

PRELIMINARY VERSION

UNEDITED

The preliminary version of this Legislative Summary is made available to parliamentarians, parliamentary staff and the public to ensure timely access to the information, research and analysis needed to study the bill in question. The official version of the Legislative Summary, which may differ from this unedited version, will replace this document on the Parliament of Canada website.



LEGISLATIVE SUMMARY

BILL C-10: AN ACT TO AMEND THE BROADCASTING ACT AND TO MAKE RELATED AND CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

43-2-C10-E

14 December 2020

Isabelle Brideau, Gabrielle de Billy Brown, Francis Lord et Marion Ménard

Parliamentary Information and Research Service

PRELIMINARY VERSION

UNEDITED

AUTHORSHIP

14 December 2020	Isabelle Brideau	Legal and Social Affairs Division
	Gabrielle de Billy Brown	Legal and Social Affairs Division
	Francis Lord	Economics, Resources and International Affairs Division
	Marion Ménard	Legal and Social Affairs Division

ABOUT THIS PUBLICATION

Library of Parliament Legislative Summaries summarize bills currently before Parliament and provide background about them in an objective and impartial manner. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations. Legislative Summaries are revised as needed to reflect amendments made to bills as they move through the legislative process.

For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Library of Parliament Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

© Library of Parliament, Ottawa, Canada, 2020

Legislative Summary of Bill C-10
(Preliminary version)

43-2-C10-E

Ce document est également publié en français.

CONTENTS

1	BACKGROUND	1
1.1	The <i>Broadcasting Act</i> (1991)	1
1.1.1	Changes in Canada's Broadcasting Sector	2
2	DESCRIPTION AND ANALYSIS	3
2.1	Definitions (Clause 1)	3
2.2	Broadcasting Policy for Canada (Clause 2)	3
2.3	Application (Clause 3)	5
2.4	Objects (Clause 4)	5
2.5	Implementation of Proposal (Clause 5)	5
2.6	General Powers (Clauses 6 and 7)	6
2.7	Regulations (Clause 8)	7
2.8	Regulations: Fees (Clauses 9 and 10)	7
2.9	Where Public Hearing Required (Clause 12)	8
2.10	Consultations Between the Canadian Radio-television and Telecommunications Commission and CBC/Radio-Canada (Clause 14)	8
2.11	Conditions Governing Suspension and Revocation (Clause 15)	9
2.12	Report of Contravention by CBC/Radio-Canada (Clause 16)	9
2.13	Provision of Information by the Canadian Radio-television and Telecommunications Commission (Clause 17)	9

PRELIMINARY VERSION

UNEDITED

2.14	Setting Aside or Referring Decisions Back to the Canadian Radio-television and Telecommunications Commission, and Filing of Petitions (Clauses 18 and 19).....	10
2.15	Prohibition and Broadcasting Contrary to the Act and Defence (Clauses 20 to 22).....	10
2.16	Administrative Monetary Penalties (Clause 23)	10
2.16.1	Designation of Persons to Issue Notices, their Contents and Representations to the Canadian Radio-television, and Telecommunications Commission	11
2.16.2	Powers Respecting Hearings and Limitation or Prescription Period	11
2.16.3	Undertaking and Requirements.....	12
2.16.4	Commission of a Violation by a Corporation or by CBC/Radio-Canada	12
2.17	Amendments to the Objects and Powers of CBC/Radio-Canada (Clauses 24 to 26).....	12
2.18	Related Amendments (Clauses 27 to 30).....	12
2.18.1	<i>Canada's Anti-Spam Legislation</i>	12
2.18.2	<i>Cannabis Act</i>	13
2.19	Consequential Amendments (Clauses 31 to 41).....	14
2.19.1	<i>Access to Information Act</i>	14
2.19.2	<i>Canadian Radio-television and Telecommunications Commission Act</i>	14
2.19.3	<i>Copyright Act</i>	14
2.19.3.1	Ephemeral Recordings.....	14
2.19.3.2	Retransmission	14
2.19.4	<i>Referendum Act, Canada Elections Act and Accessible Canada Act</i>	15
2.20	Transitional Provisions (Clauses 42 to 46).....	15
2.21	Coming Into Force (Clause 47)	16



LEGISLATIVE SUMMARY OF BILL C-10: AN ACT TO AMEND THE BROADCASTING ACT AND TO MAKE RELATED AND CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

1 BACKGROUND

On 3 November 2020, the Honourable Steven Guilbeault, Minister of Canadian Heritage, introduced Bill C-10, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts, in the House of Commons.¹

The bill modernizes the *Broadcasting Act* to bring businesses that provide audio or audiovisual content online within its scope. It also amends broadcasting and regulatory policies to ensure the various segments of Canada's population, such as official language communities, Indigenous people and racialized communities, are represented. In addition, the bill modifies the mandate and powers of the Canadian Radio-television and Telecommunications Commission (CRTC). The CRTC will have more flexibility to enforce regulations.

1.1 THE *BROADCASTING ACT* (1991)

The *Broadcasting Act* was established in 1991. It sets out the objectives of the broadcasting policy for Canada and provides the legislative means to achieve them. The Act has four parts.

Part I defines some of the terms used in the Act and sets out the principles of the broadcasting policy for Canada (sections 2 and 3). This policy stipulates that the Canadian broadcasting system must

- be owned and controlled by Canadians;
- through its programming, provide a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;
- serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;
- encourage the development of Canadian expression;

- serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples within that society;
- be readily adaptable to scientific and technological change; and
- make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming.

Part II sets out the objects and powers of the CRTC. This organization is mandated to regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy for Canada. As an independent public body, it can issue broadcasting licences and set the requirements licensees must satisfy.

Part II also sets down the powers of the Governor in Council respecting the CRTC.

Part III lays out the governance structure of CBC/Radio-Canada, its powers and its duties as the national public broadcaster.

Part IV concerns the repeal of the Act of 1968, the amendments made to other related Acts in 1991, transitional provisions and the coming into force of the Act.

1.1.1 Changes in Canada's Broadcasting Sector

When the Act was passed in 1991, Canada's broadcasting sector was operating in a linear, or traditional, environment using technology that had "limited"² reach and capacity.

The rapid development of the Internet and digital technologies had consequences for traditional broadcasting.³ Consumers quickly gained access to a range of online content through devices other than radios and televisions. In 1999 and 2009, the CRTC exempted new media broadcasting undertakings that provide broadcasting services over the Internet from its regulations. In addition, in 2012 the Supreme Court of Canada ruled that Internet service providers are not broadcasting undertakings "subject to the *Broadcasting Act*."⁴

The 2017 federal budget announced a review of the Act and the *Telecommunications Act*.⁵ At the Governor in Council's request, two major studies were prepared. In May 2018, the CRTC published a report that included recommendations on the future of programming distribution in Canada.⁶ More recently, in January 2020 the Broadcasting and Telecommunications Legislative Review Panel released its report containing proposals to modernize the legislation governing Canada's communications sector.⁷

2 DESCRIPTION AND ANALYSIS

Bill C-10 has 47 clauses. The following description and analysis focus on the key aspects of the bill rather than examining each provision. Moreover, this legislative summary does not consider in detail the amendments that serve to update and modernize the terminology of the Act.

The Department of Justice published a Charter Statement in which it declared that it has examined the bill and found no potential impact on the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*.⁸

2.1 DEFINITIONS (CLAUSE 1)

Clause 1 amends the interpretation provisions of the Act.

Section 2(1) of the Act is amended to include the definition of “online undertaking.” Under the new definition, these undertakings transmit or retransmit programs over the Internet for reception by the public. The definition of “broadcasting undertaking” is also amended to encompass online undertakings. The definition of “broadcasting” is amended by adding that the transmission of programs for reception by the public includes scheduled or on-demand transmission. The government’s backgrounder on the bill states that “services such as Crave, Tou.TV, Netflix, Amazon Prime, and Spotify would be subject to the Act and could be required to contribute to the Canadian broadcasting system as determined by the CRTC.”⁹

Clause 1(3) adds to the Act section 2(2.1), which stipulates that a user uploading and receiving programs through a social media service does not carry on a broadcasting undertaking for the purposes of the Act.

2.2 BROADCASTING POLICY FOR CANADA (CLAUSE 2)

The broadcasting policy for Canada sets out some policy objectives the CRTC is mandated to implement. The bill amends multiple aspects of this policy.

In the current version of the Act, section 3(1)(a) requires that the Canadian broadcasting system be owned and controlled by Canadians. Clause 2(1) replaces this principle with a general obligation for broadcasting undertakings to contribute to the implementation of the objectives of the broadcasting policy for Canada.

PRELIMINARY VERSION

UNEDITED

In its current form, the Act states that the Canadian broadcasting system, through its programming and the employment opportunities it provides, must serve the needs and interests of Canadian men, women and children. Clause 2(2) amends section 3(1)(d)(iii) of the Act to specify that all Canadians must benefit from the employment opportunities the Canadian broadcasting system provides, including “Canadians from racialized communities and Canadians of diverse ethnocultural backgrounds, socio-economic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages.”

Furthermore, the bill amends the Act by adding new section 3(1)(d)(iii.1) to stipulate that the Canadian broadcasting system provides opportunities to Indigenous persons to produce programming in Indigenous languages, English or French, or in any combination of them, and to carry on broadcasting undertakings. This addition corresponds to the Legislative Review Panel’s recommendation 53, which called for ensuring “the creation of and access to content by and for Indigenous Peoples, including Indigenous languages content.”¹⁰

Clause 2(3) simplifies the wording of section 3(1)(f), which concerns broadcasting undertakings’ use of Canadian creative resources to create and present programming. Broadcasting undertakings no longer have to “make maximum use, and in no case less than predominant use,” of these resources, as the Act currently states. Broadcasting undertakings must now make use of these resources “to the extent that is appropriate for the nature of the undertaking.”

The bill clarifies two further objectives of the broadcasting policy for Canada. In their current forms, sections 3(1)(g) and 3(1)(h) of the Act state that the programming provided by broadcasting undertakings should be of a high standard and that broadcasting undertakings have a responsibility for the programs they broadcast. Under clause 2(3), sections 3(1)(g) and 3(1)(h) specify that this requirement applies only to programming over which broadcasting undertakings have control. In the bill’s new interpretation provisions, the term “programming control” is defined as control over the selection of programs for transmission, but not control over the selection of a programming service for retransmission.

The current Act stipulates in section 3(1)(i)(ii) that the programming provided by the Canadian broadcasting system should be drawn from local, regional, national and international sources. Clause 2(4) adds new section 3(1)(i)(ii.1) to state that the programming provided by the Canadian broadcasting system should include Canadian news and current events programs that reflect the viewpoints of Canadians, “including the viewpoints of Indigenous persons and of Canadians from racialized communities and diverse ethnocultural backgrounds.”

PRELIMINARY VERSION

UNEDITED

As regards linguistic duality, clause 2(5) deletes the phrase “as resources become available” from current section 3(1)(k) of the Act. This concept, which provides for the desired increase in access to programming, appears to be outdated given the potential of online broadcasting services. The bill also deletes this same wording from sections 3(1)(o) and 3(1)(p) of the Act, which pertain to programming for Indigenous persons and persons with disabilities, respectively.

2.3 APPLICATION (CLAUSE 3)

Clause 3 adds new sections 4.1(1) and 4.1(2) to the Act. New section 4.1(1) specifies that the Act does not apply to users who generate and receive programs through an online undertaking that provides a social media service. Businesses such as YouTube, Facebook and TikTok are examples of this type of video platform that enable users to upload content.¹¹ Note that the bill does not define the term “social media service.”

2.4 OBJECTS (CLAUSE 4)

Currently, section 5(2)(a) of the Act states that the Canadian broadcasting system should be regulated and supervised in a manner that takes into account the characteristics of English- and French-language broadcasting. Clause 4(1) adds Indigenous languages to the criteria that the CRTC must consider. Clause 4(2) adds new section 5(2)(e.1), which stipulates that this regulation and supervision should facilitate the provision of programs that are accessible to persons with disabilities.

Additionally, clauses 4(1) and 4(3) add new sections 5(2)(a.1) and 5(2)(h). New section 5(2)(a.1) states that the CRTC must treat broadcasting undertakings fairly and equitably, taking into account any variation in size and any other relevant difference. New section 5(2)(h) provides that the CRTC must avoid imposing obligations on any class of broadcasting undertaking that will not contribute in a material way to the implementation of the broadcasting policy for Canada.

2.5 IMPLEMENTATION OF PROPOSAL (CLAUSE 5)

Pursuant to section 7 of the Act, the Governor in Council may issue to the CRTC directions of general application on broad policy matters relating to the objectives of the broadcasting policy for Canada and the regulatory policy for the Canadian broadcasting system. Section 8 concerns the procedure for the Governor in Council’s making of orders under section 7.

Clause 5(1) amends sections 8(2) and 8(3) of the Act regarding the publication requirements for proposed orders of the Minister responsible and their referral to parliamentary committees. The bill ends the automatic referral of proposed orders to a Senate or House of Commons committee once they are tabled before each House of Parliament. It also requires the Minister responsible to specify in the notice of the proposed order the period during which interested parties may make representations (at least 30 days) and obliges the Minister to publish a report summarizing the representations received.

2.6 GENERAL POWERS (CLAUSES 6 AND 7)

The Act currently grants the CRTC the power to establish classes of licences. Clause 6(1) amends section 9(1)(a) to explicitly state that this power does not extend to online undertakings.

In addition, the CRTC's current power to issue and renew broadcasting undertakings' operating licences for up to seven years is eliminated. Clause 6(1) amends sections 9(1)(b) and 9(1)(e) to specify that the CRTC may now issue and renew licences for a fixed or indefinite term.

In connection with the power to issue licences, clause 7 adds new section 9.1(1), which enables the CRTC to make orders imposing specific conditions on the carrying on of broadcasting undertakings to further the implementation of the broadcasting policy for Canada. These orders may therefore impose requirements regarding the following:

- the proportion of programs to be broadcast that must be Canadian programs;
- the time devoted to broadcasting them and their discoverability¹² (sections 9.1(1)(a) and 9.1(1)(b));
- the programming services carried by distribution undertakings and the terms and conditions of contracts between them and their subscribers (sections 9.1(1)(e) and 9.1(1)(f));
- access to programming by persons with disabilities (section 9.1(1)(g)); and
- obligations for persons carrying on broadcasting undertakings to provide certain information to the CRTC, on matters such as governance, programming and finances (sections 9.1(1)(i) and 9.1(1)(j)).

Note that the bill gives the CRTC a new power to impose “conditions” on broadcasting undertakings. This term is not defined in the bill. According to

the government backgrounder, “Conditions of service are very similar to conditions of licence, except that a condition of service is not tied to a broadcaster’s licence or its licence term.”¹³ This power will give the CRTC more flexibility to “modify conditions of service as market conditions change rather than having to wait until the end of a licence term to impose new rules and requirements.”¹⁴ This addition to the Act stems from one of the CRTC’s recommendations in a 2019 report on the future of programming distribution in Canada¹⁵ and its submission to the Legislative Review Panel.¹⁶

2.7 REGULATIONS (CLAUSE 8)

The Act currently provides for a broadcasting regulatory framework in general terms and leaves the regulatory details to the CRTC. The CRTC can therefore independently interpret the Act and is not required to submit every regulatory change to Parliament.

Clause 8(1) repeals section 10(1)(a) of the Act, which sets out the CRTC’s power to make regulations respecting the proportion of time that must be devoted to broadcasting Canadian programs. To achieve this objective, the CRTC will now make orders imposing conditions respecting the proportion of programs to be broadcast that must be Canadian programs and the proportion of time devoted to broadcasting them pursuant to new section 9.1(1)(a) of the Act, which is established by clause 7.

In addition, clause 8(4) amends section 10(1)(c) of the Act to specify that the CRTC may make regulations respecting standards for programs “over which a person carrying on a broadcasting undertaking has programming control.”

Clause 8(6) amends section 10(1)(e) of the Act to stipulate that online undertakings are not subject to regulations governing the proportion of time to be assigned to political parties and candidates.

Of further note, clause 8(8) amends section 10(1)(i) to state that the CRTC may make regulations respecting the registration of broadcasting undertakings with it, including online undertakings.

2.8 REGULATIONS: FEES (CLAUSES 9 AND 10)

Clause 10 gives the CRTC new regulatory powers by adding to the Act new sections 11.1(1) to 11.1(7). New section 11.1(1) enables the CRTC to make regulations respecting expenditures that persons carrying on broadcasting undertakings must make for purposes such as developing, financing, producing or promoting Canadian audio

or audiovisual programs (section 11.1 (1)(a)). The bill also gives the CRTC the power to make an order respecting these expenditures, under new section 11.1(2).

New section 11.1(3) of the Act provides that a CRTC regulation made under new section 11.1(1) may apply to all persons carrying on broadcasting undertakings or all persons carrying on broadcasting undertakings of any class established by the CRTC by regulation. Under new section 11.1(4), the CRTC may determine to which persons, organizations or funds these expenditures are to be paid.

New section 11.1(5) of the Act stipulates that orders and regulations made under new section 11.1 may provide for expenditures to be calculated based on criteria such as the revenues of the persons carrying on broadcasting undertakings, the performance of those persons in relation to objectives set by the CRTC and the market served by those persons.

New section 11.1(6) provides that proposed regulations regarding these expenditures must be published in the *Canada Gazette*, while proposed orders respecting these expenditures must be published on the CRTC's website. Persons carrying on broadcasting undertakings and other interested persons may make representations to the CRTC regarding these regulations or orders.

2.9 PUBLIC HEARINGS (CLAUSE 12)

Section 18 of the Act requires the CRTC to hold public hearings in certain circumstances, such as when issuing, suspending or revoking a licence. Clause 12 amends section 18(1) of the Act to require the CRTC to hold such hearings when establishing any performance objectives referred to in new section 11.1(5)(b) as a criterion for calculating the expenditures required by order or regulation.

2.10 CONSULTATIONS BETWEEN THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION AND CBC/RADIO-CANADA (CLAUSE 14)

Under the Act, CBC/Radio-Canada must fulfill its legislative mandate and satisfy the licence conditions and other regulatory requirements set by the CRTC. The strengthening of the CRTC's order-making and regulatory powers, as provided by new sections 9.1(1) and 11.1 of the Act, affects the relationship between CBC/Radio-Canada and the CRTC. Clause 14 amends sections 23(1) to 23(3) of the Act to reflect the CRTC's new order-making and regulatory powers.

For example, under the current wording of section 23(1) of the Act, the CRTC must consult CBC/Radio-Canada, at the latter's request, regarding any conditions attached

to any licence issued to it. The bill extends this duty to circumstances where the CRTC proposes to impose new regulatory requirements on CBC/Radio-Canada through an order or regulation made under new sections 9.1(1) and 11.1 of the Act.

2.11 CONDITIONS GOVERNING SUSPENSION AND REVOCATION
(CLAUSE 15)

Section 24 of the Act sets out the conditions under which the CRTC may suspend or revoke a licence. For example, a licence may be suspended or revoked if a licensee contravenes or fails to comply with the conditions attached to the licence, a regulation made under Part II of the Act or a compliance order made by the CRTC pursuant to section 12(2) of the Act.

Clause 15 amends section 24(1)(a) of the Act by adding that a licence may be suspended or revoked if the licensee contravenes any order made by the CRTC under new sections 9.1(1) and 11.1(2) of the Act.

2.12 REPORT OF CONTRAVENTION BY CBC/RADIO-CANADA
(CLAUSE 16)

Section 25(1) of the Act enables the CRTC to report to the Minister responsible any circumstances where CBC/Radio-Canada has allegedly contravened or failed to comply with any condition, order or regulation to which it is subject as well as the CRTC's observations or recommendations on the matter. While the CRTC retains its power to report to the Minister, clause 16 amends section 25(1) of the Act to specify the provisions of the Act under which the conditions, orders and regulations are made.

2.13 PROVISION OF INFORMATION BY THE CANADIAN RADIO-TELEVISION
AND TELECOMMUNICATIONS COMMISSION
(CLAUSE 17)

Clause 17 adds new sections 25.1 to 25.3 authorizing the CRTC to provide the Minister or the Chief Statistician of Canada with any information submitted to it regarding a broadcasting undertaking. These sections also authorize the CRTC to make available for public inspection any information submitted to it during proceedings before it, unless this information is designated as confidential by the person who submits them.

For example, new section 25.3(4) authorizes the CRTC to disclose or require the disclosure of confidential information in the course of proceedings before it if it determines that the disclosure is in the public interest. Furthermore, the CRTC may disclose or require the disclosure of this information to the Commissioner of Competition at the latter's request.

2.14 SETTING ASIDE OR REFERRING DECISIONS BACK TO THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION, AND FILING OF PETITIONS (CLAUSES 18 AND 19)

Clause 18(1) amends section 28(1) of the Act to grant the Governor in Council more time to set aside CRTC decisions issuing, amending or renewing a licence or to refer them back to the CRTC for reconsideration. The current time limit is 90 days; the amended one is 180 days.

2.15 PROHIBITION AND BROADCASTING CONTRARY TO THE ACT AND DEFENCE (CLAUSES 20 TO 22)

Every person who carries on a broadcasting undertaking without a licence is guilty of an offence punishable on summary conviction. Clause 20 adds to the Act new section 31.1, which prohibits a person from carrying on a broadcasting undertaking, except for an online undertaking, unless they do so in accordance with a licence or if they are exempt from the requirement to hold a licence pursuant to an order made under section 9(4) of the Act. However, under new section 33.1, a person cannot be found guilty of such an offence if they establish that they “exercised due diligence to prevent the commission of an offence.”¹⁷

Clause 21 amends section 32 of the Act to specify that the prohibition set out in new section 31.1 is an offence punishable on summary conviction. The bill also increases the maximum fine provided by section 32 of the Act, raising it from \$20,000 to \$25,000 for an individual and from \$200,000 to \$250,000 for a corporation.

2.16 ADMINISTRATIVE MONETARY PENALTIES (CLAUSE 23)

Pursuant to sections 32 and 33 of the Act, every person who carries on a broadcasting undertaking without a licence, contravenes or fails to comply with the regulations faces proceedings for an offence punishable on summary conviction. Clause 23 establishes a regime of administrative monetary penalties by adding to the Act new Part II.2, which contains new sections 34.4 to 34.995. This regime significantly strengthens the CRTC’s powers. The CRTC had recommended creating such a regime in its submission to the Legislative Review Panel.¹⁸

The new provisions impose monetary penalties on any person who contravenes a regulation or order made by the CRTC (new section 34.4(1)). They provide for a maximum penalty of \$25,000 for a first violation by an individual and \$10 million in any other case (new section 34.5(1)). They also set out a list of criteria the CRTC must take into account when determining the amount of the penalty, including the nature and scope of the violation, the history of compliance of the person who committed

the violation and the person's ability to pay (new section 34.5(2)). In most cases, pursuant to new section 34.94(1) of the Act, a person cannot be held liable for a violation if they establish that they exercised due diligence to prevent its commission.

2.16.1 Designation of Persons to Issue Notices, their Contents and Representations

The bill sets out the proceedings for violations. The CRTC may designate persons to issue notices of violation (new section 34.7). These designated persons are authorized to cause the notices to be served on the persons believed to have committed a violation if they have reasonable grounds to believe that the violation was committed (new section 34.8(1)).

The bill adds a provision authorizing designated persons to require a person to submit to them information relevant for the purpose of verifying whether a violation was committed (new section 34.996). The bill adds an explicit prohibition on knowingly making a material misrepresentation to designated persons (new section 34.997). Any person who makes a material misrepresentation is guilty of an offence and is liable to a maximum fine of \$10,000 for a first offence by an individual and \$100,000 for a first offence in any other case (new section 34.998(1)).

Notices must include the act or omission giving rise to the violation, the provision at issue, the amount of the penalty liable to be paid and the time and manner of payment. They must also state that the person believed to have committed the violation may pay the penalty immediately or make representations to the CRTC (new section 34.8(2)).

When a person believed to have committed a violation makes representations to the CRTC, the latter must decide, on a balance of probabilities, whether the person committed the violation (new section 34.92(2)).

Where an act or omission can be proceeded with as either a violation or an offence, it must be proceeded with in only one way (new sections 34.992(1) and 34.992(2)).¹⁹

2.16.2 Powers Respecting Hearings and Limitation or Prescription Period

During violation proceedings, the CRTC has all the powers of a superior court.

Violation proceedings under the bill have a limitation or prescription period of three years after the day on which the subject matter became known to the CRTC (new section 34.97(1)).

The CRTC's decisions in violation proceedings can be appealed to the Federal Court of Appeal under section 31 of the Act (new section 34.92(4)).

2.16.3 Undertaking and Requirements

A violation can also be resolved through an undertaking by the person believed to have committed it (new section 34.9(1)). The undertaking sets out the acts or omissions that it covers and the requirement for the person in question to pay a specified amount (new section 34.9(2)). The undertaking ends the violation proceeding (new section 34.9(4)), and the CRTC may make public the name of the person who entered into it (new section 34.98(a)).

2.16.4 Commission of a Violation by a Corporation or by CBC/Radio-Canada

When a corporation is believed to have committed a violation, its officers, directors or agents or mandataries may be liable for the violation, whether or not the corporation is proceeded against (new section 34.95).

As for CBC/Radio-Canada, the CRTC cannot impose a penalty on it unless it holds a public hearing on the matter (new section 34.99(1)). After holding this hearing, if the CRTC is satisfied that CBC/Radio-Canada has committed a violation, it forwards to the Minister responsible a report setting out the circumstances of the violation, its findings, the amount of any penalty imposed and any observations or recommendations relating to the violation (new section 34.991(1)). This report must be tabled before each House of Parliament (new section 34.991(2)).

2.17 AMENDMENTS TO THE OBJECTS AND POWERS OF CBC/RADIO-CANADA
(CLAUSES 24 TO 26)

Section 38(1) of the Act concerns the rules for the attributes necessary to be appointed as director of CBC/Radio-Canada. This provision currently states that a person cannot be appointed as director if they are directly or indirectly engaged in the operation of a broadcasting undertaking. Clause 24(1) adds new section 38(3), which specifies that the undertakings in question are those that must be carried on under a broadcasting licence, that are carried on by a person who is exempt from the requirement to hold a licence under a CRTC order or that must be registered with the CRTC under regulations.

2.18 RELATED AMENDMENTS
(CLAUSES 27 TO 30)

2.18.1 *Canada's Anti-Spam Legislation*

Commonly referred to as *Canada's anti-spam legislation (CASL)*, *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial*

activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act prohibits sending a commercial electronic message (CEM) without the recipient's consent.

CASL sets out the circumstances in which a person is considered to have given their express or tacit consent to receive a CEM and imposes requirements on the form and contents of CEMs. A business that contravenes CASL's requirements is liable to administrative monetary penalties.

Section 5 of CASL provides that the legislation does not apply in respect of broadcasting by a broadcasting undertaking as defined in the Act.²⁰ Clause 27 amends section 5 of CASL to ensure it applies to online undertakings, even in their capacity as broadcasting undertakings. CASL therefore prohibits online undertakings from sending CEMs without the recipient's consent.²¹

However, clause 28 adds to CASL new section 6(7.1) to enable an online undertaking to send a CEM subject to two conditions. First, the recipient must have expressly or implicitly consented to the transmission of a program from that online undertaking to an electronic address. Second, the message must be, form part of or be sent in the course of the transmission of that program to that electronic address.

The limited circumstances in which a person is deemed to have given implicit consent to receive CEMs are set out in section 10(9) of CASL. However, clause 29 amends this provision to specify that the circumstances described there do not apply to online undertakings.

2.18.2 *Cannabis Act*

The *Cannabis Act* governs the sale of cannabis in Canada. It prohibits certain ways of promoting cannabis, cannabis accessories and cannabis-related services.²² While section 23(1) of this legislation prohibits broadcasting such illicit promotions on behalf of another person, section 23(2) provides for some exceptions to this prohibition. For instance, an exception is made for undertakings that merely distribute a broadcaster's signal (section 23(2)(b) of the *Cannabis Act*). Clause 30 amends section 23(2) of the *Cannabis Act* to add an exception for online undertakings that broadcast an illicit promotion, provided that they did not insert the promotion themselves and that this broadcasting is otherwise compliant with the Act.

2.19 CONSEQUENTIAL AMENDMENTS
(CLAUSES 31 TO 41)

2.19.1 *Access to Information Act*

Clause 31 amends the *Access to Information Act* to ensure that confidential information provided to the CRTC pursuant to new section 25.3 of the Act cannot be subject to an access to information request.

2.19.2 *Canadian Radio-television and Telecommunications Commission Act*

Under section 13 of the *Canadian Radio-television and Telecommunications Commission Act* (CRTCA), the CRTC must submit to the Minister an annual report on its activities. Section 13(2) of the CRTCA requires the report to include information about the CRTC's activities pertaining to the enforcement of specific provisions of the Act. Clause 32 adds two sections to section 13(2) of the CRTCA, which require this report to include information on any notices of violation the CRTC issued in relation to contraventions of a regulation or order made under the Act and in relation to contraventions of certain provisions of the *Accessible Canada Act*.

2.19.3 *Copyright Act*

2.19.3.1 Ephemeral Recordings

Section 30.8 of the *Copyright Act* provides an exception for ephemeral recordings that allows programming undertakings to fix or reproduce some works, performances and sound recordings without these fixations or reproductions constituting copyright infringement.²³ This exception enables programming undertakings to avoid paying royalties for acts that are entirely the result of the technical processes used to make authorized broadcasts of protected content.

Section 30.8(11) of the *Copyright Act* sets out a definition for “programming undertaking” in order to apply the exception. Clause 33 amends this section by adding to the *Copyright Act* new section 30.8(11)(d). This provision specifies that the ephemeral recordings exception applies to online undertakings carried on lawfully under the Act regarding programs that they originate.

2.19.3.2 Retransmission

Section 31(2) of the *Copyright Act* provides that a retransmitter's communication of a work to the public by telecommunication is not an infringement of copyright if that communication is a simultaneous, unaltered retransmission of a local or distant signal. Currently, this exception does not apply to a retransmitter that provides

broadcasting services that are distributed and accessible on the Internet (or a “new media retransmitter”).

Clause 34(1) temporarily amends section 31(1) of the *Copyright Act* to update its definition of “new media retransmitter” to reflect the CRTC’s *Exemption Order for Digital Media Broadcasting Undertakings* of 2012.²⁴ However, this amendment does not result in the retransmission exception applying to new media retransmitters.

The definition of “new media retransmitter” will be repealed when clauses 34(2) to 34(4) come into force by order of the Governor in Council. At that point, it can define “retransmitter” in regulations made under new section 31(3)(a) of the *Copyright Act*. The content of that definition will determine to which retransmitters the exception applies.

2.19.4 *Referendum Act, Canada Elections Act and Accessible Canada Act*

Provisions of the *Referendum Act*, *Canada Elections Act* (CEA) and *Accessible Canada Act* (ACA) impose obligations on broadcasting undertakings pertaining to various activities governed by these three Acts. The wording of these provisions currently refers to the conditions imposed on licences issued under the Act. The bill makes consequential amendments to certain provisions of these three Acts to replace any references to these conditions with references to the conditions the CRTC imposes by order to implement the broadcasting policy for Canada pursuant to new section 9.1 of the Act.

More specifically, clauses 35 and 36 respectively amend sections 21(1) and 24(2) of the *Referendum Act*; clauses 37, 38 and 39 respectively amend sections 335(1), 339(3) and 345(1) of the CEA; and clauses 40 and 41 amend sections 42(1)(b) and 118(3)(a) of the ACA. Despite the amendments the bill makes to the wording of these provisions, they continue to have substantially the same effect.

2.20 TRANSITIONAL PROVISIONS (CLAUSES 42 TO 46)

The purpose of the transitional provisions is to maintain the stability of the broadcasting regulatory framework by ensuring that any obligations imposed under the Act before the bill receives Royal Assent remain in effect.

2.21 COMING INTO FORCE
(CLAUSE 47)

By default, the vast majority of the bill's provisions come into force on the day the bill receives Royal Assent. Clause 47 provides that clauses 34(2) to 34(4) will come into force on a day fixed by order of the Governor in Council.

NOTES

1. [Bill C-10, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts](#), 43rd Parliament, 2nd Session.
2. Canadian Radio-television and Telecommunications Commission (CRTC), [CRTC Written Public Submission to the Legislative Review Panel](#), 2019, pp. 8–9.
3. Ibid.
4. [Reference re Broadcasting Act](#), 2012 SCC 4.
5. Department of Finance Canada, [Building a Strong Middle Class](#), Budget 2017, p. 106.
6. CRTC, ["User-Uploaded Video," Harnessing Change: The Future of Programming Distribution in Canada](#).
7. Broadcasting and Telecommunications Legislative Review Panel, [Canada's Communications Future: Time to Act](#), Final report, January 2020, p. 128.
8. Department of Justice, [Charter Statement – An Act to amend the Broadcasting Act and to make consequential amendments to other Acts \(C-10\)](#), 18 November 2020.
9. Department of Canadian Heritage, [Frequently asked questions – Modernizing the Broadcasting Act for the Digital Age](#).
10. Broadcasting and Telecommunications Legislative Review Panel, [Canada's Communications Future: Time to Act](#), Final report, January 2020, p. 128.
11. Department of Canadian Heritage, [Frequently asked questions – Modernizing the Broadcasting Act for the Digital Age](#).
12. Discoverability is the quality of being able to be discovered or found. See Canada Media Fund, [Discoverability: Toward a Common Frame of Reference](#), Part 1, p. 10.
13. Department of Canadian Heritage, [Frequently asked questions – Modernizing the Broadcasting Act for the Digital Age](#).
14. Ibid.
15. CRTC, ["Conclusions and Potential Options – Replace prescriptive licensing with comprehensive and binding service agreements that include traditional and new players," Harnessing Change: The Future of Programming Distribution in Canada](#).
16. CRTC, [CRTC Written Public Submission to the Legislative Review Panel](#), 2019, p. 17.
17. See also new section 34.21 of the Act, added by clause 22.
18. CRTC, [CRTC Written Public Submission to the Legislative Review Panel](#), 2019, p. 17.
19. [Section 126](#) of the *Criminal Code* provides that a person who intentionally and without lawful excuse contravenes federal legislation is guilty of either an indictable offence liable to imprisonment for a term of no more than two years or an offence punishable on summary conviction. Section 126 further provides that the federal government can institute proceedings in respect of such a contravention. However, this provision applies only when the federal legislation in question does not itself provide a penalty for violating its requirements.

PRELIMINARY VERSION

UNEDITED

20. [*An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*](#), S.C. 2010, c. 23, s. 5.
21. *Ibid.*, s. 6(1).
22. See the [*Cannabis Act*](#), S.C. 2018, c. 16, ss. 17–22.
23. A programming undertaking is an undertaking that transmits programs either directly by radio waves or another means of telecommunication, or indirectly through a distribution undertaking for reception by the public using a broadcasting receiving apparatus.
24. CRTC, [*Broadcasting Order CRTC 2012-409*](#), 26 July 2012.