



LEGISLATIVE SUMMARY

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

Publication No. 43-2-C10-E

14 December 2020

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Legislative Summary of Bill C-10
(Legislative Summary)

Publication No. 43-2-C10-E

Ce document est également publié en français.

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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* (the Act) to bring businesses that provide audio or audiovisual content online within its scope. It also amends broadcasting and regulatory policies in order to provide accessible programming and to ensure that the various segments of Canada's population, for example Indigenous people, racialized communities and people of diverse ethnocultural backgrounds, 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

The *Broadcasting 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.²

This policy stipulates that the Canadian broadcasting system must:

- be owned and controlled by Canadians;
- through its programming, provide a public service essential to maintaining and enhancing 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 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;
- be readily adaptable to scientific and technological change; and
- maximize the use, and in all cases, make at least predominant use of Canadian creative and other resources in creating and presenting programming.

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 so it can implement 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/Radio-Canada (CBC/Radio-Canada), its powers and its duties as the national public broadcaster.

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, traditional environment and used broadcasting infrastructure that was based on "technology with limited reach and finite capacity."³

The rapid development of the Internet and digital technologies has had consequences for traditional broadcasting.⁴ Consumers quickly gained access to a range of online content through devices other than radios and televisions. In 1999 and 2009, the CRTC exempted from its regulations new media broadcasting undertakings that provide broadcasting services over the Internet. In addition, in 2012 the Supreme Court of Canada ruled that Internet service providers are not broadcasting undertakings "subject to the *Broadcasting Act*."⁵

The 2017 federal budget provided for a review of the Act and the *Telecommunications Act*.⁶ At the request of the Governor in Council, two major studies were prepared. In May 2018, the CRTC published a report that included recommendations on the future of programming distribution in Canada.⁷ More recently, in January 2020, the Broadcasting and Telecommunications Legislative Review Panel (Legislative Review Panel) released its report, which contains proposals to modernize the legislation that governs Canada's communications sector.⁸

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 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.

The Department of Justice has published a Charter statement in which it declares 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*.⁹

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, and the definition of “broadcasting” is amended to specify 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.”¹⁰

Clause 1(3) adds section 2(2.1) to the Act to stipulate 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.

2.2 BROADCASTING POLICY FOR CANADA
(CLAUSE 2)

The broadcasting policy for Canada sets out some objectives that the CRTC must implement. Bill C-10 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 achieving the objectives of the broadcasting policy for Canada.

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 Canadians. Clause 2(2) amends section 3(1)(d)(iii) of the Act and specifies 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.

Furthermore, clause 2(2) amends the Act by adding new section 3(1)(d)(iii.1), which stipulates that the Canadian broadcasting system must provide opportunities to Indigenous persons to produce programming in Indigenous languages, English or French, or in any combination of those languages, and to carry on broadcasting undertakings. This addition comes in response to the Legislative Review Panel’s recommendation (No. 53) calling for “the creation of and access to content by and for Indigenous Peoples, including Indigenous languages content.”¹¹

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

Bill C-10 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. Clause 2(3) amends sections 3(1)(g) and 3(1)(h) of the Act and specifies that these requirements apply 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) which states 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.”

With regard to linguistic duality, clause 2(5) deletes the phrase “as resources become available” from current section 3(1)(k) of the Act; the concept provides for the desired increase in access to programming in both official languages but appears outdated given the potential of online broadcasting services. 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 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. Services like YouTube, Facebook and TikTok are examples of this type of video platform that enables users to upload content.¹² 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 the system should be regulated and supervised in a way that facilitates 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) to the Act, respectively. New section 5(2)(a.1) states that the CRTC must treat broadcasting undertakings that provide similar services fairly and equitably, taking into account their relative 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 does not contribute in a material way to implementing the broadcasting policy for Canada.

2.5 IMPLEMENTATION OF PROPOSAL
(CLAUSE 5)

Under section 7 of the current Act, the Governor in Council may 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 concerns the procedure to follow when the Governor in Council makes an order 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 when 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)

Section 9 of 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 the operating licences of broadcasting undertakings 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 for carrying on broadcasting undertakings to implement the broadcasting policy for Canada.

These orders may then impose requirements regarding the following:

- the proportion of programs to be broadcast that must be Canadian programs (section 9.1(1)(a));
- the time devoted to broadcasting them and their discoverability¹³ (sections 9.1(1)(a) and 9.1(1)(b));
- the programming services carried by distribution undertakings and the terms and conditions of service in contracts with 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 on Bill C-10, “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.”¹⁴ This power gives 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.”¹⁵ This addition to the Act stems from one of the CRTC’s recommendations in a 2019 report on the future of programming distribution in Canada¹⁶ and from its submission to the Legislative Review Panel.¹⁷

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, therefore, can independently interpret the Act, and it 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 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 to be broadcast that must be Canadian programs and the proportion of airtime 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 television standards “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) so 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 adds new sections 11.1(1) to 11.1(7) to the Act, giving the CRTC new regulatory powers. 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)). New section 11.1(2) also enables the CRTC to make an order respecting these expenditures.

New section 11.1(3) of the Act provides that a CRTC regulation made under new section 11.1(1) applies to either 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, their performance in relation to objectives set by the CRTC and the market they serve.

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 and requires the CRTC to hold such hearings when establishing any performance objectives referred to in new section 11.1(5)(b) as criteria 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 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 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 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.

2.12 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 in which 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 can be 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 to the Act, 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 it to the CRTC.

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 and grants the Governor in Council more time to set aside CRTC decisions to issue, amend or renew a licence, or to refer these decisions back to the CRTC for reconsideration. The current time limit of 90 days is raised to 180 days.

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

Clause 20 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 they are exempt from this licence requirement pursuant to an order made under section 9(4) of the Act.

Clause 21 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 21 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.”¹⁸

2.16 ADMINISTRATIVE MONETARY PENALTIES
(CLAUSE 23)

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 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.¹⁹

Clause 23 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 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

Clause 23 sets out the proceedings for violations pursuant to new section 34.4(1) of the Act. The CRTC may therefore 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 there are reasonable grounds to believe that the violation was committed (new section 34.8(1)).

Clause 23 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 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 the person is liable to pay 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 cannot be proceeded with as both a violation and an offence (new sections 34.992(1) and 34.992(2)).²⁰

2.16.2 Powers Respecting Hearings and Limitation or Prescription Period

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)).

2.16.3 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 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)), 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, 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)). After holding this hearing, if 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)). 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 attributes needed to be appointed as director of CBC/Radio-Canada. The 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 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 Act.²¹ 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 for the transmission of programs from sending CEMs without the recipient's consent.²²

However, clause 28 adds new section 6(7.1) to CASL to allow an online undertaking to send a CEM under 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 the program itself, form a part of it or be sent in the course of transmitting it 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.²³ 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 the broadcast 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 under 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; they require this report to include information about the notices of violation the CRTC issued concerning contraventions of an order or regulation made under the Act for 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*.

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 undertakings²⁴ to fix or reproduce some works, 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 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 produce themselves.

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 2012.²⁵ However, the amendment does not include new media retransmitters in the retransmission exception.

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 the retransmitters to which 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 respectively 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 Bill C-10 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. [Broadcasting Act](#), S.C. 1991, c. 11.
3. Canadian Radio-television and Telecommunications Commission (CRTC), [CRTC Written Public Submission to the Legislative Review Panel](#), 2019, pp. 8–9.
4. Ibid.
5. [Reference re Broadcasting Act](#), 2012 SCC 4.
6. Department of Finance Canada, [Building a Strong Middle Class](#), Budget 2017, p. 106.
7. CRTC, "[Conclusions and Potential Options](#)," *Harnessing Change: The Future of Programming Distribution in Canada*.
8. Broadcasting and Telecommunications Legislative Review Panel, [Canada's Communications Future: Time to Act](#), Final report, January 2020, p. 128.
9. Department of Justice, [Bill C-10: An Act to amend the Broadcasting Act and to make consequential amendments to other Acts – Charter Statement](#), 18 November 2020.
10. Government of Canada, [Frequently asked questions – Modernizing the Broadcasting Act for the Digital Age](#).
11. Broadcasting and Telecommunications Legislative Review Panel, [Canada's Communications Future: Time to Act](#), Final report, January 2020, p. 128.

12. Government of Canada, [Frequently asked questions – Modernizing the Broadcasting Act for the Digital Age](#).
13. 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, 6 May 2016.
14. Government of Canada, “[Q18 – How does a condition of service differ from a condition of licence?](#),” *Frequently asked questions – Modernizing the Broadcasting Act for the Digital Age*.
15. Ibid.
16. 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*.
17. CRTC, [CRTC Written Public Submission to the Legislative Review Panel](#), 2019, p. 17.
18. Clause 22 adds a similar defence provision to the Act (new section 34.21) for another offence.
19. CRTC, [CRTC Written Public Submission to the Legislative Review Panel](#), 2019, p. 17.
20. 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. See [Criminal Code](#), R.S.C. 1985, c. C-46, s. 126.
21. [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.
22. Ibid., s. 6(1).
23. See [Cannabis Act](#), S.C. 2018, c. 16, ss. 17–22.
24. As currently defined, 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).
25. CRTC, [Broadcasting Order CRTC 2012-409](#), 26 July 2012.