

Public Consultations Begin for the Modernization of Canada's Broadcasting System

Casey Chisick, Stephen I. Selznick, Jessica Zagar, Eric Mayzel, Steven Henderson

May 18, 2023

On May 12, 2023, the Canadian Radio-television and Telecommunications Commission (CRTC) announced that it was starting its first set of public consultations as part of its phased approach to modernizing Canada's broadcasting regime following the recent passage of the *Online Streaming Act*.

As discussed further in previous Cassels Comments in our ongoing series about the passage and implementation of the *Online Streaming Act*, the *Online Streaming Act* received royal assent on April 27, 2023, responding to rapid technological change in the broadcasting industry by providing Canada's *Broadcasting Act* with its most expansive set of amendments in over 30 years. Shortly after the *Online Streaming Act* became law, the CRTC published a Regulatory Plan explaining the specific steps it plans to take to implement the *Online Streaming Act* and modernize Canada's broadcasting system. A significant focus of this three-phase plan is the use of public consultations on a wide range of broadcasting issues at each phase, which will inform the CRTC's creation of its new regulatory framework.

As part of Phase One of the CRTC's Regulatory Plan, the CRTC has now opened the comment process for its first three public consultations. These consultations relate to contributions by broadcasters to the Canadian broadcasting system, the registration of online streaming services, and the exemption orders and conditions of service applicable to online undertakings.

Consultation on Contributions to the Canadian Broadcasting System

In Notice of Consultation 2023-138, the CRTC is seeking comments on a proposed new framework that will govern the contributions that broadcasters will be required to make to support the Canadian broadcasting system, including contributions for the creation and discoverability of Canadian and Indigenous content.

Since online undertakings were previously exempt from making contributions to Canada's broadcasting system, one of the key issues under this new contribution framework will be determining which online audio and video platforms will be required to contribute, as well as what forms those initial contributions will take. However, this new framework will also likely affect traditional broadcasters who were already required to contribute to Canada's broadcasting system under the pre-existing contribution framework, as the types of contributions they are expected to make may change.

Cassels

The Notice for this public consultation includes 39 specific questions to which stakeholders are invited to respond. These questions relate to the applicability of the proposed contribution framework, the overall contribution level, the initial base contribution requirement that may be applied to certain online undertakings, and the funds that could be the recipients of those contributions.

The CRTC is accepting comments for this public consultation until **June 27, 2023**. Parties who file comments by this deadline will have the option to file a reply to matters raised during the comment period until **July 12, 2023**.

Consultation on the Registration of Online Streaming Services

In Notice of Consultation 2023-139, the CRTC is seeking comments on its proposed new *Online Undertakings Registration Regulations*. These Regulations would require certain online audio and video streaming services that operate in Canada to register with the CRTC.

One of the specific issues about which the CRTC is seeking comments is determining the requirements that will apply to streaming services that must register. Under the current version of the proposed Regulations, streaming services that are required to register will need to provide the CRTC with basic contact and corporate information, as well as information regarding the essential features of the broadcasting services they offer.

The CRTC is also seeking comments on which types of streaming services should be exempted from the registration requirement. The Notice of Consultation includes a proposed exemption order which would exempt from registration online undertakings who solely provide video game services, solely provide one-time rentals or purchases of individual programs, or generate less than \$10 million in annual Canadian gross revenues from broadcasting activities.

It is worth noting that this registration requirement differs from the former licensing requirement under the previous version of the *Broadcasting Act*. Previously, broadcasting undertakings who wished to operate in Canada were required to either be licensed by the CRTC or be subject to an order exempting them by forbearance from the licensing requirement. Following the passage of the *Online Streaming Act*, online undertakings are not required to hold a CRTC licence (or receive an exemption) to legally operate in Canada. However, these online undertakings may still be required to *register* with the CRTC to operate in Canada.

The CRTC is accepting comments for this public consultation until **June 12, 2023**. Parties who file comments by this deadline will have the option to file a reply to matters raised during the comment period until **June 27, 2023**, and an option to file a further reply to any replies received until **July 12, 2023**.

Cassels

Consultation on Exemption Orders and Conditions of Service

In Notice of Consultation 2023-140, the CRTC is seeking comments on changes to the current exemption orders that apply to online undertakings, as well as a possible transition from such exemption orders to “conditions of service” orders which would apply to online undertakings.

As noted above, prior to the passage of the *Online Streaming Act*, broadcasting undertakings who were not licensed by the CRTC could still operate in Canada if subject to an exemption order, such as the *Digital Media Exemption Order* (2012-409) or the *Video on Demand Exemption Order* (2015-356). However, since the current *Broadcasting Act* no longer requires online undertakings to be licensed, the CRTC is seeking comments on whether those exemption orders should now be amended, repealed, or replaced.

The CRTC is also accepting comments on whether it should transition away from exemption orders to new conditions of service orders. The purpose of these conditions of service orders would be to replace some of the conditions contained within the exemption orders. The CRTC is relatedly accepting comments on which online undertakings should be subjected to these conditions of service orders if they are ultimately adopted.

In total, the Notice for this public consultation includes 15 specific questions to which stakeholders are invited to respond, relating to the status of the current exemption orders and a potential transition to conditions of service orders.

The CRTC is accepting comments for this public consultation until **June 12, 2023**. Parties who file comments by this deadline will have the option to file a reply to matters raised during the comment period until **June 27, 2023**, and an option to file a further reply to any replies received until **July 12, 2023**.

Practical Implications and Next Steps

These three public consultations are the first opportunity for stakeholders in the Canadian broadcasting industry to make their voices heard on the implementation of the *Online Streaming Act* and the CRTC’s upcoming modernization of Canada’s broadcasting system. Since these public consultations have been introduced as part of Phase One of the CRTC’s Regulatory Plan, they will likely be particularly influential in shaping how the CRTC moves forward with its plan.

Although these public consultations are especially relevant for online undertakings, many of the issues about which the CRTC is seeking comment may also affect traditional broadcasters. Accordingly, any broadcaster operating in Canada that has an interest in Canada’s changing regulatory system is encouraged to submit comments before the filing deadlines.

Cassels

The Cassels Entertainment & Sports and Intellectual Property Groups have been closely monitoring the implementation of the *Online Streaming Act*, and have extensive experience assisting organizations with making submissions as part of public consultation processes. If you are interested in submitting comments for any of the public consultations described in this article or would like further information on what these consultation processes entail, please contact any member of our Entertainment & Sports or Intellectual Property Groups.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.