

Policy Brief No. 5 – January 2024

# Technology-Facilitated Mind Hacking: Protection of Inner Freedoms in Canadian Law

Emily Laidlaw

## Key Points

- Freedom of thought, belief and opinion are protected in section 2(b) of the Canadian Charter of Rights and Freedoms, but that protection only applies against actions government might take.
- The present threat to our rights to these inner freedoms does not come primarily from government but from corporate actors, which, as private parties, do not owe direct constitutional duties to the users of their products or services.
- Government has a duty under international human rights law to protect individuals from corporate interferences with rights.
- All levels of government should implement these freedoms in law and policy through renewed focus on law reform in the areas of privacy, artificial intelligence and online safety laws.

## Introduction

Freedom of thought, belief and opinion have gained traction internationally as human rights that are infringed by technology-facilitated “mind hacking.” Consider the immersive influence of virtual reality (Loewen-Colón, Mosurinjohn and Amarasingam, forthcoming 2024), the use of psychographic targeting of users for influence campaigns,<sup>1</sup> the dark patterns of website design that nudge consumer behaviour (Mathur et al. 2019), the psychological influence of memes and videos (Fielitz and Ahmed 2021), and the impact of recommender systems on youth mental health (Amnesty International 2023). These examples scratch the surface of the various ways our minds are being slowly and subtly hacked.

This policy brief explores the status of these rights in Canadian law. Do we, in Canada, have legal rights to freedom of thought, belief and opinion? If so, do those rights extend to protect us from technological interferences? Do we have rights to protect us against the activities and products of technology companies? The short answer is that, not surprisingly, it is complicated. Crucially, the legal uncertainty in this area creates a hurdle to making any use of this

<sup>1</sup> *Joint investigation of Facebook, Inc. by the Privacy Commissioner of Canada and the Information and Privacy Commissioner for British Columbia*, PIPEDA Findings #2019-002 (25 April 2019), online: *Office of the Privacy Commissioner of Canada* <[www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2019/pipeda-2019-002/](http://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2019/pipeda-2019-002/)>.

---

## About the Author

Emily Laidlaw is a CIGI senior fellow, a Canada Research Chair in Cybersecurity Law and associate professor at the University of Calgary. She researches in the areas of technology regulation, cybersecurity and human rights, with a focus on platform regulation, online harms, privacy, freedom of expression and corporate social responsibility.

Emily's research spans Canadian, UK, European and international law. As a scholar, she actively contributes to law reform and other advisory work to government and other bodies, with recent projects on online harms, mis- and disinformation, defamation law, intimate image abuse, intermediary liability, content moderation and privacy. She is currently serving as ethics advisor to Calgary City Council.

Emily is also a network director of the Canadian Network on Information and Security and a member of the Institute for Security, Privacy and Information Assurance. She is author of the book *Regulating Speech in Cyberspace: Gatekeepers, Human Rights and Corporate Responsibility* (Cambridge University Press, 2015).

right in practice. This policy brief contributes a step-by-step analysis of the legal chokepoints that must be untangled to breathe life into these rights.

---

## Charter of Rights and Freedoms

The inner freedoms of thought, belief and opinion are known as “forgotten freedoms” in the Canadian Charter of Rights and Freedoms (Charter)<sup>2</sup> (Newman 2019). Freedom of expression protects outward acts that convey meaning. Our inner freedoms are the opposite, protecting ideas and beliefs before they are expressed. Protection of such freedoms is crucial, because they can be attacked indirectly by forces influencing and shaping our thoughts and belief system.<sup>3</sup> These rights have received minimal scholarly attention in Canada and have been rarely referenced in case law, usually only in passing.<sup>4</sup> The rights are buried alongside the right to freedom of expression in section 2(b), which has done most of the heavy lifting in Charter litigation over the years. Section 2 sets out the “fundamental freedoms”: “(a) freedom of conscience and religion; (b) *freedom of thought, belief, opinion* and expression, including freedom of the press and other media of communication [*italics added*]; (c) freedom of peaceful assembly; and (d) freedom of association.”<sup>5</sup>

Freedom of thought, belief and opinion are ordered differently in the Charter than in the UDHR<sup>6</sup> and the International Covenant on Civil and Political Rights (ICCPR),<sup>7</sup> both of which influenced the Charter's drafting. Under the Charter, freedom of thought,

---

2 Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [Charter].

3 Dwight Newman (2019) quotes Professor René Cassin for this articulation during the drafting process of the Universal Declaration of Human Rights (UDHR).

4 See e.g. *BC (AG) v School District No 65 (Cowichan)*, 1985 CanLII 456 (BCSC); *Lafferty, Harwood & Partners Ltd v Parizeau*, 2003 CanLII 32941 (QCCA).

5 *Supra* note 2, s 2.

6 Universal Declaration of Human Rights, GA Res 217A (111), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810 (1948) 71 [UDHR].

7 International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) [ICCPR], online: <[www.ohchr.org/en/professionalinterest/pages/ccpr.aspx](http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx)>.

belief and opinion are coupled with expression and media freedom. In contrast, the UDHR and the ICCPR separate these inner freedoms, and pair freedom of thought and belief with conscience and religion, and freedom of opinion with expression.<sup>8</sup> The Charter drafters seemed to want to make explicit that the protection of Canadian citizens' inner thoughts and beliefs is not limited to religious ones (Fitzpatrick and Newman 2020).

By pairing freedom of thought, belief and opinion with expressive rights, the Charter's section 2(b) is all-encompassing of the various ways we engage with information and ideas. One must have space to think before one can exercise the right to seek, receive and impart information and ideas, which then further fuels development of our internal thoughts, beliefs and opinions. These rights are all part of an iterative process of intellectual freedom (Shiffrin 2014). The pairing with expressive rights is also significant, because there is an important privacy dimension to freedom of thought, belief and opinion, and how privacy may or may not be considered in the interpretation of these section 2(b) rights is unclear (Richards 2015).

The rights in section 2(b) are deeply connected to each other but, as with all Charter rights, are distinct.<sup>9</sup> It is unclear why freedom of thought, belief and opinion are all listed in this section, because at first blush they appear duplicative, but a legislature must be presumed to know what it is doing (Sullivan 2022). For example, what is the difference between freedom of thought and opinion? It makes sense to have both rights in the ICCPR, because freedom of opinion is anchored in religious liberty, but no such differentiation exists in the Charter. An investigation of parliamentary debates reveals that the freedoms were minimally discussed during the drafting, and that the discussion that did occur was mostly about the ordering of the rights in section 2.<sup>10</sup>

Recent Canadian scholarship is instructive (Newman 2019; 2021), as is international human rights and European Union law (Alegre 2022;

Aswad 2020). Freedom of thought is the most internally oriented of the freedoms and protects three rights: the right to keep our thoughts private, the right to keep them free from manipulation, and the right to keep them free from penalty (Alegre 2022; Newman 2019, 2021). Freedom of opinion seems to connote something more than thought, referring to the internal process of judgment formation (Newman 2021). The ICCPR and the UDHR specifically protect the freedom to "hold opinions," while section 2(b) protects freedom "of opinion," which indicates both an internal and an external dimension to the right. Freedom of belief, in contrast, seems to refer to the inquisitive process of forming a belief on matters sufficiently weighty to raise dignitary concerns, referring to the inherent value of all persons that is foundational to human rights (Alegre 2022; Newman 2021).

The Charter approach departs from international human rights instruments in another important way. Under the ICCPR, freedom of thought and opinion are absolute rights, meaning that they cannot be restricted.<sup>11</sup> There are no absolute rights in the Charter. All rights, including the fundamental freedoms in section 2, are subject to section 1: "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."<sup>12</sup>

This means that even our inner freedoms can be limited by government action in certain circumstances. The test is similar to the proportionality approach in international human rights, asking whether the law has been designed to achieve a pressing and substantial objective, and if so, whether the limit is proportional.<sup>13</sup> In practice, these rights might be treated as absolute, in part to comply with Canada's obligations as a party to the ICCPR since 1976. Nonetheless, the possibility for justified government interference with the inner workings of our minds exists under law.

8 UDHR, *supra* note 6, arts 18–19; ICCPR, *supra* note 7, arts 18–19.

9 *R v Vice Media Canada Inc*, 2018 SCC 53 at para 112, [2018] 3 SCR 374.

10 Canada, Parliament, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, 32nd Parl, 1st Sess, No 1–56 (1980–1981).

11 ICCPR, *supra* note 7, arts 18(1)–18(3), 19(1).

12 Charter, *supra* note 2, s 1.

13 *R v Oakes*, [1986] 1 SCR 103.

## Rights Against Whom?

Even if the substance of the Charter right is fleshed out, it will not solve the problem at hand. The present threat to our rights to these inner freedoms does not come primarily from government, but rather from corporate actors: technology companies developing and unleashing on the market some products or services with the potential to subtly disrupt and manipulate our freedom to think for ourselves.

Private parties do not owe each other constitutional duties.<sup>14</sup> TikTok, for example, does not have a constitutional duty to users to protect their rights to freedom of thought, belief and opinion in Canadian law. This is because the Charter only applies to governmental action: “(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.”<sup>15</sup>

For example, a state might interfere with freedom of thought by controlling mediums of communication, such as the Nazis did with control of national radio broadcasts during the Third Reich (Alegre 2022). In certain circumstances, specific corporate action could be framed as undertaking a government function, inviting direct Charter duties, but these circumstances are rare, such as when a corporation is enlisted to implement a specific government policy.<sup>16</sup>

In practice, section 32 means that the government, agents of the state, and non-governmental bodies undertaking government action must comply with the Charter. For example, legislation must be Charter-compliant, because Parliament’s decision to pass legislation is a governmental action.<sup>17</sup> What about courts? In Canada, courts are excluded from Charter application, which Justice La Forest described as “a deliberate choice” by

Parliament.<sup>18</sup> Otherwise, all matters before courts might be treated as Charter cases. It is notable that other jurisdictions have not approached the role of courts so narrowly. For example, in the United Kingdom a court is a public authority and thus bound by the Human Rights Act.<sup>19</sup> If a claimant can find a cause of action to hang their hat on, such as breach of confidence, then they can argue human rights, and the court is bound to apply the law in a manner compatible with human rights law.<sup>20</sup>

The Charter, however, is “far from irrelevant to private litigants”; it is simply narrower in scope.<sup>21</sup> In disputes between private parties, courts may in limited circumstances apply what are known as Charter values.<sup>22</sup> First, a court must develop the common law in a manner consistent with Charter values. For example, if party A sues party B for a breach of privacy, such as intrusion on seclusion,<sup>23</sup> then a court must consider Charter values in its interpretation and development of the common law.<sup>24</sup> This is not *carte blanche* for a court to do as they wish. Major law reform is the responsibility of legislatures, not courts,<sup>25</sup> and any development of the common law by courts must be incremental. However, it does mean that party A can argue Charter principles, and a court is required to consider them, in interpreting and developing the common law.

Second, when interpreting legislation, courts may only consider Charter values if there is genuine ambiguity about how to understand a legislative provision. The law is different for legislation that is quasi-constitutional, such as Canada’s private sector privacy laws.<sup>26</sup> For example, if Parliament passes legislation regulating social media, a court

14 *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130 at para 95 [Hill].

15 *Charter*, *supra* note 2, s 32(1).

16 *Eldridge v BC (AG)*, [1997] 3 SCR 624.

17 *RWDSU v Dolphin Delivery Ltd*, [1986] 2 SCR 573 at para 39 [Dolphin Delivery].

18 *McKinney v University of Guelph*, [1990] 3 SCR 229.

19 *Human Rights Act 1998 (UK)*, c 42.

20 *Campbell v MGN Ltd*, [2004] UKHL 22.

21 *Dolphin Delivery*, *supra* note 17 at para 39.

22 *Ibid*.

23 *Starting with Jones v Tsige*, 2012 ONCA 32.

24 *Ibid* at paras 45–46.

25 *R v Salituro*, [1991] 3 SCR 654; *Hill*, *supra* note 14 at para 85.

26 *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 [PIPEDA]; *AT v Globe24h.com*, 2017 FC 114 [CanLII] at paras 92–96, [2017] 4 FCR 310. See, for example, *CanadianOxy Chemicals Ltd v Canada (AG)*, [1999] 1 SCR 743 at para 14. The Charter should not normally inform statutory interpretation unless there are two or more ways to plausibly read a provision that all align with the intentions of the legislation: *Slaight Communications Inc v Davidson*, [1989] 1 SCR 1038.

cannot turn to the Charter as an interpretive aid as to the meaning of, say, a provision mandating algorithmic accountability, unless that provision is unclear. The right to freedom of thought and opinion, or any other Charter right, would not be on the table to push through the back door for consideration by a court. The justification for this approach is that if the legislative intent is clear, it is not the role of a court to subvert it (Horner 2014). Recently, the Supreme Court of Canada seemed to take a looser approach; thus, the law in edge cases remains unsettled.<sup>27</sup>

We are faced with a profound dilemma flowing from current law. The vast majority of corporate behaviours that impact freedom of thought, belief and opinion are regulated by statute, such as in the areas of privacy,<sup>28</sup> competition,<sup>29</sup> artificial intelligence,<sup>30</sup> online safety<sup>31</sup> and media law.<sup>32</sup> Charter rights would only arise when drafting such legislation and to assess whether a government action infringes a right, which is not the focus of any of the above. Charter values only arise if a statutory provision is unclear or if the legislation is quasi-constitutional. Thus, the greatest scope for consideration of these rights is in the development of the common law, but there are few relevant common law causes of action. A further wrinkle is that the meaning of Charter values is unsettled. As Matthew Horner (2014) comments, “the meaning of Charter values, while rhetorically powerful, is substantively unclear.” It is a big leap for a court to apply Charter *values* before the *right* has been fleshed out by courts.

The government is certainly free to pass legislation to protect freedom of thought and opinion. The question is whether the government is legally required to do something, whatever that something is.

## Government Duty to Protect Section 2(b) Freedoms?

The question of whether a government must take proactive steps to protect a right, or whether it must simply not infringe the right itself, is a question about whether the right is *positive* or *negative*. If freedom of thought and opinion are positive rights, the government must take steps to ensure the law protects those rights, such as adopting legislation to give effect to these rights. If the rights are negative, then it is presumed we are free and enjoy our rights when unrestrained by law. To put it another way, the government does not need to proactively do anything. The fact that the Charter rights are not protected through any legislation would be irrelevant.

As a fundamental freedom, section 2(b) was traditionally framed as a negative liberty. Freedom of expression, for example, typically “prohibits gags, but does not compel the distribution of megaphones.”<sup>33</sup> More accurately, section 2(b) is neither positive nor negative, but exists along a spectrum,<sup>34</sup> with positive and negative dimensions. For example, the government may not have a positive obligation to provide a specific platform of expression. However, positive governmental action may be required to ensure that a right is meaningfully enjoyed.<sup>35</sup>

Would the government be obligated to act when it has not legislated in a particular area? For example, would a Canadian government have a positive duty to enact legislation protecting users’ rights to freedom of thought, belief and opinion from interferences by corporate actors? The short answer is no. The Supreme Court of Canada succinctly stated that “one must guard against reviewing legislative silence, particularly where no legislation has been enacted in the first place.”<sup>36</sup> Thus, the only time a government might be compelled to positively act to protect the

27 *R v Jarvis*, 2019 SCC 10, [2019] 1 SCR 488.

28 PIPEDA, *supra* note 26; Bill C-27, *An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts*, 1st sess, 44th Parl, 2021 to present [Bill C-27].

29 *Competition Act*, RSC 1985, c C-34.

30 See the *Artificial Intelligence and Data Act* in Bill C-27, *supra* note 28.

31 See [www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content.html](http://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content.html).

32 Bill C-11, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, 1st sess, 44th Parl, 2021 (assented to 27 April 2023).

33 *Haig v Canada (Chief Electoral Officer)*, [1993] 2 SCR 995 at 1035.

34 *Toronto (City) v Ontario (AG)*, 2021 SCC 34 at para 20 [Toronto].

35 *Native Women’s Assn of Canada v Canada*, [1994] 3 SCR 627 at para 49 in which the court states “positive governmental action may be required in order to make the freedom of expression meaningful.” For the steps to satisfy a section 2(b) positive claim, see *Baier v Alberta*, 2007 SCC 31, [2007] 2 SCR 673 at para 30 [Baier], and *Toronto*, *supra* note 34.

36 *Dunmore v Ontario (AG)*, [2001] 3 SCR 1016, 2001 SCC 94 at paras 28–29.

right to freedom of thought, belief and opinion would be to ensure access to an existing statutory scheme.<sup>37</sup> The government could not be compelled to create one. Based on current law, we are entirely at the mercy of government to choose to do something. That is an untenable situation in the face of the severity of the threats we face.

It is arguable that current law in Canada conflicts with international human rights law. Canada acceded to the ICCPR in 1976. As part of that process, Canada is required to make the necessary changes to domestic law to ensure that it is compliant with the ICCPR.<sup>38</sup> Article 2 of the ICCPR requires that state parties take positive steps to protect rights even between private parties.<sup>39</sup> This positive obligation was confirmed to apply to the right to freedom of opinion and expression in article 19: “The obligation also requires States parties to ensure that persons are protected from any acts of private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities.”<sup>40</sup>

At the time the ICCPR was drafted, states debated whether article 19 should be limited to governmental action. The language was intentionally left broad to require that governments protect individuals from corporate interferences with rights (Aswad 2020, 335–36). This broad approach is nowhere to be seen in the Charter or relevant case law.

There is also good reason to view the state as a steward of human rights. The state duty is to protect human rights, and, as described in the UN *Guiding Principles on Business and Human Rights*, it can fulfill this duty by implementing the necessary laws to ensure that corporations respect human rights (Office of the High Commissioner for Human Rights 2011). Many scholars have explored the ways that technology has changed the social conditions of speech, thereby necessitating more positive

action by governments (Laidlaw 2015). The same argument can be made for the need for government action to protect our rights of freedom of thought, belief and opinion from technology companies.

Even if we can argue that Canadian governments must do better to comply with international human rights by ensuring protection between private parties, a question arises: Which government? Human rights are within federal and provincial/territorial jurisdiction. There are various arguments that can be made to justify federal jurisdiction to legislate, particularly under the trade and commerce power, but that is getting ahead of ourselves.<sup>41</sup> What can be said is that all governments of Canada should turn their attention to the ways that the rights are being infringed by private parties and do what they can with the powers they have to protect Charter values.

---

## Conclusion

At the moment, freedom of thought, belief and opinion are not only “forgotten freedoms” but empty ones in Canada. The primary interferences with these rights are from private actors, and the Charter only directly applies to governmental action. Courts have limited power to consider the values underlying the Charter absent genuine ambiguity in statute or government interference. The rights might creep through the back door via common law litigation but causes of action are select and rare. We are thus at the mercy of government to breathe life into these rights and make them as meaningful in actions between private parties. Government has a duty under international human rights law to do so.

The next step would be for governments — federal, provincial and territorial — to collaborate to develop law and policy to protect these rights. Specifically, new or amended legislation should concretize the duties of technology companies. By protecting rights between users and technology companies, the Canadian government will fulfill its duty to protect fundamental rights. More immediately, support should be provided to members of the judiciary through education to

---

37 Baier, *supra* note 35 at para 30.

38 UN Human Rights Committee, ICCPR, *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13 [26 May 2004] at para 13.

39 *Ibid* at para 8.

40 UN Human Rights Committee, ICCPR, *General comment no. 34, Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34 (12 September 2011) at para 7.

---

41 *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 91, reprinted in RSC 1985, Appendix II, No 5, ss 91–92.

develop their understanding of these rights and the role of technology in their interference. Further, corporations have a responsibility to respect human rights by assessing and implementing protection of these rights throughout their governance structures, as the UN *Guiding Principles on Business and Human Rights* urge. Government, civil society and academia can push this work through codes of practice, which, while not substitutes for legislation, can be stopgaps until concrete governmental action is taken.

## Acknowledgements

Thanks to Hasti Pourriahi and Jessica May for their superb research assistance with this policy brief.

---

## Works Cited

- Alegre, Susie. 2022. *Freedom to Think: The Long Struggle to Liberate Our Minds*. London, UK: Atlantic Books.
- Amnesty International. 2023. *Driven into the Darkness: How TikTok's 'For You' Feed Encourages Self-Harm and Suicidal Ideation*. London, UK: Amnesty International. [www.amnesty.org/en/documents/pol40/7350/2023/en/](http://www.amnesty.org/en/documents/pol40/7350/2023/en/).
- Aswad, Evelyn Mary. 2020. "Losing the Freedom to Be Human." *Columbia Human Rights Law Review* 52 (1): 307–71. [https://hrlr.law.columbia.edu/files/2020/11/306\\_Aswad.pdf](https://hrlr.law.columbia.edu/files/2020/11/306_Aswad.pdf).
- Fielitz, Maik and Reem Ahmed. 2021. *It's not funny anymore. Far-right extremists' use of humour*. Luxembourg City, Luxembourg: Publications Office of the European Union. [https://home-affairs.ec.europa.eu/networks/radicalisation-awareness-network-ran/publications/far-right-extremists-use-humour-2021\\_en](https://home-affairs.ec.europa.eu/networks/radicalisation-awareness-network-ran/publications/far-right-extremists-use-humour-2021_en).
- Fitzpatrick, Monica and Dwight Newman. 2020. "Freedoms of Thought, Belief and Opinion as Protected Inner Freedoms." In *Supreme Court Law Review*, second series, vol. 98, edited by Derek Ross and Brian Bird. Toronto, ON: LexisNexis Canada.
- Horner, Matthew. 2014. "Charter Values: The Uncanny Valley of Canadian Constitutionalism." *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 67. <https://doi.org/10.60082/2563-8505.1293>.
- Laidlaw, Emily B. 2015. *Regulating Speech in Cyberspace: Gatekeepers, Human Rights and Corporate Responsibility*. Cambridge, UK: Cambridge University Press. <https://doi.org/10.1017/CBO9781107278721>.
- Loewen-Colón, Jordan, Sharday Mosurinjohn and Amarnath Amarasingam. Forthcoming 2024. "The Vulnerability of Emerging Technologies of the Self: A Critical Analysis of VR Through Psychedelic Self-Hacking." In *Security of Self*, edited by Emily B. Laidlaw and Florian Martin-Bariteau. Ottawa, ON: Ottawa University Press.
- Mathur, Arunesh, Gunes Acar, Michael J. Friedman, Eli Lucherini, Jonathan Mayer, Marshini Chetty and Arvind Narayanan. 2019. "Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites." *Proceedings of the ACM Conference on Human-Computer Interaction 3 (CSCW)*: article 81. <https://doi.org/10.1145/3359183>.
- Newman, Dwight. 2019. "Interpreting Freedom of Thought in the *Canadian Charter of Rights and Freedoms*." In *Supreme Court Law Review*, second series, vol. 91, edited by Derek Ross, 107–22. Toronto, ON: LexisNexis Canada.
- . 2021. "Freedom of Thought in Canada: The History of a Forgetting and the Potential of a Remembering." *European Journal of Comparative Law and Governance* 8 (2–3): 226–44. <https://doi.org/10.1163/22134514-bja10017>.
- Office of the High Commissioner for Human Rights. 2011. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. New York, NY: United Nations. [www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](http://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf).
- Richards, Neil. 2015. *Intellectual Privacy: Rethinking Civil Liberties in the Digital Age*. Oxford, UK: Oxford University Press.
- Shiffrin, Seana Valentine. 2014. *Speech Matters: On Lying, Morality, and the Law*. Princeton, NJ: Princeton University Press.
- Sullivan, Ruth. 2022. *The Construction of Statutes*. 7th ed. Toronto, ON: LexisNexis Canada.

---

## About CIGI

The Centre for International Governance Innovation (CIGI) is an independent, non-partisan think tank whose peer-reviewed research and trusted analysis influence policy makers to innovate. Our global network of multidisciplinary researchers and strategic partnerships provide policy solutions for the digital era with one goal: to improve people's lives everywhere. Headquartered in Waterloo, Canada, CIGI has received support from the Government of Canada, the Government of Ontario and founder Jim Balsillie.

---

## À propos du CIGI

Le Centre pour l'innovation dans la gouvernance internationale (CIGI) est un groupe de réflexion indépendant et non partisan dont les recherches évaluées par des pairs et les analyses fiables incitent les décideurs à innover. Grâce à son réseau mondial de chercheurs pluridisciplinaires et de partenariats stratégiques, le CIGI offre des solutions politiques adaptées à l'ère numérique dans le seul but d'améliorer la vie des gens du monde entier. Le CIGI, dont le siège se trouve à Waterloo, au Canada, bénéficie du soutien du gouvernement du Canada, du gouvernement de l'Ontario et de son fondateur, Jim Balsillie.

This project has been funded by the Office of the Privacy Commissioner of Canada (OPC); the views expressed herein are those of the author and do not necessarily reflect those of the OPC.



This policy brief was made possible thanks to the financial support of the Konrad-Adenauer-Stiftung (KAS) Canada.

Copyright © 2024 by the Centre for International Governance Innovation

The opinions expressed in this publication are those of the author and do not necessarily reflect the views of the Centre for International Governance Innovation or its Board of Directors.

For publications enquiries, please contact [publications@cigionline.org](mailto:publications@cigionline.org).



This work is licensed under the Creative Commons Attribution 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by/4.0/>. For re-use or distribution, please include this copyright notice.

Centre for International Governance Innovation and CIGI are registered trademarks.

67 Erb Street West  
Waterloo, ON, Canada N2L 6C2  
[www.cigionline.org](http://www.cigionline.org)

---

## Credits

Managing Director and General Counsel [Aaron Shull](#)  
CIGI Senior Fellow and Project Co-Leader [Susie Alegre](#)  
Director, Program Management [Dianna English](#)  
Program Manager [Jenny Thiel](#)  
Publications Editor [Lynn Schellenberg](#)  
Senior Publications Editor [Jennifer Goyder](#)  
Graphic Designer [Abhilasha Dewan](#)