

# 2009 notable year for free expression in Canada: Report



Mounties stand next to Olympic rings during the closing ceremony of the 2010 Winter Games in Vancouver. Violations of free expression during the Olympics was one of the topics covered in a new report by Canadian Journalists for Free Expression. DIMITAR DILKOFF/AFP/GETTY IMAGES

## Supreme Court rulings score an A while access to information gets an F

By JOAN DELANEY  
Epoch Times Staff

The health of free expression in Canada—or the lack thereof—was the subject of a report released by a Toronto-based watchdog organization Monday to coincide with World Press Freedom Day.

In its first-ever annual report, Canadian Journalists for Free Expression (CJFE) analyzed a range of issues, including the reasons human rights tribunals should stay away from trying to regulate offensive speech, police impersonation of journalists, and violations of free expression during the 2010 Olympics.

From unprecedented rulings by the Supreme Court of Canada, to stonewalling by the federal government on access to information requests, the report found that 2009 was a noteworthy year for free expression issues in Canada.

“There are big changes happening in Canada right now. That was one of the reasons we chose this year to create this report card, because it’s been a remarkable year,”

says CJFE manager Julie Payne.

“There have been eight groundbreaking cases in front of the supreme court—some of them we’re still waiting for decisions, some of them we’ve been getting decisions—and they’re really going to change the landscape for free expression.”

The report gave the government a failing grade on access to information, pointing out that although Prime Minister Stephen Harper made eight promises during the 2006 election campaign to reform Canada’s access to information laws, just one has so far been kept—and that only partially.

Forty-three percent of information requests to government departments were not met within the required time limit of 30 days; 23 percent took more than 60 days. When they were finally released, some documents had large chunks of text blacked out.

Payne says that while successive governments have stonewalled on access to information requests, the problem is “reaching a crisis point

now.”

Cases currently before the Supreme Court promise to make 2010 another noteworthy year for free expression, she says.

“There’s two big ones about protection of sources issues that we’re still waiting for decisions on. There are all sorts of things happening in terms of access to information and the government and what Canadians have a right to hear and know. It’s an exciting time. I think there is some really groundbreaking work happening and hopefully it will have an impact.”

The following are some highlights of CJFE’s 2009 Free Expression Review.

Free expression in the courts: Defamation rulings and hate speech laws became the subjects of high-profile court cases in 2009, with journalists and writers on one side and citizens and minority groups aggrieved by their reporting on the other, said the report.

In December 2009, a landmark ruling by the Supreme Court established the defence of “responsible communications,” allowing journalists who cover stories “on a matter of public interest” to escape liability if they can show they diligently attempted to prove the facts.

On the issue of more openness in court, at the appeals court level, all the cases CJFE reviewed were decided in favour of more open courtrooms. However, at the trial level, it was a different story.

“While there are trial judges who are informed and sensitive to the concept of transparency, far too often the lower courts exhibit a stubborn dependence on a knee-jerk use of publication bans, sealing orders, and in-camera proceedings,” the report said.

Freedom of information: The report found that Canada’s Access to Information Act (ATIA) has largely been used to hide rather than provide information, with the situation worsening in recent years.

During 2009, the worst offenders for stalling on information requests were Health Canada, Public Works, the RCMP, Canada Border Services, Foreign Affairs, and the Department of National Defence.

Introduced in 1982, the ATIA circumscribed what information was available by excluding all cabinet documents and dozens of government agencies and Crown corporations. It also declared that the Information Commissioner could not be compelled to release information that the government decided should

be kept secret.

The report explained that “free” means “unfettered” while “access” means “an approach,” with the result that the ATIA guaranteed a procedure rather than a right. CJFE is calling on the government to close this loophole by making it a freedom of information act rather than an Access to Information Act.

Police impersonating journalists: Canada is one of the few western democracies that allow police to pose as journalists, the report said. It cites cases in which police pretending to be reporters have arrested suspects after luring them into false interviews, posed as reporters to capture protests on film, and pretended to conduct news interviews to gather information for their investigations.

Supported by other media and free expression groups, CJFE is preparing a court application against the Ontario government to end the practice of police impersonating reporters. The application seeks a declaration from the court that the practice violates the freedom of expression guaranteed in the Canadian Charter of Rights and Freedoms.

Olympic watch: In monitoring the 2010 Olympics in Vancouver

in January, CJFE found that officials at all levels of government “appeared all too ready to deny speech, protest and assembly rights in order to generate a rosy glow on the Games.” Most worrisome, said the report, was the temporary detention and interrogation of four American journalists and their colleagues travelling to Canada around the time of the Olympics.

Other areas covered in the report include free speech on the Web, attacks on the ethnic press and the unsolved murder of Indo-Canadian Times founder Tara Singh Hayer, and Canadian journalists attacked or detained abroad.

CJFE also recognized several accomplishments during 2009, including the Information Commissioner of Canada “for keeping the government’s feet to the fire in difficult circumstances,” and major media outlets that, in a year of recession, spent tens of thousands of dollars arguing important cases in all levels of court.

The Canadian Human Rights Commission was recognized for its decision in the Lemire case that deemed the hate speech provision of the Canadian Human Rights Code to be unconstitutional.

# Court upholds Epoch Times probe into Montreal publisher

VICTORY CONTINUED FROM P1

The papers had no advertisements or news, just articles denouncing Falun Gong and calling for the elimination of the meditation practice, which has been subject to often violent suppression in China since 1999.

The articles in Chau’s special editions repeated the Chinese regime’s most malicious charges against Falun Gong practitioners—that they engage in bestiality, vampirism, murder, and suicide.

These are exactly the same virulent fabrications state-run media in China have been broadcasting since the practice was outlawed in 1999—charges rights groups say are propaganda used to justify the repression.

The Epoch Times examined Chau and his business and wrote several articles detailing his actions. The paper interviewed a former high-ranking Chinese diplomat who suggested Chau was working on the behalf of the Chinese regime.

Chau sued The Epoch Times for libel, seeking nearly a quarter million dollars in damages.

But the judge found that Epoch Times journalists had “acted reasonably and committed no fault,” noting that the reporters had reviewed testimony made before the European Parliament and U.S. House of Representatives, interviewed a former Chinese diplomat with insight into Beijing’s influence of overseas media, and spoken with members of the Chinese community in preparing their stories.

“This is a case of the bitter complaining about being bitten,” Justice Mandeville said in her ruling.

The judge noted that Chau de-

scribed his own role as an agent of the Chinese regime.

“In fact ... during a forum for news agencies in Beijing [Chau] described his duty as a publisher of an overseas Chinese media, saying that he has ‘... the responsibility to maintain a positive image of its motherland, to defend the dignity of the Chinese nation and to unsparingly promote and facilitate the spirit of national revival,’” Justice Mandeville wrote, in reference to one of Chau’s speeches uncovered by an Epoch Times reporter.

“Mr Chau ... believes that it is part of his responsibility to defend the position of the PRC government. The [Epoch Times] articles raised that his opinions on Falun Gong but also on Tibet and many other subjects are identical to that which the PRC’s government advocates.”

The court also found that, though Chau had denied being an agent of Beijing, his explanations for how he funded his special editions were “to say the least, nebulous.” Justice Mandeville said Mr. Chau had offered three different explanations.

She added that The Epoch Times had an essential source in Chen Yonglin, a former consul at the Chinese consulate in Sydney, Australia. Before defecting to Australia, Chen said his respon-



Justice Catherine Mandeville dismissed a defamation claim by Crescent Chau, publisher of La Presse Chinoise in Montreal, against The Epoch Times’ Montreal publisher. ‘This is a case of the bitter complaining about being bitten,’ Mandeville said in her ruling. ANDREA HAYLEY/EPOCH TIMES

sibilities included monetary and participating in efforts to suppress Chinese dissidents in Australia.

Chen supported this claim with a

document from the Chinese consulate in Sydney.

Titled the “Special Anti-Falun Gong Working Group Division of Labour Table” and dated February 7, 2001, it lists the responsibilities for members of the anti-Falun Gong team, which included the heads of all sections at the consulate.

For example, the head of the political affairs department was responsible for “recommending” anti-Falun Gong articles from state-run media in China for use in Chinese-language media overseas and writing anti-Falun Gong articles for publishing in Chinese-language media.

Chen said it was likely that Chau was acting on Beijing’s behalf.

The stories Chau complained of, published in 2007, were merely several of many reports The Epoch Times carried that probed the Chinese regime’s efforts to influence media, community, and student groups in Canada. It’s an issue that has concerned the Canadian government.

In 2006, The Epoch Times uncovered that Ottawa had sent home Mr. Wang Pengfei, the second secretary at the Chinese Embassy in Ottawa, after he was caught collecting information on Falun Gong practitioners in Canada and inciting students to help him. The Prime Min-

ister’s Office later confirmed the report.

“I am very pleased to see that the judge realized that this was sound journalism, that it was well done,” says Michel Juneau-Katsuya, one of Canada’s foremost experts on Chinese espionage and the former head of the Asia desk for CSIS (Canadian Security Intelligence Service).

Juneau-Katsuya is the author of Nest of Spies, a book detailing Canada’s failure to address the espionage carried out in Canada by China and other countries.

He said lawsuits like the one The Epoch Times faced are a common strategy the Chinese regime uses to silence people who are writing about sensitive topics.

“Chinese intelligence services know the law and they have been using the law to try and intimidate. This is a form gagging lawsuit. They try to sue people and entangle them in lawsuits for a long period of time, knowing this will cost them a lot of money, to scare them to write about them.”

“We know one thing, that the vast majority of the Chinese media are actively controlled by the [Chinese] government.”

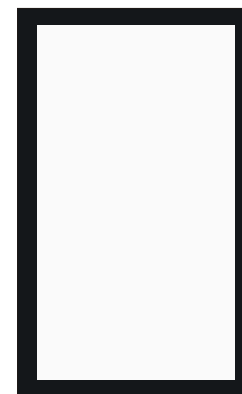
Juneau-Katsuya says those like Chau who follow the Chinese state media closely can earn accolades back in China and free trips on lucrative speaking tours.

Chau’s work to denounce Falun Gong was indeed immediately recognized. Within four days of the “special edition” hitting the streets, the website for the Mainland China-based People’s Daily, the official newspaper of the Chi-

nese Communist Party, published a report praising Chau.

“The Justice Special Edition (the paper also bore the English name Truth Magazine) has 32 pages with a distribution of more than 100,000 copies,” the People’s Daily said. “The front page carries publisher Crescent Chau’s special article ... It is very sharp, rich in content, and powerful.”

**4**  
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