



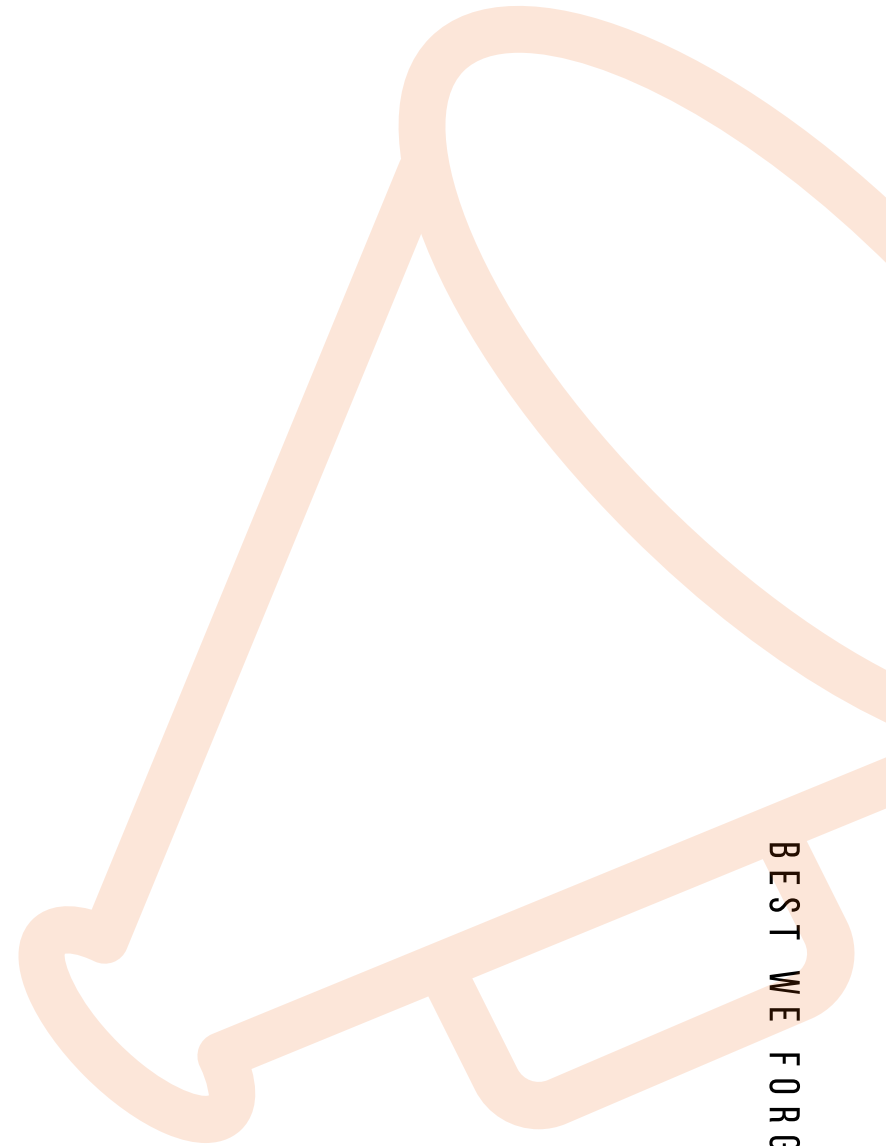
MARYNA POLATAIKO

**BEST WE FORGET: THE
RIGHT TO BE FORGOTTEN AS
CHAMPION OF EXPRESSION**

MCGILL FACULTY OF LAW

THESIS

- The right to be forgotten (RTBF) is not at odds with the freedom of expression;
- *Google Spain* introduction;
- Canadian jurisprudence;
- Core purposes of the freedom of expression in Canada;
- RTBF is necessary for freedom of expression.

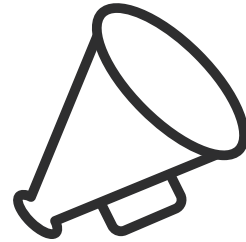


BEST WE FORGET

THE RIGHT TO BE FORGOTTEN

The right to erasure is also known as 'the right to be forgotten'. The broad principle underpinning this right is to enable an individual to request the deletion or removal of personal data whether there is no compelling reason for its continued processing.

- UK Information Commissioner's Office



court of
justice of the
european
union

GOOGLE SPAIN

- Per Directive 95/46, CJEU found that Google = a "data controller";
- Search engines can be made to remove the personal information of claimants from search results;
- Informational privacy > public's right to know;
- Directive 95/46 interpreted to provide RTBF.



pipeda

personal information protection &
electronic documents act

GLOBE24H.COM

- Did PIPEDA have extra-territorial application to Globe24h.com, despite it not being in Canada?
- Was Radulescu using personal information without consent as part of a 'commercial activity'?
- Were his activities were 'journalistic'?
- Were his activities were 'appropriate' per s. 5(3) of PIPEDA?

GLOBE24H.COM

Justice Moseley (Federal Court):

"A declaration that the respondent has contravened PIPEDA, combined with a corrective order, would allow the applicant and other complainants to submit a request to Google or other search engines to remove links to decisions on Globe24h.com from their search results. Google is the principal search engine involved and its policy allows users to submit this request where a court has declared the content of the website to be unlawful. Notably, Google's policy on legal notices states that completing and submitting the Google form online does not guarantee that any action will be taken on the request. Nonetheless, it remains an avenue open to the applicant and others similarly affected."

- recognition of google's intermediary role in privacy
- expanding global reach of pipeda

GOOGLE V. EQUUSTEK

- injunctions against datalink for unlawful appropriation of trade secrets and trademark infringement
- worldwide injunction ordering google to de-index illegal datalink websites

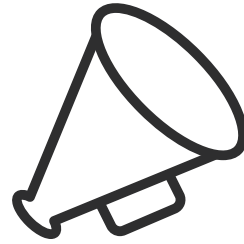
GOOGLE APPEALS!

- injunction beyond the jurisdiction of the court
- it improperly operated against an innocent non-party
- it had an impermissible extraterritorial reach

GOOGLE V. EQUUSTEK

BC COURT OF APPEAL SAYS NO

- It had territorial competence to issue the injunction (data-gathering and advertising constituted conducting business in BC)
- Non-party? No problem!
- No violation of principles of comity
- Google raises issue of protecting the “openness of the World Wide Web, and the need to avoid unnecessary impediments to free speech.”
- Court of Appeal says it's not valuable expression.



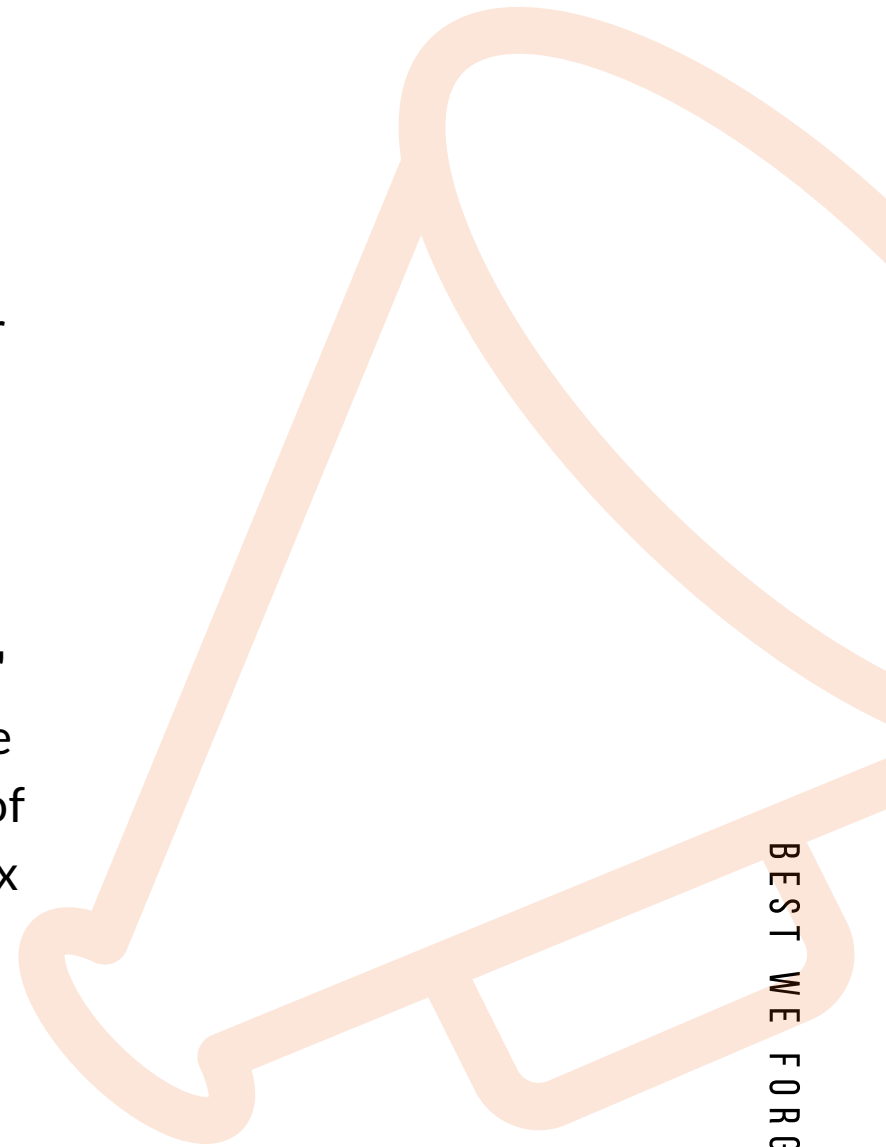
supreme
court of
canada

GOOGLE V. EQUUSTEK

Google: "At its core, this case is about the propriety of the Courts of British Columbia issuing a permanent, mandatory, worldwide injunction against Google Inc. intended to silence speech regarding the existence of publicly accessible websites on the Internet."

SUPREME COURT

- Upholds de-indexing order;
- Limits scope of precedent! Issue: "whether Google can be ordered, pending a trial, to globally de-index D's websites which, in breach of several court orders, is using those websites to unlawfully sell the intellectual property of another company."
- Expression: "This is not an order to remove speech that, on its face, engages freedom of expression values, it is an order to de-index websites that are in violation of several court orders."
- Not RTBF, but...



BEST WE FORGET

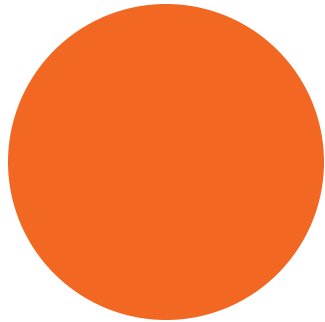
RTBF AND THE CHARTER?

Supreme Court in *Grant v. Torstar Corp.*:

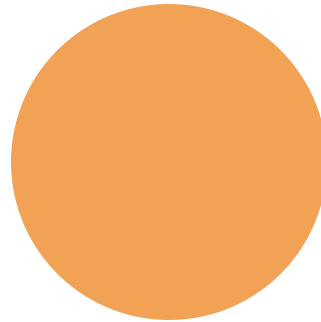
“The common law, though not directly subject to Charter scrutiny where disputes between private parties are concerned, may be modified to bring it into harmony with the Charter.”

2. Everyone has the following fundamental freedoms:
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

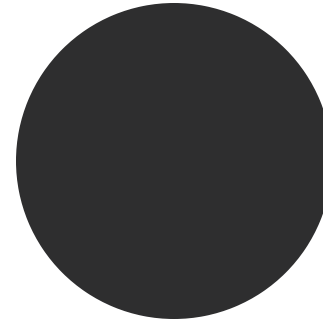
CORE OF EXPRESSIVE FREEDOM



THE SEARCH FOR
TRUTH & THE
MARKETPLACE OF
IDEAS



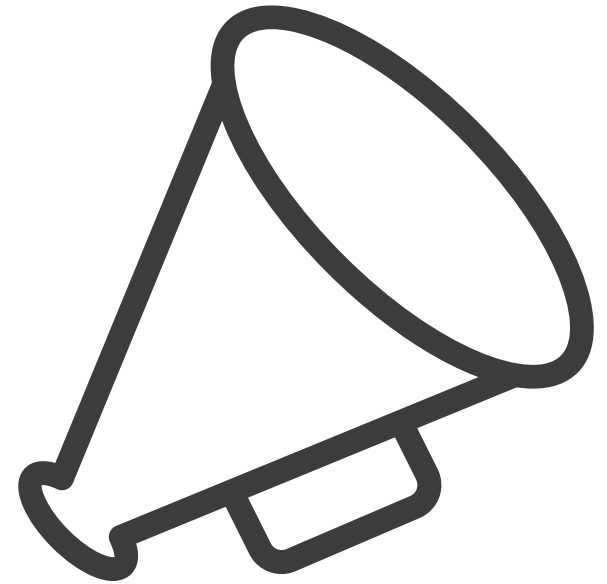
DEMOCRACY &
SELF-
GOVERNMENT



AUTONOMY &
SELF-
ACTUALIZATION

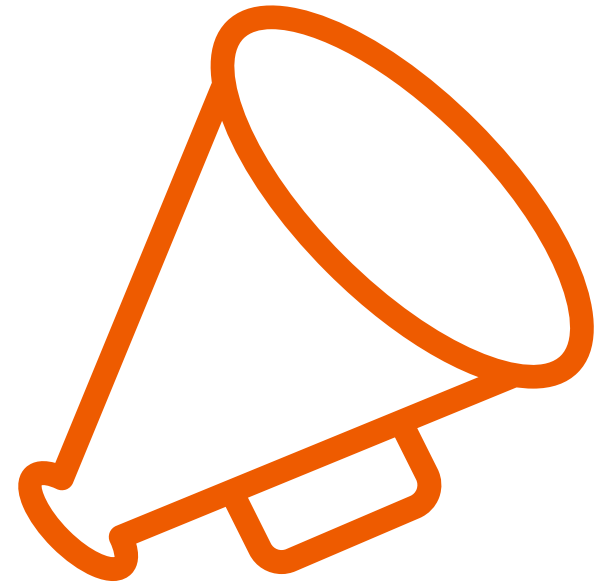
BEST WE FORGET

TRUTH & THE MARKETPLACE OF IDEAS



- J.S. Mill, *On Liberty*
- We should have access to all ideas, even if they're bad
- No censorship
- Debate will bring us closer to the truth
- Utilitarian view of free speech

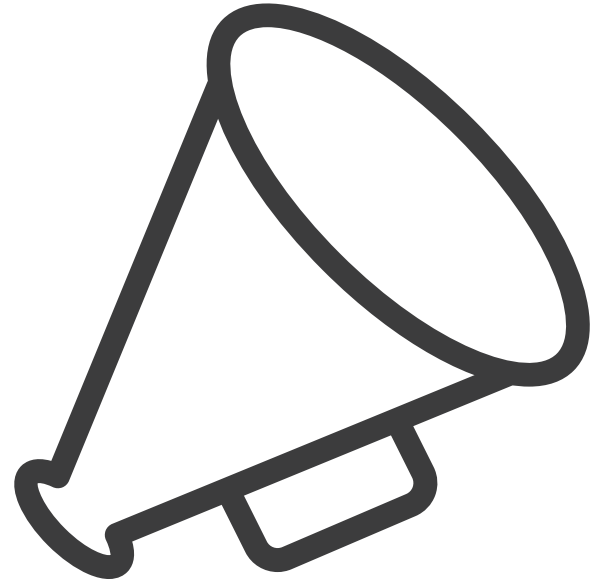
DEMOCRACY & SELF-GOVERNMENT



- Alexander Meiklejohn
- In order to govern ourselves, we need access to information on questions of public importance, e.g. informed voting
- Richard Moon: democratic discussion helps us empathize with one another - creates community-oriented citizens

AUTONOMY & SELF- ACTUALIZATION

- Allows individuals to reason and make decisions for themselves;
- Expression also enables people to project their ideas, emotions, and identities



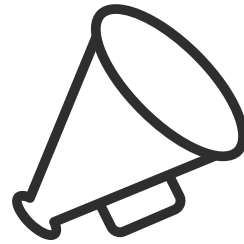
THE SUPREME COURT ENDORSES THESE THEORIES!

"Information is disseminated and propositions debated. In the course of debate, misconceptions and errors are exposed. What withstands testing emerges as **truth**."

"...free expression is essential to the proper functioning of **democratic governance**..."

"... diversity in forms of individual **self-fulfillment** and human flourishing ought to be cultivated in an essentially tolerant, indeed welcoming, environment ..."

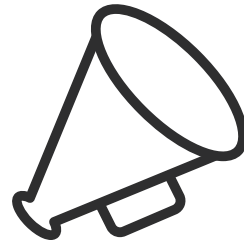
**HOW DOES THE RTBF
ENABLE THE CORE VALUES
OF SELF-EXPRESSION?**



democracy
& the search
for truth

GOOGLE AS PERMANENT RECORD?

- **Expression** requires **intellectual privacy**: “protection from surveillance or unwanted interference by others when we are engaged in the processes of generating ideas and forming beliefs...”
- Because everything on the Internet is 'on the record,' we refrain from entering into candid debates on important issues.
- Viktor Mayer-Schonberger describes the effects of digital permanence as a panopticon: “**I act as if I am watched even if I am not.**”



autonomy & self- actualization

- **Web 2.0:** Unprecedented content-sharing.
- Individuals share content to convey their identities.
- **Impression Management:** instagram handles, 'favourite' books, humble brag statuses, totally candid vacay pics, etc.
- Internet as identity workshop: no more online/offline divide.
- **Personal narrative of identity:** out of context, inaccurate?
- Personal growth: petty crime, MySpace profile, drunk photos.

"Today, those who have made mistakes, no matter the degree of innocence, carry that information around with them - Google attaches it to their names... Information associated with an individual can limit his or her professional pursuits, the interest of potential social ties, the ability to grow, and perceptions of self."

- Ambrose, Friess, & Van Matre

'YOUR DIGITAL FOOTPRINT
MATTERS'

'10 steps to erase your
digital footprint'

'Clean Up Your
Digital Footprint'

'MANAGING YOUR
DIGITAL FOOTPRINT'

'LEAVE NO TRACE:
HOW TO ELIMINATE
YOUR DIGITAL
FOOTPRINT'

'How to
delete your
digital life'



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THANKS!

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