



15 June 2022

VIA EMAIL to pbo-dpb@parl.gc.ca

Mr. Yves Giroux
Parliamentary Budget Officer
Office of the Parliamentary Budget Officer
Parliament of Canada
99 Bank Street, 9th Floor
Ottawa, ON K1A 0A9

Subject: Information Request IR0649

Dear Mr. Giroux,

In my capacity as Chief Executive Officer of the Canadian Radio-television and Telecommunications Commission (CRTC or Commission), I am pleased to prepare this response to your request of 2 June 2022.

I understand that you are preparing an analysis of the recently-tabled budget, as part of your mandate under the *Parliament of Canada Act*. As you note, that budget proposes the following:

...\$8.5 million over two years, starting in 2022-23, to the Canadian Radio-television and Telecommunications Commission to establish a new legislative and regulatory regime to require digital platforms that generate revenues from the publication of news content to share a portion of their revenues with Canadian news outlets.

The legislative regime referred to is that of Bill C-18, to be known as the *Online News Act*. As you are aware, Bill C-18 is, as of the writing of this letter, before the House of Commons. Most recently, the bill was read for the second time and referred to the Standing Committee on Canadian Heritage.

Given that this bill has not been passed into law, there are certain necessary limits to what can be provided in response to your questions. Please understand that these limits do not stem from a simple reluctance on the part of the CRTC to discuss the matter or from a failure to appreciate your role or authorities.

The Commission is a quasi-judicial tribunal empowered by Parliament to regulate the Canadian communications system in the public interest.¹ Under the provisions of the *Canadian Radio-television and Telecommunications Act*, the Commission is composed of up to 13 Members, appointed by the Governor in Council. Currently, there are nine Members, including a Chairperson and two Vice-Chairs.

As an administrative body of this type, the Commission's jurisdiction and authority to act are entirely dependent on its enabling statutes. In other words, the Commission can only act pursuant to the powers granted by Parliament. It may not—indeed, must not—act pursuant to a legislative proposal that has not become law. As a result, the CRTC has yet to exercise any power under Bill C-18 as it is effectively prohibited from doing so.

Further, when the Commission is given statutory authority by Parliament, it exercises these powers transparently and publicly, consistent with natural justice and the duty of procedural fairness. This means that those who may be impacted by any contemplated exercise of the Commission's powers are given notice beforehand and the opportunity to comment. The same process would be followed under Bill C-18, should it become law: the CRTC would launch public processes to solicit comment from interested persons prior to exercising any new powers it may be granted.

Finally, it is important to note that the amount proposed in the budget—\$8.5M over two years for the CRTC to administer C-18—is intended as temporary, transitional funding, rather than as a permanent allocation.

Bill C-18 would permit the Commission to raise its own revenues for the administration of the *Online News Act*. In particular, the Commission would have the authority to make regulations imposing fees and charges on various entities for the explicit purpose of defraying the costs of administering the Act. If Bill C-18 becomes law, once the Commission makes these regulations, there would be no further need for funds to be appropriated from general revenues. To reiterate, the Commission has not yet done so because it cannot unless and until Bill C-18 becomes law.

The methods of raising revenue envisioned under Bill C-18 are similar, in important respects, to methods already used by the Commission to fund its existing regulatory mandate.

¹ See, for instance, *Broadcasting Act*, s. 16 and *Telecommunications Act*, s. 55, which grant the CRTC the powers of a superior court in order to pursue certain statutory goals.

The lion's share of the CRTC's funding—87%—comes from fees paid directly by the companies it regulates. The Commission collects these fees under the authority of the *Telecommunications Fee Regulations, 2010* and the *Unsolicited Telecommunications Fees Regulations*, which the Commission has made under the *Telecommunications Act*, and the *Broadcasting Licence Fee Regulations, 1997*, made under the *Broadcasting Act*.²

The Treasury Board of Canada authorizes the CRTC to use revenues from these fees to offset operating expenses incurred in the same fiscal year. Methods exist to ensure that fees charged correspond to actual expenses. For instance, the Commission may issue refunds to fee payers when fees collected exceed regulatory costs.³

The above represents a responsible approach to regulation. It is respectful of Parliamentary authority by not acting on powers that the Commission does not yet possess, it is responsive to the public by involving those affected by legislation in its administration, and it is fair in its funding by relying mainly on revenues generated from regulated entities.

With this important context having been provided, I now turn to your specific questions. Every effort has been made to provide fulsome answers, within the constraints described above. You have asked:

With respect to enacting Bill C-18:

- What will be the digital news intermediaries subject to the Act?
- What will be news businesses subject to the act [*sic*]?
- What share of administrative cost will be incurred by the digital news intermediaries?
- What will be the cohort of services that will be regulated by the CRTC, what will be the contribution to those cost [*sic*] by the parties?
- How much does it cost to the CRTC to process complaints and what proportion of this amount is charged to the parties?
- How much does it to the CRTC cost to cause an independent auditor to prepare an annual report?
- What are the resources needed to oversee a bargaining process?
- Any other information related to the administration of a similar program

² The remaining share of CRTC funding comes from appropriations and is earmarked exclusively for expenses related to administration of Canada's Anti-Spam Legislation and the Voter Contact Registry. Consistent with other agencies in the public administration, the CRTC also receives statutory funding allocated to employee benefit plans.

³ See, e.g., [Compliance and Enforcement Order CRTC 2022-159](#), *Unsolicited Telecommunications Fees – Telemarketing regulatory costs for 2022-23 and fees paid for 2021-22*, 13 June 2022.

Responses to these questions follow.

Digital news intermediaries subject to the Act

Bill C-18 does not identify specific digital news intermediaries (DNIs) to which the Act will apply. Rather, at clause 6, it sets out a list of application criteria. In particular, the Act will apply to a DNI where there is “a significant bargaining power imbalance between its operator and news businesses” based on:

- (a) the size of the intermediary or the operator;
- (b) whether the market for the intermediary gives the operator a strategic advantage over news businesses; and
- (c) whether the intermediary occupies a prominent market position.

Clause 7 of the bill places the onus on affected DNIs to notify the Commission that the Act applies to them.

As the bill is not yet law, no action can yet be taken under these provisions and none has.

News businesses subject to the Act

Bill C-18 does not purport to regulate news businesses directly. Rather, it would allow news businesses that meet certain statutory criteria to request that the Commission designate them as “eligible”. Once eligible, these news businesses could compel the operators of DNIs to which the Act applies to bargain with them. The purpose of bargaining would be to compensate eligible news business fairly when their news content is made available online by DNIs.

The eligibility criteria, as set out at clause 27 of the bill, are met if the news business:

- (a) is a qualified Canadian journalism organization as defined in subsection 248(1) of the *Income Tax Act*; or
- (b) produces news content that is primarily focused on matters of general interest and reports of current events, including coverage of democratic institutions and processes, and
 - (i) regularly employs two or more journalists in Canada,
 - (ii) operates in Canada, including having content edited and designed in Canada,

(iii) produces news content that is not primarily focused on a particular topic such as industry-specific news, sports, recreation, arts, lifestyle or entertainment.

As the bill is not yet law, no action can yet be taken under these provisions and none has.

The share of administrative cost to be incurred by DNIs

Bill C-18 would empower the Commission to raise revenues to cover its costs of administering the Act. Under the relevant provisions of the bill, costs may not be recovered directly from DNIs but could be recovered from the operators of DNIs.

This could happen in two ways. Firstly, under clause 79 of the bill, the Commission would be able to make regulations “respecting fees to be paid for the provision of services — including dealing with a complaint or providing regulatory processes”. The Commission would be able to fix these fees or set out a method to calculate them; it would be able to establish classes of DNI operators and news businesses for the purposes of these fees. Any such fees payable could not exceed the aggregate costs to the Commission for providing the service in question.

In other words, the Commission could set a price to be paid by an entity for engaging a regulatory process before the Commission and, as the bill is structured, these fees may end up being paid by DNI operators in some cases.

Under clause 81 of Bill C-18, the Commission would be empowered to make regulations, with the approval of the Treasury Board, “respecting contributions by operators in respect of the recovery, in whole or in part, of costs incurred in relation to the administration of the Act”.

These regulations could provide for fees to be calculated by reference to criteria such as operator revenues or the market served by the DNI of an operator. Fees payable under this provision could not exceed the costs attributable to the Commission’s responsibilities under the Act, less any fees recovered under clause 79.

In other words, clause 81 would grant the Commission a power similar to that which it currently exercises under *Broadcasting Act* in collecting broadcasting licence fees or under *Telecommunications Act* in collecting telecommunications fees and unsolicited telecommunications fees. This would be a broad-based regulatory charge intended to recover general administrative costs. Unlike the fees under clause 79, the broad-based charges under clause 81 could only be payable by the operators of DNIs.

Further, clause 83 of Bill C-18 provides that the Commission would have to spend any revenue generated under these mechanisms in the same fiscal year the revenue is generated or in the following fiscal year.

As the bill is not yet law, no action can yet be taken under these provisions and none has.

If Bill C-18 receives Royal Assent and comes into force, it will take time for the Commission to make regulations to recover its costs. The \$8.5M over two years proposed by Budget 2022 is intended to provide the Commission with funding for its regulatory work under the bill in the interim.

Services that will be regulated by the CRTC, and contribution to costs by parties

The Commission would not regulate services under Bill C-18. Rather, its authority would primarily involve the creation, administration and enforcement of a mandatory bargaining regime intended to enhance the fairness and sustainability of the Canadian digital news marketplace.

As a corollary to its administration of this bargaining regime, the Commission would receive requests from news businesses for eligibility to bargain under the Act. As discussed above, the eligibility criteria are set out in the bill. If a news business satisfied the criteria, the Commission would be required to designate it as eligible.

Similarly, the Commission could receive requests to exempt DNIs from the Act, in whole or in part. The bill sets out the exemption criteria, at clause 11, and if the criteria are met, the Commission would be required to grant the exemption.

Under clauses 51 and 52 of the bill, the Commission would be responsible for administering the provisions prohibiting the operators of DNIs from unjust discrimination and undue or unreasonable preference or disadvantage. These provisions relate to the making available of news content produced primarily for the Canadian news market by a DNI. However, the Commission's authority would be limited to finding violations and imposing administrative monetary penalties as a consequence (which would be paid to the Receiver General, not to the CRTC).

As discussed above, Bill C-18 would empower the Commission to recover its costs through fees for service or broad-based regulatory charges. These fees and charges would recover costs associated with the activities described in this response, including the administration of

the bargaining process, the granting of eligibility designations and exemptions, and the treatment of undue preference complaints.

However, as Bill C-18 is not yet law, no action can yet be taken under these provisions and none has.

The cost to process complaints and the proportion charged to the parties

Currently, in acting pursuant to its existing regulatory powers, the Commission does not charge parties directly for engaging specific regulatory processes. Rather, the Commission recovers the costs associated with its regulatory activities with revenues raised from fees charged under the *Broadcasting Act* (broadcasting licence fees) and the *Telecommunications Act* (telecommunications fees, unsolicited telecommunications fees). These are not “fees for services” but broad-based fees charged to regulated entities in proportion to the revenues they raise from their regulated businesses.

In other words, if an individual Canadian has a complaint about their communications services, they may complain to the CRTC and engage its processes without having to pay to do so. The same is true for a communications company that wishes to complain about a competitor.

If the Commission were to enact a “fee for service” regime under clause 79 of Bill C-18, this would be an entirely new approach for the CRTC with no comparable precedent.

However, as Bill C-18 is not yet law, no action can yet be taken under these provisions and none has.

The cost to cause an independent auditor to prepare an annual report

Clause 86 of Bill C-18 would require the CRTC to cause an independent auditor to prepare an annual report respecting the impact of the *Online News Act* on the Canadian digital news market.

As the bill is not yet law, no action can yet be taken under this provision and none has. There is no comparable duty on the Commission under any of the statutes it currently administers. Accordingly, there is no precedent for the Commission to draw upon. Nonetheless, in retaining an independent auditor, the Commission would be bound by the same contracting rules that bind all government actors under the *Financial Administration Act* and its regulations.

The resources needed to oversee a bargaining process

The CRTC does not currently administer any bargaining processes. The Commission does administer an alternative dispute resolution regime under the *Broadcasting Act* and the *Telecommunications Act*. As will be seen, this regime differs in key respects from that proposed in Bill C-18.

Whereas Bill C-18 would establish a mandatory bargaining regime, the Commission's current dispute resolution regime is generally voluntary. That is, parties may elect to pursue alternative dispute resolution to avoid engaging the Commission's more formal adjudicative processes. Parties engaged in a dispute may propose various dispute resolution methods, such as Commission staff-assisted mediation or final offer arbitration. In all cases the Commission retains the discretion to determine whether a given method is appropriate in a specific case, unlike under Bill C-18.⁴ If the Commission accepts a dispute for final offer arbitration, the process remains internal and the Commission itself acts as arbitrator, unlike under Bill C-18. While not a typical occurrence, the Commission also has the authority to order broadcasting licensees to take part in mediation should it be necessary.

To administer this regime, the CRTC has two teams of staff, one in its Broadcasting Sector and one in its Telecommunications Sector. In total these teams comprise approximately 20 direct full-time equivalent positions (FTEs). These positions are generally staffed by policy analysts and, as with all CRTC staff, they are supported by a management structure and the Commission's corporate services sector.

The Commission recovers the costs associated with its dispute resolution regime from revenues raised by the broad-based fees it charges under those Acts.

Information related to the administration of a similar program

As an arm's-length quasi-judicial tribunal, the CRTC does not administer government programs. Rather it exercises statutory powers to regulate communications in the public interest.

The Commission does not currently administer any bargaining processes. As explained above, it administers an alternative dispute resolution regime under the *Broadcasting Act* and

⁴ The existing regime is explained in greater detail in [Information Bulletin CRTC 2019-184, Practices and procedures for dispute resolution](#), 29 May 2019.

the *Telecommunications Act* and recovers associated costs with revenues raised by the broad-based fees it charges under those Acts.

Thank you for providing me with the opportunity to respond to your questions. I trust this information will be helpful as you continue your analysis of the recent budget.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Ian Scott', with a long horizontal stroke extending to the right.

Ian Scott
Chairperson and Chief Executive Officer
Canadian Radio-television and Telecommunications Commission

Encl. PBO Reply Form