Charter when passing legislation which violates constitutional protection of freedom of expression and other rights. The law was strongly criticized by UN human rights monitors,⁶⁸ but legal challenges by the Canadian Civil Liberties Association and the National Council of Canadian Muslims⁶⁹ were largely unsuccessful because of the government's invocation of the notwithstanding clause.

Limiting Political Discourse

Ontario adopted several election-related laws that limited public discourse. In 2016, it amended⁷⁰ the Ontario Election Finances Act to impose a \$600,000 limit on third-party advertising during the six months before the issuance of a writ of election. The law also broadened the Act's scope by changing the restriction on "third party election advertising" to one on "third party political advertising." In 2021, the subsequent government of Ontario passed Bill 254,⁷¹ which extended the pre-election political advertising ban to twelve months while keeping the maximum that could be spent at \$600,000. Challenged as an excessive limitation on freedom of expression,⁷² the Ontario Superior Court ruled the law unconstitutional. The Ontario government then adopted Bill 307⁷³ which invoked the notwithstanding clause to override the Charter. This was challenged in court as, while the Charter section on freedom of expression can be overridden, Section 3 on democratic rights cannot. The Ontario Court of Appeal struck down the law.⁷⁴ Ontario has been granted leave to appeal this decision to Canada's Supreme Court.⁷⁵

In 2018, the Ontario government passed Bill 5⁷⁶ reducing the number of electoral districts from 47 to 25 in the middle of Toronto's municipal election. The mid-campaign changes denied candidates their platforms and obstructed their political expression. It also obstructed Torontonians' ability to make informed voting decisions. The Ontario Superior Court ruled the law unconstitutional⁷⁷ as it violated both the municipal candidates' and voters' freedom of expression. Ontario quickly appealed and the Ontario Court of Appeal reversed⁷⁸ the lower court decision, upholding the constitutionality of legislation. The City of Toronto appealed this

⁶⁸ <https://www.cbc.ca/news/canada/montreal/bill-21-united-nations-human-rights-concerns-1.5145344>

⁶⁹ <https://canliiconnects.org/en/summaries/70246>

⁷⁰ <https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2016/2016-12/bill---text-41-2-en-b002ra.pdf>

⁷¹ <https://www.ontario.ca/laws/statute/s21005>

⁷² <https://democracywatch.ca/wp-content/uploads/OntCtRulingWorking-Families-v-Ontario-judgment.pdf>

⁷³ <https://www.ontario.ca/laws/statute/s21031peee>

⁷⁴ <https://www.canlii.org/en/on/onca/doc/2023/2023onca139/2023onca139.html?resultIndex=1>

⁷⁵ <https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=40725>

⁷⁶ <https://www.ontario.ca/laws/statute/s18011>

⁷⁷ <https://www.canlii.org/en/on/onsc/doc/2018/2018onsc5151/2018onsc5151.html?resultIndex=1>

⁷⁸ <https://www.canlii.org/en/on/onca/doc/2018/2018onca761/2018onca761.html?resultIndex=1>

decision to the Supreme Court of Canada. In a 5-4 decision, the Court dismissed the appeal,⁷⁹ allowing Ontario's law to stand.

That same year, the federal government amended⁸⁰ the Canada Election Act which prohibited, during federal elections, knowingly making false statements about political candidates with the intention of affecting the outcome of the election. The amendment deleted the word "knowingly" thereby removing the *mens rea* element from the offense and effectively creating a strict liability offense for certain kinds of speech. The Ontario Superior Court ruled the Act unconstitutional.⁸¹

Ag-Gag Laws

In yet further restrictions on expressive freedom, Alberta [2019],⁸² Ontario [2020],⁸³ Prince Edward Island [2020],⁸⁴ and Manitoba [2021]⁸⁵ introduced "Ag-Gag" laws. Under the guise of animal protection and disease prevention, these laws seek to silence, or "gag," whistleblowers, journalists, and other concerned citizens by restricting their ability to have access to farms, animal processing facilities, and animal transport vehicles thus preventing documentation and reporting on any animal abuse or threats to animal welfare. The Ontario law is currently being challenged in court.

Limiting Protests

In 2022, the government of Canada, as mentioned above, took the unprecedented step of issuing a proclamation invoking the Emergencies Act⁸⁶ for the first time in Canadian history. The proclamation declared a public order emergency existed throughout Canada that necessitated taking special temporary measures to end truck and protest blockades across Canada. The invocation of the Emergencies Act allowed the government to prohibit public assembly, remove vehicles, prohibit use of property to support or fund the blockade, and authorized the Royal Canadian Mounted Police to enforce municipal and provincial laws. It was revoked after ten days in which the police ended the blockades and protests.

⁷⁹ <https://www.canlii.org/en/ca/scc/doc/2021/2021scc34/2021scc34.html?resultIndex=1>

⁸⁰ https://laws-lois.justice.gc.ca/eng/annualstatutes/2018_31/page-1.html

⁸¹ <https://www.canlii.org/en/on/onsc/doc/2021/2021onsc1224/2021onsc1224.html?searchUrlHash=AAAAAQAOQ1YtMTktMDA2MjcZODAAAAAAQ&resultIndex=1>

⁸² <https://canlii.ca/t/5443x>

⁸³ <https://www.ontario.ca/laws/statute/20s09>

⁸⁴ <https://canlii.ca/t/55x22>

⁸⁵ <https://web2.gov.mb.ca/laws/statutes/2021/pdf/c05321.pdf>

⁸⁶ <https://www.justice.gc.ca/eng/csj-sjc/section58.html>

Concerned about aggressive protests during the pandemic against vaccine mandates and mask mandates, Quebec [2021],⁸⁷ British Columbia [2021],⁸⁸ Saskatchewan [2021],⁸⁹ Nova Scotia [2021],⁹⁰ and Newfoundland and Labrador [2022]⁹¹ adopted laws prohibiting demonstrations and protests around health service facilities where Covid-19-related services were being performed. The Quebec Bill 105⁹² prohibited demonstration, "in any manner," within 50 meters of Covid-19 testing and vaccination centers, health or social services, childcare, or educational facilities. The British Columbia Access to Services (COVID-19) Act⁹³ made it illegal to interfere with or disrupt the provisions or services or intimidate anyone or "otherwise do or say anything that could reasonably be expected to cause an individual concern for the individual's physical or mental safety."

These acts tracked earlier legislation that created "protected zones" around abortion clinics and health service providers' homes to prevent interference and intimidation of women seeking abortions and of medical staff providing those health services. Within these zones, the laws prohibit communication intended to discourage women from proceeding with their planned abortions as well as communication to dissuade service providers from performing abortions. Such acts were passed in Newfoundland and Labrador [2016],⁹⁴ Quebec [2016],⁹⁵ Ontario [2017],⁹⁶ Alberta [2018],⁹⁷ and Nova Scotia [2020].⁹⁸

Protests

Alberta adopted a broader law against protests. The Critical Infrastructure Defence Act⁹⁹ prohibits willfully entering, damaging, obstructing, interrupting, or interfering with "critical infrastructure." This includes highways, railways, oil sands sites, or mines. It extends to "[t]he land on which critical infrastructure is located, and any land used in connection with the essential infrastructure." On September 28, 2021, Alberta announced it was expanding the reach of the Act to include hospitals and other health facilities.

⁸⁷https://www.publicationsduquebec.gouv.qc.ca/fileadmin/Fichiers_client/lois_et_reglements/LoisAnnuelles/en/2021/2021C26A.PDF

⁸⁸ <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/21033>

⁸⁹ <https://pubsaskdev.blob.core.windows.net/pubsask-prod/131550/Chap-36-2021.pdf>

⁹⁰ https://nslegislature.ca/legc/bills/64th_1st/3rd_read/b011.htm

⁹¹ https://nslegislature.ca/legc/bills/64th_1st/3rd_read/b011.htm

⁹²https://www.publicationsduquebec.gouv.qc.ca/fileadmin/Fichiers_client/lois_et_reglements/LoisAnnuelles/en/2021/2021C26A.PDF

⁹³ <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/21033>

⁹⁴ <https://www.canlii.org/en/nl/laws/stat/snl-2016-c-a-1.02/127342/snl-2016-c-a-1.02.html>

⁹⁵https://www.publicationsduquebec.gouv.qc.ca/fileadmin/Fichiers_client/lois_et_reglements/LoisAnnuelles/fr/2016/2016C28F.PDF

⁹⁶ <https://www.ontario.ca/laws/statute/17s19>

⁹⁷ <https://kings-printer.alberta.ca/documents/Acts/P26P83.pdf>

⁹⁸ <https://nslegislature.ca/sites/default/files/legc/PDFs/annual%20statutes/2020%20Spring/c005.pdf>

⁹⁹ https://kings-printer.alberta.ca/1266.cfm?page=c32p7.cfm&leg_type=Acts&isbncIn=9780779817672

Intimidation and Health Services

Canada passed Bill C-3,¹⁰⁰ a Criminal Code amendment adding a new offense, "intimidation - health services." The offense includes intimidating or "engag[ing] in any conduct with the intent to provoke a state of fear in" people obtaining health services, health professionals, or other staff supporting health workers. It also criminalized intentionally obstructing or interfering with another person's lawful access to health services. The law applies to any place in Canada that provides healthcare, and to any place that healthcare workers might be, including their homes (i.e., it is not restricted to certain protected zones). The penalties include up to 10 years in prison.

Restricting Online Content

That same year, as part of its effort to restrict harmful content online, the Canadian government introduced Bill C-36¹⁰¹ making it possible for individuals to lay information before a provincial court judge if the individual feared, on reasonable grounds, that another person may engage in hate speech or commit mischief or other offense "motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, gender identity or expression, or any other similar factor." The proposed legislation authorized a judge to order a defendant to enter into a recognizance or peace bond to keep the peace and be of good behavior for a period that can extend up to two years. The order allows restrictions of defendant's movement or behavior to reduce the risk of them committing an offense in future. The legislation also reintroduced a provision to the Canadian Human Rights Code prohibiting hate speech – a provision which had been removed by Parliament in 2013, leaving hate speech to be dealt with under the Criminal Code. The Bill died when a writ was issued for a federal election. During the election, the Prime Minister announced that a top priority of the government, should his party be re-elected was to introduce legislation within the first one hundred days that would regulate online harms. Almost two years later, the legislation has not been tabled.

Criminalizing Holocaust Denial and More

In its 2022 Budget Implementation Act,¹⁰² the Canadian government amended the Criminal Code to prohibit the communication of statements not only "denying" the Holocaust but also "condoning" or "downplaying" it.

¹⁰⁰ <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-3/royal-assent>

¹⁰¹ <https://www.parl.ca/DocumentViewer/en/43-2/bill/C-36/first-reading>

¹⁰² https://laws-lois.justice.gc.ca/eng/AnnualStatutes/2022_10/page-24.html#h-121

Regulating Campus Speech

In 2022, Quebec gave royal assent to Bill 105¹⁰³ requiring universities to adopt academic freedom policies and create committees to oversee their enforcement. Considerable concern has been expressed¹⁰⁴ that the legislation sets a dangerous precedent by giving the Minister authority to rewrite university policies, violating fundamental freedom from political interference in research and teaching.

Compelled Speech

As part of Bill 100, it's 2019 Budget Act, Ontario introduced the Federal Carbon Tax Transparency Act¹⁰⁵ requiring gasoline retailers to affix stickers to their pumps reading, "The Federal Carbon Tax will cost you." The retailers were required to ensure the stickers were prominently displayed "within the top two-thirds of the side of the gasoline pump that faces motor vehicles when the pump is used to put gasoline into their fuel tanks." This compelled speech was widely seen as retaliation by the Ontario government against the federal carbon tax. The Ontario Superior Court¹⁰⁶ ruled the Act unconstitutional and of no force or effect.

Restricting the Use of Languages Other than French in Business, Services, and Education

In 2022, Quebec adopted Bill 96¹⁰⁷ which tightened French language requirements on businesses, including professional services, such as medicine, in their provision of services, their communication, and their hiring practices, prohibiting the use of English in numerous settings. It also restricts access to education in languages other than French and provides a new private right of action for all Québec residents to seek injunctive relief or damages against those which do not comply.

II. Non-Legislative Developments

Addressing Antisemitism

To deal with concern about antisemitism in Canada, the Canadian government developed its Anti-Racism Strategy¹⁰⁸ in 2019 which adopted the International Holocaust Remembrance

¹⁰³https://www.publicationsduquebec.gouv.qc.ca/fileadmin/Fichiers_client/lois_et_reglements/LoisAnnuelles/en/2022/2022C21A.PDF

¹⁰⁴ <https://montreal.ctvnews.ca/is-bill-32-the-real-threat-to-academic-freedom-130-quebec-professors-speak-out-in-open-letter-1.5878266>

¹⁰⁵ <https://www.ontario.ca/laws/statute/19f07a>

¹⁰⁶ <https://www.canlii.org/en/on/onsc/doc/2020/2020onsc4838/2020onsc4838.html?resultIndex=1>

¹⁰⁷https://www.publicationsduquebec.gouv.qc.ca/fileadmin/Fichiers_client/lois_et_reglements/LoisAnnuelles/en/2022/2022C14A.PDF

¹⁰⁸ <https://www.canada.ca/en/canadian-heritage/campaigns/anti-racism-engagement/anti-racism-strategy.html>

Alliance [IHRA] definition of antisemitism,¹⁰⁹ controversial because it allows criticism of the state of Israel to be considered as antisemitism.

The governments of Ontario [2020],¹¹⁰ Quebec [2021],¹¹¹ British Columbia [2022¹¹²], Alberta [2022],¹¹³ New Brunswick [2022],¹¹⁴ Manitoba [2022],¹¹⁵ and Saskatchewan [2022]¹¹⁶ subsequently passed orders-in-council or issued directives declaring their adoption of the IHRA definition.

Protecting Academic Freedom

In response to allegations of restrictions on campus speech, Ontario and Alberta took actions designed to promote freedom of expression on campus. Ontario directed¹¹⁷ all colleges and universities to develop a free speech policy based on the University of Chicago Statement on Principles of Free Expression,¹¹⁸ threatening reductions to the institutions' operating grant funding if they failed to comply. The Ontario directive also required institutions to consider student groups' compliance with the policy as a condition for ongoing financial support or recognition. The directive was criticized by the Canadian Association of University Teachers¹¹⁹ which pointed out that the vagueness in the government's guidelines of what constitutes an interference with free speech may result in the prohibition of legitimate protests. Alberta issued a similar directive in 2019.¹²⁰

Restricting Students Expression

In its 2019 Student Choice Initiative,¹²¹ Ontario made the majority of post-secondary student fees optional, including fees paid to student unions, which are frequent critics of the government. This puts continued viability of student unions and their campus publications and

¹⁰⁹<https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>

¹¹⁰ <https://www.ontario.ca/orders-in-council/oc-14502020>

¹¹¹ <https://canadadocs.org/government-of-quebec-adopts-ihra-non-binding-definition-of-antisemitism/>

¹¹² <https://www.jns.org/british-columbia-latest-canadian-province-to-adopt-ihra-definition/>

¹¹³ <https://www.alberta.ca/release.cfm?xID=846463A33CF98-9844-D486-05E25E1323BADFE0>

¹¹⁴ <https://www.bnairbrith.ca/new-brunswick-latest-canadian-province-to-adopt-ihra-definition/>

¹¹⁵ <https://news.gov.mb.ca/news/index.html?item=56745>

¹¹⁶<https://www.saskatchewan.ca/government/news-and-media/2022/december/19/saskatchewan-adopts-definition-of-antisemitism>

¹¹⁷<https://news.ontario.ca/en/backgrounder/49950/upholding-free-speech-on-ontarios-university-and-college-campuses>

¹¹⁸ <https://freeexpression.uchicago.edu/>

¹¹⁹ <https://www.caut.ca/latest/2018/08/ontario-free-speech-requirements-universities-and-colleges-cause-concern>

¹²⁰<https://edmontonjournal.com/news/politics/advanced-education-minister-promises-chicago-principles-details-coming-soon-as-students-academics-concerned-for-september-deadline>

¹²¹<https://news.ontario.ca/en/release/50954/government-for-the-people-to-lower-student-tuition-burden-by-10-per-cent>

other student media at serious risk. The Ontario Court of Appeal¹²² ruled the policy was inconsistent with university acts and could not be imposed on universities by executive action.

Compelled Speech

The Canadian government's 2018 Canada Summer Jobs Program¹²³ limited organizational eligibility for funding to those with policies affirming respect for individual human rights including reproductive rights, thereby disallowing funding for groups with pro-life policies even when the funded student placement would have nothing to do with this issue.

III. Enforcement

As described above, enforcement of restrictions on constitutionally protected rights and freedoms was made possible by the "notwithstanding" clause in the Canadian Charter of Rights and Freedoms which allows the federal parliament and provincial parliaments to override the Charter. In a few importance instances, as noted above, Canadian courts blocked speech restrictive legislation, including Ontario's extreme limit on pre-election political advertising,¹²⁴ Canada's attempt to criminalize making false statements about political candidates even if that was not done knowingly,¹²⁵ and Ontario's attempt to require retailers to post anti-federal government stickers on their gasoline pumps.¹²⁶

Conclusion

During the period under consideration, governments in Canada used legislation and policy directives to limit freedom of expression, often deliberately but sometime inadvertently. In some instances, Canadian courts found the measures contrary to the Canada's Charters of Rights and Freedoms and struck them down. But many others were not challenged, survived court challenges, or were rendered exempt from constitutional oversight by Canada's constitutional provision that allows sections, including the section of freedom of expression, by government invocation of the "notwithstanding"¹²⁷ clause. There was a notable instance during this period of legislative enhancement of expressive rights. Two provincial governments – Ontario in 2015¹²⁸ and British Columbia in 2019¹²⁹ introduced anti-SLAPP laws that are the

¹²² <https://www.ontariocourts.ca/decisions/2021/2021ONCA0553.htm>

¹²³ <https://policyoptions.irpp.org/magazines/january-2018/canada-summer-jobs-and-the-charter-problem/>

¹²⁴ <https://www.canlii.org/en/on/onca/doc/2023/2023onca139/2023onca139.html?resultIndex=1>

¹²⁵ <https://www.canlii.org/en/on/onsc/doc/2021/2021onsc1224/2021onsc1224.html?searchUrlHash=AAAAAQAOQ1YtMTktMDA2Mjc2ODAAAAAAQ&resultIndex=1>

¹²⁶ <https://www.canlii.org/en/on/onsc/doc/2020/2020onsc4838/2020onsc4838.html?resultIndex=1>

¹²⁷ <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/check/art33.html>

¹²⁸ <https://www.ontario.ca/laws/statute/s15023>

¹²⁹ <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19003>

most speech protective in the world¹³⁰ in providing an effective means for dismissal of strategic lawsuits against public participation (SLAPPs).

¹³⁰ <https://cfe.torontomu.ca/publications/global-anti-slapp-ratings-assessing-strength-anti-slapp-laws>