

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CANADIAN BROADCASTING CORPORATION and BELL MEDIA INC.

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF MICHAEL GEIST
(sworn April 7, 2011)

I, MICHAEL GEIST of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY

1. I am a law professor at the University of Ottawa, where I hold the Canada Research Chair in Internet and E-commerce Law. I have obtained a Bachelor of Laws (LL.B.) degree from Osgoode Hall Law School in Toronto, Master of Laws (LL.M.) degrees from Cambridge University in the UK and Columbia Law School in New York, and a Doctorate in Law (J.S.D.) from Columbia Law School.
2. I have written numerous academic articles and government reports on the Internet and law and was a member of Canada's National Task Force on Spam. I have served on the Privacy Commissioner of Canada's Expert Advisory Board since 2006. I am also a syndicated columnist on technology law issues with my regular column appearing in the *Toronto Star* and the *Ottawa Citizen*.
3. I have appeared before many Parliamentary committees as an expert witness on Internet and technology law issues including the Bill C-32 legislative committee

(copyright), the Foreign Affairs and International Trade committee (intellectual property and trade policy), the Industry, Science and Technology committee (privacy, counterfeiting, spam), the Canadian Heritage committee (digital media), the Justice committee (identity theft), the National Security committee (counterfeiting), and the Ethics, Access to Information and Privacy committee (open government).

4. I have also appeared as an expert witness before foreign government committees including the United States Federal Communications Commission Open Internet hearings and the European Parliament hearing on the Anti-Counterfeiting Trade Agreement. I served as an e-commerce advisor to the Canadian government delegation at the Hague Conference Draft Convention on Jurisdiction and the Enforcement of Judgments and served on the Canadian delegation at the UNCITRAL Working Group on Electronic Commerce.

5. My work has been cited with approval by many senior appellate courts including the Supreme Court of Canada, the Canada Federal Court of Appeal, the Ontario Court of Appeal, the California Court of Appeals, and the Arizona Court of Appeals.

6. I currently sit on the boards of CANARIE, Canada's advanced research and education network, and the Canadian Legal Information Institute. I previously served on the board of the Canadian Internet Registration Authority and on the advisory boards of many technology companies in Canada and the United States.

7. I have received numerous awards for my work including the Kroeger Award for Policy Leadership in 2010, the Public Knowledge IP3 Award in 2010, the Les Fowlie Award for Intellectual Freedom from the Ontario Library Association in 2009, the Electronic Frontier Foundation's Pioneer Award in 2008, Canarie's IWAY Public Leadership Award for my contribution to the development of the Internet in Canada in 2003, and I was named one of Canada's Top 40 Under 40 in 2003.

8. My full curriculum vitae is attached as **Exhibit "A"**.

9. This affidavit addresses four issues: the emergence of social media, particularly Twitter and Facebook, as enormously popular communication tools, the increasingly important role of social media in politics and political reporting, the inability to suppress or censor information on social media sites such as Twitter, and the harm to public confidence in the electoral system that could result from an Internet ban on communicating election results.

The Emergence of Social Media

10. The challenges posed by the Internet to the publication of electoral results was last considered by the Supreme Court of Canada in 2007 in *R. v. Bryan*.¹ The evidence relied upon by the courts in that decision involved several expert affidavits on the Internet and broadcasting written in 2005.

11. I have reviewed those affidavits, which include analysis from Kaan Yigit and Bryan Segal, both noted experts on the Internet and new media. It is instructive that neither affidavit references social media, Facebook or Twitter. Indeed, the technological focus at the time was on text messaging, email, and access to websites. Attached together as **Exhibit "B"** are copies of these affidavits.

Facebook

12. The absence of social media from the affidavits is to be expected since Facebook was not available to the general public in 2005 and Twitter did not exist.

13. Facebook describes itself as "a social utility that helps people communicate more efficiently with their friends, family and coworkers."² Facebook users post information about themselves, their interests, and their activities including news clippings, photos, and videos. The site supports millions of groups that allow users with common interests to connect, organize events, and share information. Millions of applications have been created for Facebook that allow users to interact with the

¹ [2007] 1 S.C.R. 527, 2007 SCC 12.

² **Exhibit "C"** - <http://www.facebook.com/press/info.php?factsheet>

site and each other from mobile phones, personal computers, and other Internet-connected devices. Attached as **Exhibit “C”** is a copy of the document in footnote 2.

14. Facebook opened to the general public in September 2006. At the time, the service had approximately nine million registered users, predominantly within the education system.³ Attached as **Exhibit “D”** is a copy of the document in footnote 3.

15. In less than five years, Facebook has grown to over 600 million active users worldwide.⁴ The average Facebook user has 130 friends, is connected to 80 community pages, groups and events, and creates 90 pieces of content each month. More than 30 billion pieces of content, including web links, news stories, blog posts, notes, and photo albums, are shared each month on Facebook.⁵ Attached as **Exhibits “E”** and **“F”** are copies of the documents in footnotes 4 and 5.

16. Facebook is frequently accessed through mobile devices such as smartphones. There are more than 250 million active users currently accessing Facebook through their mobile devices.⁶

17. Canadians are among the most active Facebook users in the world. There are an estimated 17 million Canadian Facebook users or over 50 percent of the Canadian population.⁷ Nearly 2 out of 3 Canadian Internet users is a registered user of Facebook.⁸ In fact, more Canadians use Facebook today than used email when the Yigit and Segal affidavits were sworn in 2005. Attached as **Exhibits “G”** and **“H”** are copies of the documents in footnotes 7 and 8.

³ **Exhibit “D”** - Sarah Lacy, Facebook: Opening the Doors Wider, Business Week, 12 September 2006. Online at http://www.businessweek.com/technology/content/sep2006/tc20060912_682123.htm

⁴ **Exhibit “E”** - Nicholas Carlson, Goldman to clients: Facebook has 600 million users, Business Insider, 5 January 2011, Online at http://www.msnbc.msn.com/id/40929239/ns/technology_and_science-tech_and_gadgets/.

⁵ **Exhibit “F”** - <http://www.facebook.com/press/info.php?statistics>

⁶ Id.

⁷ **Exhibit “G”** - Michael Oliveira, Web-savvy Canadians lead the world in time spent online, Canadian Press, 28 December 2010. Online at <http://www.thestar.com/news/sciencetech/technology/article/912790--web-savvy-canadians-lead-the-world-in-time-spent-online>

⁸ **Exhibit “H”** - <http://www.checkfacebook.com/>

Twitter

18. Twitter describes itself as a “real-time information network” that connects users to the latest information they find interesting. Information is disseminated by “tweets”, which are short messages of up to 140 characters in length. Tweets can include a short burst of information, a comment, or feature a hyperlink to an article, photo or video.

19. The public can follow discussion on Twitter by either subscribing to the tweets of particular user (called “following” the user) or by using a search query to track discussion on any topic. While the public can access tweets through the Twitter.com website, many software programs and third party services enable access to Twitter discussion without requiring a visit to the site through the World Wide Web.

20. Google, the world’s largest search engine, integrates tweets into its keyword search results, allowing the public to access information contained in tweets within general Internet searches. Google also offers a real time search service that actively tracks Twitter discussion as it occurs.⁹ Attached as **Exhibit “I”** is a copy of the document in footnote 9.

21. Twitter users often “retweet” tweets of interest by sending the tweet from one follower to their group of followers. The practice of retweeting allows a single message to quickly propagate to potentially millions of Twitter users in a matter of minutes. In 2010, the most retweeted tweets were retweeted by more than 37,000 people.¹⁰ Attached as **Exhibit “J”** is a copy of the document in footnote 10.

22. Tweets often also include a hashtag - words or phrases prefixed with a “#” sign - that allows the public to quickly search for all tweets using the specific search term. For example, #CPC, #LPC, and #NDP are often used as hashtags for the

⁹ **Exhibit “I”** - <http://www.google.com/landing/realtime/>

¹⁰ **Exhibit “J”** - Stan Schroeder, Twitter Reveals the 10 Most Retweeted Tweets of 2010, Mashable.com, 15 December 2010. Online at <http://mashable.com/2010/12/15/twitter-reveals-the-10-most-retweeted-tweets-of-2010/>.

Conservative Party of Canada, the Liberal Party of Canada, and the New Democratic Party of Canada.

23. Twitter has grown to over 200 million users since its launch in July 2006.¹¹ It is adding an average of 460,000 new users every day.¹² Users send 155 million tweets daily.¹³ In the United States, 38 percent of users access Twitter from their mobile devices.¹⁴ Attached as **Exhibits “K”, “L”, “M” and “N”** are copies of the documents in footnotes 11, 12, 13 and 14.

24. There are currently 4.5 million Canadian Twitter users.¹⁵ Canadians are among the world’s largest Twitter users, ranking 6th worldwide as a source of tweets.¹⁶ The Canadian Twitter user base grew by over 75 percent in 2010.¹⁷ One Canadian, Justin Bieber, is among the most popular Twitter users in the world, with more than 8.6 million followers.¹⁸ Attached as **Exhibits “O”, “P” and “Q”** are copies of the documents in footnotes 15, 16 and 18.

Social Media and Politics

25. The popularity of social media has been particularly notable with respect to its use by politicians, political journalists, and the general public for political discussion and debate.

¹¹ **Exhibit “K”** - Tom Johansmeyer, 200 Million Twitter Accounts... But How Many Are Active?, Social Times, 3 February 2011, online at http://socialtimes.com/200-million-twitter-accounts-but-how-many-are-active_b36952.

¹² **Exhibit “L”** - <http://blog.twitter.com/2011/03/numbers.html> [*Twitter numbers*]

¹³ **Exhibit “M”** - <http://twitter.com/#!/twitterglobalpr/status/55779434350907392>

¹⁴ **Exhibit “N”** - Marissa McNaughton, Mobile Use of Twitter Increases 66%, The Realtime Report, 25 March 2011. Online at <http://therealtime.com/2011/03/25/mobile-use-of-twitter-increases-66/>.

¹⁵ **Exhibit “O”** - Laura Payton, The House: The Twitter election, CBC News, 2 April 2011. Online at <http://www.cbc.ca/news/politics/canadavotes2011/story/2011/04/01/cv-election-twitter.html> [*Payton*]

¹⁶ **Exhibit “P”** -

http://semicast.com/pr/20100331/Only_30_percent_of_messages_on_Twitter_are_from_the_U.S.

¹⁷ Twitter numbers, *supra*.

¹⁸ **Exhibit “Q”** - <http://twitter.com/#!/JUSTINBIEBER>

26. Politwitter.ca, which tracks social media use by Canadian politicians, reports that each political party leader has tens of thousands of fans on Facebook. Members of Parliament from all parties have posted hundreds of postings on their Facebook pages.¹⁹ Attached as **Exhibit “R”** is a copy of the document in footnote 19.

27. Over half of all Members of Parliament actively use Twitter to communicate with constituents and the general public. In the last two and a half years, Canadian MPs have sent out more than 50,000 tweets.²⁰

28. The use of Twitter by Canadian politicians has attracted worldwide attention. For example, Industry Minister Tony Clement, one of the most active Twitter users in Cabinet, was the subject of a Wall Street Journal article noting his growing Twitter influence.²¹ In addition to using Twitter to respond to public concerns, Clement has used Twitter to announce government policy.²² Attached as **Exhibit “S”** is a copy of the document in footnote 21.

29. Twitter has been widely used throughout the current election campaign, leading some to describe it as the “Twitter election.”²³

30. During the first week of the election campaign, Liberal leader Michael Ignatieff used Twitter to challenge Conservative leader Stephen Harper to a one-on-one debate. Harper responded to Ignatieff on Twitter.

31. Other party leaders have also used Twitter to declare policies, participate in debate, or respond to election developments. For example, NDP leader Jack Layton declared his support for an open Internet on Twitter²⁴ and participated in a debate

¹⁹ **“Exhibit “R”** - <http://politwitter.ca/page/statistics>

²⁰ Id.

²¹ **Exhibit “S”** - Phred Dvorak, Canadian Minister Gains Twitter ‘Klout’, Wall Street Journal, 17 February 2011. Online at <http://blogs.wsj.com/digits/2011/02/17/canadian-minister-gains-twitter-klout/>

²² Id.

²³ Payton, *supra*.

²⁴ **Exhibit “T”** - <http://twitter.com/#!/jacklayton/status/55710857153355776>

with CBC on Twitter.²⁵ Green party leader Elizabeth May issued her first response to her party's exclusion from televised debates on Twitter.²⁶ Attached as **Exhibits "T"**, **"U"** and **"V"** are copies of the documents in footnotes 24, 25 and 26.

32. While social media has played an important role for politicians communicating their views to the public during the current election campaign, its importance is even more pronounced among the media and general public.

33. The media and general public have adopted #elxn41 as the hashtag most frequently associated with election tweets. During the first week of the campaign, there were almost 100,000 #elxn41 tweets, or one #elxn41 tweet every six seconds.²⁷ Approximately 47 percent of these tweets were retweets of other tweets, highlighting the ability for Twitter to amplify a single tweet and spread it to a wider audience.²⁸ Attached as **Exhibits "W"** and **"X"** are copies of the documents in footnotes 27 and 28.

34. All major Canadian media organizations are making extensive use of social media as part of their election campaign coverage. Most journalists covering daily campaign events use Twitter to provide instant reports on campaign press conferences and public reaction. Media websites often feature a running stream of tweets from reporters. For example, CTV News offers a window of campaign tweets and CTV tweets from its political reporters.²⁹ Many Canadian newspaper³⁰ and

²⁵ **Exhibit "U"** - <http://twitter.com/#!/jacklayton/status/55630649234690048>

²⁶ **Exhibit "V"** - <http://twitter.com/#!/ElizabethMay/status/52863441169432576>

²⁷ **Exhibit "W"** - <https://twitter.com/#!/markblevis/status/53991895868784641>

²⁸ **Exhibit "X"** - Mark Blevis, #elxn41 digital week 1 in review (part 2 of 6): Twitter, 2 April 2011. Online at <http://www.markblevis.com/elxn41-digital-week-1-in-review-twitter/>.

²⁹ **Exhibit "Y"** - <http://www.ctv.ca/mini/election2011/joinin/index.html>

³⁰ **Exhibit "Z"** - Top 10 Canadian Newspapers Followed on Twitter, CisionNavigator. Online at <http://navigator.cision.com/Top-10-Canadian-Newspapers-Followed-on-Twitter.aspx>.

television stations³¹ have tens of thousands of Twitter followers. Attached as **Exhibits “Y”, “Z” and “AA”** are copies of the documents in footnotes 29, 30 and 31.

35. Canadian media is also integrating Facebook into their coverage. For example, the Globe and Mail features a social plugin on the front page of its website that allows Facebook users to see which articles their friends recommend.³² Attached as **Exhibit “BB”** is a copy of the document in footnote 32.

36. Canadians are using social media to voice their views and engage on electoral policy issues. For example, when the Liberal party released its policy platform on Sunday, April 3, 2011, tweets related to the platform release generated 1.3 million potential views (based on the number of followers of the Twitter users tweeting on the issue).³³ Attached as **Exhibit “CC”** is a copy of the document in footnote 33.

37. The widespread use of social media tools such as Twitter is not unique to this election. Naheed Nenshi’s victory in the October 2010 City of Calgary mayoralty vote was widely credited to his extensive use of social media.³⁴ Nenshi’s social media use attracted global attention and is viewed as a model for future election campaigns.³⁵ The use of Twitter in the Calgary campaign reached its apex during the coverage of the election results, with hundreds of related tweets posted every

³¹ **Exhibit “AA”** - Laurent Maisonnave, Twitter Top 10 Canadian TV stations by Seevibes, Seevibes, 23 February 2011. Online at <http://blog.seevibes.com/social-media/twitter-top-10-canadian-tv-stations/>.

³² **Exhibit “BB”** - FAQ: The Globe and Mail and Facebook, Globe and Mail, 28 March 2011. Online at <http://www.theglobeandmail.com/news/the-globe-new-facebook-features/article1540477/>.

³³ **Exhibit “CC”** - Mark Blevis, Platform event gives Liberals the largest share of voice on Twitter, 4 April 2011. Online at <http://www.markblevis.com/platform-event-gives-liberals-the-largest-share-of-voice-on-twitter/>.

³⁴ **Exhibit “DD”** - E-mocracy reigns as Twitter elects new Calgary mayor, Citycaucus.com, 19 October 2010. Online at <http://www.citycaucus.com/2010/10/e-mocracy-reigns-as-twitter-elects-new-calgary-mayor>. [*CityCaucus*]

³⁵ **Exhibit “EE”** - Chrystia Freeland, Calgary’s mayor draws the world’s attention, Calgary Herald, 3 April 2011.

minute.³⁶ Attached as **Exhibits “DD”** and **“EE”** are copies of the documents in footnotes 34 and 35.

38. The importance of social media as part of the political process has become a common story around the world. During the 2010 Brazilian presidential election, all three presidential candidates actively used Twitter, leading to tens of thousands of daily tweets on the election by the general public.³⁷ In Ecuador, the President used Twitter to declare a national state of emergency.³⁸ In South Korea, social media, including Facebook and Twitter, was credited with having a direct influence on that country’s 2010 election.³⁹ Recent reports indicate that the United States Department of Homeland Security plans to use Twitter and Facebook to issue terror alert warnings to the public.⁴⁰ Attached as **Exhibits “FF”**, **“GG”**, **“HH”** and **“II”** are copies of the documents in footnotes 37, 38, 39 and 40.

39. Twitter has also been used by the public to serve as a crowdsourcing election monitor. During the 2008 U.S. Presidential and Congressional elections, Twitter Vote Report allowed voters to quickly share voting experiences during election day including instances of long waits or local problems.⁴¹ The project was organized by NPR, Tech President, American University, and CBS News. The Twitter Vote Report received a Golden Dot Award for achievement in online politics.⁴² Attached as **Exhibits “JJ”** and **“KK”** are copies of the documents in footnotes 41 and 42.

The Inability To Censor Social Media

³⁶ CityCaucus, supra.

³⁷ **Exhibit “FF”** - Brazil and politics - a Twitter snapshot (Infographic), CreamGlobal.com, 21 October 2010. Online at http://blog.creamglobal.com/right_brain_left_brain/2010/10/brazil-and-politics-a-twitter-snapshot-infographic.html

³⁸ **Exhibit “GG”** - http://twitter.com/#!/Presidencia_Ec/status/26004680445

³⁹ **Exhibit “HH”** - Dae Ryun Chang, Twitter's Surprising Impact on the South Korean Election, Harvard Business Review, 11 June 2010. Online at http://blogs.hbr.org/cs/2010/06/twitters_new_role_in_south_kor.html

⁴⁰ **Exhibit “II”** - Elieen Sullivan, US to use Facebook, Twitter to issue terror alerts, Associated Press, 7 April 2011. Online at http://news.yahoo.com/s/ap/20110407/ap_on_re_us/us_color_coded_threats.

⁴¹ **Exhibit “JJ”** - <http://blog.twittervotereport.com/>

⁴² **Exhibit “KK”** - Twitter Vote Report Wins Golden Dot Award. Online at <http://www.macnews.com/content/twitter-vote-report-wins-golden-dot-award>.

40. The importance of social media during election campaigns and political events around the world has also placed the spotlight on the technical difficulties in suppressing or censoring its use.

41. During the 2011 protests in Egypt, activists turned to Twitter to quickly disseminate information to a global audience. During the last two weeks of January, there were over 1.5 million tweets related to the Egyptian protests.⁴³ Attached as **Exhibit "LL"** is a copy of the document in footnote 43.

42. In response, the Egyptian authorities initially tried to block Twitter and Facebook.⁴⁴ Information quickly spread among the population on how to avoid the blocking attempts.⁴⁵ Analysts noted that "unlike television or newspapers, Twitter and Facebook are not so easy to control other than blocking them entirely because of their distributed nature."⁴⁶ Attached as **Exhibits "MM", "NN" and "OO"** are copies of the documents in footnotes 44, 45 and 46.

43. When the efforts to block Facebook and Twitter failed, Egyptian authorities attempted to shut down access to the entire Internet.⁴⁷ Even with a full Internet shutdown, activists still found ways to spread information via Twitter, using a "speak-to-tweet" service introduced by Google that allowed people to connect to Twitter via

⁴³ **Exhibit "LL"** - Jolie O'Dell, "How Egyptians Used Twitter During the January Crisis [INFOGRAPHIC]" Mashable, 2 February 2011. Online at <http://mashable.com/2011/02/01/egypt-twitter-infographic/>.

⁴⁴ **Exhibit "MM"** - "Confusion over Egyptian blocks on web protest tools" BBC News (January 26 2011). Online at <http://www.bbc.co.uk/news/technology-12291982>.

⁴⁵ **Exhibit "NN"** - "Egyptians: How to bypass blocked Twitter and Facebook websites" The Islamic Workplace (January 27 2011). Online at <http://makkah.wordpress.com/2011/01/27/egyptians-how-to-bypass-blocked-twitter-and-facebook-websites/>.

⁴⁶ **Exhibit "OO"** - Erick Schonfeld, "Twitter Is Blocked In Egypt Amidst Rising Protests" TechCrunch (January 25 2011). Online at <http://techcrunch.com/2011/01/25/twitter-blocked-egypt/>.

⁴⁷ **Exhibit "PP"** - Byron Acohido, "Egypt's Internet service blockade unprecedented" USA Today, 31 January 2011. Online at http://www.usatoday.com/tech/news/2011-02-01-egyptinternet01_ST_N.htm.

the telephone.⁴⁸ Attached as **Exhibits “PP”** and **“QQ”** are copies of the documents in footnotes 47 and 48.

44. The experience in Egypt has been replicated in other countries during other recent protests. For example, despite strict Internet censorship in Tunisia, social media emerged as the largest source of documentation of protests in that country in 2011.⁴⁹ During a two-day period at the height of the protests, 50,000 Twitter users sent 28 tweets per second related to Tunisia. The tweets reached a potential audience of 26 million.⁵⁰ Attached as **Exhibits “RR”** and **“SS”** are copies of the documents in footnotes 49 and 50.

45. The same was true during protests in Iran in 2009. Despite persistent efforts by the Iranian government to engage in content censorship, activists used various tools to post information to social media services such as Twitter.⁵¹ From June 7, 2009 to June 26, 2009, there were more than 2 million tweets about the Iranian election.⁵² At its peak, a search for "Iran" on Twitter generated over 100,000 tweets per day and over 8,000 tweets per hour.⁵³ Attached as **Exhibits “TT”**, **“UU”** and **“VV”** are copies of the documents in footnotes 51, 52 and 53.

The Harm From Blocking Canadian Social Media Discussion of Election Results

⁴⁸ **Exhibit “QQ”** - “Egypt internet comes back online” BBC News, 2 February 2011. Online at <http://www.bbc.co.uk/news/technology-12346929>.

⁴⁹ **Exhibit “RR”** - Tunisia protesters use Facebook, Twitter and YouTube to help organize and report” Los Angeles Times, 14 January 2011. Online at <http://latimesblogs.latimes.com/technology/2011/01/tunisia-students-using-facebook-and-twitter-to-organize.html>.

⁵⁰ **Exhibit “SS”** - Alexia Tsotsis, A Twitter Snapshot Of The Tunisian Revolution: Over 196K Mentions Of Tunisia, Reaching Over 26M Users, TechCrunch, 16 January 2011. Online at <http://techcrunch.com/2011/01/16/tunisia-2/>.

⁵¹ **Exhibit “TT”** - Lev Grossman, “Iran’s Protests: Why Twitter is the Medium of the Movement” Time 17 June 2009. Online at <http://www.time.com/time/world/article/0,8599,1905125,00.html>.

⁵² **Exhibit “UU”** - <http://www.webecologyproject.org/wp-content/uploads/2009/08/WEP-twitterFINAL.pdf>

⁵³ **Exhibit “VV”** - Evolution of a Revolution: Visualizing Millions of Iran Tweets, ReadWriteWeb, 25 July 2009. Online at http://www.readwriteweb.com/archives/evolution_revolution_visualizing_millions_iran_tweets.php

46. Social media has emerged as a critically important tool for millions of Canadians over the past six years. It has become an integral part of the way they access information, communicate with each other, and express their opinions. It has become particularly important in the political realm, where it is widely used by politicians, media outlets, and the general public. Comscore reports that political information was the fastest growing information category on the Internet in Canada in 2010.⁵⁴ Attached as **Exhibit “WW”** is a copy of the document in footnote 54.

47. Given the active use of social media for political news and commentary purposes, it is certain that millions of Canadians will turn to social media tools such as Facebook and Twitter on Election Day to gather information and provide their opinion. This information will be readily and instantly available to anyone with Internet access.

48. A prohibition on the communication of election results while polls remain open in some parts of Canada would necessarily require enforcing a ban on communicating such information on social media and the Internet in order to be effective.

49. The experience in other countries demonstrates the technical impossibility of fully censoring or blocking the dissemination of information using services such as Twitter.

50. Unlike conventional news broadcasts or the websites that were considered in the Bryan case, stopping access to information posted on Twitter (or stopping Canadians from posting to Twitter) would likely require the active cooperation of all Canadian Internet service providers (ISPs) and telecommunications companies since access to social media is available from both Internet access services and wireless services.

⁵⁴ **Exhibit “WW”** - Comscore Canada Digital Year in Review 2010, 8 March 2011. Online at http://www.comscore.com/Press_Events/Presentations_Whitepapers/2011/2010_Canada_Digital_Year_in_Review.

51. The only content regularly blocked by the larger Canadian ISPs is a limited number of child pornography images identified by Project Cleanfeed Canada. The blocking of these images is consistent with the Canadian Criminal Code, which prohibits the viewing of child pornography. Many smaller Canadian ISPs do not participate in the Project Cleanfeed Canada initiative and do not regularly block any content.

52. To the best of my knowledge, wireless access services do not block any content on mobile devices.

53. Efforts to shut down access to lawful social media services such as Twitter and Facebook, which are used for both political and non-political purposes, would have enormous negative implications for freedom of expression in Canada.

54. In the absence of complete Internet blocking of access to these services on both wired and wireless services, stopping the dissemination of electoral results would require a total prohibition on the communication of electoral results in any medium.

55. Even with such a prohibition, there would be the prospect of significant harm to public confidence in the electoral system, since false or misleading electoral results information might become widely disseminated in the absence of information from official sources or trusted news organizations.

56. Experiences in other countries have demonstrated the potential for rapid dissemination of inaccurate political information through social media. For example, during a 2008 Massachusetts Senatorial campaign, a group distributed nearly 1,000 tweets attacking Democratic candidate Martha Coakley in the early hours prior to the

election. The tweets quickly spread to over 60,000 people.⁵⁵ Attached as **Exhibit "XX"** is a copy of the document in footnote 55.

57. In 2005, Internet communication tools such as instant messaging and email did not have widespread, instant broadcast capabilities such that a communication ban appeared feasible. Given the current popularity of social media tools that did not exist at the time, a similar ban today is simply not possible without inflicting enormous harm to freedom of expression and public confidence in the election system.

SWORN BEFORE ME at the City of
Ottawa, in the Province of Ontario,
on April 7, 2011.

Commissioner for Taking Affidavits



MICHAEL GEIST

⁵⁵ **Exhibit "XX"** - Science Daily, 'Truthy' Web Site to Search, Identify Smear Tactics, Twitter-Bombs Through Election Runup, 28 September 2010. Online at <http://www.sciencedaily.com/releases/2010/09/100928122612.htm>.

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Proceeding commenced at TORONTO

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