

Civil Liberties

Naughty or Nice List



CANADIAN
CONSTITUTION
FOUNDATION



Christmas message from the Canadian Constitution Foundation

We at the Canadian Constitution Foundation (CCF) are thrilled to bring you this year's special holiday report on the year in review of civil liberties in Canada. The CCF had another incredible year in 2024. We published a new book, "Free Speech in Canada," we won our massive legal challenge against the Trudeau government's Emergencies Act, and had significant victories in cases at all levels of court across Canada. While the list of where government got things wrong is lengthy, we also wanted to acknowledge a few times government got the balance right, or where as a result of citizens fighting back, the courts reined in government overreach.

As a national civil liberties charity in Canada, we are concerned with expanding state intrusions into our rights we saw in 2024. But we are looking forward to a new year where we can fight back against these intrusions. This will not occur because of governments' own decisions to cede power. Rather, it is because of the tireless advocacy of all our supporters and the work that we and other organizations do to fight against government overreach.

Thank you to all our supporters and donors for making that fight possible. If you want to support our work you can make a tax deductible donation at theCCF.ca/donate/

Christine Van Geyn
CCF Litigation Director

NAUGHTY LIST

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Criminalizing

“residential school denialism”

The Court Challenges Program

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Canada’s healthcare system

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Niagara Region

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NICE LIST

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Book: Free Speech in Canada



**NAUGHTY
LIST**

BUBBLE ZONES

Governments don't get to tell Canadians what topics they are allowed to protest about and what topics they are not. But governments are now banning protests based on their subject matter, and restricting where these protests can take place. "Bubble zones" prohibit protests within defined geographic areas. Anyone who protests within the protected "bubble" can face penalties. Since 2020, bubble zones have expanded rapidly. There are now bubble zones around schools, libraries, community centres, hospitals, and places of worship. Calgary restricts protests based on the topics, and some politicians have even proposed bubble zones to prevent protests in front of their offices! Enough with the bubble zones. As more and more spaces come under the umbrella of various "speech free" bubbles, our cities come closer to becoming one giant bubble zone. These anti-speech laws land a spot on this year's Naughty List!



CRIMINALIZING “RESIDENTIAL SCHOOL DENIALISM”

Kimberly Murray is the independent special interlocutor investigating unmarked burial sites at residential schools. Much of her work is important – investigating potential burial sites and collecting the stories of residential school survivors. But her work has been undermined by her proposal to criminalize what she calls “residential school denialism.” She provides an impossibly broad definition of denialism; she says it includes minimizing the harm of residential schools, saying the death rates were typical for the period, saying that we don’t know the truth and that there is a conspiracy to exaggerate deaths, and that it wasn’t a genocide. Much remains unknown about unmarked burial sites, and creating a broad criminal sanction around this topic will not allow for a full investigation to take place. The stories of the people who attended residential schools ought to be our central focus. Not putting people in prison, like Kim wants to.



THE COURT CHALLENGES PROGRAM

To state the obvious, the government should not fund lawsuits against its own laws with taxpayer money. But in Canada we actually do this! The Court Challenges Program offers taxpayer dollars to activists to sue the government for Charter breaches. Funding for the program will always be inevitably politically skewed by the partisanship of the government in power. The Minister of Heritage appoints the expert panels who decide whether to grant funding to a particular case, and the current panel seems drawn entirely from the political left. Information about which cases are funded is kept secret until the cases are over. There is no transparency about the political or partisan tilt of whose cases do or don't get funding. This program should be scrapped, and deserves a spot on the 2024 Naughty List.



WHITEHORSE CIVILITY POLICY

We are used to governments trying to censor our speech, but what if they try to censor our thoughts? That's what is happening in the Yukon city of Whitehorse. The northern city recently adopted a "civility policy" that bans signs and "microaggressions". Whitehorse has defined this absurd new term a "microaggression" as "comments or actions that subtly and often unconsciously or unintentionally expresses a prejudiced attitude towards a member of a marginalized group." Banning certain speech and even unconscious thoughts is an unacceptable limit on the freedom of expression of citizens who want to participate in and observe city council meetings. The CCF is fighting back: we filed a lawsuit this year challenging this absurdity. But until it's struck down, the Whitehorse civility policy lands a spot on this year's Naughty List!



MP NOORMOHAMED

OK this one is personal. In October, CCF Litigation Director Christine Van Geyn appeared at the Federal Heritage Committee to talk about freedom of expression. Christine and Josh Dehaas have just written a book about the topic. But during her committee appearance, Liberal MP Taleeb Noormohamed had no interest in learning about this right and how to better protect it. Instead he made partisan culture war attacks against the Canadian Constitution Foundation. He asked if we support abortion, brought up a proposal by the Harper government from 2015 that never happened, talked about trans kids, and asked if we think it's "OK to use the N-word." Instead of trying to learn from an expert, MP Noormohamed made bizarre and unconnected partisan attacks. The lack of desire to understand fundamental rights explains why this government has introduced censorious legislation, and this MP is the worst example of it. That's why he gets a spot on our civil liberties Naughty List.



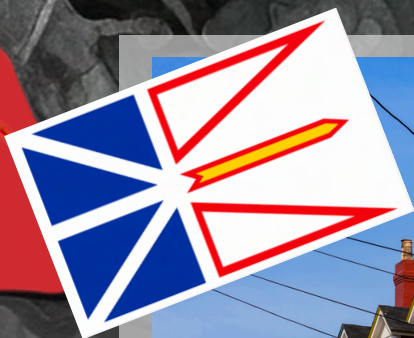
GOVERNMENT MONOPOLY HEALTHCARE

Every year, Canadian newspapers run countless stories about Canadians failed by our government monopoly healthcare system. Just in December there was a story about a woman who waited 6 years for a knee replacement, only to have an 8-day delay for a complication revision, resulting in her leg being amputated. A Halifax woman waited 3 years for her MRI that showed she had a brain tumour. A Montreal man died of an aneurysm after spending six hours in an emergency room before giving up and going home. Canada's government monopoly healthcare system leaves patients to suffer and die on wait lists as care is rationed. Patients are banned from going outside the government system for care. The CCF challenged the system, and now the government is demanding we pay them \$1.7 million for fighting for patients' rights. The system is getting worse every year, and deserves reform as well as a spot on the Naughty List.



THE NEWFOUNDLAND GOVERNMENT

Losing a parent suddenly is hard enough. The government shouldn't make it harder. But that's what the Newfoundland government did to Kim Taylor. Kim's mother suddenly passed away during the COVID-19 pandemic. But Newfoundland had locked down hard, and refused to let Kim into the province to say goodbye to her mom at the funeral. The Charter guarantees Canadians the right to enter, remain in and leave Canada, and to take up residence in any province. But shockingly, the Newfoundland government has claimed that this right does not include the right to travel within Canada. At the CCF we believe Canadians have a fundamental right to travel freely within and across the country without discriminatory barriers, and we are intervening in Kim's case at the Supreme Court to say so. Newfoundland's initial and cruel refusal to let Kim go to her mom's funeral is bad enough. But their claim that there is not even a right to travel within Canada gets them a spot on the Naughty List!



NIAGARA REGION

Niagara Region really keeps stepping in it. In 2018 they were recognized as Canada's most secretive municipal government. There is a \$680 million backlog in water and wastewater infrastructure investment, with 44 per cent of the Region's water assets in poor or very poor condition. Yet Regional Council wastes time and resources on freedom restricting nonsense. In March of 2024, the region announced that it was entering a state of emergency over... a solar eclipse. This allows the local municipality to make new laws through decree. This was an illegal declaration of an emergency. Then Niagara council also proposed an illegal bylaw that would ban signs and at regional council meetings, a proposal that the Region ultimately walked back after receiving a legal threat from CCF. Niagara should spend more time fixing crumbling infrastructure and less time trying to grab power and silence critics.



CENSORSHIP IN THE ONLINE HARMS BILL (PARTS 1-3)

Bill C-63, the federal “Online Harms Bill”, is a four-part bill that combines all sorts of unrelated things together. Part 1 would create obligations for social media platforms, enforced by a new bureaucracy known as the Digital Safety Commission. The \$250 million new bureaucracy would have the power to issue crippling fines against platforms that don’t take down “harmful” content, including hate speech. Part 2 would create new criminal offences and penalties for hate speech, including penalties of up to life imprisonment, as well as peace bonds for future speech crimes not yet committed. Part 3 would create a new human rights mechanism for members of the public could seek civil damages for “hate” they see online, allowing them to complain about speech they don’t like at zero cost to them, with huge costs to the speaker. Parts 1-3 of Bill C-63 will result in government censorship, and need to be scrapped (as well as added to the Naughty List).



A vibrant, cartoon-style illustration of Santa Claus. He is depicted from the waist up, wearing his traditional red suit with white trim and a white beard. He has a red hat with a white pom-pom and is holding a large, rolled-up scroll in front of him. The scroll is made of aged, yellowish-brown parchment and has the words "NICE LIST" written on it in bold, black, sans-serif capital letters. The background is a rich red, decorated with various Christmas ornaments, including white and gold spheres, a large red and white striped candy cane, and a golden reindeer. In the bottom right corner, there are several wrapped gifts in red and green paper. The overall scene is festive and celebratory.

**NICE
LIST**

CHILD PROTECTION IN THE ONLINE HARMS BILL (PART 4)

We believe in strong protections for children against abuse and exploitation. While we are highly critical of Parts 1-3 of the Online Harms Bill, C-63, we support Part 4. Part 4 deals with mandatory reporting of child pornography online by internet service providers. Part 4 is considered urgent to prevent harm to children, and likely could have passed unanimously if it had been introduced on its own in May. If the Liberals were actually serious about addressing the issue of child sexual abuse, they would have proposed part 4 alone and passed it months ago, instead of tying it to highly controversial, potentially unconstitutional, and censorious proposals in Parts 1-3 of the bill. . Parts 1-3 should be abandoned, and Part 4 should pass unanimously as a separate bill.



JUSTICE MOSLEY'S DECISION IN THE EMERGENCIES ACT CASE

Justice Mosley's decision that Trudeau's use of the Emergencies Act was illegal and the freezing of bank accounts was unconstitutional was the most significant civil liberties cases in a generation. The decision was announced on January 23, 2024. Justice Mosley found that "Due to its nature and to the broad powers it grants the Federal Executive, the Emergencies Act is a tool of last resort." The government "cannot invoke the Emergencies Act because it is convenient, or because it may work better than other tools at their disposal or available to the provinces." But this incredible decision is now under threat. Within minutes of the 200-page decision's release, the Trudeau government announced they were appealing. We are fighting to maintain the precedent set by Justice Mosley in the appeal, which will be heard in February of 2025.



ALBERTA FIGHTING CENSORSHIP BY PROFESSIONAL REGULATORS

The Alberta government has announced a plan better protect the free expression rights of professionals in the province. The CCF has been at the forefront raising concerns about how professional regulatory bodies are punishing their members for speaking out about political, social, cultural or even religious issues. Lawyers are brought before their regulator because of arguments with neighbours. Doctors are cautioned for speaking about how their church administers communion. Nurses have been disciplined for talking about failures of the healthcare system. And no case is more notorious than Dr. Jordan Peterson being punished by the College of Psychologists for his social media posts. Regulators need to stick to their knitting, and only deal with issues directly related to their mandate, not the opinions of their members on social issues. We are optimistic that Alberta has announced plans to reign in this censorship by professional regulators.



SUPREME COURT DECISION: NO ABSOLUTE IMMUNITY

The Supreme Court has ruled that the state is not entitled to absolute immunity for damages when it enacts unconstitutional laws that infringe on Charter rights. In a case called R v Power, the Trudeau government had argued that it had absolute immunity from paying damages. The Supreme Court disagreed, and held that the state may be required to pay damages for passing legislation that is clearly unconstitutional, bad faith or an abuse of power. The CCF intervened in the case to argue that the government is not entitled to absolute immunity, and damages must be available in exceptional circumstances. From banning Indigenous potlatch ceremonies to interning innocent Japanese-Canadians during the Second World War, Canada's pre-Charter history is sadly full of examples of Parliaments that passed laws that were clearly unconstitutional. If the freezing of bank accounts during the freedom convoy is any indication, we still can't trust Parliament to never enact unconstitutional laws. The decision gets it right by clarifying the exceptional circumstances when damages can be claimed.



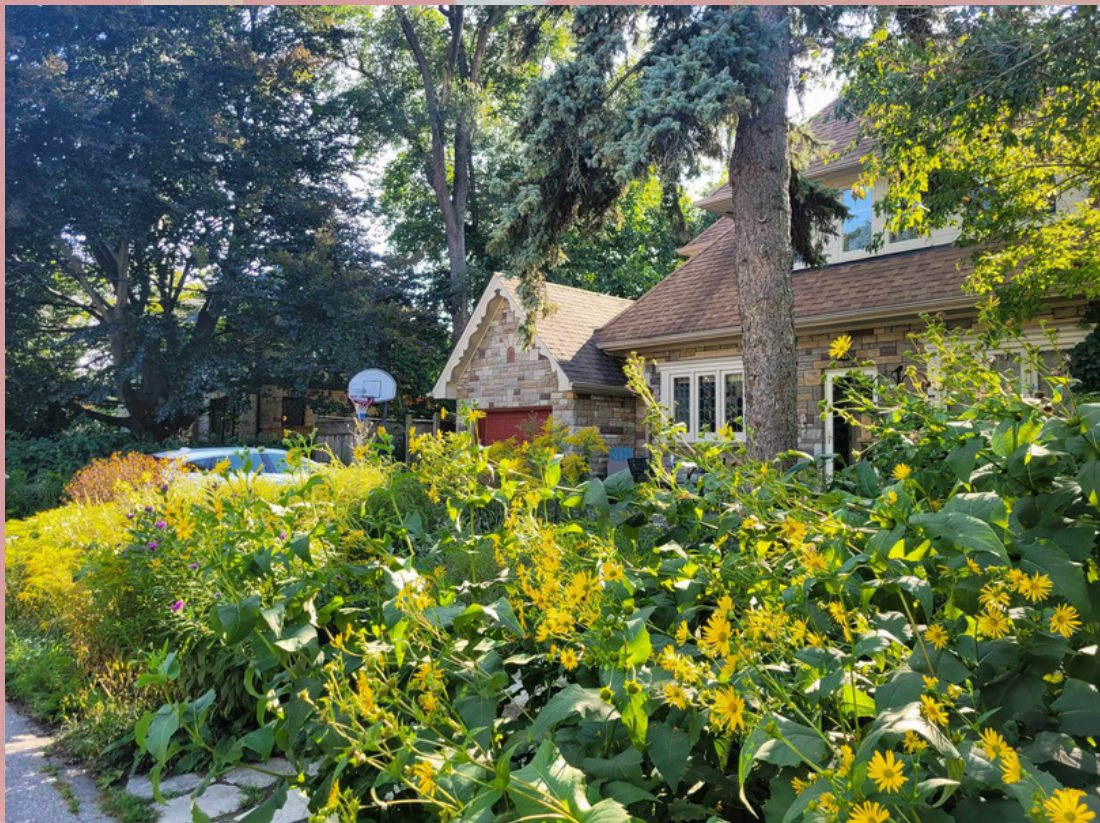
UNIVERSITY OF TORONTO

In the aftermath of the October 7, 2023 Hamas massacre of over 1,200 Israelis, which triggered the Israel-Hamas war, protests broke out across Canada. A group of anti-Israel protesters took over university green spaces, including a large field in the center of the University of Toronto. The protesters set up fences and blocked access to the field by other students and university staff. Inside, they set up a large encampment. The University was unable to use its own property, and brought an injunction to remove the encampment, which they called trespassers. U of T won. The Ontario Superior Court judge confirmed that the encampment was trespassing, and Charter did not apply to campus. The court ordered an injunction, which U of T was able to use to remove the trespassers in the encampment. This recognition of property rights was entirely consistent with the Charter. While U of T should have acted faster, we still give them a place on the Nice List for standing up for their property rights against the mob.



NATURALIZED GARDENS

Naturalized gardens feature native plants arranged to mimic a naturally occurring meadow and forest. They include pollinator plants, tall grasses, untrimmed bushes, and act as a habitat for small animals and birds. People with naturalized gardens grow them to make a political point about ecology, and to express their own views on aesthetic beauty. But cities across Canada crack down on naturalized gardens for growing “weeds” and “tall grass,” and because they stand out as unusual. But these gardens can make a political statement and are protected expression. Those homeowners fighting back for their right to express themselves with their gardens deserve a spot on our Nice List!



CANADA'S ELECTORAL SYSTEM

In November of 2024, the CCF appeared at the Court of Appeal of Ontario in an appeal of a legal challenge to Canada's electoral system. An activist group had challenged Canada's "first past the post" voting system. The CCF intervened to argue that there is nothing unconstitutional about the "first past the post" system, which is what Canada inherited from the United Kingdom. It is the system our country has had since confederation, and could not suddenly become unconstitutional. No voting system in the world is perfect; the first past the post system has pros and cons, and so does the system preferred by these activists. These activists should not be using the courts to try to achieve what they want at the ballot box - a different electoral result. While our system isn't perfect, it's constitutional and gets a spot on the Nice List.



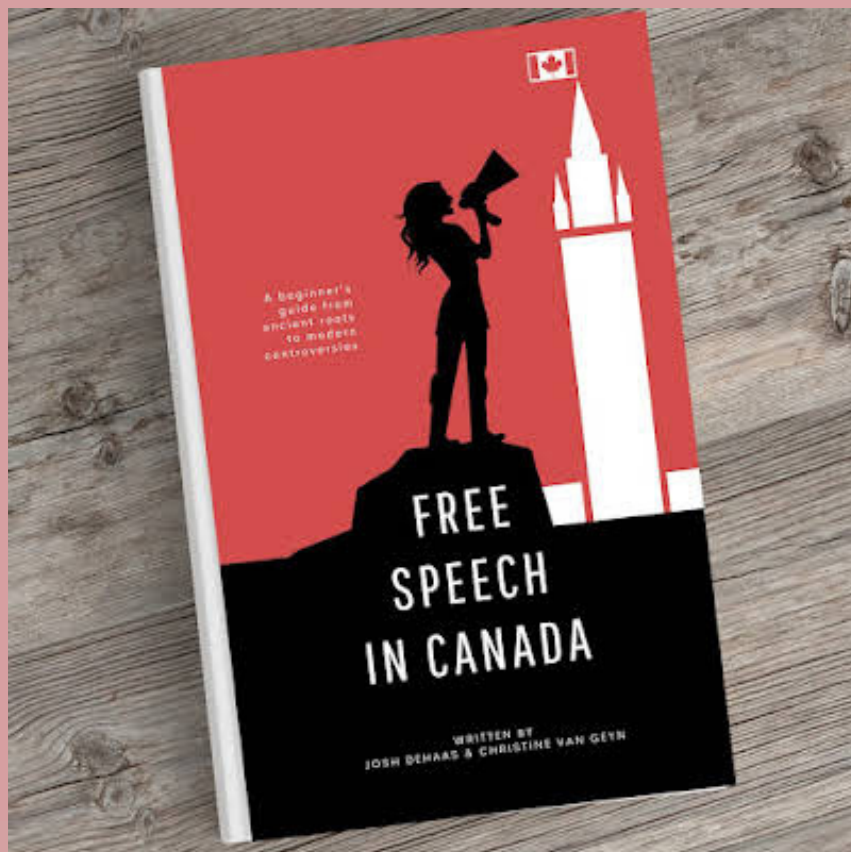
SUPREME COURT DECISION: NO CHARTER FREE ZONES


The Supreme Court case of Dickson v Vuntut Gwitchin First Nation dealt with a question of whether the Charter applies to indigenous self-government. The CCF intervened in the case to argue that all Canadians benefit from the protections of the Charter, including Canadians who live in self-governing indigenous territory. The Supreme Court held that the Charter in general applies to both governments and Indigenous governing entities in Canada. Section 25 of the Charter, which protects Aboriginal rights in Canada, can shield indigenous governments from some Charter claims, but only when there is an irreconcilable conflict between a collective Aboriginal right and an individual Charter right. While the decision isn't perfect, the affirmation that there are no "Charter Free Zones" gets this case a spot on the Nice List.



BOOK: FREE SPEECH IN CANADA

On December 9, the CCF's Christine Van Geyn and Josh Dehaas released their new book, "Free Speech in Canada". This short new book serves as a vital beginner's guide for understanding and protecting your rights. From historical milestones to contemporary issues, each chapter explores landmark cases and legal principles that have shaped the landscape of free expression in Canada. The book explains landmark free speech cases in clear and easy to understand language. The book is already a #1 best seller on Amazon, and is definitely very Nice! The book is \$9.99 and available on Amazon.ca Order [HERE](#).



Thank you... 

The Canadian Constitution Foundation is grateful to all of our generous supporters who make our work possible. You are certainly on our NICE LIST!

Please have a wonderful Christmas and a happy new year. We look forward to all the new and exciting work to come in 2025.

If you want to support our work, you can make a tax deductible charitable donation at theCCF.ca/donate/