



## Legislative Summary

**BILL C-11:**  
**AN ACT TO AMEND THE BROADCASTING ACT**  
**AND TO MAKE RELATED AND CONSEQUENTIAL**  
**AMENDMENTS TO OTHER ACTS**

Publication No. 44-1-C11-E

**17 February 2022**

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*Legislative Summary of Bill C-11*  
(Legislative Summary)

Publication No. 44-1-C11-E

Ce document est également publié en français.

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# Legislative Summary of Bill C-11: An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts

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## 1 BACKGROUND

On 2 February 2022, the Honourable Pablo Rodriguez, Minister of Canadian Heritage, introduced Bill C-11, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts, in the House of Commons (short title: “Online Streaming Act”).<sup>1</sup>

Bill C-11 includes some of the amendments proposed during the 2<sup>nd</sup> Session of the 43<sup>rd</sup> Parliament in Bill C-10, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts.<sup>2</sup> On 16 February 2021, after second reading, Bill C-10 was referred to the House of Commons Standing Committee on Canadian Heritage for consideration. This committee reported the bill with over 30 amendments on 14 June 2021.<sup>3</sup> Bill C-10 died on the *Order Paper* when Parliament was dissolved in August 2021.

Bill C-11 modernizes the *Broadcasting Act* (the Act) to bring online undertakings within its scope. It amends broadcasting and regulatory policies to ensure that the programming provided is accessible and that the entire Canadian population is represented, including Canadians from racialized communities or of diverse ethnocultural backgrounds, socio-economic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages.

In addition, the bill modifies the mandate and powers of the Canadian Radio-television and Telecommunications Commission (CRTC). It gives the CRTC the power to impose administrative monetary penalties when certain violations are committed, aligning with its existing powers to regulate telecommunications and spam.

### 1.1 THE *BROADCASTING ACT*

The Act was established in 1991. It sets out the principles and objectives of the broadcasting policy for Canada and provides the legislative means to achieve them.<sup>4</sup>

Under the Act, as part of this policy, the Canadian broadcasting system:

- shall be owned and controlled by Canadians;
- provides, through its programming, a public service essential to maintaining and enhancing national identity and cultural sovereignty;
- should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;
- should encourage the development of Canadian expression;
- should serve the needs and interests of Canadians and reflect their circumstances and aspirations, which include equal rights, linguistic duality, the multicultural and multiracial nature of Canadian society and the special place of Indigenous peoples within that society;
- should be readily adaptable to scientific and technological change; and
- shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming.<sup>5</sup>

The Act also sets out the mission and powers of the CRTC. The organization has a mandate to regulate and supervise all aspects of the Canadian broadcasting system for the purpose of implementing the broadcasting policy for Canada. As an independent public body, it can issue broadcasting licences and establish the requirements licensees must satisfy. The Act also sets out the powers of the Governor in Council with regard to the CRTC.

Lastly, the Act lays out the governance structure of the Canadian Broadcasting Corporation/Société Radio-Canada (CBC/Radio-Canada), its powers and its duties as the national public broadcaster.

## **2 DESCRIPTION AND ANALYSIS**

Bill C-11 has 54 clauses. This section focuses on the key aspects of the bill rather than examine each provision. Moreover, the amendments that update and modernize the terminology used in the Act are not considered in detail in this Legislative Summary.

### **2.1 DEFINITIONS AND INTERPRETATION (CLAUSE 2)**

Clause 2 amends the interpretation provisions of the Act. Section 2(1) of the Act is amended to add the definition of “online undertaking.” Under this new definition, such an undertaking is one that transmits or retransmits programs over the Internet for reception by the public by means of broadcasting receiving apparatus. The definition of



“broadcasting undertaking” is also amended to encompass online undertakings, while the definition of “broadcasting” is amended to specify that the transmission of programs for reception by the public includes scheduled or on-demand transmission.

Clause 2(3) replaces section 2(3) of the Act with new sections 2(2.1), 2(2.2) and 2(2.3) and an amended version of section 2(3). These new provisions specify who does not carry on a broadcasting undertaking.

New section 2(2.1) stipulates that a social media user uploading and receiving programs through this service does not carry on a broadcasting undertaking for the purposes of the Act.

New section 2(2.2) specifies that an online undertaking that provides a social media service does not exercise programming control over programs uploaded by a user of this social media service as long as this user is not the provider of the service, the provider’s affiliate, or the agent or mandatary of either of them.

New section 2(2.3) specifies that a person who transmits programs over the Internet as part of the operations of an educational institution, a public library, a museum or a venue for the presentation of live performing arts does not carry on an online undertaking.

New section 2(3) states that the Act shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic independence enjoyed by broadcasting undertakings. The Act shall also be construed and applied in a manner that is consistent with the Government of Canada’s commitment to enhancing the vitality and supporting the development of Canada’s English and French linguistic minority communities.

## **2.2 BROADCASTING POLICY FOR CANADA (CLAUSE 3)**

The broadcasting policy for Canada sets out objectives that the CRTC must pursue. Bill C-11 amends multiple aspects of this policy.

In the current version of the Act, section 3(1)(a) states that the Canadian broadcasting system shall be owned and controlled by Canadians. Clause 3(1) amends this provision to specify that this principle does not apply to foreign broadcasting undertakings that provide programming to Canadians.

New section 3(1)(a.1) requires each broadcasting undertaking to contribute to the implementation of the objectives of the broadcasting policy for Canada in a manner that is appropriate given the nature of the services they provide.

In its current form, the Act states that the Canadian broadcasting system, through its programming and employment opportunities, must serve the needs and interests of all Canadians. Clause 3(3) amends section 3(1)(d)(iii) of the Act to specify that, through its programming and employment opportunities, the Canadian broadcasting system must serve

the needs and interests of all Canadians, 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.<sup>6</sup>

Furthermore, clause 3(3) adds section 3(1)(d)(iii.1) to the Act to stipulate that the Canadian broadcasting system must provide opportunities to Indigenous persons so they can produce programming in Indigenous languages, English or French, or in any combination of these languages, and carry on broadcasting undertakings.

The Act is also amended to ensure that the broadcasting policy for Canada enhances the vitality of official language minority communities, including by supporting production and broadcasting of original programs by those communities (section 3(1)(d)(iii.3)).

The role of the community element in the Canadian broadcasting system is also strengthened by the addition of section 3(1)(d)(iii.4) to state that the broadcasting policy for Canada shall support community broadcasting that reflects the diversity of the communities being served.

Clause 3(4) amends the wording of section 3(1)(f) of the Act, stating that Canadian broadcasting undertakings shall employ Canadian human resources to create, produce and present their programming. Section 3(1)(f.1) is added to the Act to compel foreign online undertakings to make “the greatest practicable” use of these human resources while taking into account Canada’s linguistic duality.

Bill C-11 clarifies two further objectives of the broadcasting policy for Canada. Currently, sections 3(1)(g) and 3(1)(h) of the Act state that broadcasting undertakings should provide programming of high standard and that broadcasting undertakings have a responsibility for the programs they broadcast. The bill’s new interpretation provisions add the term “programming control” to distinguish situations where a broadcasting undertaking has control over the selection of programs for transmission from those where it does not.

In its current form, section 3(1)(i) of the Act outlines a set of objectives that the programming provided by the Canadian broadcasting system should achieve. Clause 3(5) adds section 3(1)(i)(i.1) to the Act to specify that this programming should reflect and support Canada’s linguistic duality, including programming from French linguistic minority communities.



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. This provision is amended to state that these sources should include, at the local level, community broadcasters. Moreover, this programming should reflect the viewpoints of Indigenous persons and Canadians from diverse ethnocultural backgrounds (new section 3(1)(i)(ii.1)).

With regard to linguistic duality, clause 3(6) removes the concept of services being extended “as resources become available” from section 3(1)(k) of the Act; the concept provides for the desired increase in access to programming in both official languages but has become outdated given the potential of online undertakings. The bill also deletes the same wording from sections 3(1)(o) and 3(1)(p) of the Act on programming for Indigenous persons and persons with disabilities, respectively.

## 2.3 APPLICATION (CLAUSE 4)

Clause 4 adds new sections 4.1 and 4.2 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. Note that the bill does not define the term “social media service.”

However, new section 4.1(2) specifies that the Act applies if a program is uploaded by a social media service provider or its affiliate, or the agent or mandatary of either of them.

New section 4.2(1) grants the CRTC the authority to make regulations determining which programs uploaded by a social media service are subject to the Act. Under new section 4.2(2), the CRTC must consider the following:

- the extent to which the program uploaded to an online undertaking that provides a social media service directly or indirectly generates revenues;
- the fact that such a program was broadcast by a broadcasting undertaking that is required to be carried under a licence or to be registered with the CRTC but does not provide a social media service; and
- the fact that such a program has been assigned a unique identifier under an international standards system.

## 2.4 OBJECTS (CLAUSE 5)

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 5(1) adds Indigenous languages to the factors that the CRTC must consider, as well as the minority context of French in North America and the specific needs and interests of English and French linguistic minority communities in Canada and of Indigenous peoples.

Clause 5(2) amends the Act to state that the CRTC regulations should facilitate the provision to Canadians of programs that are created and produced by the above-mentioned groups (new section 5(2)(e)) and the production of programs accessible to persons with disabilities (new section 5(2)(e.1)).

Clause 5(3) adds section 5(2)(h) to the Act. Under this new provision, the CRTC should avoid imposing obligations on a broadcasting undertaking if these obligations do not contribute in a material way to implementing the broadcasting policy for Canada.

## 2.5 ENGLISH AND FRENCH LINGUISTIC MINORITY COMMUNITIES (CLAUSE 6)

Clause 6 adds to the Act sections 5.1 and 5.2, which state that the CRTC shall enhance the vitality of English and French linguistic minority communities and consult with them when making decisions that may adversely affect them. One purpose of these consultations is to enable the CRTC to gather information on its policies, decisions and initiatives. The CRTC is required to openly and meaningfully consider the communities' opinions and provide them with feedback.

## 2.6 DIRECTIONS OF THE GOVERNOR IN COUNCIL (CLAUSES 7 AND 8)

Under section 7 of the current Act, the Governor in Council may, by order, issue directions of general application to the CRTC relating to the objectives of the broadcasting policy for Canada and relating to the regulation and supervision of the Canadian broadcasting system.

Section 8 of the Act concerns the procedure to follow when the Governor in Council makes an order under section 7. Clause 8(1) amends sections 8(2) and 8(3) of the Act as regards 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 after 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 during that period.

## 2.7 GENERAL POWERS (CLAUSES 9 AND 10)

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

In addition, the bill provides that the maximum term of operating licences issued or renewed by the CRTC for broadcasting undertakings, which is seven years under the current wording of the Act, may now be indefinite or fixed (new sections 9(1)(b) and 9(1)(e)).

In connection with the CRTC's power to issue licences, clause 10 adds new section 9.1(1) to the Act to enable the CRTC to make orders imposing conditions for carrying on broadcasting undertakings for the implementation of the broadcasting policy for Canada. These orders therefore make it possible to impose conditions respecting:

- the proportion of programs to be broadcast that must be Canadian programs (section 9.1(1)(a));
- the proportion of programs that must be devoted to specific genres to ensure diversity of programming (section 9.1(1)(d));
- the showcasing and discoverability of Canadian programs (section 9.1(1)(e));<sup>7</sup>
- the programming services carried by distribution undertakings and the terms and conditions of service in contracts with their subscribers (sections 9.1(1)(h) and 9.1(1)(j));
- access to programming by persons with disabilities (section 9.1(1)(k));
- any changes in ownership or control of a broadcasting undertaking (section 9.1(1)(m)); and
- a requirement 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)(n) and 9.1(1)(o)).

## 2.8 REGULATIONS (CLAUSES 11 AND 12)

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

Clause 11(2) repeals section 10(1)(a) of the Act, which currently gives the CRTC the power to make regulations on the proportion of airtime that must be devoted to broadcasting Canadian programs. To achieve this objective, the CRTC will now make orders to impose conditions respecting the proportion of programs and the proportion of airtime to be devoted to Canadian programs (new section 9.1(1)(a)).

In addition, clause 11(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 11(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.

In addition, clause 11(8) amends section 10(1)(i) so that the CRTC may make regulations respecting the registration of broadcasting undertakings with it, including online undertakings.

Clause 11(10) replaces sections 10(2) and 10(3) of the Act. The CRTC now considers a set of criteria in making regulations respecting Canadian programs. Notably, in making any regulations, it must consider whether online undertakings collaborate with independent Canadian producers (new section 10(1.1)(d)).

Clause 12 adds section 10.1 to the Act in order to clarify that the CRTC shall make orders and regulations in a manner consistent with the freedom of expression enjoyed by social media users.

## 2.9 REGULATIONS: FEES (CLAUSE 14)

Clause 14 creates new section 11.1, which gives the CRTC the authority to make orders or regulations to require persons carrying on broadcasting undertakings to make expenditures to develop and promote Canadian programs.

New section 11.1 specifies that these mandatory expenditures may serve to support the development, financing, production or promotion of Canadian audio or audiovisual programs (new section 11.1(1)(a)). These expenditures may also

directly support the creators of Canadian programs, including their training (new section 11.1(1)(b)), or the participation of organizations representing the public interest in proceedings before the CRTC (new section 11.1(1)(c)).

New section 11.1(4) of the Act provides that a CRTC regulation made under the new powers provided in new section 11.1 applies to all persons carrying on broadcasting undertakings, including online undertakings.

New section 11.1(6) of the Act stipulates that orders and regulations made under new section 11.1 may provide for expenditures to be calculated by reference to criteria such as the revenues of the persons carrying on broadcasting undertakings, their performance in relation to objectives set by the CRTC and the market they serve.

**2.10 PUBLIC HEARINGS  
(CLAUSE 16)**

Section 18 of the Act currently requires the CRTC to hold public hearings in certain circumstances, such as when issuing, suspending or revoking a licence. Clause 16 amends section 18(1) of the Act and requires the CRTC to hold such hearings when establishing classes of broadcasting undertakings (new section 11(2)(b)) or objectives for the broadcasting of Canadian programs (new section 11.1(6)(b)).

**2.11 CONSULTATIONS BETWEEN THE CANADIAN RADIO-TELEVISION  
AND TELECOMMUNICATIONS COMMISSION AND THE CANADIAN  
BROADCASTING CORPORATION/SOCIÉTÉ RADIO-CANADA  
(CLAUSE 19)**

Under the current 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 under new sections 9.1(1) and 11.1 of the Act affects the relationship between CBC/Radio-Canada and the CRTC. Clause 19 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 shall consult CBC/Radio-Canada, at the latter's request, regarding any conditions attached to any licence issued or to be issued to it. The bill extends this duty to circumstances where the CRTC proposes to impose on CBC/Radio-Canada new conditions under new section 9.1(1) or new regulatory requirements through an order or regulation made under new section 11.1 of the Act.

2.12 CONDITIONS GOVERNING SUSPENSION OR REVOCATION  
(CLAUSE 20)

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 20 amends section 24(1)(a) of the Act and adds 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.

2.13 REPORT OF CONTRAVENTION BY THE CANADIAN  
BROADCASTING CORPORATION/SOCIÉTÉ RADIO-CANADA  
(CLAUSE 21)

In the event that CBC/Radio-Canada has allegedly contravened or failed to comply with any condition, order or regulation to which it is subject, the CRTC may, under section 25(1) of the Act, report to the minister responsible its observations or recommendations on the matter. Clause 21 updates section 25(1) of the Act to specify that the CRTC's authority in this regard extends to orders made under new sections 9.1(1) and 11.1(2).

2.14 PROVISION OF INFORMATION BY THE CANADIAN RADIO-TELEVISION  
AND TELECOMMUNICATIONS COMMISSION  
(CLAUSE 22)

Clause 22 adds new sections 25.1 to 25.3 to the Act, authorizing the CRTC to provide the minister responsible 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 the person who submits it to the CRTC has designated it as confidential and the designation is not withdrawn by that person.

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.

Similar provisions appear in sections 37 to 39 of the *Telecommunications Act*.<sup>8</sup>



2.15 SETTING ASIDE OR REFERRING DECISIONS BACK TO THE  
CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION,  
AND FILING OF PETITIONS  
(CLAUSES 23 AND 24)

Clause 23(1) amends section 28(1) of the Act to increase from 90 to 180 days the time that the Governor in Council has to set aside or refer back to the CRTC a decision to issue, amend or renew a licence.

2.16 PROHIBITION AND BROADCASTING CONTRARY TO  
THE *BROADCASTING ACT* AND DEFENCE  
(CLAUSES 25 AND 26)

Clause 25 adds new section 31.1 to the Act; it prohibits a person from carrying on a broadcasting undertaking, except for an online undertaking, unless they have a licence to do so or unless the undertaking in question is exempt from this licence requirement pursuant to an order made under section 9(4) of the Act.

Clause 26 amends sections 32 to 34 of the Act to specify that contravening the prohibition set out in new section 31.1 is an offence punishable on summary conviction. It also specifies that the maximum fine for this offence is \$25,000 for an individual and \$250,000 for a corporation. The Act currently provides that the maximum fine for carrying on a broadcasting undertaking without a licence is \$20,000 for an individual and \$200,000 for a corporation.

Clause 26 also adds new section 33.1 to the Act to specify that a person cannot be found guilty of the offence above or of the offence of contravening any regulation or order made by the CRTC, if they establish that they exercised due diligence to prevent the commission of an offence.

2.17 ADMINISTRATIVE MONETARY PENALTIES  
(CLAUSE 28)

Under current sections 32 and 33 of the Act, a person who carries on a broadcasting undertaking without a licence, who contravenes or fails to comply with a regulation made under the Act, or who contravenes or fails to comply with a condition of their licence is guilty of an offence punishable on summary conviction. Clause 28 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 significantly strengthens the CRTC's powers.

Clause 28 imposes monetary penalties on any person who contravenes a regulation or order made by the CRTC (new section 34.4(1)). It provides for a maximum penalty of \$25,000 for a first violation by an individual and \$10 million for a first violation in any other case (new section 34.5(1)). It also sets 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 their 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.

#### 2.17.1 Designation of Persons Authorized to Issue Notices

Clause 28 sets out the proceedings for violations pursuant to new section 34.4(1) of the Act. The CRTC may thus 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 believe on reasonable grounds that a violation was committed (new section 34.8(1)).

Clause 28 also adds to the Act new parts II.3 and II.4 respecting the submission of information and material misrepresentation of fact, which contain new sections 34.996 to 34.998. New Part II.3 authorizes 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). New Part II.4 adds an explicit prohibition on knowingly making a material misrepresentation of fact to designated persons (new section 34.997). Any person who knowingly makes a material misrepresentation of fact is guilty of an offence and is liable to a maximum fine of \$10,000 in the case of a first offence by an individual and, in any other case, \$100,000 for a first offence (new section 34.998(1)).

#### 2.17.2 Proceeding in Respect of Violation and Prescription

During violation proceedings, the CRTC has all the powers of a superior court of record (new section 34.91).

Violation proceedings have a prescription period of three years after the day on which the subject matter of the proceedings 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)).

### 2.17.3 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)), in which case the undertaking sets out the omissions or acts that it covers and any requirement for the person in question to pay a specified amount (new section 34.9(2)). The undertaking ends the violation proceeding for any act or omission referred to in the undertaking (new section 34.9(4)). The CRTC may make public the name of the person who entered into such an undertaking (new section 34.98(a)).

### 2.17.4 Commission of a Violation by a Corporation or by the Canadian Broadcasting Corporation/Société Radio-Canada

When a corporation other than CBC/Radio-Canada is believed to have committed a violation, its officers, directors, agents or mandataries may be held 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 without holding a public hearing on the matter (new section 34.99(1)). If, after holding such a hearing, the CRTC is satisfied that CBC/Radio-Canada has committed a violation, it submits a report to the minister responsible 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)). The Minister must table this report before each house of Parliament (new section 34.991(2)).

### 2.18 AMENDMENTS TO THE OBJECTS AND POWERS OF THE CANADIAN BROADCASTING CORPORATION/SOCIÉTÉ RADIO-CANADA (CLAUSES 29 TO 31)

Section 38(1) of the Act concerns the attributes needed to be appointed as a director of CBC/Radio-Canada. The provision currently states that a person cannot be appointed as a director if they are directly or indirectly engaged in the operation of a broadcasting undertaking. Clause 29(2) adds new section 38(3) to the Act, 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, including online undertakings.

Clause 30(1) amends section 46 of the Act to account for the CRTC's new order-making power.

## 2.19 RELATED AMENDMENTS (CLAUSES 32 TO 35)

### 2.19.1 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*<sup>9</sup> prohibits sending a commercial electronic message (CEM) without the recipient’s prior consent.

CASL sets out the circumstances in which a person is considered to have given their express or implied consent to receive a CEM and imposes requirements on the form and contents of these CEMs. A business that contravenes CASL requirements incurs 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 *Broadcasting Act*. Clause 32 amends section 5 of CASL to ensure it applies to online undertakings, even in their capacity as broadcasting undertakings. CASL, therefore, prohibits online undertakings for the transmission of programs from sending CEMs without the recipient’s prior consent.<sup>10</sup>

However, clause 33 adds new section 6(7.1) to CASL to allow an online undertaking to send a CEM if the recipient has expressly or implicitly consented to the transmission of a program from that online undertaking to an electronic address, and if the message is or forms part of that program or is sent in the course of transmitting it to the electronic address to which that program is transmitted.

The limited circumstances in which a person is deemed to have given implied consent to receive CEMs are set out in section 10(9) of CASL. However, clause 34 amends this provision to specify that the circumstances described therein do not apply to online undertakings.

### 2.19.2 *Cannabis Act*

The *Cannabis Act*<sup>11</sup> governs the sale of cannabis in Canada. It prohibits certain means of promoting cannabis, cannabis accessories and cannabis-related services.<sup>12</sup> 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 35

amends section 23(2)(b) 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 the broadcast is otherwise compliant with the *Broadcasting Act*.

2.20 CONSEQUENTIAL AMENDMENTS  
(CLAUSES 36 TO 47)

2.20.1 *Access to Information Act*

Clause 36 amends the *Access to Information Act*<sup>13</sup> to ensure that confidential information provided to the CRTC under new section 25.3 of the *Broadcasting Act* cannot be subject to an access-to-information request.

2.20.2 *Canadian Radio-television and Telecommunications Commission Act*

Under section 13 of the *Canadian Radio-television and Telecommunications Commission Act*<sup>14</sup> (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 *Broadcasting Act*. Clause 37 adds two paragraphs to section 13(2) of the CRTCA to require this report to also include information about the notices of violation the CRTC issues concerning contraventions of an order or regulation made under the *Broadcasting Act* regarding the identification and removal of barriers and the prevention of new barriers, and about the notices of violation issued concerning the contravention of certain provisions of the *Accessible Canada Act*.<sup>15</sup>

2.20.3 *Copyright Act*

2.20.3.1 Ephemeral Recordings

Section 30.8 of the *Copyright Act*<sup>16</sup> provides an exception for ephemeral recordings that allows programming undertakings to fix or reproduce some works,<sup>17</sup> performances and sound recordings without these fixations or reproductions constituting copyright infringement. This exception allows 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” to apply the exception. Clause 38 amends this section so that the ephemeral recordings exception applies to online undertakings regarding programs that they produce themselves.

#### 2.20.3.2 Retransmission

Section 31(2) of the *Copyright Act* provides that the communication of a work to the public by telecommunication is not an infringement of copyright for a retransmitter if various conditions are met, including 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 39 amends section 30.9(7) of the *Copyright Act* to update the definition of “broadcasting undertaking.” This amendment serves to exclude online undertakings from the definition, as they do not hold a broadcasting licence from the CRTC.

The definition of “new media retransmitter” in the *Copyright Act* will be repealed when clauses 40(1) to 40(4) come into force by order of the Governor in Council. At that point, the Governor in Council will be able to define “retransmitter” in regulations made under new section 31(3)(a) of the *Copyright Act*. The content of that definition will determine the retransmitters to which the exception applies.

#### 2.20.4 *Referendum Act, Canada Elections Act* and *Accessible Canada Act*

Provisions of the *Referendum Act*,<sup>18</sup> *Canada Elections Act*<sup>19</sup> and *Accessible Canada Act* 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 *Broadcasting 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 *Broadcasting Act*.

More specifically, clauses 41 and 42 respectively amend sections 21(1) and 24(2) of the *Referendum Act*; clauses 43, 44 and 45 respectively amend sections 335(1), 339(3) and 345(1) of the *Canada Elections Act*; and clauses 46 and 47 respectively amend sections 42(1)(b) and 118(3)(a) of the *Accessible Canada Act*. Despite the fact that the bill amends the wording of these provisions, they continue to have substantially the same effect.

#### 2.21 TRANSITIONAL PROVISIONS (CLAUSES 48 TO 52)

The purpose of the transitional provisions set out in clauses 48 to 52 is to maintain the stability of the broadcasting regulatory framework by ensuring that any obligations imposed under the *Broadcasting Act* before Bill C-11 receives Royal Assent remain in effect.



## 2.22 REVIEW (CLAUSE 53)

Clause 53 provides that, five years after Bill C-11 receives Royal Assent, a committee of the Senate, of the House of Commons or of both houses must conduct a comprehensive review of the amendments that the bill makes to the *Broadcasting Act*. This committee must also submit a report containing any recommended changes to the appropriate house or both houses, as the case may be.

## 2.23 COMING INTO FORCE (CLAUSE 54)

By default, the vast majority of the bill's provisions come into force on the day the bill receives Royal Assent. Clause 54 provides that clauses 40(2) to 40(4), concerning the definition of “new media retransmitter” in the *Copyright Act*, come into force on a day to be fixed by order of the Governor in Council.

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## NOTES

1. [Bill C-11, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts](#), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session.
2. [Bill C-10, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts](#), 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session (first reading version, 3 November 2020).
3. House of Commons, Standing Committee on Canadian Heritage, [Fifth Report](#), 11 June 2021.
4. [Broadcasting Act](#), S.C. 1991, c. 11.
5. *Ibid.*, s. 3.
6. [Bill C-11, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts](#), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, cl. 3(3).
7. Discoverability is the intrinsic ability of given content “to stand out or to position itself so as to be easily found and discovered.” See Canada Media Fund, [Discoverability: Toward a Common Frame of Reference – Part 1](#), p. 10.
8. [Telecommunications Act](#), S.C. 1993, c. 38, ss. 37–39.
9. [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.
10. *Ibid.*, s. 6(1).
11. [Cannabis Act](#), S.C. 2018, c. 16.
12. *Ibid.*, ss. 17–22.
13. [Access to Information Act](#), R.S.C. 1985, c. A-1.
14. [Canadian Radio-television and Telecommunications Commission Act](#), R.S.C. 1985, c. C-22.
15. [Accessible Canada Act](#), S.C. 2019, c. 10.
16. [Copyright Act](#), R.S.C. 1985, c. C-42.

17. As currently defined in the *Broadcasting Act*, a programming undertaking is an “undertaking for the transmission of programs either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of a broadcasting receiving apparatus.” See [Broadcasting Act](#), S.C. 1991, c. 11, s. 2(1).
18. [Referendum Act](#), S.C. 1992, c. 30.
19. [Canada Elections Act](#), S.C. 2000, c. 9.