



Online News Notice of Consultation CRTC 2024-55

PDF version

Ottawa, 13 March 2024

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Call for comments – Framework under the *Online News Act* (formerly Bill C-18)

Summary

The *Online News Act* received royal assent on 22 June 2023 and on 19 December 2023, regulations regarding the application of that Act came into force.

The purpose of the *Online News Act* is to enhance fairness in the Canadian digital news marketplace and contribute to its sustainability. The *Online News Act* sets out a framework requiring the largest online platforms to negotiate for compensation with eligible news businesses in Canada and to reach fair commercial deals for the news content made available by the online platforms. If they cannot come to an agreement during a 90-day bargaining period and a 120-day mediation period, a final arbitration period of 45 days would follow and a panel of independent arbitrators would select a final offer made by one of the parties.

Many provisions of the *Online News Act* came into force on 19 December 2023. The *Online News Act Application and Exemption Regulations* (the Regulations) also came into force on that same day. The Regulations, made by the Government of Canada, establish factors that determine if the *Online News Act* applies to an online platform and set out a timeframe of 180 days for online platforms to notify the Commission that the *Online News Act* applies to them.

Online platforms that reach agreements with a broad range of news organizations, whether individually, in groups, or as part of a single collective agreement, may apply for an exemption from the *Online News Act*. If a platform makes an exemption application, the Commission will consider the application by applying the tests set out in the *Online News Act* and the Regulations. If an online platform receives an exemption, it is no longer required to participate in mandatory bargaining, mediation and arbitration framework with news businesses.

Although the Regulations provide online platforms with a path to exemption without engaging in the mandatory bargaining process, the Commission must still be prepared to administer the mandatory bargaining process, if necessary. The Commission is also required to maintain lists of eligible news businesses and online platforms that are subject to that Act, establish a code of conduct to ensure parties bargain in good faith, maintain a roster of qualified arbitrators and, if necessary, assign them to cases. The Commission will also be required to consider complaints from eligible news businesses about online platforms conferring an undue preference or disadvantage in the course of making available news content.

The Commission is calling for comments on these issues, as set out in the present notice of consultation. The Commission will accept interventions that it receives on or before **12 April 2024**. Only parties who file comments may file a reply to matters raised during the comment period. Replies must address only the issues raised during the comment period. The deadline for the filing of replies is **22 April 2024**. Information on how to participate in this proceeding is available at paragraphs 46 to 55 of this notice.

Background

1. On 22 June 2023, the *Online News Act* received royal assent and some provisions came into force on that day. The rest of that Act came into force on 19 December 2023.¹ The purpose of this Act is to enhance fairness in the Canadian digital news marketplace and contribute to its sustainability.
2. The *Online News Act* sets out a framework for mandatory bargaining between news businesses and online platforms that make news content available. It also sets out criteria for determining which news businesses are eligible to participate and a bargaining process that consists of three stages: a bargaining period, mediation, and final offer arbitration (FOA). It allows an online platform that has signed agreements with a broad range of news businesses to apply to the Commission for an exemption from mandatory bargaining based on various criteria that must be met. The *Online News Act* requires the Commission to consider complaints regarding undue preference and to hire an independent auditor to prepare an annual report in regard to the impact of that Act on the Canadian digital news marketplace. The *Online News Act* grants the Commission authority to collect information for the purpose of exercising its abilities or performing its duties and functions under that Act.
3. On 19 December 2023, the *Online News Act Application and Exemption Regulations*² (the Regulations) came into force. The Regulations establish the factors that determine if the *Online News Act* applies to an online platform and when an online platform is required to notify the Commission that this Act applies to it.
4. The Regulations also provide direction to the Commission on how to interpret the criteria set out in the *Online News Act* to determine if an online platform qualifies for exemption from mandatory bargaining and set out a pathway for an online platform to satisfy the exemption criteria through a 60-day open call process. Through this process, an online platform publicizes a call for news businesses that wish to receive remuneration for the making available of their news content. News businesses then submit attestations to the online platform that they could meet the eligibility criteria under section 27 of the *Online News Act*, that they operate a news outlet³ that meets the criteria set out in section 31 of that Act, and that their news content is made available on the online platform in question.

¹ *An Act respecting online communications platforms that make news content available to persons in Canada*, SC 2023, c 23.

² SOR/2023-276, 15 December 2023.

³ In the *Online News Act*, a “news outlet” means an undertaking or any distinct part of an undertaking whose primary purpose is to produce news content and includes an Indigenous news outlet or an official language minority

5. An online platform may file an application with the Commission for exemption after reaching agreements with attesting news businesses, either individually or through a group or collective representing those news businesses. If an online platform's application for exemption meets the requirements in the Regulations, the Commission is directed to interpret the requirements for an exemption in section 11 of the *Online News Act* as being met.
6. Together, the *Online News Act* and the Regulations provide two general ways in which online platforms and news businesses can engage. The first involves eligible news businesses initiating mandatory bargaining with an online platform for a 90-day bargaining period, followed by a 120-day mediation period. If no agreement is reached, the parties would go to a 45-day FOA period. The second way involves online platforms negotiating agreements with a broad range of news businesses or a collective representing those news businesses. In either scenario, a platform could apply for an exemption from mandatory bargaining based on the requirements for an exemption as laid out in the *Online News Act* and the Regulations.
7. The Commission's role under the *Online News Act* is narrower than the role it plays with respect to the *Broadcasting Act* or the *Telecommunications Act*. Rather than providing policy objectives and asking the Commission to develop and implement policies that meet those objectives, the *Online News Act* requires the Commission to oversee the functioning of the framework defined in that Act and the Regulations. Specifically, the Commission must:
 - create a list of the online platforms the *Online News Act* applies to and consider their requests for exemption from mandatory bargaining based on factors provided in the Regulations;
 - publish on its website any open call launched by an online platform seeking an exemption and publish the list of news businesses that respond to the call;
 - resolve applications from Canadian news businesses to be designated as eligible to participate in the mandatory bargaining process and consider any challenges by online platforms regarding which of the news outlets operated by an eligible news business should be subjects of the bargaining process;
 - implement the bargaining framework under the *Online News Act*, including the 90-day bargaining period, the 120-day mediation period and the 45-day FOA period;
 - establish a code of conduct to ensure parties bargain in good faith, which must be done through regulation;
 - maintain a list of qualified arbitrators and assign them to specific FOA cases if the parties do not select the arbitrators within a period that the Commission considers reasonable;

community news outlet, whereas a “news business” means an individual or entity that operates a news outlet in Canada.

- have an independent auditor prepare an annual report on the impact of the *Online News Act* on the Canadian digital news marketplace, which is to be published by the Commission;
 - consider complaints about online platforms conferring an undue preference or disadvantage in the course of making available news content; and
 - gather information relevant to its roles under the *Online News Act* and monitor compliance with the requirements of that Act.
8. While the *Online News Act* and the Regulations provide a path for online platforms to receive an exemption from the mandatory bargaining process, the Commission must still be prepared to administer the *Online News Act*, including the mandatory bargaining process, if necessary. In this notice, the Commission is seeking to gather the evidence that will allow it to make decisions and fulfill its mandate under the *Online News Act* and in light of the Regulations. Therefore, it is seeking comments related to:
- the bargaining process, including bargaining, mediation and FOA;
 - discrimination, undue preference and disadvantage complaints; and
 - data gathering requirements.
9. Other aspects of the *Online News Act* that the Commission is required to address will be addressed in future proceedings. This will include a consultation process for the code of conduct that the Commission must establish by regulation under section 49 of the *Online News Act*.

Bargaining processes

10. If parties are engaging through the mandatory bargaining process, mandatory bargaining could be initiated once the Commission has established an initial list of online platforms that the *Online News Act* applies to, as well as a list of news businesses that have applied under section 27 of that Act and have been designated as eligible to bargain. A news business or a group of news businesses may then initiate the mandatory bargaining process with an online platform, pursuant to section 20 of the *Online News Act*. The full bargaining process includes a 90-day bargaining period, a 120-day mediation period and a 45-day FOA period. In the event that the mandatory bargaining framework is necessary, the Commission must be prepared to implement it in a timely manner. Thus, the sections that follow ask detailed questions about the mandatory bargaining process.

90-day bargaining period

11. The *Online News Act* does not set out how eligible news businesses should initiate the bargaining process. The Commission considers that the initiation procedure should be designed to avoid unnecessary delays in bargaining or disputes about procedures. It should give clear notice to online platforms and the Commission about when bargaining will start. It

should also provide clear notice of which news outlets are to be the subject of bargaining and who is authorized to represent them, which is particularly important in the case of groups of eligible news businesses bargaining together.

12. Different parties may pursue bargaining along different schedules, so it would not be appropriate to fully define a schedule for the 90-day bargaining period. However, the Commission could define a minimum level of activity that should be included within the 90-day window, leaving it up to parties to agree on the precise schedule and on any additional activities they would like to include.
13. With those factors in mind, the Commission is of the preliminary view that eligible news businesses or groups of eligible news businesses should be required to give notice of their intent to initiate the mandatory bargaining process by submitting a written package of information to both the online platform and to the Commission, which must include the following elements:
 - name and contact information for the person(s) authorized to bargain on behalf of the news business(es);
 - for groups of news businesses, a list of all news businesses participating and an attestation that the representative(s) have written authorization to bargain on behalf of each news business, which can be made available to the Commission upon request;
 - a list of the news outlets which are to be the subject of bargaining;
 - the date on which the 90-day bargaining period is to begin; and
 - a proposed schedule for bargaining activities which contains at least the following elements:
 - determining initial information to be shared between parties;
 - sharing of initial information between parties;
 - initial proposals from each party;
 - responses (including reasons) to the proposals from each party;
 - counter-proposals from each party; and
 - responses (including reasons) to the counter-proposals.

Q1. Do you agree with the Commission's preliminary view? If not, please propose an alternative, with justification.

(a) What, if any, deadline should be established for parties to agree on the bargaining schedule?

(b) Are other procedures required to efficiently administer the 90-day bargaining period? If so, please explain.

120-day mediation period

14. Pursuant to section 19 of the *Online News Act*, if parties are unable to come to an agreement during the initial 90-day period for bargaining, the bargaining process transitions immediately into a 120-day period for mediation.
15. In order to ensure that the Commission is apprised of the status of bargaining and the transition to the mediation period, it is of the preliminary view that parties should be required to notify the Commission, in writing, if they have not reached an agreement by the end of the 90-day bargaining period. This notification should come no later than 24 hours after the final day of the bargaining period.
 - Q2. Do you agree with the preliminary view that parties should be required to notify the Commission within 24 hours after the final day of the 90-day bargaining period if they are unable to reach an agreement? If another procedure would be more suitable, please propose an alternative, with justification.
16. The *Online News Act* does not set out how mediation should be conducted or who should act as the mediator. Parties could be left to agree on an external mediator, required to use Commission staff as mediators, or offered a choice between either, with the requirement to use Commission staff mediators if they cannot agree on an external mediator within a reasonable deadline.
17. The Commission notes that agreeing on a mediator and a mediation process may consume much of the 120-day mediation period. Particularly for smaller news businesses, the cost of engaging an external mediator could be high.
18. Given that Commission staff already offers mediation services to resolve certain broadcasting and telecommunications disputes, the Commission is of the preliminary view that mediation under the *Online News Act* should be conducted by Commission staff, using the mediation practices and procedures set out in Broadcasting and Telecom Information Bulletin 2019-184 as guidelines.

Q3. Do you agree with the preliminary view that mediation should be facilitated by Commission staff based on the practices and procedures outlined in Broadcasting and Telecom Information Bulletin 2019-184?

Q4. If you do not agree with the Commission's preliminary view, what alternative procedures would you propose for selecting external mediators and conducting mediation between parties?

- (a) What deadline should be set for agreeing on a mediator before parties are required to use the default of mediation facilitated by Commission staff?

45-day FOA period

19. FOA is the third and final stage of the bargaining process set out in section 19 of the *Online News Act*. In the FOA period, parties would each submit an offer to a panel of three independent arbitrators, which would select one of the offers to become the agreement

between the parties. The FOA period lasts 45 days and the scope is limited to monetary disputes.

20. In order to ensure that the Commission is apprised of the status of bargaining and the transition to the FOA process, it is of the preliminary view that parties should be required to notify the Commission, in writing, no later than 24 hours after the final day of the 120-day mediation period if they have not reached an agreement.

Q5. Do you agree with the preliminary view that parties should be required to notify the Commission within 24 hours after the final day of the 120-day mediation period if they are unable to reach an agreement? If another procedure would be more suitable, please propose an alternative, with justification.

Roster of qualified arbitrators

21. In accordance with section 33 of the *Online News Act*, the Commission must publish a list of qualifications for arbitrators and maintain a roster of qualified arbitrators for parties to select from. The proposed list of qualifications for arbitrators is set out in the appendix to this notice. The proposed list outlines the competencies and experience that would be required for an arbitrator to be listed on the roster, additional qualifications that would be considered an asset, and certain administrative requirements such as adequate insurance and fee disclosure.

Q6. Please comment on whether the proposed list of qualifications set out in the appendix to this notice is suitable for determining that candidates are qualified to arbitrate disputes related to the *Online News Act*.

(a) Are there additional qualifications which should be included? If so, please provide the reasons for each.

22. The *Online News Act* includes some requirements around arbitrator conduct. It also provides penalties should an arbitrator disclose confidential information. Arbitrator conduct is often governed by one or more existing codes of conduct, such as the Code of Ethics of the Alternative Dispute Resolution Institute of Canada or the rules of professional conduct of a provincial law society. Given the provisions already in place in the *Online News Act* and the fact that arbitrators are often already governed by separate codes of conduct administered by other professional bodies, the Commission is of the preliminary view that a separate code of conduct for arbitrators under the *Online News Act* is not necessary. However, the Commission has included adherence to an established professional code of conduct in the proposed qualifications for arbitrators.

Q7. Do you agree with the preliminary view that a separate code of conduct for arbitrators under the *Online News Act* is not necessary?

(a) If so, what established codes of conduct should be considered acceptable to meet this requirement?

(b) If not, please propose what a separate code of conduct for arbitrators should contain, with justification.

23. Consistent with the *Online News Act*'s focus on the importance of Indigenous perspectives, the Act requires that the roster include Indigenous arbitrators. The *Online News Act* also aims to reflect diversity in other ways, including linguistic diversity (English-language and French-language news businesses, including those operating in official language minority communities [OLMC]), racial diversity (Black and other racially diverse news businesses) and geographic diversity (various markets across all regions of Canada). Arbitrators reflecting these additional diverse populations would be valuable to the roster.

Q8. What actions should the Commission take to ensure that Indigenous arbitrators are included in the roster?

Q9. How can the roster of qualified arbitrators reflect the linguistic, racial and geographic diversity emphasized in the *Online News Act*?

24. Parties that are engaged in the bargaining process may request to have specific arbitrators added to the roster prior to reaching the FOA period. The Commission intends to establish a deadline for proposing candidates that allows sufficient time to review the candidates' qualifications prior to adding them to the roster.

Q10. Would a deadline of 60 days prior to the end of the mediation period for proposing additions to the roster of arbitrators be acceptable? If another procedure would be more suitable, please propose an alternative, with justification.

Scope of the FOA

25. Pursuant to subsection 19(3) of the *Online News Act*, the scope of FOA is limited to monetary disputes. Many core elements of how an agreement is structured (e.g., fixed payments versus payments based on volume of news shared) would have a substantial impact on the monetary value of an agreement. Non-monetary issues may include some ancillary issues such as how data is to be shared between parties through the life of the agreement.

26. The Commission's oversight role in the bargaining framework does not empower it to impose terms of agreement, monetary or non-monetary, on bargaining parties. Parties could be encouraged, through mediation, to resolve any non-monetary issues before they reach the FOA period, particularly those that might have an impact on the monetary value of the final agreement. The Commission could also extend the mediation period to allow non-monetary issues to be resolved, but only with the agreement of both parties. As a result, there is no clear mechanism to ensure that all non-monetary disputes are resolved prior to the FOA period. Parties could agree to allow an arbitral panel to resolve non-monetary disputes, or could resolve any such disputes privately in light of the monetary determination made by an arbitral panel.

27. Apart from the bargaining process, the Commission would have a role in enforcing the code of conduct, and in resolving complaints of undue preference, which could encompass non-monetary issues.

Q11. What types of contractual clauses would you expect to be included in an agreement negotiated under the *Online News Act*? Which should be considered monetary and which should be considered non-monetary?

Q12. If necessary, what actions could the Commission take to assist parties in resolving any non-monetary issues?

FOA procedures

28. Paragraph 85(b) of the *Online News Act* allows the Commission to make regulations regarding procedures for the bargaining process, including during the FOA period. When acting in a private context, arbitrators are typically responsible for establishing the procedures to be used including schedules, filings, and exchanges of information.

29. With the 45-day period allowed for completing FOA, the Commission considers it appropriate to provide some standardized procedures to ensure time is not unduly consumed with setting procedures. Such procedures could be made mandatory through a regulation or could be non-binding guidance that would provide a default procedure to follow where parties do not agree to an alternative. Non-binding guidance could also be established on shorter timelines than binding guidance, which would need to follow a separate regulation-making process.

30. In broadcasting and telecommunications matters, parties that file a request for FOA with the Commission follow the procedures outlined in Broadcasting and Telecom Information Bulletin 2019-184. Although many elements of the procedures are specific to the Commission, that information bulletin outlines requirements that could be applicable to the FOA period under the *Online News Act*. These include requirements that relate to preparing and serving offers, including arguments, and responding to the other offer.

Q13. Please comment on the appropriateness of adapting the procedures outlined in Broadcasting and Telecom Information Bulletin 2019-184 to suit the FOA period under the *Online News Act* and on any adaptations that would be necessary.

31. The Commission is of the preliminary view that procedural guidance should be non-binding, as it would allow flexibility to arbitrators and parties to work in their preferred manner while also providing a useful default for cases where there is no agreement on procedures.

Q14. Do you agree that procedural guidelines to the arbitrators and parties engaged in FOA should be non-binding? If binding procedural guidelines would be more suitable, please justify.

32. As per paragraph 19(1)(c) of the *Online News Act*, if no agreement is reached before the end of the mediation period, the 45-day FOA period begins the day after the end of the mediation period, but only if at least one of the parties elects for FOA. For FOA to effectively begin immediately following the mediation period, an earlier deadline for parties to indicate that they intend to initiate FOA may be necessary. An early deadline would allow parties to agree on arbitrators or request that the Commission appoint an arbitration panel prior to the start of the FOA period.

Q15. Should the Commission require that a party provide notice prior to the end of the mediation period that they intend to continue to FOA if no agreement is reached in the mediation period?

(a) What would be an appropriate deadline for that notice?

Q16. If neither party initiates FOA at the conclusion of the mediation period, should the FOA period still be calculated from the day following the end of mediation?

33. If parties cannot agree on a full-arbitration panel of three members in a reasonable time, the Commission may appoint one or more members to the panel, taking into account the preferences of the parties. Neither the Commission nor the parties may select an arbitrator with a conflict of interest.

Q17. What should the Commission consider as a reasonable deadline for parties to agree on arbitrators or request Commission assistance in appointing arbitrators, whether initially or to replace an arbitrator with a conflict of interest?

(a) If notice that a party intends to continue into FOA is required prior to the end of the mediation period, would it be reasonable for the Commission to require that parties agree on arbitrators by the end of the mediation period?

34. The *Online News Act* allows the Commission to provide administrative and technical assistance to arbitration panels considering offers under that Act. It may also disclose confidential information to the arbitration panel, if necessary. The Commission is not obligated to provide such support but could potentially do so where it would make the process more efficient or cost effective for the parties.

Q18. What kinds of administrative or technical assistance would be appropriate for the Commission to provide to arbitrators?

Q19. The *Online News Act* provides that arbitrators must ensure that confidential information disclosed to them is not disclosed other than during the arbitration to parties. Is any additional protection necessary to prevent parties from disclosing information gained from the arbitration panel? If so, what form of protection would be appropriate (e.g., non-disclosure agreements)?

35. Pursuant to sections 39 and 43 of the *Online News Act*, the arbitration panel must provide written reasons for its decision when dismissing an offer from one or more parties and when choosing a final offer to become an agreement between the parties, respectively. If the arbitration panel rejects both final offers, it must provide parties with the opportunity to submit a new offer.

Q20. If an arbitration panel rejects both final offers, should a new 45-day FOA period automatically begin on the day following that on which written reasons are provided, or should the arbitration panel have the discretion to set any procedures it deems appropriate for the submission and review of new offers?

Undue preference, discrimination and disadvantage

36. The *Online News Act* includes a broadly worded provision which restricts online platforms, when making news content available, from acting in a way that unduly discriminates against an eligible news business, gives undue preference to an individual or entity or subjects an eligible news business to an unreasonable disadvantage. Pursuant to subsection 52(1) of the *Online News Act*, only news businesses which have been designated as eligible by the Commission may make such complaints.
37. Subsection 52(2) of the *Online News Act* sets out factors that the Commission must consider when deciding whether discrimination, preference or disadvantage is undue, including whether it was in the normal course of business, retaliatory, or consistent with the purposes of that Act, as well as any other factors considered by the Commission in making its decision. These factors leave room for online platforms to make reasonable adjustments to their services, but the burden of proof is on the online platform to show that any discrimination, preference or advantage is justified.
38. Subsection 52(2) of the *Online News Act* is similar, though less specific, than section 52ZC of Australia's [News Media and Digital Platforms Mandatory Bargaining Code](#), which prohibits online platforms from differentiating against news businesses in particularly enumerated ways, for instance, whether a news business has taken steps to participate in mandatory bargaining or whether a news business has concluded an agreement with an online platform. It could be helpful for the Commission to provide guidance emphasizing similar types of potential preference or advantage.

Q21. Should the Commission provide guidance on specific types of undue preference, disadvantage or discrimination that would be prohibited? If so, should this guidance focus on remuneration for online news content or participation by an eligible news business in the bargaining, mediation and arbitration processes? What other conduct should be targeted specifically, if any?

Q22. Beyond those factors listed in subsection 52(2) of the *Online News Act*, what additional factors could the Commission consider when considering complaints related to undue preference, disadvantage or discrimination?

Data collection requirements

39. The *Online News Act* grants the Commission the ability to collect information from online platforms and news businesses where it requires the information to perform its duties. This could include collecting data even if an online platform has received an exemption from mandatory bargaining.
40. For instance, the Commission may require data to verify that the appropriate online platforms are included on its list of digital news intermediaries, to assess applications for exemption and to provide data for the independent auditor's annual report.

41. The auditor's report must analyze a variety of factors related to the total number and commercial value of agreements and how they relate to or affect newsroom expenditures as well as how these agreements implicate a variety of categories of news outlets including Indigenous and OLMC news outlets. In order to fully canvass these factors, the auditor may need access to all agreements related to the availability of news content on online platforms that were reached under a process set out in the *Online News Act* or the Regulations, including those formed outside the mandatory bargaining process. While the auditor's report must not reveal any specific information designated as confidential, the auditor will likely require access to confidential information in order to prepare the report.
42. In some situations, news businesses are obligated to proactively share information with the Commission. For example, section 53.1 of the *Online News Act* requires the Canadian Broadcasting Corporation to file a report on the effects of any agreements it signs under that Act, but not the agreements themselves.
43. However, without access to all agreements entered into, the Commission may not have the full context necessary to make determinations related to exemption orders, to verify compliance with the code of conduct, or to provide the auditor with adequate information to prepare the annual report. As a result, the Commission is of the preliminary view that any agreement entered into between online platforms and news businesses pursuant to a process set out in the *Online News Act* or the Regulations, with respect to compensation for making news content available, must be submitted to the Commission.
44. While the Commission must collect certain data in order to meet the requirements of the *Online News Act*, the Commission recognizes that data collection should be limited to only what is necessary to fulfill the mandate of the *Online News Act* and the value of the data to be collected must be balanced against the burden of submitting it.

Q23. Should all agreements between online platforms and news businesses regarding compensation for making news content available, entered into a process set out in the *Online News Act* or the Regulations, be automatically filed with the Commission?

45. In order to understand the impact of the *Online News Act* and to facilitate the creation of the auditor's annual report, the Commission may collect data from platforms and news businesses. Information that must be included in the auditor's report, as set out in subsection 86(2) of the *Online News Act*, include newsroom expenditures and markets served by the relevant news businesses.

Q24. What data should online platforms be required to provide to the Commission on an annual basis in order to facilitate the auditor's report and fulfill the Commission's other duties? Please explain what it would represent and how it could be compiled or calculated by the entity providing it.

Q25. What data should eligible news businesses be required to provide to the Commission on an annual basis in order to facilitate the auditor's report and fulfill the Commission's other duties? Please explain what it would represent and how it could be compiled or calculated by the entity providing it.

Q26. What data should news businesses which have not been designated as eligible be required to provide to the Commission on an annual basis in order to facilitate the auditor's report and fulfill the Commission's other duties? Should collection of such data be limited to news businesses that have responded to at least one platform's open call? Please explain what it would represent and how it could be compiled or calculated by the entity providing it.

(a) Should that annual data include updates with respect to how a news business that responded to an open call could meet the eligibility criteria set out in subsection 27(1) of the *Online News Act*? For example, is it a qualified Canadian journalism organization? Does it operate an Indigenous news outlet?

Q27. What types of expenditures should be included in the calculation of newsroom expenditures (e.g., journalist salaries, IT equipment/content production, etc.)?

Call for comments

46. The Commission calls for comments on the questions set out in the present notice. The Commission will accept interventions that it receives on or before **12 April 2024**. Only parties who file interventions may file a reply to matters raised during the intervention period. Replies must address only the issues raised during the intervention period. The deadline for the filing of replies is **22 April 2024**.

Procedure

47. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) shall apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, answers, replies and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website under "[Statutes and Regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
48. Interested persons are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a template for the covering letter to be filed by the parties, can be found in Broadcasting Information Bulletin 2010-28-1.
49. The Commission encourages interested persons and parties to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

50. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line ***End of document*** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
51. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
52. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention/comment/answer form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

53. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
54. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
55. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

56. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, and telephone and fax numbers.
57. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
58. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
59. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

60. Links to interventions, replies and final replies filed for this proceeding, as well as other documents referred to in this notice, are available on the Commission's "[Consultations and hearings: have your say](#)" page.
61. Documents are available upon request during normal business hours by contacting:

Documentation Centre
Examinationroom@crtc.gc.ca
Tel.: 819-997-4389
Fax: 819-994-0218

Client Services
Toll-free telephone: 1-877-249-2782
Toll-free TTY: 1-877-909-2782

Secretary General

Related documents

- *Practices and procedures for dispute resolution*, Broadcasting and Telecom Information Bulletin CRTC 2019-184, 29 May 2019

- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Changes to certain practices for filing interventions – Expansion of filing practices to include the filing of joint supporting comments for broadcasting policy proceedings*, Broadcasting Information Bulletin CRTC 2010-28-1, 10 December 2010

Appendix to Online News Notice of Consultation CRTC 2024-55

List of proposed qualifications for arbitrators

Arbitrators for the Commission's roster of qualified arbitrators under the *Online News Act* must:

- Be able to conduct an efficient and effective arbitration process.
- Adhere to a recognized code of ethics for arbitrators in Canada or be a member of the Bar of one of the provinces or territories of Canada.
- Not disclose information designated as confidential under the *Online News Act*.
- Attest that they have familiarized themselves with the *Online News Act*.

Arbitrators must possess:

- Superior procedural skills and in-depth understanding of rules of procedure.
- A superior understanding of the rules of evidence including the ability to understand, interpret, and use complex technical and financial evidence presented by experts.
- An in-depth understanding of the rules of natural justice.
- The ability to deal with preliminary matters, which may include directions on pleadings and disclosure of evidence, interrogatories, and determination of the necessity for witnesses or experts.
- The ability to maintain appropriate working relationships between the parties in an adversarial atmosphere.
- The ability to organize and analyze quantitative and qualitative information.
- The ability to render independent and impartial decisions, as well as clearly explain, orally and in writing, the reasons behind them – all with due regard for tight time frames.
- The ability to maintain accurate records of all proceedings.

In addition, the following will be considered an asset:

- knowledge of economics;
- understanding of online advertising, marketing analytics, and data monetization;
- knowledge of competition law and policy;
- knowledge of information technology law;
- the ability to work with financial statements and an accounting/financial background; and
- arbitration training where the candidate has experience as an arbitrator, judge or tribunal member. Where the candidate has no work experience as an arbitrator, judge or tribunal member, arbitration training and certification will be considered essential.

The above-noted competencies and skills will be demonstrated by experience and qualifications that meet the following:

At least 10 years of experience doing complex commercial litigation or dispute resolution, which must include:

- complex issues with significant dollar amounts or important principles at stake; and
- areas where complex evidence of a technical or financial nature is presented by experts. Such areas include, but are not limited to, competition law, information technology law, copyright law, and commercial law.

Or

Experience as a judge of a superior court who has presided over commercial cases or dealt extensively with commercial cases involving complex technical or financial evidence provided by experts.

Or

Experience as an adjudicative tribunal member or counsel involved in revenue, price- or rates-setting hearings.

Other requirements

- Adequate insurance to cover the potential liabilities (minimum \$1,000,000).
- Disclosure of conflicts of interest and information on potential bias.
- Disclosure of fees.
- Availability on short notice.
- Willingness to travel will be considered an asset.
- Bilingualism will be considered an asset.

Voluntary declaration

A candidate who identifies as an Indigenous person may provide a voluntary declaration to that effect.