

CRTC Launches Public Consultation for Proposed Bargaining Code of Conduct Under Online News Act

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Almost a year and a half after the passage of the *Online News Act*, the Canadian Radio-television and Telecommunications Commission (CRTC)'s regulatory plan to implement this new legislation moves closer to completion. On October 8, 2024, the CRTC launched a new public consultation seeking comments from interested parties regarding a draft Code of Conduct that would govern the negotiations that take place between digital news intermediaries and eligible Canadian news businesses under the *Online News Act*'s mandatory bargaining process. This new consultation is currently expected to be one of the last consultations that the CRTC completes before it moves forward with the publication of a fulsome bargaining framework.

BACKGROUND

As discussed in our [previous Cassels Comment](#), the *Online News Act* received royal assent in June 2023. The *Online News Act* establishes a mandatory bargaining process that will require “digital news intermediaries” (DNIs) — online platforms that make news content produced by other businesses available on their platform — to enter into commercial agreements with eligible Canadian news businesses. Pursuant to these contractual agreements, DNIs will be required to compensate Canadian news businesses for sharing their news content on the DNIs' platforms.

Shortly after the *Online News Act* received royal assent, the CRTC published a [regulatory plan](#) for the development of a framework for the mandatory bargaining process. Since then, the CRTC has overseen numerous public consultations relating to the bargaining process and the implementation of the *Online News Act* more broadly. We have discussed many of these prior consultations in detail in our ongoing series covering the implementation of the *Online News Act*, including consultations relating to the [regulations under the legislation](#), the [structure of the bargaining process itself](#), and a [proposed exemption from the framework for Google](#) after the federal government and Google reached a deal regarding Google's financial contributions to eligible Canadian news businesses.

THE CODE OF CONDUCT PUBLIC CONSULTATION

On October 8, 2024, the CRTC published [Online News Notice of Consultation CRTC 2024-236](#), in which it

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seeks comments from interested parties and members of the public regarding the development of the Code of Conduct that will govern the *Online News Act*'s mandatory bargaining process between DNIs and eligible Canadian news businesses. The development of a Code of Conduct by the CRTC is itself a requirement under section 49 of the *Online News Act*, which also outlines certain types of provisions that the Code of Conduct must contain and other provisions it may optionally include.

In the Summary section of the Notice of Consultation, the CRTC implicitly acknowledges that there is likely no immediate necessity for the Code of Conduct, as there are currently no remaining non-exempt DNIs making news content available in Canada (as Google's exemption request has now been granted, and the only other entity that would have fallen within the definition of an eligible DNI — i.e., Meta — stopped and continues to refrain from making news content available on its platforms in Canada). Nevertheless, the CRTC has stressed the importance of having a Code of Conduct in place so that any future required bargaining can proceed without delay.

The Notice of Consultation includes a draft Code of Conduct as an appendix and invites interested parties to comment on some or all of the draft. The draft Code includes provisions relating to:

- A general requirement on all parties participating in the bargaining to engage in the process in good faith, including by committing time to the process and engaging in meaningful dialogue about their respective positions;
- A prohibition against “unfair behaviour”, which includes behaviour that is intended to unreasonably delay or prolong the bargaining process, deceptive behaviour, abusive or threatening behaviour, and any other behaviour that is not in accordance with the procedural obligations agreed to by the parties;
- Prohibitions and limitations on the types of provisions that can be included in the final negotiated agreement between the parties; and
- Information sharing processes, including a general requirement that any information exchanged by the parties during the bargaining process be maintained in confidence and only be used for the purposes of bargaining activities.

KEY TAKEAWAYS & NEXT STEPS

As discussed above, once the Code of Conduct is finalized and comes into force, it will likely sit on the shelf for some time. However, given the quick-changing nature of Canada's online news industry, the Code of Conduct and the bargaining process it governs may suddenly find a practical use. For example, it is unclear whether Meta will eventually change course on its decision to block all news content on its platforms in Canada, in which case Meta could become subject to the *Online News Act* should it fail to reach a negotiated deal with the federal government as Google did. Furthermore, the growth of other online and social media platforms in Canada telepaths that the definition of DNI under the *Online News Act* will

eventually capture new entities that are not currently subject to DNI regulation.

The public consultation relating to the Code of Conduct is presently the final public consultation listed in the CRTC's regulatory plan for the implementation of the *Online News Act*. However, further implementation steps remain on the horizon. For example, the CRTC will shortly be issuing a call for proposals for an independent auditor to prepare an annual report on the impact of the *Online News Act* on Canada's digital news marketplace. The CRTC is also expected to begin publishing decisions setting out the final regulatory framework under the *Online News Act* in the coming months.

The Cassels [Entertainment & Sports Law](#) Group has been closely monitoring developments related to the *Online News Act*. If you have any questions about the content of this article or how the *Online News Act* may impact your business, please reach out to any member of our team.

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