GLOBAL INFORMATION SOCIETY WATCH 2021-2022

Digital futures for a post-pandemic world

Global Information Society Watch 2021-2022
Digital futures for a post-pandemic world

Disclaimer: The views expressed herein do not necessarily represent those of Sida, APC or its members.

CANADA

THE NEED FOR A BROAD-BASED DIGITAL RIGHTS MOVEMENT IN CANADA

eQualitie
Michel Lambert
https://equalit.ie

Introduction

On 8 February 2022, almost two years into the pandemic, two important political events happened in Canada. For the first time, a member of the federal parliament, Joel Lightbound, who is also from Prime Minister Justin Trudeau's Liberal Party of Canada, spoke out publicly on the government's COVID-19 policies, saying they had become "politicised" and "divisive". His political future was at stake for a few weeks.

The same day, as infection rates from the fifth wave appeared to be declining in his province, the premier of Quebec, François Legault, declared that most restrictions would be removed within the following month. However, two major policies would remain in effect: the vaccine passport – an application on mobile phones necessary for every individual to have access to stores and services – and the state of emergency which allows the government to run affairs without using the usual political institutions.

These two separate events demonstrate how the federal and provincial governments have kept tight control over the management and messaging of the COVID-19 pandemic, and wish to carry on doing so, including by disallowing debates on their policies and stifling any divergent viewpoints.

Signs that the government wants more control

Vaccine passports

In Quebec, where 81% of the population has received two vaccines already, and where this rate is still growing daily, insisting on the vaccine passport is inexplicable other than by the government's interest in continuing to track people. The Quebec National Institute for Public Health in Quebec (*Institut national de santé publique du Québec*) has even recently admitted that they have no proof of the efficiency of the passport. Many technical weaknesses with the passport application have also been exposed. As of January 2022, more than 150 investigations into fake passports were opened, with guilty people facing fraud charges and up to five years in prison.

Mass surveillance

In December 2021, the Canadian public health agency admitted to having tracked 33 million mobile devices during the lockdown that year. To do so, they awarded a contract to the Telus Data for Good programme,[1] a programme launched by the Telus telecommunications company, claiming to help "solve pressing societal issues in ways that preserve privacy and build trust." The irony of that situation has made the public realise that there are few regulations that act as safeguards in protecting privacy in Canada. As a result, local NGOs have started to request that the government introduce new laws that would create rules around how public bodies report on the collection and use of sensitive personal information, and provide oversight from an independent third party, like the Office of the Privacy Commissioner of Canada.

New laws to control Canadians – and no law to protect them

At the federal level, while disinformation and misinformation existed before COVID-19, the pandemic has spawned two ambitious and very dangerous draft laws looking at controlling what is accessible to Canadians over the internet from almost all online services, as well as controlling what Canadians publish online.

In November 2020, the government introduced Bill C-10, followed in June 2021 by Bill C-36.

Bill C-10, called the "censorship bill" by many, was initially presented as a way of generating new taxes for streaming services. It was rapidly sent to the senate after a gag order was placed on the committee studying it. Instead of simply taxing streaming services, critics found that the bill would amend the Canadian Broadcasting Act and grant utterly inappropriate power to one institution, the Canadian Radio-television and Telecommunications Commission (CRTC). It would have the power to decide which audiovisual content is available on the internet. The bill's adoption was delayed because of the Canadian elections in September 2021. It was, however, reintroduced as Bill C-11 in February 2022.

Despite government promises of a less aggressive version, the second version of the bill still gives

---

1   https://www.telus.com/en/about/privacy/data-for-good

a limitless reach to the CRTC's jurisdictional power over audiovisual services on the internet. An internal memo from the government[2] identified a wide range of sites and services, including video streaming, podcast apps, audiobooks, home workout apps and adult and sport websites potentially covered by the legislation. Michael Geist, a well-known researcher from the University of Ottawa, believes that this may result in many services choosing to block the Canadian market[3] entirely.

Bill C-36 was presented in June 2021 to fight online hate speech. It would have amended the Canadian Criminal Code, the Youth Criminal Justice Act and the Canadian Human Rights Act to allow individuals or groups to file hate speech complaints with the Canadian Human Rights Commission. Critics said it was fraught with problems and risked hampering freedom of speech on top of being difficult to enforce.

Between July and September 2021, the Canadian Heritage Ministry consulted interested parties on the proposed bill. While the majority of respondents consulted during this process confirmed the need to take action on the problem of hate speech, they also identified several overarching concerns, including those related to freedom of expression, privacy rights, the impact of the proposal on certain marginalised groups, and compliance with the Canadian Charter of Rights and Freedoms.[4]

Civil society has caught "long COVID"

These threats to civil freedoms coming from the national and provincial level have seriously affected political life in Canada, and particularly in provinces like Quebec. Mainstream media have completely abdicated their role of being a watchdog to power, and have reduced themselves to just being transmission channels for government decisions on the pandemic. Journalists who dared to question those policies were fired. The most recent example is Francine Pelletier, a well-known journalist from the newspaper *Le Devoir* in Montreal who dared to write an article questioning the government's policy of prioritising vaccination over other possible interventions in its strategy for combatting the virus in January 2022. She was fired a week later.

As governments are managing the pandemic outside of the normal institutions and parameters, political parties have been reduced to observers, hardly criticising the footnotes from government policies that are introduced.

Maybe most of all, civil society organisations have slowly slipped into a state of dormancy – a kind of long COVID. As many of the global campaigns and movements – against climate change, racism, gender-based violence, war and others – were suddenly paused due to the pandemic, many local organisations lost contact with a global perspective. They were trapped into managing immediate difficulties, including financial difficulties, and were struggling to maintain democratic structures online and to reflect and act on pressing political issues. Added to this is the absence of a substantial, critical and alternative vision that is not aligned with the idea that the virus is a conspiracy and that it does not exist. Civil society had its TINA[5] – or "there is no alternative" – moment. This has resulted in a real inability to debate alternative political perspectives from a factual point of view, and to create alternative, meaningful strategies that safeguard human rights.

The future of digital rights advocacy

Canadian digital rights advocacy can be defined in many ways, but in particular by the obvious characteristic that there are far fewer actors in the actual movement than the number of people and organisations that really should be concerned by the development of such a broad-scope tool as the internet. This might be explained by the fact that the Canadian Internet Governance Forum (IGF) process is very young (it was first funded in 2019) and fragmented (a Quebec Provincial IGF also exists, but the two processes are still not formally connected), and possibly by a certain conviction held by many that the internet in Canada is "safe and secure", here to stay, relatively easy to access, and somehow self-managed. In comparison to other human rights movements in Canada, digital rights organisations can be quite specialised, not always successfully connecting with the "offline" rights movements or any other civil society group concerned about the internet.

It is also fair to say that the digital rights organisations could be better connected to each other, learn more from each others' work, and cooperate more on campaigns. While Canadian community-based campaigns working on many issues are often federated in associations, giving weight to their advocacy,

2   https://fr.scribd.com/document/508665790/A-2020-00498-Heritage-c10-Digital-Exclusion

3   Geist, M. (2022, 9 February). Bill C-11's Foundational Faults, Part One: The Nearly Unlimited Global Reach of CRTC Jurisdiction Over Internet Audio-Visual Services. https://www.michaelgeist.ca/2022/02/bill-c-11s-foundational-faults-part-one-the-nearly-unlimited-global-reach-of-crtc-jurisdiction-over-internet-audio-visual-services

4   https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content/what-we-heard.html

5   TINA was a slogan often used by the Conservative British prime minister Margaret Thatcher. It was used to signify Thatcher's claim that the market economy is the only system that works, and that there was nothing to debate.

this is not the case in the field of digital rights. For instance, when ethical hackers easily infiltrated the COVID vaccination app in Quebec, and pointed out the app's weaknesses to the government, they were immediately labelled as anti-government and threatened with judicial proceedings, but hardly any organisation stood up to support them.

Digital rights organisations are probably not spending enough of their resources on educating other organisations or their constituents about the importance and challenges of digital rights. A study[6] by Lab-Delta, a Montreal-based group doing research on technology and activism, concluded after interviewing university students that even when people assume and pretend that they understand digital rights issues, the majority of them do not. This lack of understanding of the issues is one reason why it is difficult to connect digital rights movements meaningfully to other societal concerns, and also shows the huge need to educate the public on digital rights issues.

However, there is only so much digital rights organisations can do. Their resources are limited, and most of them are currently spent on engaging the government on policy and legislation, as was clear from the last two roundtables held at the Canadian IGF. While there were many recommendations, they were all directed at what the government should do.

Conclusion

I would argue that there has been more of a pause than a real shift in digital rights advocacy in Canada as a result of the pandemic. Central issues facing the movement, namely the lack of networking inside and outside the movement, and the lack of public education, were realities prior to March 2020, and are likely to persist in the near future.

Even the two new federal laws, C-11 and C-36, were already planned, at least as far as government intentions go, as early as 2019. The scope they initially chose to give to these bills was boosted by the sudden need to counter COVID disinformation, which was not expected, but a mandate letter to the Canadian Heritage Minister in December 2019[7] already mentioned the government's plans to create new regulations for social media platforms, requiring them and internet service providers (ISPs) to remove "illegal content", including hate speech.

The rights movement – including the digital rights movement – responded to these and forced revisions which show the capacities of these movements, and the responsiveness of the government. It can be expected that further adjustments will occur in future versions of the laws, but nobody knows exactly how flexible the government will finally be.

Two issues can, nevertheless, be considered new issues:

- A vaccine passport, falling under the jurisdiction of each of the country's ten provinces. The passports were originally created to encourage people to get vaccinated, but since Canada now has one of the highest levels of vaccination in the world, their utility has become highly questionable. In Quebec, the government also decided to create an app to replace a paper document, making the passport available only to mobile phone owners. Furthermore, each province has its own system, creating a completely disorganised patchwork of systems.

- The Canadian government showing its willingness to track millions of mobile devices during lockdowns to "analyse" people's movement, without there being any real public protection in the current legislation.

What is also clearly necessary is that digital rights organisations need to challenge their advocacy silos, and begin to build broader advocacy movements that include other actors, including at the community level. This is all the more important given that the restrictions contemplated and enacted by the government are cross-cutting and have implications for everyone in the country.

What is interesting is that when movements confront the government on issues like hate speech, often activists tend to focus the discussion on legislation. But involving others with fresh approaches in the discussions might well open them up to new ideas. An advocacy approach countering hate speech could for instance also involve proactive strategies using education – formal and informal – as well as supporting interventions by community-based organisations. Digital literacy training, so that the public can recognise when content is abusive, is also essential. After all, instead of overly restrictive legislation, in 2019, the UN Special Rapporteur on the right to freedom of opinion and expression encouraged states to explore alternative ways to combat hate speech, including creating platforms for dialogue.[8]

6   Couture, S., et al. (2021). *Stratégies d'engagement pour et par le numérique*. Lab-Delta. https://www.labdelta.ca/publications/strategies-dengagement-pour-et-par-le-numerique

7   https://pm.gc.ca/en/mandate-letters/2019/12/13/archived-minister-canadian-heritage-mandate-letter

8   UN Office on Genocide Prevention and the Responsibility to Protect. (2020). *United Nations Strategy and Plan of Action on Hate Speech: Detailed Guidance on Implementation for United Nations Field Presences*. https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20PoA%20on%20Hate%20Speech_Guidance%20on%20Addressing%20in%20field.pdf

Action steps

Specifically, movements should:

- Force governments to revoke vaccine passports in every province.
- Lobby the federal government for a law to be adopted aimed at creating rules around how public bodies report on the collection and use of sensitive personal information, and provide oversight from an independent third party, like the Office of the Privacy Commissioner of Canada.
- Work towards creating a pan-Canadian network on digital security. The global IGF may be held in Canada in 2024, and this might help to facilitate such a process.
- Connect more with offline movements to avoid solely techno-centric or legislative answers to issues.

On the C11 and C36 bills, movements should advocate for the government to:

- Reaffirm its commitment to net neutrality and the principles of the open internet.
- Reflect on enforcing existing laws to keep big tech companies in check and ensure they are held responsible for the harms occurring on their platforms.
- Define clearly several key terms and concepts before regulating big tech.[9]

- Provide narrower, clearer definitions of the illegal and harmful content addressed by the pending legislation.
- Acknowledge that using automated decision making to flag and remove content should be avoided, as it will lead to legitimate content being censored.
- Acknowledge that automated systems that send user data to law enforcement agencies should also be avoided.
- Acknowledge that there are other avenues to deal with online harms, and explore these before resorting to removing content, such as digital literacy, understanding better the impact of paid-for content on hate speech, as well as the role of competition law in this regard, and more control for users over the algorithms used in their content feeds.[10]

---

9   Several key terms and concepts are mentioned in the laws that need better definition, such as "CanCon" (Canadian content), "discoverability", "social media services", and the delineation between companies' services and the companies themselves.

10 This last point was raised at the Canadian IGF, where one participant suggested that giving more algorithmic choice or control over algorithms to parents could provide for a better online experience for their children.

DIGITAL FUTURES FOR A POST-PANDEMIC WORLD

Through the lens of the COVID-19 pandemic, this edition of Global Information Society Watch (GISWatch) highlights the different and complex ways in which democracy and human rights are at risk across the globe, and illustrates how fundamental meaningful internet access is to sustainable development.

It includes a series of thematic reports, dealing with, among others, emerging issues in advocacy for access, platformisation, tech colonisation and the dominance of the private sector, internet regulation and governance, privacy and data, new trends in funding internet advocacy, and building a post-pandemic feminist agenda. Alongside these, 36 country and regional reports, the majority from the global South, all offer some indication of how we can begin mapping a shifted terrain.

GLOBAL INFORMATION SOCIETY WATCH
2021-2022 Report
www.GISWatch.org

APC

Sida