



Broadcasting Information Bulletin CRTC 2023-137

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Guidance on the current *Broadcasting Act* and the transitional provisions of the *Online Streaming Act*

Summary

This information bulletin informs traditional Canadian broadcasters about the impact that the current *Broadcasting Act* will have on their existing regulatory obligations. It also explains the transitional provisions set out in the *Online Streaming Act*, which carry over conditions and requirements imposed under the former *Broadcasting Act*.

Background

1. On 27 April 2023, the *Online Streaming Act* came into force.¹ This Act includes, among other things, amendments to the former *Broadcasting Act* that account for the impact that Internet audio and video² services have had on the Canadian broadcasting system. The current *Broadcasting Act* provides the Commission with clear powers and tools to, among other things, regulate online undertakings operating in whole or in part in Canada, regardless of their country of origin.³
2. The purpose of this information bulletin is to inform traditional Canadian broadcasters about the impact that the current *Broadcasting Act* will have on their existing regulatory obligations. It also explains the operation of the transitional provisions set out in the *Online Streaming Act*, which carry over conditions and requirements imposed under the former *Broadcasting Act*.

Transitional provisions

3. The *Online Streaming Act* includes transitional provisions set out in sections 48 through 52, which specify how regulatory obligations and requirements under the former *Broadcasting Act* will be treated under the current *Broadcasting Act*. By explaining these transitional provisions, this information bulletin will help

¹ An Act to amend the *Broadcasting Act* and to make related and consequential amendments to other Acts, SC 2023, c 8.

² The term “video” is used in this notice of consultation, whereas the term “audio-visual” is used in the amended *Broadcasting Act*.

³ Under the former *Broadcasting Act*, in order to legally operate in whole or in part in Canada, a broadcasting undertaking was required to be either licensed by the Commission or exempted from the obligation to hold a licence by way of an exemption order. Under the current *Broadcasting Act*, to legally operate in Canada, online undertakings no longer need to hold a licence or be exempt from holding a licence.

broadcasting undertakings transition to the new regulatory framework and reduce regulatory uncertainty.

4. Overall, the Commission retains many of the same powers it held under the former *Broadcasting Act*, and the matters over which it has jurisdiction remain essentially the same. As such, regulated entities will remain subject to the same requirements to which they were bound prior to the coming into force of the current *Broadcasting Act*. The principal changes relate to the manner in which the Commission can now exercise those powers along with how the tools available to the Commission to regulate various matters have evolved.
5. All actions that the Commission had taken prior to the coming into force of the current *Broadcasting Act* remain in force. As such, regulations, orders, decisions and all measures taken under the former *Broadcasting Act* remain valid and will be deemed to have been made under the current *Broadcasting Act*, insofar as they are not inconsistent with the current *Broadcasting Act*, unless otherwise indicated.⁴
6. For the benefit of the broadcasting industry, this information bulletin outlines in detail what those transitional provisions are and how they impact specific regulatory obligations in place before the coming into force of the current *Broadcasting Act*, including:
 - the new key provisions of the current *Broadcasting Act* relating to definitions, orders, licences, regulations relating to fees, and regulations and/or orders relating to expenditures; and
 - an explanation of the impact of the transitional provisions on the regulatory obligations that already apply to the broadcasting sector, with respect to the following key matters under the former *Broadcasting Act*: conditions of licence, requirements under paragraphs 9(1)(f) through (h) relating to the distribution and carriage of programming services and broadcasting, exemption orders, and regulations.

New key provisions of the current *Broadcasting Act*

Definitions

7. In order to achieve the objectives of the current *Broadcasting Act*, specifically in regard to companies that generate and transmit online content, changes have been made to the definitions contained in that Act in order to include online broadcasting undertakings.

⁴ See paragraph 44(g) of the *Interpretation Act*, which states the following: “Where an enactment, in this section called the ‘former enactment’, is repealed and another enactment, in this section called the ‘new enactment’, is substituted therefor, [...] all regulations made under the repealed enactment remain in force and are deemed to have been made under the new enactment, in so far as they are not inconsistent with the new enactment, until they are repealed or others made in their stead [...]”

8. Subsection 2(1) of the current *Broadcasting Act* includes a definition of “online undertaking,” specifically, “an undertaking for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus.”
9. Further, the definition of “broadcasting undertaking” has been broadened to include online undertakings. The definitions of “distribution undertaking” and “programming undertaking,” however, have been amended to exclude online undertakings in order to reflect the fact that online undertakings will be regulated differently from licensed undertakings. Online undertakings, which will not hold broadcasting licences, will be regulated by the Commission under its regulation-making and order-making powers, which are discussed in greater detail below.

Commission’s power to make orders

10. The current *Broadcasting Act* includes new powers to issue orders. Specifically, subsection 9.1(1) of the current *Broadcasting Act* provides the Commission with the power to make orders imposing conditions on broadcasting undertakings that the Commission considers appropriate for the implementation of the Canadian broadcasting policy, and sets out a non-exhaustive list of specific subject matter that can be the object of such orders.⁵
11. This power essentially replaces the Commission’s authority to impose conditions of licence with a power to make orders imposing conditions on the carrying on of broadcasting undertakings. To avoid confusion with the term “condition of licence,” orders that impose conditions under section 9.1 of the current *Broadcasting Act* shall be referred to as “conditions of service.” In many cases, the subject matters that were regulated by way of conditions of licence under subsection 9(1) of the former *Broadcasting Act* can now be regulated by way of conditions of service.
12. An order that imposes conditions of service may apply to all persons carrying on broadcasting undertakings, all persons carrying on broadcasting undertakings within a class established by the Commission, or to a particular person carrying on a broadcasting undertaking.⁶

Issuing licences and setting conditions

13. Amendments to subsection 9(1) of the former *Broadcasting Act* have resulted in a change to the approach for licensing. As stated above, the Commission’s ability to impose conditions is now contained in section 9.1 of the current *Broadcasting Act*, and any such conditions are to be imposed as conditions of service. As such, while the Commission retains the power to issue licences, the conditions regulating the activities of specific licensees have been decoupled from the licence itself.

⁵ The non-exhaustive list of conditions regarding the specific subject matter is set out in paragraphs 9.1(1)(a) to (p) of the current *Broadcasting Act*.

⁶ Subsection 9.1(2) of the current *Broadcasting Act*.

14. The Commission does, however, retain the authority to establish classes of licences, other than for online undertakings, as well as to issue, amend, suspend or revoke a licence. Under the current *Broadcasting Act*, licences may be issued and renewed for a fixed or indefinite term, whereas the term could not exceed seven years under the former *Broadcasting Act*. The term of a licence may only be amended on the application of the licensee, but the Commission may, on its own motion, amend a licence other than as to its term. The Commission retains the same powers to suspend or revoke a licence.

Authority to make regulations regarding fees

15. Amendments have been made to section 11 of the former *Broadcasting Act* to make the fees under that section due and payable not only by licensees, but also by all persons carrying on broadcasting undertakings, including online undertakings.
16. As such, pursuant to section 11 of the current *Broadcasting Act*, the Commission may, by regulation, establish schedules of fees to be paid by persons carrying on broadcasting undertakings that relate to the recovery of the costs of the Commission's activities under the *Broadcasting Act*, and provide for classes of fees to be levied. It may also provide for the payment of any fees by a person carrying on a broadcasting undertaking, including the time and manner of such payment.
17. For the purposes of the transition between the former *Broadcasting Act* and the current *Broadcasting Act*, the regulations respecting licence fees that were made under the former *Broadcasting Act* that relate to the recovery of costs of the Commission's activities under the *Broadcasting Act* remain in force as of the coming into force of the current *Broadcasting Act* and continue to apply to licensees. The Commission anticipates that it will establish new fees regulations to apply to all broadcasting undertakings, including online undertakings. When it does so, proposed regulations will be the subject of a public process in which the views of all interested persons will be sought on how fees could be most fairly distributed amongst broadcasting undertakings.

Authority to make regulations and/or orders regarding expenditures

18. The current *Broadcasting Act* introduces a new section 11.1, which grants the Commission explicit authority to make regulations and orders respecting expenditures to be made by broadcasting undertakings for specific purposes.⁷ The specific purposes, listed in subsection 11.1(1) of the current *Broadcasting Act*, relate to providing support for Canadian programming, Canadians who create programming, and participation by Canadians in Commission proceedings.⁸

⁷ Subsection 11.1(1) grants the Commission the authority to make regulations respecting expenditures, while subsection 11.1(2) sets out the Commission's authority to make orders respecting expenditures.

⁸ 11.1(1)(a) developing, financing, producing or promoting Canadian audio or video programs, including independent productions, for broadcasting by broadcasting undertakings; (b) supporting, promoting or training Canadian creators of audio or video programs for broadcasting by broadcasting undertakings; or (c)

19. As such, section 11.1 of the current *Broadcasting Act* provides that if the Commission wishes to establish new expenditure and/or contribution obligations, it must do so by regulation or by order, and follow the appropriate publication procedures contained in subsection 11.1(7).
20. Orders and regulations made under this section may provide that an expenditure is to be paid to any person or organization, other than the Commission, or into any fund, other than a fund administered by the Commission.⁹ In addition, regulations and orders may provide for expenditures to be calculated according to any criteria that the Commission deems appropriate, including, for example, the revenues of broadcasting undertakings or the markets they serve.¹⁰

Impact of the transitional provisions on the regulatory framework that already applies to the broadcasting sector

Conditions of licence, expectations and encouragements, and licence terms

21. As discussed above, under the current *Broadcasting Act*, the Commission retains the power to issue licences. However, the specific requirements imposed on licensees, previously referred to as “conditions of licence,” will no longer be contained within the licences themselves. With the coming into force of the current *Broadcasting Act*, as a general rule, most conditions of licence have become (i.e., are now “deemed to be”) conditions of service imposed by orders under section 9.1 of the current *Broadcasting Act*.¹¹ The following is a non-exhaustive list of examples of the types of conditions of licence that are now deemed conditions of service under the current *Broadcasting Act*:

- **broadcasting distribution undertakings:** conditions of licence that require or allow for the distribution of certain programming services;
- **over-the air and discretionary services:** conditions of licence that set out ownership and control, accessibility, local programming and general programming;
- **on-demand services:** conditions of licence that relate to ownership and control, accessibility, exhibition and the promotion of Canadian content, contribution to Canadian content, local expression and information-related programming;
- **radio undertakings:** conditions of licence that relate to the proportion of programs to be broadcast.

supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act.

⁹ Subsection 11.1(5) of the current *Broadcasting Act*.

¹⁰ Paragraphs 11.1(6)(a) and (c), respectively, of the current *Broadcasting Act*.

¹¹ Paragraph 49(1)(a) of the *Online Streaming Act*.

22. As an exception to the general rule set out in paragraph 21, conditions of licence that imposed expenditures requirements are deemed orders made by the Commission under subsection 11.1(2) of the current *Broadcasting Act*.¹² For example, conditions of licence imposed on any licensees under the former *Broadcasting Act* that relate to Canadian programming expenditures (CPE), expenditures on programs of national interest (PNI) and/or contributions to Canadian content development (CCD) that are over and above CCD contribution requirements set out in the *Radio Regulations, 1986*¹³ are now deemed expenditure orders made pursuant to subsection 11.1(2) of the current *Broadcasting Act*.
23. In sum, licensees that held a broadcasting licence under the former *Broadcasting Act* continue to be subject to the existing requirements that were set out in conditions of licence. These conditions are now deemed to be imposed either as conditions of service made pursuant to section 9.1 of the current *Broadcasting Act* or conditions of expenditure orders made pursuant to subsection 11.1(2), depending on the subject matter of the condition.
24. Further, licensees that held a broadcasting licence under the former *Broadcasting Act* continue to be subject to any expectations and/or encouragements that were imposed in the context of that version of the Act.
25. In regard to the term of licences, they remain unchanged until each licence is up for renewal, at which point the Commission will establish a new term, pursuant to paragraph 9(1)(e) of the current *Broadcasting Act*. Further, the Commission will apply the new regulatory framework under the current *Broadcasting Act* to all licence renewal applications with the coming into force of that version of the *Broadcasting Act*. This includes both new licence renewal applications, as well as those that were ongoing prior to the coming into force of the current *Broadcasting Act*.

Requirements relating to the distribution and carriage of programming services and broadcasting

26. Paragraphs 9(1)(f), (g) and (h) of the former *Broadcasting Act*, which set out specific requirements relating to the distribution and carriage of programming services and broadcasting that the Commission could impose on licensees in furtherance of its objects, have been repealed and replaced in the current *Broadcasting Act*.¹⁴ The

¹² Subsection 50(2) of the *Online Streaming Act*.

¹³ SOR/86-982.

¹⁴ Paragraph 9(1)(f) of the former *Broadcasting Act* related to the requirement to obtain approval from the Commission before contracting with telecommunications common carriers for the distribution of programming directly to the public; paragraph 9(1)(g) related to the requirement for broadcasting undertaking licensees to give priority to the carriage of broadcasting; and paragraph 9(1)(h) related to the requirement that any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission. These provisions are now contained in paragraphs 9.1(1)(f), (g) and (h) of the current *Broadcasting Act*.

transitional provisions¹⁵ state that those requirements that were imposed on a licensee under the former *Broadcasting Act* are now deemed to be a condition of service imposed by an order made under section 9.1 of the current *Broadcasting Act*.

27. For example, paragraph 9(1)(h) of the former *Broadcasting Act* granted the Commission the authority to require licensees to carry, on such terms and conditions as it deemed appropriate, programming services specified by the Commission. In past decisions, the Commission has used its authority under this paragraph to issue orders making it mandatory for licensees of broadcasting distribution undertakings to distribute various programming services. The transitional provisions ensure that this continues to be the case.
28. As a result, requirements imposed by way of paragraphs 9(1)(f) and (g) of the former *Broadcasting Act*, and in particular all mandatory distribution orders issued by the Commission under paragraph 9(1)(h) of that version of the *Broadcasting Act*, remain in force and are now deemed to be orders imposed pursuant to section 9.1 of the current *Broadcasting Act*.

Exemption Orders – Subsection 9(4) of the former *Broadcasting Act*

29. Pursuant to subsection 9(4) of the former *Broadcasting Act*, the Commission could exempt persons who carried on broadcasting undertakings of any class specified in an exemption order imposed by the Commission from any or all of the requirements under Part II of that version of the *Broadcasting Act*, or any regulation made under that Part.¹⁶ Under the current *Broadcasting Act*, the Commission retains its authority under subsection 9(4) of the former *Broadcasting Act* to issue exemption orders. Accordingly, as a general rule, exemption orders that have been issued in respect of broadcasting undertakings remain in effect as of the coming into force of the current *Broadcasting Act*, unless they are inconsistent with the provisions of that version of the *Broadcasting Act*.
30. As an exception to this general rule, any terms and conditions of an exemption order that relate to expenditures and/or contributions are now deemed to be regulations made under subsection 11.1(1) of the current *Broadcasting Act*.¹⁷
31. All of the conditions set out in existing exemption orders remain valid, and those undertakings that wish to continue to operate pursuant to these orders must continue to abide by their requirements. Should the Commission wish to change any expenditure requirements set out in existing exemption orders, it will follow the publication procedures contained in subsection 11.1(7) of the current *Broadcasting Act*. These include publishing, in the *Canada Gazette* and/or on the Commission's website, any proposals to make regulations or orders, and providing an opportunity to

¹⁵ Paragraph 49(1)(b) of the *Online Streaming Act*.

¹⁶ The Commission could do so where it was satisfied that such an exemption would not have a significant effect on the implementation of the broadcasting policy for Canada.

¹⁷ Paragraph 50(1)(a) of the *Online Streaming Act*.

interested persons to make representations to the Commission in the context of a public proceeding.

Regulations made pursuant to section 10 of the former *Broadcasting Act*

32. The majority of the Commission's regulation-making power in section 10 of the former *Broadcasting Act* has been carried over into the current *Broadcasting Act*. In addition, the current *Broadcasting Act* allows the Commission to make regulations that apply to all broadcasting undertakings going forward, and not just licensees.
33. It is important to note, however, that the Commission's existing regulations only apply to licensees. If the Commission determines that certain existing regulations should apply more broadly to other broadcasting undertakings, it will have to propose amendments to those regulations, which will require public processes in which the views of all interested persons will be sought.
34. As a general rule, regulations that were made under subsection 10(1) of the former *Broadcasting Act*, such as the *Radio Regulations, 1986* and the *Discretionary Services Regulations*,¹⁸ continue to be valid. As an exception to that general rule, the Commission no longer has the power to make regulations prescribing the proportion of time to be devoted to broadcasting Canadian programs (set out in paragraph 10(1)(a) of the former *Broadcasting Act*), nor can it make regulations specifying the information to be provided by licensees to the Commission regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs (set out in paragraph 10(1)(i) of the former *Broadcasting Act*).
35. Nevertheless, these requirements continue to be enforceable, as they are now imposed through the Commission's order-making power under section 9.1 of the current *Broadcasting Act* (specifically, paragraphs 9.1(1)(a), (n) and (o)). As such, regulations that pertain to Canadian programming or that require the licensee to submit information to the Commission are now deemed orders made under section 9.1 of the current *Broadcasting Act*, and licensees continue to be subject to those requirements.¹⁹
36. In addition, any regulation made under subsection 10(1) of the former *Broadcasting Act* that relates to expenditures and/or contributions is now deemed to be an expenditure regulation made under subsection 11.1(1) of the current *Broadcasting Act*.²⁰

¹⁸ SOR/2017-159.

¹⁹ Subsection 49(2) of the *Online Streaming Act*.

²⁰ See paragraph 50(1)(b) of the *Online Streaming Act*. The Commission notes that section 52 of the *Online Streaming Act* also clarifies that expenditures and contributions that were made by a broadcasting undertaking before the coming into force of the current *Broadcasting Act* under (i) a condition of licence issued under the former *Broadcasting Act*, (ii) a term or condition of an exemption order under

Ongoing proceedings

37. It is important to bear in mind that any proceedings that were commenced by the Commission prior to the coming into force of the current *Broadcasting Act* but that will conclude after that version of the *Broadcasting Act* has come into force will continue under and in conformity with that Act, in so far as it may be done consistently with that Act.²¹ Where there are ongoing proceedings during this overlap period between the old and new regulatory frameworks, the Commission will advise parties within the specific proceedings of any necessary additional processes that may be required to address the shift to the new regulatory framework.

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subsection 9(4) of the former *Broadcasting Act*, or (iii) a regulation made under section 10 of the former *Broadcasting Act*, are all deemed to have been validly required by the Commission.

²¹ See paragraph 44(c) of the *Interpretation Act*, which states the following: “Where an enactment, in this section called the ‘former enactment’, is repealed and another enactment, in this section called the ‘new enactment’, is substituted therefor, [...] every proceeding taken under the former enactment shall be taken up and continued under and in conformity with the new enactment in so far as it may be done consistently with the new enactment [...]”