Bill C-18 : Online News Act

Index

Bill C-18 : Transcript form the third reading

https://sencanada.ca/en/content/sen/chamber/441/debates/135db_2023-06-15-e?language=e

Third Reading

Senator Harder: Thank you, Madam Speaker, and thank you, colleagues, for letting us commence this debate now.

I rise today on the ancestral and unceded territory of the Algonquin Anishinaabe people to speak on third reading of Bill C-18, the online news act. This bill compels large digital platforms, like Meta and Google, to compensate Canadian media outlets in return for posting news content on their platforms. It is a bill that we must urgently pass for the sake of the industry and, perhaps more importantly, for the sake of our public discourse and our commitment to democratic debate.

At issue is the fact that these same digital platforms derive economic benefit in the form of ad revenue from content that they do not produce. In some cases, they pay individual outlets for content, but in many others they do not.

Bill C-18 would ensure that those platforms can no longer pick and choose which outlets they will compensate. It is, in its rawest form, a bill aimed at levelling the playing field between those outlets that have agreements and those that don't.

Many of the latter are small- and medium-sized outlets that have continued to publish on shoestring budgets, having already slashed jobs and wages. Since 2008, Canada has lost over 460 outlets. Just five months ago, Postmedia, which operates more than 100 large and small newspapers across the nation, announced cuts of 11% of its staff.

Many of the publications that this bill will help have already made heroic efforts to serve the public. I am put in mind, for example, of the public service performed by our nation's minority language press in informing various diasporas on how to protect themselves from the coronavirus. New Canadians, many of whom don't speak either English or French, had nowhere else to turn for information that — it is no exaggeration — they needed to survive. These publications stepped up, with some operating at a loss. It's fair to ask whether they will still be there when the next public health emergency surfaces.

Others, like hard-pressed rural and northern outlets, have continued to publish the goings-on of their community, connecting the farthest-flung parts of our country to our larger population centres. This is a crucial role they play at a time when polarization in Canada and the rest of the world interferes with our ability to talk to each other.

Still other publications in the racialized, Indigenous and official minority language spheres work hard to inform their often underserved readerships. This initiative will help those I just mentioned if they want to be part of it.

Let me hasten to add, though, that Bill C-18 should not be seen by anyone as a panacea. It is but one of a number of programs already undertaken which are aimed at helping our challenged news industry weather and, hopefully, thrive in the ever-changing digital environment.

Despite The Logic's devotion to such pioneering subject matter, it finds itself at a competitive disadvantage, forced to contend with larger outlets that already have agreements with the big digital platforms. Indeed, the publication's Chief Executive Officer, David Skok, has said it's unfortunate to be in a situation where he must rely on agreements with private industries like Google to help fund his publication's journalism. The Logic feels compelled to support the act because Big Tech selects which outlets it wants to support through voluntary agreements and refrains from supporting others. This creates an uneven playing field.

If we want to encourage the development of publications like The Logic — which I believe are the future — we cannot allow the larger platforms to sign deals only with the big players. This makes for competitive unfairness and, more disturbingly, allows Big Tech to pick winners and losers — exactly the criticism that gets levelled at government for launching initiatives like this bill.

It's far better, in my view, to treat everyone equally, particularly in an industry that provides such an important public service as does journalism.

Adding this initiative to others that have been enacted by government, including the Canada Periodical Fund, the Local Journalism Initiative and the journalism labour tax credit, will go some ways to sustaining the industry as it continues to find its legs in the new environment.

The bill, of course, is not free of criticism. Some have criticized it, for example, for potentially keeping alive publications that have not done the work required to adjust to the new reality. I will leave that judgment to others more familiar with the efforts being made at some of these outlets, many of which have been publishing for generations.

I would say, however, that the consequences of not supporting those publications risks the loss of something bigger than the publications themselves — namely, the infrastructure which supports the whole profession.

What is ultimately at stake here is the removal of experienced and guiding hands which maintain a mature industry over time. In our own review of the bill, it became clear that younger journalism graduates have fewer and fewer mentors to whom they can look up. These younger journalists are put into positions of leadership which, in previous years, would have taken many of them more years to reach. The pool upon which even the best publications rely on to hire promising up-and-comers is becoming shallower by the year.

Given this contraction, is it any wonder that publications that deal with misinformation and disinformation are becoming increasingly influential? Relying on such outlets to convey information would be bad even for Big Tech, which makes me wonder why they continue to use bullying tactics to oppose this bill. As you know, the big platforms have gone so far as to experiment with blocking access to news on their sites. Just this week, Meta began blocking news for some Canadians on Facebook in a test that is expected to last most of the month. Google did the same thing earlier this year.

Now, it's not my business to say whether such moves are counterproductive for a company's Canadian reputation or its bottom line. It defies credulity when these corporations argue that it is somehow their free-market right to derive ad revenue without compensating those who create the content.

Musicians who write pop songs get paid when those pop songs are played on the radio. Playwrights get a royalty when their work is put on a stage, even at the local community theatre.

When a famous individual's image is used to advertise a certain product, that person is paid for the value of the personal brand he or she has created through many years of hard work.

As Ronald Reagan learned, if you want to use "Born in the U.S.A." as a campaign theme, you'd better ask The Boss first.

These platforms claim that news holds little value for them. This is too hard to buy. Users come to social media and search engines to access the totality of the internet; 77% of Canadians get their news online, including 55% of Canadians who use social media platforms as a pathway to news.

Professor Dwayne Winseck, who testified before our committee, estimates that in 2021 Google's advertising revenue in Canada alone was $4.9 billion while Meta's was $4 billion.

What these foreign multinationals are really worried about is a check on their dominant market position. International observers whose nations are considering similar compensation initiatives are noticing this behaviour. Damian Collins, a British MP and former tech minister — by the way, a Conservative MP — had this to say:

It says a lot about the values of a company like @Meta that in Canada instead of paying modest compensation to news companies for the free distribution of their content, they'd rather block it. A big win for disinformation pushers if they flow through.

These same observers are watching the Canadian experiment and our experience very closely. That these internet giants would rather cut off Canadians' access to local news than pay their fair share is a real problem.

The international community is also measuring the effectiveness of this bill, in many cases to see if they can use it as a guidepost for their own legislation.

The United Kingdom and New Zealand are putting forward comparable legislation while the European countries are implementing the EU copyright directive, which puts comparable requirements on platforms to compensate news publishers.

Let me say, though, that the committee which reviewed Bill C-18 has done so in a rigorous and thoughtful way and added a number of amendments that are supported by the government. They include, for example, putting a tripwire in place for the full regime to come into force within six months after Royal Assent, guaranteeing that an outlet does not have to participate in the regime if it does not wish to do so, and adding language that deals with official minority language communities as well as Black, Indigenous and other racialized communities.

Currently, the legislation intentionally does not set boundaries on what parties can negotiate overall, allowing them to bargain over the elements outside the scope of news content. Under the current bill, the CRTC — the Canadian Radio-television and Telecommunications Commission — would be required not only to consider the value of news content but also the value of a reader's personal information, which can be used for other purposes.

This amendment reduces potential compensation to the outlets. Don't take my word for it; take the word of the industry members who are surprised by this amendment. They say it handcuffs them and helps the platforms more than the media.

Paul Deegan, the CEO of News Media Canada, which represents 560 titles, said the following:

The amendment would limit the ability of news publishers to negotiate fair compensation with dominant platforms. Value will be determined during negotiations.

Pierre-Elliott Levasseur, President of *La Presse*, agreed:

This amendment would tie one hand behind our back and hamstring us in negotiations with the platforms that enjoy a massive power imbalance over news publishers. The majority of media outlets in Canada have tried to get deals with Facebook and Google, only to have the door slammed in their faces. This is particularly true in Quebec, where La Presse, the Quebecor titles and the Hebdos have all been left out in the cold. This amendment benefits the platforms at the expense of publishers.

So says Pierre-Elliott Levasseur.

Allow me, again, to underscore the need for urgent action. Big Tech would like nothing more than for this bill to be delayed beyond the summer, eating up crucial time to negotiate badly needed agreements with news outlets which are already in a very tight spot.

You need look no further than the announcement this week that BCE Inc. plans a news division consolidation by cutting 1,300 positions and closing or selling off nine radio stations.

It is also not hyperbole to say the very fabric of our democracy depends on a robust and diverse media; without it, the body politic will not have the information it needs to make informed decisions on our nation's future.

If you doubt this, have a look at the nations that do not have access to unfettered press and the unchecked power wielded by their often autocratic leaders. I am not just speaking of the most vicious examples, like Vladimir Putin. I also think of a nation like Hungary, led by authoritarian Prime Minister, Viktor Orbán. Reporters Without Borders currently ranks Hungary eighty-fifth in the world when it comes to press freedom. Ten years ago, it ranked fortieth.

Turkey is another example. In the month of April, during that country's recent election, the state broadcaster devoted 60 times more coverage to the incumbent — and the eventual winner — President Erdoğan than to his main opponent, Kemal Kılıçdaroğlu.

Both of these nations were heretofore relatively strong Western democracies.

Here in Canada, we are obviously not living in the same environment. But we must be more vigilant about protecting democracy than we have been.

If you believe I'm exaggerating, look at the threats to pluralism that have taken root in the country south of us — and I don't mean Mexico. We may not have appreciated it before, but it's clear that democracy is fragile.

This is an essential bill aimed at providing one of our most important democratic institutions with some degree of protection.

It needs to become law and receive Royal Assent before we rise for the summer to ensure that those who need it can derive benefits before it's too late.

I therefore urge your support for this important third reading vote. Thank you.

Hon. Donna Dasko: Honourable senators, I rise today to speak to Bill C-18, the online news act, at third reading.

The news media business in Canada is in trouble, and Bill C-18 is designed to be part of the solution.

Many news organizations, particularly newspapers, are in dire straits. A 2021 Statistics Canada report surveying newspaper publishers in Canada revealed that operating revenue of Canadian newspaper publishers declined to $2.1 billion in 2020, down 22% from just two years earlier, in 2018.

Declines in revenues have led to closures and job losses; over 469 news outlets have closed from 2008 to 2022, including over 300 community newspapers, and one third of journalism jobs have disappeared since 2010.

Just yesterday, Bell Media announced the elimination of 1,300 jobs, mostly affecting their news operations, including nine radio stations and foreign bureaus.

The other side of this picture is that the internet has increased its share of advertising revenue as that of newspapers and other media has declined. Government background documents estimate that Google's and Facebook's revenues from digital advertising were $9.7 billion in Canada in 2021, which was 80% of the total digital ad revenue of about $12 billion.

Bill C-18 aims to fix the balance. The rationale behind the bill is that news organizations are not getting fair compensation for the news they produce from the digital platforms that distribute this news to the public.

Bill C-18 requires that major digital platforms make deals with news businesses to pay these businesses for information that is shared on their platforms.

Bill C-18 lays out the framework behind these deals. If voluntary deals are made between digital platforms and eligible news media within certain timelines that meet certain criteria, digital platforms would be exempted from the required portion of the act, which is to enter into a formal negotiation process that could lead to final offer arbitration. The CRTC will take the role in developing a code of conduct to guide the bargaining process and determine if agreements reached meet the conditions for exemption, among other roles it will take on.

Bill C-18 is a complex bill, and it needed fulsome study. We had a good process at committee, but I feel we needed to do more.

I want to focus on some of what we learned at committee and where I see issues going forward that we were not able to examine.

Our nine meetings with witnesses — of course, we had one meeting for clause-by-clause consideration — focused primarily on the views of stakeholders. From our 60 witnesses, we learned that Bill C-18 has widespread support, particularly across the newspaper sector, including large and small organizations, as represented, for example, by News Media Canada, but it also has significant support among broadcasters such as the Canadian Association of Broadcasters. It has strong support among online publishers and multicultural media.

However, the two digital platforms, Google and Facebook, which would now qualify as the operators responsible for making deals with news organizations under the act, are aggressively opposed. During the period of parliamentary review of the bill, both companies launched "market studies" which involved blocking access to news on their platforms to some of their users and subscribers. While market studies are legitimate, and I can say this from 30 years in this industry, the timing of these studies was provocative, to say the least, and is rightly seen as

a shot across the bow at the government and at the news industry in this country. Minister Rodriguez described these actions as threats, and even the Prime Minister weighed in, accusing the companies of using bullying tactics and saying that the federal government would not back down.

When both tech giants appeared as witnesses at committee on May 3 and were asked how they would respond if the bill were to pass in its current form, Google Vice President of News, Richard Gingras, did not want to speculate. He replied:

We've been clear on the considerations we have, which is to do with whether we need to assess how we use links or whether we need to assess whether it is logical for us to continue to provide a service like Google News . I have no certainty right now as to what we might do.

Facebook, however, was categorical. Rachel Curran, Head of Public Policy for Meta in Canada, stated:

Because the legislation ignores the realities of how our platforms work, the preferences of people who use them and the value we provide news publishers, we have no choice but to comply with it by ending the availability of news content in Canada if Bill C-18 is passed as drafted.

We have two very large, very powerful, very angry foreign-owned tech giants required by law to negotiate with way smaller Canadian firms. What could possibly go wrong?

Some have debated whether the company's threats to leave are real or, in fact, a bluff. But if they are real, there is reason to be concerned. That is because we also learned at committee about how many news publishers rely on these platforms for their own business operations and successes.

Jeff Elgie of Village Media told us:

we benefit greatly from the traffic back to our sites that we, in turn, are able to monetize and form new audiences, subscribers and followers that we would otherwise be challenged to reach. Google and Facebook combined generate almost 50% of our traffic on an ongoing basis. You will find similar numbers across our entire industry, legacy or new.

If that traffic were to be lost, the business would be over.

This sentiment was echoed by journalist and commentator Jen Gerson, who stated at committee that independent media, start-up media and media trying to build its brand in the marketplace are reliant on social media to build a brand, develop an audience and get a network across. The loss of Facebook, she believed, would be serious.

The policy framework behind Bill C-18 emphasizes that news organizations are not getting fair compensation from the platforms, but how will these realities figure in the negotiation process?

If we had those extra committee meetings I mentioned earlier, we could have invited more experts to dig deeper into the policy framework to understand how it works and its possible contradictions, and we might have been able to offer solutions. For example, how does the need for commercial deals, which must be negotiated privately, square with the regulatory requirements such as the transparency demands? We know that those transparency demands will increase. It seems clear to me. What will be the impact of this policy on the internet, and what will be the impact on innovation? Does the long list of requirements that must be met for

exemption, which go beyond fair compensation, create an undue burden on the commercial negotiation process as claimed by witness Philip Palmer of the Internet Society?

There were some other concerns: Our committee didn't look at advertising or consumer behaviour even though the movement of advertising and consumers onto platforms, social media and search engines is central to these developments. How will news consumers be impacted by this policy? These are all important issues going forward.

As I said earlier, our committee did excellent work in the time we had, passing nine substantive amendments in one meeting. These have already been described by Senators Harder and Housakos, so I will not attempt to go through them.

I am pleased the amendment I proposed, which would remove the ability of the Canadian Radio-television and Telecommunications Commission, or CRTC, to designate news businesses as eligible, was accepted. The news businesses should decide for themselves if they wish to apply and be part of this framework.

Colleagues, I love the news media, and it is painful to see what's happening to the news today. I deplore the threats of the tech giants. I feel that despite its flaws, Bill C-18 is our only hope at this particular moment in time to help this industry, which is vital to our democracy. If all the pieces fit together and if all the players do their part, it could be a wonderful thing. It could be a wonderful assistance to this industry. That is why I intend to support it today.

Hon. Leo Housakos: Honourable colleagues, initially, I thought I might actually support this bill, believe it or not, despite the report I gave earlier. The Coles Notes version that journalists should be fairly compensated for their work sounded noble enough, and, colleagues, we all recognize we want to protect and ensure a thriving free and independent press. It's crucial to our democracy. It's crucial to our society.

Yes, traditional news media in this country is struggling. I say "traditional" because the truth is the industry as a whole isn't struggling. It is just evolving, changing. It's not just in journalism. We see it in every walk of life. We see it the way the restaurant industry works, the food industry and the transportation industry. The digital world has made significant changes. The whole world and everything we do is moving online. It's progress. That's why you see even the traditional broadcasters slowly abandoning their business model and their old way of doing things because the world, eyeballs and consumers are going in a different direction.

Is that concerning given the lack of regulation and the rise of misinformation and disinformation available on the internet? Sure, but that doesn't mean, as Liberal MP Lisa Hepfner claimed, that online news is fake news, for example.

Somehow that we come to the conclusion that what's going on in online news is misinformation and somehow traditional news broadcasters are more accurate or that they have more rigid standards, I think, is exaggerated. The news industry has been self-regulated for years. They've been setting their own standards.

Shame on MP Hepfner for maligning decent, hard-working Canadians who are making their living in this country delivering solid online news. The fact is online delivery is the future of news, and traditional media know it to be true. They have to adapt their business model or they will be left behind.

Many have adopted their models. In the meantime, there are massive job cuts and have been for several years. Bill C-18 isn't going to fix that. I would support the bill if I were convinced that it would.

Certainly, it will give more revenue to large news outlets. It will make the big even bigger and the strong even stronger. The objective of trying to help diversify local news in the country will not be achieved with this bill. I believe quite the contrary. It will give more revenue to Bell Media, Rogers, Quebecor and tonnes more revenue to CBC, the government's favourite place to put taxpayers' money.

Well, we are on the cusp of passing this extremely important bill that is maybe not a magic bullet. I agree with Senator Harder that it is not a magic bullet, but why wouldn't they wait and see the outcome? We're rushing this bill through. Despite my reservations that this bill will not save and diversify journalism in this country, we are still giving it a shot. As you can see, we are not distracting from the objective of the government trying to put this bill forward.

I believe journalism is changing. It is inevitable. The reality of the digital world is changing, and journalists have to change with it.

Colleagues, once we pass Bill C-18, I suspect the 1,300 employees at Bell Media and all these journalists who lost their jobs in the next six months will be hired back, right? All the fat cats at Bell Media and CTV — I say fat cats because I guarantee the cuts we've seen in journalism over the years are not equivalent to the cuts we see in upper management of these corporations. I invite you all to go to the annual reports of Bell Media, Rogers and Quebecor and see what the executive salaries are. People think there are fat cats in the Senate and the gatekeepers here. Go check out the salaries of some of these executive vice-presidents. You'll find it staggering. These same people who are so concerned about journalism and our democracy, go see how much they get paid compared to some of the hard-working journalists in this country.

It's stunning to me that government talks a good game on following the science and embracing technology, but are doing the very opposite when it comes to digital internet media. The truth is companies like Bell have to adjust to the reality of the internet.

The other reality is that not one of these people who were let go yesterday will get rehired once this bill passes. I'm ready to bet on that and have that discussion when we review the outcome in a few months or even in a couple of years.

Contrary to what they said in their statement that things would have been different had Bill C-18 been passed sooner — the problem is we didn't move quickly enough; it's our fault — not one of those people who were let go yesterday would have held their jobs had Bill C-18 been passed one, two or six months earlier. I do want to point out how cynical Bell Media's move is, both the timing and the blaming of it on regulatory burden and the slow passage of Bill C-18. I noticed that unlike in the case of Facebook and Google and their responses in regard to the implications of Bill C-18, Minister Rodriguez didn't question Bell and their timing or accuse them of scare tactics and say he won't be bullied or intimidated.

Colleagues, Meta and YouTube have been hiring Canadians across the country for years. I invite you to go to any region of the country where Google and Meta and Facebook have operations and visit their facilities. They're hiring young Canadians at a record pace — these fat digital cats that need to be reeled in by the Canadian government because these are just terrible international corporations that are doing harm to our basic way of life. Go see all the thousands

of young Canadians coming out of IT schools — the engineers and programmers — and see what kind of jobs they have and what kind of environment.

I went to visit a couple of the offices of Google last year, and, boy, let me tell you that I wish I was 25 or 30 again. That generation of kids, they know how to work, they know how to be innovative and they know how to create work-life balance. I was very impressed, and the future is bright. But we have to embrace them and give them an opportunity to grow, flourish and continue to be innovative.

Also, he can and should sympathize — I'm talking about my good friend Minister Rodriguez — with the people who lost their jobs yesterday, but I notice he didn't say anything about the people who made the decision or call them out about their timing, as I said. That's because it's very easy to demonize big tech.

I have issues with them as well. I don't think Meta and Alphabet are perfect. No corporation needs to be free to run wild, but I'm also not defending management at Bell Media or Rogers Communications or Shaw Communications, and I'm not picking sides. My sense is that when you look at this legislation, the government has a propensity to continue to defend traditional broadcasting, which we all know — we had this debate with Bill C-11 — is dead and done with, and they continue to side with big corporations: Bell Media, Rogers and Quebecor. They're giants in this country, and they're not giants because they offer the best service at the lowest price. Most of us in here are old enough to pay cable bills every month. Take a look at that bill. Call your friends down south in the United States or in Europe or anywhere else around the world and compare some of those cable bills.

Senator MacDonald: Our phone bills.

Senator Housakos: We have cell bills and internet bills or connectivity bills, right? See what those giants are charging Canadians compared to other nations around the world.

By the way, they've become as big as they are because they gouge consumers and taxpayers and because of the regulatory protection we have afforded them for decades through the CRTC and through governments — successive governments, by the way — Liberal, Conservative and other ones. At some particular point, we've got to stand up for the consumer and for Canadians and say, "Enough is enough; some competition is good." And let's stop saying every time we have a business model that is failing because somebody is more innovative, more cost-effective and is garnering more customer service that we're going to step in and we're going to make it an equal playing field. We're going to help those with the bad ideas and bad fiscal results and we're going to prop them up with taxpayers' money. Let's call this what it is: a shakedown in an effort to protect the status quo.

Big tech isn't stealing content. They aren't taking the work of journalists and profiting off it without journalists being fairly compensated. The passage of Bill C-18 won't result in one journalist in this country getting a raise. More importantly, let's also keep in mind that a lot of the content that we are talking about that's being stolen by tech companies is being downloaded and placed there by journalists themselves.

As I have said many times before, these platforms are actually providing a service to news outlets to drive traffic to their products and to their content. We aren't talking about the reproduction of content without fair attribution or compensation. We're not talking about links taking consumers to the actual Global News or CTV News websites.

I consider Facebook to be the Uber or even the cab driver, and Global News is the restaurant. Would we expect the cabbie to give the restaurant a percentage of the fare that was collected? Of course not. Just because someone, in this case, has figured out a way to monetize someone else's product, it does not mean they are stealing that product. It doesn't mean the manufacturer of that product is being any less fairly compensated. As long as the copyright laws are being respected — and they are here — nothing is being stolen.

None of us are forced to post our work. Senators, local restaurants, every single business in the country, artists of all sorts — they're posting their stuff. We're all posting our stuff on these websites, and we're posting it because we're getting more reach. We're getting more of our constituents in our home provinces to see the work we do here in the Senate, advocating on their behalf.

Journalists add their links to their stories on Facebook because it accentuates their work; it drives more people to their website. So if you're writing articles for *La Presse* in Montreal and you post it on your Facebook account, it's because that journalist is benefiting from people that are being driven to *La Presse*'s website, and, of course, that's a paywall. If more people are driven to the site because of a journalist promoting their product, that paywall grows, and that business grows.

By the way, back to my earlier point, there is a lot of print media in the country that is flourishing because of digital platforms. There are a lot of them that have to be lauded because they were ahead of their time and they realized they needed to adjust. *The Globe and Mail* adjusted. *The Globe and Mail* is as effective today as they were when I was a kid. They have great coverage. They still have a great product, and they are still making money, but they were also one of the first to sit down and make a deal with these platforms, and the platforms understood that this was a good product for them to make a good deal with.

Traditional media and some journalists themselves are struggling to adapt to the digital world and what that means for delivery and consumption of news. Shaking down big tech and driving them to the point where platforms like Meta and Alphabet will stop promoting your content is not the win this government and a lot of people in media think it is. I fear this legislation will have the opposite of the desired effect.

We have seen how serious Meta is about stopping the dissemination of news information. The people that will be hurt when that happens — and I believe it will happen. I think there is no reason why a business model that's designed to be free to give consumer choice and to drive traffic is going to continue to drive traffic for the media and the journalists in this world if they have to pay for that service. Their whole business model will be disrupted, and the loser will be Canadian consumers. The loss will be the taxpayers' because I think there will be a detrimental growth. We had witnesses who came before our committee, including print associations that represent journalists in this country, who say that thanks to Meta, their traffic is up as much as 31%, 32% or 33%.

Facebook and Google are at a point right now where, like any business, when you have a government that wants to come in and regulate you and tell you what to do with your business enterprise at some point, you're going to say, "You know what, I'm going to shut down and go elsewhere; there's no future here." Again, the loser will be our country because we live

The Hon. the Speaker: I'm sorry, Senator Housakos, but your time is up.

Senator Dagenais: Thank you very much, Madam Speaker. This is on debate.

I do not intend to block something that could become a financial lifeline for some of the country's traditional media outlets, even though I don't think they'll all be saved.

The most recent report on the federal government's annual advertising spending clearly shows that the government gave 55% of its budget to the digital media targeted by Bill C-18. That represents $64 million, versus $53 million for our Canadian newspapers and radio and television stations.

It made me wonder: How do we reconcile the fact that the government wants to pass a bill to tax web giants like GAFA for the benefit of traditional media, when the government and its advertising choices are largely to blame for making them so poor? That's my contribution to the debate.

Hon. Andrew Cardozo: Honourable senators, I am pleased to rise to say a few words on Bill C-18. We heard from a number of Canadians on this, and I listened to the many speeches that we have heard along the way, especially today. My comments will be brief and in three parts. I will speak first about the purpose of the bill, then about the role of the Canadian Radio-television and Telecommunications Commission, or CRTC, in overseeing the bill and then about the larger context.

The purpose of Bill C-18 is to rebalance the power dynamics in the digital news marketplace in order to ensure that Canadian media and journalists are fairly and equitably compensated. The bill creates a new legislative and regulatory framework. It also expands the mandate and powers of the Canadian Radio-television and Telecommunications Commission, or CRTC.

The bill rebalances the power dynamics in the digital news marketplace in order to ensure fair compensation for Canadian media outlets and journalists. It creates a new legislative regulatory framework to enable digital news intermediaries, such as Google and Facebook, to negotiate agreements. This is the core of the bill: negotiating agreements with Canadian media to authorize them to disseminate Canadian media content on their platforms.

The bill also creatively sets up a process that enables smaller media outlets to bargain collectively. It gives the CRTC responsibility to make the necessary regulations, as well as a code of conduct to govern bargaining between digital news intermediaries and news businesses in relation to content. It also mandates the CRTC to determine whether agreements are outside of the bargaining process — meeting the conditions for exemptions.

The CRTC is an arm's-length agency that oversees or implements several acts, and does so rather diligently — sometimes standing up to the cabinet and the Governor-in-Council when they disagree with them. While commissioners are always appointed by the federal cabinet, the process of selecting commissioners is open and transparent, and people have to apply. Once they are appointed, they have to avoid interaction with ministers and parliamentarians, and must do so quite diligently.

It has been said that the CRTC can designate parties on a whim. Well, let me tell you, the CRTC does not and cannot do whim. It is incapable of doing whim, and that is by design. When I was there, I had a colleague who tried very hard to have a commission rule on certain issues from the bench. He tried throughout his time there, but was not successful. The process is always thoughtful, and they don't do things at the drop of a hat — for better or for worse. The CRTC

always does extensive consultations before finalizing its regulations through a process that often has two rounds of negotiations.

Lastly, the CRTC, in my view, is well equipped to take on this responsibility, as it does regulate broadcasting, which includes broadcasting news. Therefore, it will be expanding its purview by looking at print news and online news, and, in that sense, those are things that the CRTC has to learn, but they certainly have their base in place.

Let me address the larger context briefly: Here we are in the historic spring of 2023 — it needs a name. I recall the Arab Spring, but I think the artificial intelligence, or AI, spring of 2023 is a really interesting time. This is the time when AI has taken over the online world, and possibly taken over the whole world. The world has changed with the arrival of ChatGPT and other generative AI. In the context of the rapidly growing polarization in Canadian society and societies elsewhere, this kind of bill becomes all the more important.

Are we defending failing media or dinosaur media with this bill? Maybe we are, or maybe we're not. But if we are, we need to do everything we can to save the free, balanced and legitimate media that is generally balanced and edited — rather than only having all of our news be reduced to individualized social media, which we know is increasingly biased, myopic and unreliable.

There are, as mentioned, many new and developing online media that carry many of the same good values — such as being balanced and edited — as the traditional media, but they are generally small and struggling. Until such time that they are strong enough to have the same broad, edited and balanced nature, I think it is important that we do what we can to help the traditional media. The online world often drives Canadians into silos rather than brings people together to create Canadian discussion, dialogue and debate that is fair and respectful.

While the web giants are threatening consequences in this collision of democratically elected governments versus multilateral corporations, it is vital that democracy stands firm. The web giants, in fact, make the point very well as to why we need this bill. This is about our harmonious democratic society slipping away into a Wild West of disintegration of our society.

The Hon. the Speaker pro tempore: I see that Senator Housakos has a question. Senator Cardozo, will you take a question?

Senator Cardozo: We are short on time. I will answer one quick question. It's always a compliment when I receive a Housakos question.

Hon. Leo Housakos: It's a simple question.

The government says that they are so committed to helping print media, as well as diverse local and regional media. Can you explain to me why the government spends about $140 million a year in media buy-in for all of their government agencies, and why do they spend a maximum of about 2% to 2.5% on ethnic and local media, while the rest of the budget goes toward the giant broadcasters in Canada?

Senator Cardozo: I don't make those budgets, but I don't disagree with you at all. I think what we're trying to do here is help this media.

One of the things that you and I asked a number of people — who appeared before us in committee — is what is going to happen to the small media, ethnic media and so forth. One of the things that gave me the most assurance was our witnesses from Australia, who said that, in

fact, the small media got disproportionately more resources than the big media, and that gives me some assurance. It's certainly an issue that we will follow, and I think it's an important issue that was addressed extensively in our hearings. Thank you.

Hon. Julie Miville-Dechêne: Honourable senators, I want to speak at third reading of Bill C-18, which I have been following closely in part because I was a journalist in my former life, but also because I met with several groups, read a lot of analyses and reports, and took part in the Standing Senate Committee on Transport and Communications' detailed study.

Essentially, Bill C-18 is a response to the fact that many media outlets, especially traditional ones, other than CBC/Radio-Canada, are struggling financially, having lost a significant portion of their advertising revenue to giants such as Facebook and Google, which are getting away with an awful lot.

That is a fact, and the government was right to intervene, because news and journalism contribute significant value to society in any democracy.

The chosen solution is based on the Australian model, which forces those platforms to either negotiate compensation agreements with media outlets or be designated by law and subjected to arbitration. The committee adopted an amendment I proposed, which states that the bill will come into force no later than six months after Royal Assent. That is essentially the window that Google and Facebook will have to negotiate voluntary agreements with the media.

However, the committee study revealed that Bill C-18 does have certain shortcomings, which concerns me.

I'm concerned because I want Google and Facebook, which are indirectly responsible for the crisis in the media, to contribute to the economic viability of these businesses, and because I also want Google and Facebook to continue distributing Canadian journalistic content.

Unfortunately, certain aspects of Bill C-18 could result in platforms deciding to stop sharing this content. Yet for many media outlets, being visible on Google and Facebook is essential. The availability and sharing of hyperlinks to news content on these platforms often drives over 50% of web traffic to the media. It would be regrettable — catastrophic even, in some cases — if this traffic were to disappear as a result of the bill's overreach.

I want to highlight a number of things that I think are problematic in Bill C-18. First of all, while it was being studied, the House of Commons adopted amendments that significantly increased the number of media outlets eligible under Bill C-18. The list grew from about 200 organizations, which had been identified based on strict criteria of eligibility for tax credits, to 650 or 700.

This expansion also distances Canada from what is happening in France and Australia, where the number of news outlets included in the negotiation process is much smaller.

I have a lot of sympathy for community media and student radio stations, where many journalists begin their careers, but I personally believe that these organizations would be better served by targeted federal or provincial support programs than by business deals with Google and Facebook. As I see it, it doesn't really make sense to force those platforms to pay volunteer-run student radio stations for content that is of virtually no value to them.

During clause-by-clause study, the committee rejected an amendment that would have limited and clarified the number of media outlets covered by Bill C-18's commercial negotiation regime. Unfortunately, this rejection could give Google and Facebook ammunition.

In the Canadian version, however, the possibility of being exempt depends on a long series of criteria that remain vague. For example, what is fair compensation? How will we know if the money received by the media goes toward the production of news? How will the platforms know if they have entered into enough agreements with diverse media? What is meant by the requirement that a "significant portion" of the agreements be concluded with official language minority communities?

I haven't even mentioned the additional requirements that could be specified in regulations.

I have no doubt that the intentions behind these criteria are noble, of course. And, of course, I also want strong, diversified and financially healthy media in our country. But this long list of criteria gives the impression that the survival of Canada's entire media ecosystem rests on commercial agreement with two — or one — foreign companies. Is this really the model that Canada wants to put forward? Do we really believe that the survival of Indigenous media, official language minority community media or local and community media should be made dependent on commercial agreements with American technological giants who can choose to remove this content from their platforms at any time? I am sceptical.

During our hearings, we also heard sharply contrasted views between the media and the platforms on the object of the negotiations. In its briefing documents, the government states that:

Bill C-18 proposes a market-based approach that seeks to ensure digital platforms and news businesses reach fair commercial agreements based on market value.

However, several news outlets have said that they expect Google and Facebook to pay around 30% of their newsroom payroll, which sounds more like a subsidy.

The question therefore arises: Is Bill C-18 proposing a subsidy model for newsroom expenses or a commercial negotiation based on the exchange of value between two parties? Unfortunately, the bill did not really settle this question.

In a brief submitted to the committee, Konrad von Finckenstein, former chairman of the CRTC, noted this problem. He writes:

The Act should spell out the specific subject of negotiation. Without such precision negotiations (and possible arbitration) will be unfocused and raise issues not germane to the question to be determined.

The amendment we proposed, which was adopted by the committee, was inspired by testimony from government officials and even the minister, who all agreed that the negotiations should be about the value of the content of news for the platforms and the value that the big platforms bring to the media — in other words, an exchange of value.

In his testimony before the committee, Minister Pablo Rodriguez described the process set out in Bill C-18 as follows, and I quote:

what we want is to have them both sit down at the negotiating table and to make sure all of this is based on free and informed negotiations. The platforms would be on one side of the negotiating table and the news media would be on the other. The platforms will say that the fact that they're sharing the news media's content and that they're on their platforms has value and the news media will say that they do research and that that has value. They will sit down together and negotiate based on that.

In light of this testimony, the committee adopted an amendment that spells out the purpose of the negotiations and that is also based on the Australian code, which served as our model.

The new clause as follows, and I quote:

The purpose of the bargaining process is to determine the value that each party derives from the news content of an eligible news business being made available by a digital news intermediary and to determine the portion of that value that will be transferred to the eligible news business.

Of course, this amendment doesn't fix all of the problems with the bill, but it may help to clarify its objectives and bring the parties together.

Google has actually entered into agreements that with 1,500 news outlets in 15 European countries. Those agreements don't cover hyperlinks.

Bill C-18 certainly has its flaws, but at least it offers an action plan to rebalance the power dynamics. The government drew on the Australian model in good faith. That was a good idea.

What happens if Google and Facebook take news content off their platforms, the media outlets don't collect a dime and their web traffic plummets? *Le Devoir* told us that nearly 80% of its web traffic depends on links from various platforms. What impact will this have on news available to Canadians?

I have to say that I'm concerned because it's clear that Google and Facebook see Canada as a bit player in an international negotiation and believe that we are out of our league.

Hon. Paula Simons: Honourable senators, this Wednesday, Bell Media announced that it was consolidating its newsrooms across the country, laying off 1,300 people. Gone from the company are two names that those in the Parliamentary Precinct will know well: Joyce Napier, who was CTV Ottawa's bureau chief, and Glen McGregor, who was CTV's senior political correspondent. CTV will be closing its international bureaus in London and Los Angeles and scaling back its Washington bureau. The company is also closing six of its radio stations, including Edmonton's beloved sports talk station, TSN 1260.

These shocking new cuts are just the latest in a long and painful litany of media meltdowns. All across the country, our newspapers, magazines, radio stations and TV stations are fighting to stay alive in the wake of a seismic digital disruption that eroded advertising revenues, subsumed subscription sales and ruptured relationships with readers and audiences.

This bill is neither a plebiscite on the importance of journalism nor on the value of a free press. It should be starkly evident by now that Canadian journalism is in crisis and that this crisis is having a dire impact on our democracy and our society. If I thought this bill would save Canadian journalism, it would have my full-throated support. But it can't, and it won't.

Let's look at two possible outcomes of Bill C-18.

In one timeline, it's possible that both Meta and Google will make good on their threats and block access to Canadian news. Imagine Canadians suddenly unable to read or share news on Facebook or Instagram, which are two of Canada's most popular social media sites. Imagine that suddenly you can't share a story with your neighbours about a hostage-taking in your neighbourhood or, less dramatically, about plans for a high-rise tower at the end of your block. Imagine that you can't share a story about Donald Trump's latest legal woes with your cousins

or a story about wildfire smoke with your mother-in-law who has emphysema or a restaurant review from your local paper with your friend the foodie.

Meta has signalled its intent to block all news, including international news, the day Bill C-18 is given Royal Assent. That wouldn't just impinge on our ability to keep ourselves and our friends informed; it would undermine the ability of news publishers to post and share their stories, attract audiences and serve advertisers. It would reduce readership and revenues overnight, leaving Canadian publishers and broadcasters worse off than before.

As well, if Google stops surfacing Canadian and international news stories on its mighty site, well, the effects would be even more dire. Google curates the world, 90% of the globe uses Google as its search engine, an outrageous and dangerous monopoly that no country, including Canada.

If Google stops indexing us, well, suddenly, for millions and millions of Canadians who rely on Google, all news stories would just quietly disappear. And we wouldn't even know what we're not seeing. Our reality will just shift in ways we cannot imagine or anticipate. Indeed, many Canadians who have not been glued to the Bill C-18 debate might not even realize that their news just vanished not, perhaps, until we face some kind of public emergency, health crisis or political upheaval, and they suddenly find themselves in the dark without vital information they need for themselves and their families.

According to Statistics Canada figures released just this past March, a full 80% of Canadians get their news online, and 90% of those with university degrees rely on the internet as their primary news source. As for Canadians between 15 and 34, well, 95% of them rely on the internet as their primary source of news. If Google and Facebook suddenly start blocking our access to our news, which will be their legal right as private American companies, then we'll all be cut off from the news, and Canadian journalists will be cut off from readers and viewers, reporting stories that no one can find.

Let's look at another scenario.

Let's assume for the sake of argument that Facebook and Google are simply bluffing and that they are making empty threats and have neither the technical capacity nor the political guts to do anything so drastic. Let's assume that, after some huffing and puffing, they concede and enter into negotiations with Canadian news outlets and agree to subsidize Canadian journalism to the tune of, say, $300 million a year to pay for 25% or 30% or even 35% of the cost of Canadian newsrooms. Well, you may say, if that happens, then Bill C-18 will have done its job, Senator Simons.

But it's not that simple. What happens if formerly independent Canadian news organizations become utterly beholden to Google and Meta for their survival? What happens if we give these two American behemoths even more control over what we read, watch and hear? We have already had a taste of this because, in an effort to head off Bill C-18, both Google and Facebook have been busy striking secret side deals with major publishers across the country. Read a story about Bill C-18 in the media right now and you will quite often see a little note at the bottom of the page informing you that the media outlet is already receiving some form of compensation through a private agreement with one of the big social media giants. It will then be left to you to judge whether that subsidy has had any impact on the way the story about Google or Facebook was reported.

Now imagine just how independently and freely news might be reported if Facebook and Google held the purse strings in a stranglehold? You don't have to imagine. Dr. Sara Bannerman, who holds the Canada Research Chair in Communication Policy and Governance at McMaster University, has painted some ideas. In her brief to the Standing Senate Committee on Transport and Communications, she notes that there is nothing in Bill C-18 that prevents the growing influence of digital platforms over news coverage. Dr. Bannerman notes that companies such as Google and Meta could provide remuneration to news organizations in the form of training, technical support, technologies or technology licensing discounts. That sounds fine, but Dr. Bannerman writes that this, in turn, would deepen the integration of news organizations with digital platform data and technologies. Let me quote from her brief:

Such technologies could not only allow data and information about users and news to flow back to platforms (the bill makes no mention of privacy), but also shape how newsrooms view and evaluate their own activities.

The door is also open for platforms to invest in specific capital or projects rather than (or as well as) paying in cash. This would result in platforms gaining influence over the structure and infrastructure of news organizations and/or the content they produce.

Indeed, I would argue that Facebook and Google have already had a direct and detrimental impact on the way newsrooms present their stories whether it's because Facebook enthusiastically insisted that newspapers pivot to video, which largely turned out to be a waste of time, resources and talent, or whether it was because Google led newsrooms to rewrite and torture leads and headlines in a vain attempt to search engine optimize their stories.

I can only imagine how much more direct that kind of influence might become in a regime where Facebook and Google are underwriting the news.

Let me quote again from Sara Bannerman:

Allowing platforms' business models to potentially shape news in this way can be bad for news quality. It can result in newsrooms pursuing clicks and platform incentives rather than stories and formats that are important to an informed electorate and citizenry.

We certainly tried in committee to make small amendments to make Bill C-18 less damaging. I myself was quite disappointed when, by a narrow margin, the committee defeated my own amendment that strove to make Google and Facebook more accountable for the way they use their algorithms to boost some news stories and suppress others. I sought to model my amendment on the data transparency protocols that have already been embraced by the European Union to no avail, I'm afraid.

Senator Dasko, however, was successful with a far more important amendment that allowed media companies that do not wish to be part of the Bill C-18 regime to opt out. Originally, the Canadian Radio-television and Telecommunications Commission, or CRTC, had the power to order companies to be part of the deal making with Google and Facebook, even if they didn't want to do so. I'm glad to say that Senator Dasko was able to make that important change.

Another critical amendment was proposed by our deputy chair, Senator Miville-Deschêne. Her amendment aims to create a solid framework for negotiations between platforms and news organizations based on a legitimate exchange of value, giving arbitrators some functional rubric to adjudicate. The amendment attempts to inject some economic common sense into the airy

fantasy of Bill C-18, but even though the amendment was accepted by the committee, the government opposed it. I greatly fear it might not survive.

My friends, it breaks my heart. The government had so many other things it could have done. Suppose it had stopped buying so many millions of dollars in ads on Facebook and Google, and spent some of that money instead buying ads in local newspapers and ethnocultural, Indigenous and minority language publications. Suppose it had broadened its tax rebate program and rewarded Canadians directly for subscribing to newspapers and magazines. Suppose, as was suggested by one of our witnesses, independent writer and publisher Jen Gerson of *The Line*, they had simply given more money to the CBC and thus allowed the public broadcaster to stop selling ads and stop competing with newspapers and private broadcasters for advertising revenues.

Instead, we have invested so much time, energy and political capital on this weird Rube Goldberg device of a bill that might completely backfire or that might undermine the independence and integrity of Canadian news, if it works at all.

Some Hon. Senators: Hear, hear.

Hon. Fabian Manning: Honourable senators, I rise today to speak to Bill C-18, An Act respecting online communications platforms that make news content available to persons in Canada.

Both Senator Harder and the minister have repeated the assertion that, since 2010, about one third of journalism jobs in Canada have disappeared, and Canadian TV stations, radio stations and newspapers have lost around $4.9 billion in revenue. At the same time, they argue that online advertising revenue has grown considerably.

When Professor Dwayne Winseck of the School of Journalism and Communications at Carleton University testified before our committee on May 10, he pointed out that the causes for the decline in traditional media are multi-faceted. In response to a question I posed to him at committee, he said:

I do not believe that Facebook and Google caused the crisis of journalism. A decade ago revenue started to fall. The crisis of journalism is multifactorial. It depends on where you want to start. Basically, per capita newspaper circulation begins to decline in the 1980s and 1990s. Revenue peaks around 2005-2006 and then starts to go down afterwards. And why? Because of the global financial crisis. These companies were ill prepared because of consolidation, and they were debt addled exactly as advertising started to plunge and the internet giants began to emerge.

So Professor Winseck emphasized this: Google and Facebook are not the cause of the crisis in journalism.

Yet then Professor Winseck went on to state that he does not believe this bill will do anything to address the monopoly concentration that he argues has occurred over the past decade and a half. Professor Winseck argues that this foundational failure in the bill will harm Canadians by not paying sufficient attention to what he believes should be the equitable distribution of whatever fruits are born out of this legislation to support smaller, upstart news entities that could liven our news ecology. He argues that this failure in the bill is a problem.

Other witnesses took a somewhat different perspective, though they tended to arrive at the same solution when it came to their analysis of the bill. Peter Menzies, a former vice-chair of the

CRTC, told our committee on May 2 that "bill C-18 ultimately helps neither those that are struggling to survive nor those looking to enter the market". Menzies agreed that there has been tremendous dislocation in the news market in Canada and around the world during the last number of years. He noted that about 473 newspapers have died in Canada, but in his view, new entities have stepped in to take their place. He noted:

Up to 700 websites owned by licensed commercial broadcasters, many of which look very much like an online newspaper, have launched.

He argued that this has occurred without state subsidies: "216 web-based news and commentary platforms have been launched by innovators and entrepreneurs." These include many diverse news and commentary platforms.

This is a somewhat different perspective from that held by Professor Winseck, but where these and many other witnesses seemed to have agreed is that Bill C-18 will not solve the problem it has supposedly been drafted to address. Minister Rodriguez has repeated many times that this bill is important to protect the free and independent press, but it seems clear from the witness testimony that we heard at committee that the bill will likely fail in that regard.

There were serious questions that were raised at committee in relation to who will benefit from this bill. According to testimony from government officials, Bill C-18 is forecast to generate about $215 million for eligible news businesses. The Parliamentary Budget Officer, or PBO, had a somewhat higher estimate of close to $350 million. As the PBO points out, about three quarters of that amount, or about $240 million, will go to the largest broadcasters, with the CBC, Bell Media and Rogers Media being the largest beneficiaries. Whatever remaining sum of money ends up flowing to smaller eligible media and Indigenous news outlets, that amount will have to be spread across the country to multiple news businesses.

Personally, it leaves me to wonder what level of funding will actually end up being available for smaller media in my own province of Newfoundland and Labrador. When we asked that question about likely provincial breakdowns, officials could not tell us. They didn't have any answers to our questions.

When the bill was reviewed at committee, Senator Carignan proposed a very reasonable amendment to exclude state broadcasters that already receive government subsidies from benefiting from the provisions in Bill C-18. But the majority of senators on the committee rejected that amendment. That means there will be less money for smaller news businesses and for Indigenous news outlets. Evidently, the Liberal government favours that outcome over giving yet more subsidies to state broadcasters.

That is unfortunate because even if we take the most optimistic number from the Parliamentary Budget Officer and then look at the likely per capita share for Newfoundland and Labrador's smaller news businesses, the amount comes out to less than $2 million, a paltry sum for those news outlets struggling to survive in today's market.

In the face of this reality, it is scarcely surprising that many witnesses were very sceptical that Bill C-18 will actually be successful in building the fairer news ecosystem that the minister claims to want. The potential of less than $2 million for smaller news businesses in my home province of Newfoundland and Labrador will be the most optimistic scenario.

The minister was absolutely unable to explain, when he appeared at our committee, what will happen if some of the big digital news intermediaries, such as Meta, Google and perhaps

others, simply stop linking to news in Canada. Meta witnesses who appeared before our committee were quite clear that they would not participate, while Google witnesses noted that their company has not yet made a determination. The non-participation of just two large platforms would reduce the amount of funding for eligible news businesses by up to 30%.

Once again, Senator Carignan proposed an amendment to at least try to address part of this problem by removing hyperlinks as part of the definition of news content. This might have assisted in perhaps keeping platforms, which, after all, are at the heart of the government's funding model, within the funding regime. But, once again, the majority of senators on our committee said no, but I am encouraged by her speech here today about what will happen when it comes time to vote.

Colleagues, that should worry us all because it leads me to believe the government has no idea what will happen if the bottom drops out of the bill's funding model.

With the passage of this bill, many small news outlets in this country are on a journey to the unknown a sad reality indeed. In that sense, the bill is a plunge into darkness, and I fear it is a plunge into darkness in another sense as well.

There is little question that the bill has serious trade implications for Canada. Last year, the Office of the United States Trade Representative, Katherine Tai, issued a press release in which she expressed concern:

about Canada's proposed unilateral digital service tax and pending legislation in the Canadian Parliament that could impact digital streaming services and online news sharing and discriminate against U.S. businesses.

Earlier this year, the U.S. embassy also stated, "We have concerns it could impact digital streaming services and discriminate against U.S. businesses."

True to form, the government has responded by saying that it would not be intimidated. Not being intimidated is all well and good when one has a sensible strategy to deal, but based on the witness testimony we heard, it is far from clear that Bill C-18 constitutes such a sensible strategy. In fact, Bill C-18 is creating the very crisis, I believe, which the government now has no strategy to address.

During my critic briefing on this bill, officials were asked what the likely hit will be on Canadian businesses should U.S. initiate trade retaliation. Officials responded that the hit would likely be equivalent to whatever the U.S. believed U.S.-based digital news intermediaries had lost or were losing as a result of Bill C-18. In other words, whether the amount is just over $200 million, as the government forecasts, or whether it is $330 million, as forecast by the PBO, U.S. trade retaliation will potentially wipe out all those gains. Once again, one is left wondering what the end net benefit of this bill will actually end up being.

I have to admit that I was extremely surprised and disappointed as several senators on our committee who profess a great knowledge and understanding of the media world here in Canada — much better than I do — did not do much to address many of the issues and problems that our witnesses raised during our committee meetings.

There are additional concerns with this bill which relate to the implications that this legislation has for journalistic independence. In their brief on Bill C-18, the Internet Society – Canada

Chapter issued a warning about the implications that this bill could have for journalistic independence. Their brief stated:

The Online News Act will make news organizations dependent on direct cash-flows from online platforms; it will give those platforms, under CRTC supervision, intrusive oversight powers over news organizations' business operations; it will undermine journalistic independence.

This, of course, assumes that online platforms will actually participate in the regime that the bill creates, but if they ever do, concerns about the implications of this have been systematically ignored.

Further concerns were raised about the powers granted to the CRTC to compel the provision of any information it deems necessary from any news organization.

Phillip Crawley, Publisher and Chief Executive Officer of *The Globe and Mail*, raised this specific matter with our committee, asking that the information-gathering powers of the CRTC be "limited to information necessary to confirm the eligibility of news organizations, or to investigate a complaint"

Here again, Senator Carignan proposed a very reasonable amendment to limit the authorities of the CRTC in exactly that way. But once again, the majority of senators on our committee defeated the amendment.

At the end of the day, none of the minor amendments adopted at committee have addressed any of the bill's fundamental flaws. Friends, we did not change the water into wine; we just muddied the water more.

Based on witnesses' testimony, there is absolutely no assurance that Bill C-18 can deliver support for eligible news businesses that the government claims it will. Those who will lose the most as a result of this will be the smaller news businesses in Canada. That is the sad reality of this piece of legislation. But all Canadians will lose if Bill C-18 fails to deliver on its objectives and if all that results from this bill are unfulfilled expectations and yet another trade war with the United States.

The Standing Senate Committee on Transport and Communications had an opportunity to send to the government a sensible message on all of these concerns. I believe we had a duty to exercise sober second thought on this bill; however, the majority of senators failed to do that, and it is Canadians who will now live with the consequences. In our democracy, the majority rules, and I fear that it is Canadians who will now have to live with the consequences of the decision to pass this bill. I wish that it could have been otherwise. Thank you.

AI response based on transcript:

Summary:

Key Theme of the Debate:

The central theme of this debate revolves around the need for government intervention in the digital news market to ensure fair compensation for Canadian media outlets from large tech companies (primarily Google and Meta). The discussion highlights the challenges facing the news industry, particularly due to shrinking revenues and the dominance of digital platforms, while also weighing the potential consequences of such interventions on media independence and market dynamics.

Conservative Policy Suggestions:

1. **Market-Driven Solutions**: Encourage a more laissez-faire approach to the digital news market, advocating for minimal regulation and allowing media outlets to adapt to changing consumer preferences and technology without government mandates. This may involve reducing regulatory burdens on news organizations to stimulate innovation.

2. **Support for Private Sector Initiatives**: Promote partnerships between traditional media and tech companies where both entities can negotiate and contract without government interventions. This could include incentives for private investments in local journalism rather than government subsidies, allowing for competitive growth based on market forces.

3. **Enhanced Competition in Media**: Encourage the growth of diverse media platforms by implementing policies to reduce barriers to entry for new media companies, fostering a vibrant and competitive marketplace. This can include tax incentives or grants for new media startups instead of supporting larger, established companies.

Liberal Policy Suggestions:

1. **Expanded Support for Local Journalism**: Develop policies that provide direct financial support for local and independent news outlets, particularly in underserved communities, such as targeted grants or tax credits to help sustain their operations and promote diverse perspectives.

2. **Strengthened Regulations on Digital Platforms**: Enact and enforce stricter regulations on digital platforms to ensure equitable negotiations with news organizations regarding the use of news content. This may involve establishing mechanisms for greater accountability and transparency in deals between media outlets and tech giants.

3. **Collaborative Investments in Media**: Encourage collaboration between government and media organizations to foster resilience in the industry. This can include funding programs for innovation in journalism practices, supporting technology-driven solutions in news delivery, and using public funds to promote media literacy initiatives to help the public navigate the evolving media landscape.

Screenshot of AI response on 24/02/25

Processing pasted transcription...
Summary:
Key Theme of the Debate:
The central theme of this debate revolves around the need for government intervention in the digital news market to ensure fair compensation for Canadi
an media outlets from large tech companies (primarily Google and Meta). The discussion highlights the challenges facing the news industry, particularly
due to shrinking revenues and the dominance of digital platforms, while also weighing the potential consequences of such interventions on media indepen
dence and market dynamics.

Conservative Policy Suggestions:
1. **Market-Driven Solutions**: Encourage a more laissez-faire approach to the digital news market, advocating for minimal regulation and allowing medi
a outlets to adapt to changing consumer preferences and technology without government mandates. This may involve reducing regulatory burdens on news or
ganizations to stimulate innovation.

2. **Support for Private Sector Initiatives**: Promote partnerships between traditional media and tech companies where both entities can negotiate and
contract without government interventions. This could include incentives for private investments in local journalism rather than government subsidies,
allowing for competitive growth based on market forces.

3. **Enhanced Competition in Media**: Encourage the growth of diverse media platforms by implementing policies to reduce barriers to entry for new medi
a companies, fostering a vibrant and competitive marketplace. This can include tax incentives or grants for new media startups instead of supporting la
rger, established companies.

Liberal Policy Suggestions:
1. **Expanded Support for Local Journalism**: Develop policies that provide direct financial support for local and independent news outlets, particular
ly in underserved communities, such as targeted grants or tax credits to help sustain their operations and promote diverse perspectives.

2. **Strengthened Regulations on Digital Platforms**: Enact and enforce stricter regulations on digital platforms to ensure equitable negotiations with
news organizations regarding the use of news content. This may involve establishing mechanisms for greater accountability and transparency in deals bet
ween media outlets and tech giants.

3. **Collaborative Investments in Media**: Encourage collaboration between government and media organizations to foster resilience in the industry. Thi
s can include funding programs for innovation in journalism practices, supporting technology-driven solutions in news delivery, and using public funds
to promote media literacy initiatives to help the public navigate the evolving media landscape.

Bill C-18 : Text of the Bill

https://www.parl.ca/DocumentViewer/en/44-1/bill/C-18/royal-assent

First Session, Forty-fourth Parliament,

70-71 Elizabeth II – 1 Charles III, 2021-2022-2023

STATUTES OF CANADA 2023

CHAPTER 23

An Act respecting online communications platforms that make news content available to persons in Canada

---

ASSENTED TO

June 22, 2023

BILL C-18

RECOMMENDATION

Her Excellency the Governor General recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in a measure entitled "*An Act respecting online communications platforms that make news content available to persons in Canada*".

SUMMARY

This enactment regulates digital news intermediaries to enhance fairness in the Canadian digital news marketplace and contribute to its sustainability. It establishes a framework through which digital news intermediary operators and news businesses may enter into agreements respecting news content that is made available by digital news intermediaries. The framework takes into account principles of freedom of expression and journalistic independence.

The enactment, among other things,

(a) applies in respect of a digital news intermediary if, having regard to specific factors, there is a significant bargaining power imbalance between its operator and news businesses;

(b) authorizes the Governor in Council to make regulations respecting those factors;

(c) specifies that the enactment does not apply in respect of "broadcasting" by digital news intermediaries that are "broadcasting undertakings" as those terms are defined in

the *Broadcasting Act* or in respect of telecommunications service providers as defined in the *Telecommunications Act*;

(d) requires the Canadian Radio-television and Telecommunications Commission (the "Commission") to maintain a list of digital news intermediaries in respect of which the enactment applies;

(e) requires the Commission to exempt a digital news intermediary from the application of the enactment if its operator has entered into agreements with news businesses and the Commission is of the opinion that the agreements satisfy certain criteria;

(f) authorizes the Governor in Council to make regulations respecting how the Commission is to interpret those criteria and setting out additional conditions with respect to the eligibility of a digital news intermediary for an exemption;

(g) establishes a bargaining process in respect of matters related to the making available of certain news content by digital news intermediaries;

(h) establishes eligibility criteria and a designation process for news businesses that wish to participate in the bargaining process;

(i) requires the Commission to establish a code of conduct respecting bargaining in relation to news content;

(j) prohibits digital news intermediary operators from acting, in the course of making available certain news content, in ways that discriminate unjustly, that give undue or unreasonable preference or that subject certain news businesses to an undue or unreasonable disadvantage;

(k) allows certain news businesses to make complaints to the Commission in relation to that prohibition;

(l) authorizes the Commission to require the provision of information for the purpose of exercising its powers and performing its duties and functions under the enactment;

(m) requires the Canadian Broadcasting Corporation to provide the Commission with an annual report if the Corporation is a party to an agreement with an operator;

(n) establishes a framework respecting the provision of information to the responsible Minister, the Chief Statistician of Canada and the Commissioner of Competition, while permitting an individual or entity to designate certain information that they submit to the Commission as confidential;

(o) authorizes the Commission to impose, for contraventions of the enactment, administrative monetary penalties on certain individuals and entities and conditions on the participation of news businesses in the bargaining process;

(p) establishes a mechanism for the recovery, from digital news intermediary operators, of certain costs related to the administration of the enactment; and

(q) requires the Commission to have an independent auditor prepare a report annually in respect of the impact of the enactment on the Canadian digital news marketplace.

Finally, the enactment makes related amendments to other Acts.

Available on the House of Commons website at the following address:

www.ourcommons.ca

TABLE OF PROVISIONS

An Act respecting online communications platforms that make news content available to persons in Canada

70-71 Elizabeth II – 1 Charles III

CHAPTER 23

An Act respecting online communications platforms that make news content available to persons in Canada

[*Assented to 22nd June, 2023*]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the *Online News Act*.

Interpretation

Definitions

2 (1) The following definitions apply in this Act.

Commission means the Canadian Radio-television and Telecommunications Commission. (*Conseil*)

covered agreement means, as applicable,

- **(a)** an agreement that is entered into as a result of bargaining sessions referred to in paragraph 19(1)(a) or mediation sessions referred to in paragraph 19(1)(b); or
- **(b)** an arbitration panel's decision that is deemed to be an agreement under section 42. (*accord assujetti*)

digital news intermediary means an online communications platform, including a search engine or social media service, that is subject to the legislative authority of Parliament and that makes news content produced by news outlets available to persons in Canada. It does not include an online communications platform that is a messaging service the primary purpose of which is to allow persons to communicate with each other privately. (*intermédiaire de nouvelles numériques*)

eligible in relation to a news business, means that the business is designated under subsection 27(1). (*admissible*)

entity includes a corporation or a trust, partnership, fund, joint venture or any other unincorporated association or organization. (*entité*)

Indigenous news outlet means an undertaking or any distinct part of an undertaking whose primary purpose is to produce news content and that

- **(a)** is operated by an individual who belongs to an Indigenous group, community or people; and
- **(b)** produces news content primarily for Indigenous peoples. (*média d'information autochtone*)

Indigenous peoples has the meaning assigned by the definition *aboriginal peoples of Canada* in subsection 35(2) of the *Constitution Act, 1982*. (*peuples autochtones*)

Minister means the Minister of Canadian Heritage or, if another federal minister is designated under section 5, that minister. (*ministre*)

news business means an individual or entity that operates a news outlet in Canada. (*entreprise de nouvelles*)

news content means content — in any format, including an audio or audiovisual format — that reports on, investigates or explains current issues or events of public interest and includes such content that an Indigenous news outlet makes available by means of Indigenous storytelling. (*contenu de nouvelles*)

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 community news outlet. (*média d'information*)

official language minority community means English-speaking communities in Quebec and French-speaking communities outside Quebec. (*communauté de langue officielle en situation minoritaire*)

official language minority community news outlet means an undertaking or any distinct part of an undertaking whose primary purpose is to produce news content and that produces news content primarily for an official language minority community. (*média d'information de communauté de langue officielle en situation minoritaire*)

operator means an individual or entity that, through any means, operates a digital news intermediary. (*exploitant*)

Making available of news content

(2) For the purposes of this Act, news content is made available if

- **(a)** the news content, or any portion of it, is reproduced; or
- **(b)** access to the news content, or any portion of it, is facilitated by any means, including an index, aggregation or ranking of news content.

Freedom of expression

3 (1) For greater certainty, this Act is to be interpreted and applied in a manner that is consistent with freedom of expression.

Journalistic independence

(2) This Act is to be interpreted and applied in a manner that supports the journalistic independence enjoyed by news outlets in relation to news content produced primarily for the Canadian news marketplace, including local, regional and national news content.

Treatment of news content

(3) This Act is to be interpreted and applied in a manner that is aimed at ensuring news content is made available by digital news intermediaries without undue manipulation or interference.

Purpose

Purpose

4 The purpose of this Act is to regulate digital news intermediaries with a view to enhancing fairness in the Canadian digital news marketplace and contributing to its sustainability, including the sustainability of news businesses in Canada, in both the non-profit and for-profits sectors, including independent local ones.

Designation of Minister

Designation

5 The Governor in Council may, by order, designate any federal minister to be the Minister referred to in this Act.

Application

Application

6 This Act applies in respect of a digital news intermediary if, having regard to the following factors, there is a significant bargaining power imbalance between its operator and news businesses:

- **(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.

Duty to notify

7 (1) If this Act applies in respect of a digital news intermediary, its operator must so notify the Commission.

Information required

(2) An individual or entity that operates an online communications platform must, at the request of the Commission and within the time and in the manner that it specifies, provide the Commission with any information that it requires for the purpose of verifying compliance with subsection (1) or preventing non-compliance with it.

List of digital news intermediaries

8 (1) The Commission must maintain a list of digital news intermediaries in respect of which this Act applies. The list must set out each intermediary's operator and contact information for that operator and specify whether an order made under subsection 11(1) or 12(1) applies in relation to the intermediary.

Statutory Instruments Act

(2) The *Statutory Instruments Act* does not apply in respect of the list maintained under subsection (1).

Publication

(3) The Commission must publish the list on its website.

Broadcasting

9 This Act does not apply in respect of a digital news intermediary that is a *broadcasting undertaking* in respect of its *broadcasting*, as those terms are defined in subsection 2(1) of the *Broadcasting Act*.

Telecommunications service providers

10 For greater certainty, this Act does not apply to a *telecommunications service provider*, as defined in subsection 2(1) of the *Telecommunications Act*, when it is acting solely in that capacity.

Exemptions

Exemption order

11 (1) The Commission must make an exemption order in relation to a digital news intermediary if its operator requests the exemption and the following conditions are met:

- **(a)** the operator has entered into agreements with news businesses that operate news outlets that produce news content primarily for the Canadian news marketplace and the Commission is of the opinion that, taken as a whole, the agreements satisfy the following criteria:
    - **(i)** they provide for fair compensation to the news businesses for the news content that is made available by the intermediary,
    - **(ii)** they ensure that an appropriate portion of the compensation will be used by the news businesses to support the production of local, regional and national news content,
    - **(iii)** they do not allow corporate influence to undermine the freedom of expression and journalistic independence enjoyed by news outlets,
    - **(iv)** they contribute to the sustainability of the Canadian news marketplace,
    - **(v)** they ensure a significant portion of independent local news businesses benefit from them, they contribute to the sustainability of those businesses and they encourage innovative business models in the Canadian news marketplace,
    - **(vi)** they involve a range of news outlets in both the non-profit and for-profit sectors and they were entered into with news businesses that reflect a diversity

of business models that provide services to all markets and diverse populations, including local and regional markets in every province and territory, anglophone and francophone communities, and Black and other racialized communities,

- **(vii)** they ensure a significant portion of Indigenous news outlets benefit from them and they contribute to the sustainability of those outlets in a way that supports the provision of news content by and for Indigenous peoples, and
- **(viii)** they ensure a significant portion of official language minority community news outlets benefit from them and they contribute to the sustainability of those outlets in a way that supports the provision of news content by and for official language minority communities;

- **(a.1)** the Commission has held public consultations in accordance with any conditions that its Chairperson may specify; and
- **(b)** any condition set out in regulations made by the Governor in Council.

Effect of order

(2) The order exempts the operator, in relation to the intermediary, from the application of

- **(a)** section 21 and any provision of any regulations made under section 85 that is in relation to section 21; and
- **(b)** any other provision of this Act and any provision of any regulations made under subsection 81(1) or section 85 that is specified by the Commission, in its discretion, in the order.

Conditions

(3) The order may contain any conditions the Commission considers appropriate.

Approval of Treasury Board

(4) The order is subject to the approval of the Treasury Board if the order exempts the operator from the application of section 82 or any provision of any regulations made under subsection 81(1).

Duration of order

(5) The order remains in effect for a period of not more than five years and, subject to this section, may be renewed.

Interim order

12 (1) The Commission may, in relation to a digital news intermediary, make an interim order that has the same effect as an exemption order if the following conditions are met:

- **(a)** its operator has requested an exemption order in relation to the intermediary;
- **(b)** the operator has entered into agreements with news businesses that operate news outlets that produce news content primarily for the Canadian news marketplace;

- **(c)** the Commission is unable to make the exemption order because it is of the opinion that, taken as a whole, the agreements do not satisfy the criteria set out in subparagraphs 11(1)(a)(i) to (viii); and
- **(d)** the Commission is of the opinion that it will be able to change its opinion because the operator is, in good faith, taking measures that will permit the criteria to be satisfied within a reasonable period, which period must not be longer than one year.

Conditions

(2) The interim order must contain conditions respecting the measures being taken by the operator and may contain any other condition the Commission considers appropriate, including a condition requiring that public consultations be held at a time and place in Canada to be fixed by the Commission.

Approval of Treasury Board

(3) The interim order is subject to the approval of the Treasury Board if the order exempts the operator from the application of a provision referred to in subsection 11(4).

Cessation of effect

(4) The interim order must specify the period referred to in paragraph (1)(d) and ceases to have effect at the end of that period.

For greater certainty

13 For greater certainty, agreements referred to in paragraph 11(1)(a) or 12(1)(b) include agreements that were entered into before the day on which this section comes into force.

Review

14 (1) For greater certainty, the Commission may review an exemption order or an interim order.

Repeal of exemption order

(2) The Commission may repeal an exemption order if

- **(a)** the Commission is of the opinion that the operator of the digital news intermediary in question is acting in a manner that is inconsistent with this Act;
- **(b)** a condition referred to in subsection 11(1) is no longer met; or
- **(c)** a condition contained in the exemption order is not met.

Repeal of interim order

(3) The Commission may repeal an interim order if

- **(a)** the Commission is of the opinion that the operator of the digital news intermediary in question is acting in a manner that is inconsistent with this Act;
- **(b)** a condition referred to in paragraph 12(1)(c) or (d) is no longer met; or
- **(c)** a condition contained in the interim order is not met.

Reasons

15 The Commission must publish on its website reasons for

- **(a)** making or not making a requested exemption order;
- **(b)** deciding to make or not to make an interim order; and
- **(c)** deciding to repeal an exemption order or interim order.

Statutory Instruments Act

16 The *Statutory Instruments Act* does not apply in respect of an exemption order or an interim order.

Publication of orders

17 The Commission must publish on its website each exemption order and interim order that it makes.

Bargaining Process

Overview

Definition of *party*

18 In sections 19 to 44, ***party*** means, as applicable, an operator, an eligible news business or a group of eligible news businesses.

Steps in bargaining process

19 (1) The bargaining process consists of

- **(a)** negotiation or bargaining sessions over a period of 90 days;
- **(b)** if the parties are unable, within the negotiation or bargaining period, to reach an agreement, mediation sessions over a period of 120 days, beginning on the day after the end of the negotiation or bargaining period; and
- **(c)** if the parties are unable, within the mediation period, to reach an agreement and at least one of the parties wishes to initiate arbitration, final offer arbitration for a period of 45 days, beginning on the day after the end of the mediation period.

Extension

(1.1) On request of both parties, the Commission may extend a period provided for in any of paragraphs (1)(a) to (c).

Scope of bargaining process

(2) The bargaining process is limited to matters related to the making available, by the digital news intermediary in question, of news content produced by a news outlet that is identified under section 30 as a subject of the bargaining process and, if an application is made under subsection 31(1), determined by the Commission to be a subject of the bargaining process.

Scope of final offer arbitration

(3) Any final offer arbitration under the bargaining process is limited to monetary disputes.

Initiation of bargaining process

20 Only an eligible news business that is listed under subsection 29(1) or a group of eligible news businesses that are listed under that section may initiate the bargaining process with an operator.

Duty to bargain

21 An operator must participate in the bargaining process with the eligible news business or group of eligible news businesses that initiated it.

Good faith

22 Parties that are participating in the bargaining process must do so in good faith.

Copyright

Initiation of bargaining process

23 For greater certainty, an eligible news business or a group of eligible news businesses may initiate the bargaining process in relation to news content in which copyright subsists only if

- **(a)** the business or a member of the group owns the copyright or is otherwise authorized to bargain in relation to the content; or
- **(b)** the group is authorized to bargain in relation to the content.

Limitations and exceptions

24 For greater certainty, limitations and exceptions to copyright under the *Copyright Act* do not limit the scope of the bargaining process.

Mediation and final offer arbitration

25 For greater certainty, the use of news content is not to be the subject of mediation sessions or final offer arbitration during the bargaining process if the operator in question

- **(a)** has made payments to the eligible news business in question for the use of that content in accordance with a licence or agreement between the operator and the business; or
- **(b)** has made payments or has offered to make payments to the business in question for the use of that content in accordance with the relevant tariff approved by the Copyright Board for the use of that content.

Liability of operators

26 (1) If news content is made available by a digital news intermediary and its operator is a party to a covered agreement in relation to the making available of the news content by the intermediary, the operator is not liable under the *Copyright Act* for an infringement of copyright in relation to activities that are subjects of that agreement.

For greater certainty

(2) For greater certainty, nothing in this Act limits the liability of an eligible news business under the *Copyright Act* for an infringement of copyright.

Eligibility

Eligible news businesses — designation

27 (1) At the request of a news business, the Commission must, by order, designate the business as eligible if it

- **(a)** is a *qualified Canadian journalism organization* as defined in subsection 248(1) of the *Income Tax Act*, or is licensed by the Commission under paragraph 9(1)(b) of the *Broadcasting Act* as a *campus station*, *community station* or *native station* as those terms are defined in regulations made under that Act or other categories of licensees established by the Commission with a similar community mandate;
- **(b)** produces news content of public interest 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, which journalists may include journalists who own or are a partner in the news business and journalists who do not deal at arm's length with the business,
    - **(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, and
    - **(iv)** is either a member of a recognized journalistic association and follows the code of ethics of a recognized journalistic association or has its own code of ethics whose standards of professional conduct require adherence to the recognized processes and principles of the journalism profession, including fairness, independence and rigour in reporting news and handling sources; or
- **(c)** operates an Indigenous news outlet in Canada and produces news content that includes matters of general interest, including coverage of matters relating to the rights of Indigenous peoples, including the right of self-government and treaty rights.

Revoked designation

(3) Despite subsection (1), a news business must not be designated as eligible if it was previously designated and had its designation revoked under paragraph 59(1)(c).

Ineligible news businesses

(3.1) Despite subsection (1), a news business must not be designated as eligible if

- **(a)** the news business is the subject of sanctions under the *United Nations Act*, the *Special Economic Measures Act* or the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*, or is owned or controlled by an individual or entity that is the subject of such sanctions; or
- **(b)** the news business has its headquarters in a *foreign state*, as defined in section 2 of the *Special Economic Measures Act*, that is the subject of measures under an Act referred to in paragraph (a).

Revoked designation

(3.2) If a news business described in paragraph (3.1)(a) or (b) was previously designated as eligible, the Commission must, by order, revoke the order designating the business as eligible.

Statutory Instruments Act

(4) The *Statutory Instruments Act* does not apply in respect of an order made under subsection (1).

Provincial public broadcasters

28 The designation of a provincial public broadcaster as an eligible news business is subject to any other conditions specified in regulations made by the Governor in Council.

Public list

29 (1) The Commission must maintain a list of eligible news businesses and publish that list on its website. An eligible news business is only included on the list if it gives its consent.

Statutory Instruments Act

(2) The *Statutory Instruments Act* does not apply in respect of the list maintained under subsection (1).

Identification of news outlets

30 When initiating the bargaining process, an eligible news business or group of eligible news businesses must notify the operator of the digital news intermediary in question of the news outlets that are to be the subjects of the bargaining process.

Application to Commission

31 (1) If the operator is of the opinion that a news outlet identified under section 30 by an eligible news business or group of eligible news businesses should not be a subject of the bargaining process, it may apply to the Commission for a determination of the issue.

Determination

(2) A news outlet is to be a subject of the bargaining process if the Commission is of the opinion that the outlet is operated exclusively for the purpose of producing news content — including local, regional and national news content — consisting primarily of original news content that is

- **(a)** produced primarily for the Canadian news marketplace;
- **(b)** focused on matters of general interest and reports of current events, including coverage of democratic institutions and processes;
- **(c)** not focused on a particular topic such as industry-specific news, sports, recreation, arts, lifestyle or entertainment; and
- **(d)** not intended to promote the interests, or report on the activities, of an organization, an association or its members.

Special case — Indigenous news outlet

(2.1) Despite subsection (2), an Indigenous news outlet is to be a subject of the bargaining process if it

- **(a)** operates in Canada; and
- **(b)** produces news content that includes matters of general interest, including coverage of matters relating to the rights of Indigenous peoples, including the right of self-government.

Summary dismissal

(3) If the Commission is of the opinion that an application under subsection (1) is frivolous, vexatious or not made in good faith, it may dismiss the application summarily and the news outlet that is otherwise the subject of the application is a subject of the bargaining process.

Agreements

Agreement with group

32 (1) If a group of eligible news businesses enters into an agreement with an operator as a result of bargaining or mediation sessions under the bargaining process, the group must file a copy of the agreement with the Commission within 15 days after the day on which it is entered into.

For greater certainty

(2) For greater certainty, nothing in this Act prevents the agreement from applying to eligible news businesses that join the group after the agreement is entered into if the agreement provides for it.

Final Offer Arbitration

Roster of qualified arbitrators

33 (1) The Commission must publish qualifications for arbitrators on its website and must maintain a roster of arbitrators who meet those qualifications.

Indigenous persons on roster

(1.1) The Commission must ensure that the roster includes Indigenous persons.

Proposals

(2) Parties that are engaging in bargaining or mediation sessions may propose candidates for the roster.

Arbitration panel

34 (1) A final offer arbitration must be conducted by a panel that is composed of three arbitrators who

- **(a)** are selected by the parties from the roster; or
- **(b)** are appointed by the Commission from the roster, if the parties do not select the arbitrators within a period that the Commission considers reasonable.

Appointment by Commission

(2) The Commission must take the preferences of the parties into account if it appoints the arbitrators to the panel.

Status

(3) An arbitration panel is not a federal board, commission or other tribunal for the purposes of the *Federal Courts Act*.

Conflicts of interest

35 (1) If the Commission is of the opinion that an arbitrator selected by the parties has a conflict of interest, that arbitrator is ineligible to be a panel member and a replacement must be

- **(a)** selected by the parties from the roster; or
- **(b)** appointed by the Commission from the roster, if the parties do not select the replacement within a period that the Commission considers reasonable.

Appointment by Commission

(2) The Commission must not appoint an arbitrator who has a conflict of interest.

Commission assistance

36 (1) The Commission may, at the request of an arbitration panel, provide administrative and technical assistance to the panel and may, on any terms that the Commission considers necessary, disclose to the panel any information, including confidential information, in the Commission's possession that, in the Commission's opinion, is necessary for a balanced and informed decision-making process, on the condition that the Commission ensures that the arbitration panel or each individual arbitrator that presides over the final offer arbitration does not further disclose any confidential information other than during the arbitration, including by imposing any further terms that the Commission considers necessary.

Confidentiality

(2) Each individual arbitrator must take all reasonably necessary measures to ensure that confidential information disclosed to them under subsection (1) is not disclosed other than during the arbitration.

Offence — confidentiality

(3) Every individual who contravenes subsection (2) is guilty of an offence and is liable on summary conviction,

- **(a)** for a first offence, to a fine of not more than $5,000; and
- **(b)** for a second or subsequent offence, to a fine of not more than $10,000.

Decision of arbitration panel

37 The arbitration panel makes its decision by selecting the final offer made by one of the parties.

Factors

38 An arbitration panel must take the following factors into account in making its decision:

- **(a)** the value added, monetary and otherwise, to the news content in question by each party, as assessed in terms of their investments, expenditures and other actions in relation to that content;
- **(b)** the benefits, monetary and otherwise, that each party receives from the content being made available by the digital news intermediary in question; and
- **(c)** the bargaining power imbalance between the news business and the operator of the digital news intermediary in question.

Dismissal of offers

39 (1) An arbitration panel must dismiss any offer that, in its opinion,

- **(a)** allows a party to exercise undue influence over the amount of compensation to be paid or received;
- **(b)** is not in the public interest because the offer would be highly likely to result in serious detriment to the provision of news content to persons in Canada; or
- **(c)** is inconsistent with the purposes of enhancing fairness in the Canadian digital news marketplace and contributing to its sustainability.

Effect of dismissal

(2) If the arbitration panel dismisses, in accordance with subsection (1), the final offer made by one of the parties, it must accept the final offer made by the other party.

Reasons and new offers

(3) If the arbitration panel dismisses, in accordance with subsection (1), the final offer made by each of the parties, it must provide written reasons to the parties and give them an opportunity to make a new offer.

Other submissions

40 An arbitration panel may, in making its decision, seek oral or written submissions from the Commission and from the Commissioner of Competition appointed under subsection 7(1) of the *Competition Act*.

Decision final

41 An arbitration panel's decision is final.

Decision deemed to be agreement

42 An arbitration panel's decision is deemed, for the purposes of its enforceability, to be an agreement entered into by the parties.

Reasons

43 An arbitration panel must provide written reasons for its decision to the parties and the Commission.

Costs

44 The arbitration panel may apportion the costs related to final offer arbitration between the parties, if the parties cannot agree, within a period that the panel considers reasonable, on how to share the costs. In doing so, the panel must take into account each party's ability to pay, their conduct during the arbitration and any other factor that it considers appropriate.

Civil Remedies

Right of recovery

45 For greater certainty, an eligible news business or group of eligible news businesses may, during the period specified in a covered agreement, collect payments due under it and, if they are not made, recover the payments in a court of competent jurisdiction.

Compliance order

46 For greater certainty, if a provision of a covered agreement is not complied with, a party to the agreement may, in addition to any other remedy available, apply to a court of competent jurisdiction for an order directing compliance with the provision.

Competition Act

Covered agreements

47 Sections 45 and 90.1 of the *Competition Act* do not apply in respect of

- **(a)** any activity, including the making of payments or the exchange of information, that is carried out in accordance with a covered agreement between an operator and a group of eligible news businesses;
- **(b)** any provision of the covered agreement that is related to that activity; or
- **(c)** any bargaining or mediation session or any final offer arbitration under the bargaining process set out in sections 18 to 44 to which an operator and a group of eligible news businesses are parties.

Other agreements

48 (1) Sections 45 and 90.1 of the *Competition Act* also do not apply in respect of

- **(a)** any bargaining activity between an operator and a group of eligible news businesses that is conducted with a view to entering into an agreement;
- **(b)** any activity, including the making of payments or the exchange of information, that is carried out in accordance with an agreement; or
- **(c)** any provision of an agreement that is related to an activity referred to in paragraph (b).

Definition of *agreement*

(2) In this section, ***agreement*** means an agreement that

- **(a)** is not a covered agreement;
- **(b)** is entered into by an operator and a group of eligible news businesses the members of which operate news outlets that produce news content primarily for the Canadian news marketplace; and

- **(c)** is in relation to the making available of that content by a digital news intermediary operated by the operator.

Code of Conduct

Establishment of code

49 (1) The Commission must, by regulation, establish a code of conduct respecting bargaining in relation to news content — including any bargaining and mediation sessions during the bargaining process set out in sections 18 to 44 — between

- **(a)** operators of digital news intermediaries that make available news content that is produced primarily for the Canadian news marketplace by news outlets; and
- **(b)** eligible news businesses or groups of eligible news businesses.

Purpose of code

(2) The purpose of the code is to support fairness and transparency in bargaining in relation to news content.

Mandatory contents

(3) The code of conduct must contain provisions

- **(a)** respecting the requirement to bargain in good faith that is set out in section 22;
- **(b)** requiring parties to bargain in good faith even if they are bargaining outside of the bargaining process set out in sections 18 to 44;
- **(c)** respecting the requirement to bargain in good faith that is referred to in paragraph (b); and
- **(d)** respecting the information that the parties require to make informed business decisions.

Discretionary contents

(4) The code of conduct may, among other things,

- **(a)** prohibit the use of specified provisions in agreements, including agreements that are entered into as a result of bargaining or mediation sessions under the bargaining process set out in sections 18 to 44; and
- **(b)** set out examples of unfair behaviour that could arise during bargaining.

Compliance order

50 (1) If an operator, eligible news business or group of eligible news businesses fails to comply with the code of conduct, the Commission may, by order, require the operator, business or group to take any measure the Commission considers necessary to remedy the non-compliance.

Statutory Instruments Act

(2) The *Statutory Instruments Act* does not apply in respect of an order made under subsection (1).

Discrimination, Preference and Disadvantage

Prohibition

51 In the course of making available news content that is produced primarily for the Canadian news marketplace by news outlets operated by eligible news businesses, the operator of a digital news intermediary must not act in any way that

- **(a)** unjustly discriminates against an eligible news business;
- **(b)** gives undue or unreasonable preference to any individual or entity, including itself; or
- **(c)** subjects an eligible news business to an undue or unreasonable disadvantage.

Complaint

52 (1) An eligible news business or group of eligible news businesses may make a complaint to the Commission if the business or group has reasonable grounds to believe that an operator has, in relation to the business or a member of the group, contravened section 51.

Factors to take into account

(2) In determining whether an operator has contravened section 51, the Commission may take into account any factor it considers appropriate, but it must take into account whether the conduct in question is

- **(a)** in the normal course of business for the operator;
- **(b)** retaliatory in nature; or
- **(c)** consistent with the purposes of this Act.

Dismissal of complaint

(3) If the Commission is of the opinion that a complaint under subsection (1) is frivolous, vexatious or not made in good faith, it may dismiss the complaint summarily.

Provision of Information

Duty to provide information

53 An operator or news business must, at the request of the Commission and within the time and in the manner that it specifies, provide the Commission with any information that it requires for the purpose of exercising its powers or performing its duties and functions under this Act.

Canadian Broadcasting Corporation

53.1 If the Canadian Broadcasting Corporation is party to an agreement with an operator in relation to the making available of news content by a digital news intermediary, the Corporation must provide the Commission, within the time and in the manner that it specifies, with an annual report that includes the following information:

- **(a)** the amount of compensation received by the Corporation under agreements it has entered into with operators in relation to the making available of news content by digital news intermediaries;

- **(b)** information relating to the Corporation's use of that compensation; and
- **(c)** information relating to the contribution of those agreements to the sustainability of the Canadian digital news marketplace, including any such information that the Commission specifies must be included in the report.

Minister and Chief Statistician

54 (1) The Commission must, on request, provide the Minister or the Chief Statistician of Canada with any information submitted to the Commission under this Act.

Restriction

(2) Information that is provided to the Minister in accordance with subsection (1) is only to be used by the Minister for the purpose of permitting the Minister and the Governor in Council to exercise their powers and perform their duties and functions under this Act.

Confidential information

55 (1) For the purposes of this section, an individual or entity that submits any of the following information to the Commission may designate it as confidential:

- **(a)** information that is a trade secret;
- **(b)** financial, commercial, scientific or technical information that is confidential and that is treated consistently in a confidential manner by the individual or entity that submitted it; or
- **(c)** information the disclosure of which could reasonably be expected to
    - **(i)** result in material financial loss or gain to any individual or entity,
    - **(ii)** prejudice the competitive position of any individual or entity, or
    - **(iii)** affect contractual or other negotiations of any individual or entity.

Prohibition — disclosure

(2) Subject to subsections (4), (5), (7) and (8), if an individual or entity designates information as confidential and the designation is not withdrawn by them, it is prohibited for an individual described in subsection (3) to knowingly disclose the information, or knowingly allow it to be disclosed, to any individual or entity in any manner that is calculated or likely to make it available for the use of any individual or entity that may benefit from the information or use it to the detriment of any other individual or entity to whose business or affairs the information relates.

Application to individuals

(3) Subsection (2) applies to any individual referred to in any of the following paragraphs who comes into possession of designated information while holding the office or employment described in that paragraph, whether or not the individual has ceased to hold that office or be so employed:

- **(a)** a member of, or individual employed by, the Commission;

- **(b)** in respect of information disclosed under paragraph (4)(b) or (5)(b), the Commissioner of Competition appointed under subsection 7(1) of the *Competition Act* or an individual whose duties involve the carrying out of that Act and who is referred to in section 25 of that Act; and
- **(c)** in respect of information provided under subsection 54(1), the Minister, the Chief Statistician of Canada or an agent of or an individual employed in the federal public administration.

Disclosure of information submitted in proceedings

(4) If designated information is submitted in the course of proceedings before the Commission, the Commission may

- **(a)** disclose it or require its disclosure if it determines, after considering any representations from interested individuals and entities, that the disclosure is in the public interest; and
- **(b)** disclose it or require its disclosure to the Commissioner of Competition on the Commissioner's request if the Commission determines that the information is relevant to competition issues being considered in the proceedings.

Disclosure of other information

(5) If designated information is submitted to the Commission otherwise than in the course of proceedings before it, the Commission may

- **(a)** disclose it or require its disclosure if, after considering any representations from interested individuals and entities, it determines that the information is relevant to the determination of a matter before it and determines that the disclosure is in the public interest; and
- **(b)** disclose it or require its disclosure to the Commissioner of Competition on the Commissioner's request if it determines that the information is relevant to competition issues being raised in the matter before it.

Use of information disclosed to Commissioner of Competition

(6) It is prohibited for the Commissioner of Competition and any individual whose duties involve the administration and enforcement of the *Competition Act* and who is referred to in section 25 of that Act to use information that is disclosed

- **(a)** under paragraph (4)(b) other than to facilitate the Commissioner's participation in proceedings referred to in subsection (4); or
- **(b)** under paragraph (5)(b) other than to facilitate the Commissioner's participation in a matter referred to in subsection (5).

Disclosure

(7) The Commission may disclose designated information obtained by it if requested to do so under subsection 54(1).

Information inadmissible

(8) Designated information that is not disclosed or required to be disclosed under this section is not admissible in evidence in any judicial proceedings except proceedings for failure to submit information required to be submitted under this Act or for forgery, perjury or false declaration in relation to the submission of the information.

Offence — disclosure

56 (1) Every individual who contravenes subsection 55(2) is guilty of an offence and is liable on summary conviction,

- **(a)** for a first offence, to a fine of not more than $5,000; and
- **(b)** for a second or subsequent offence, to a fine of not more than $10,000.

Offence — use

(2) Every individual who contravenes subsection 55(6) is guilty of an offence and is liable on summary conviction,

- **(a)** for a first offence, to a fine of not more than $5,000; and
- **(b)** for a second or subsequent offence, to a fine of not more than $10,000.

Defence

(3) An individual is not to be found guilty of an offence under subsection (2) if they establish that they exercised due diligence to prevent the commission of the offence.

Administration and Enforcement

Production Orders

Designated persons

57 The Commission may designate persons or classes of persons for the purposes of section 58.

Power to order production

58 (1) A person designated under section 57 may, for a purpose related to verifying compliance or preventing non-compliance with this Act, by order require an operator or an eligible news business to produce, within the time and in the manner specified in the order, for examination or copying, any record, report, electronic data or other document that the designated person has reasonable grounds to believe contains information that is relevant to that purpose.

Copies and data

(2) The designated person may

- **(a)** make copies of or take extracts from the record, report, electronic data or other document produced under subsection (1);
- **(b)** reproduce any document from the data, or cause it to be reproduced, in the form of a printout or other output; and
- **(c)** prepare a document, or cause one to be prepared, based on the data.

Assistance

(3) The operator or eligible news business and every director, officer, employee and agent or mandatary of the operator or business must

- **(a)** give all assistance that is reasonably required to enable the designated person to exercise their powers and perform their duties and functions under this section, including by providing explanations respecting its organization, information technology systems, data handling and business activities; and
- **(b)** provide any documents or information, and access to any data, that are reasonably required for that purpose.

Confidential information

(4) The rules in section 55 respecting the designation and disclosure of information apply in respect of any information contained in a record, report, electronic data or other document that is provided to the designated person as if that person were a member of the Commission exercising the powers of the Commission.

Statutory Instruments Act

(5) The *Statutory Instruments Act* does not apply in respect of an order made under subsection (1).

News Businesses

Contravention — eligible news business

59 (1) If an eligible news business contravenes a provision of this Act, a provision of the regulations or an order made under this Act, the Commission may, by order,

- **(a)** impose any conditions on the business that are designed to further its compliance with this Act, including conditions respecting its participation in the bargaining process set out in sections 18 to 44;
- **(b)** suspend, for the period the Commission specifies, the order designating the business as eligible; or
- **(c)** revoke the order designating the business as eligible.

Contravention — group of eligible news businesses

(2) If a group of eligible news businesses contravenes a provision of this Act, a provision of the regulations or an order made under this Act, the Commission may, by order, impose any conditions designed to further the compliance of the group and its members with this Act, including restrictions on its participation in the bargaining process set out in sections 18 to 44.

Contravention — directors, officers, etc.

(3) For the purposes of subsections (1) and (2), the contravention of a provision of this Act, a provision of the regulations or an order made under this Act by an eligible news business or group of eligible news businesses includes such a contravention by its director, officer, employee or agent or mandatary.

Statutory Instruments Act

(4) The *Statutory Instruments Act* does not apply to an order made under subsection (1) or (2).

Administrative Monetary Penalties

Violation — operators, directors, etc.

60 (1) Subject to any regulations made under paragraph 76(a), an operator or a director, officer, employee or agent or mandatary of an operator commits a violation if they

- **(a)** contravene a provision of this Act, a provision of the regulations, an order made under this Act or an undertaking that they entered into under section 65; or
- **(b)** make a misrepresentation of a material fact or an intentional omission to state a material fact to a person designated under section 57 or paragraph 63(a).

Violation — other individuals and entities

(2) An individual or entity commits a violation if they contravene subsection 7(2).

Continued violation

(3) A violation that is continued on more than one day constitutes a separate violation in respect of each day on which it is continued.

Maximum amount of penalty

61 (1) Subject to any regulations made under paragraph 76(b), an individual or entity that commits a violation is liable to an administrative monetary penalty

- **(a)** in the case of an individual, of not more than $25,000 for a first violation and of not more than $50,000 for each subsequent violation; or
- **(b)** in the case of an entity, of not more than $10 million for a first violation and of not more than $15 million for each subsequent violation.

Criteria for penalty

(2) The amount of the penalty is to be determined by taking into account

- **(a)** the nature and scope of the violation;
- **(b)** the history of compliance with this Act, the regulations and orders made under this Act by the individual or entity that committed the violation;
- **(c)** the history of the individual or entity with respect to any previous undertaking entered into under section 65;
- **(d)** any benefit that the individual or entity obtained from the commission of the violation;
- **(e)** the ability of the individual or entity to pay the penalty;
- **(f)** any factors established by regulations made under paragraph 76(c);
- **(g)** the purpose of the penalty; and
- **(h)** any other relevant factor.

Purpose of penalty

(3) The purpose of the penalty is to promote compliance with this Act and not to punish.

Procedures

62 (1) Despite subsection 64(1), the Commission may impose a penalty in a decision made in the course of a proceeding before it under this Act, including a proceeding in respect of a complaint made under section 52, in which it finds that a violation referred to in section 60 has been committed by an individual or entity other than the individual or entity that entered into an undertaking under section 65 in connection with the same act or omission giving rise to the violation.

For greater certainty

(2) For greater certainty, the Commission is not to impose a penalty under subsection (1) on an individual or entity that has not been given the opportunity to be heard.

Designation

63 The Commission may

- **(a)** designate persons or classes of persons who are authorized to issue notices of violation or to accept an undertaking under section 65; and
- **(b)** establish, in respect of each violation, a short-form description to be used in notices of violation.

Notice of violation

64 (1) A person who is authorized to issue notices of violation may, if they believe on reasonable grounds that an individual or entity has committed a violation, other than a violation in respect of a contravention of section 51, issue a notice of violation and cause it to be served on that individual or entity.

Contents

(2) The notice of violation must set out

- **(a)** the name of the individual or entity that is believed to have committed the violation;
- **(b)** the act or omission giving rise to the violation, as well as a reference to the provision that is at issue;
- **(c)** the penalty that the individual or entity is liable to pay, as well as the time and manner in which the individual or entity may pay the penalty;
- **(d)** a statement informing the individual or entity that they may pay the penalty or make representations to the Commission with respect to the violation and the penalty and informing them of the time and manner for making representations; and
- **(e)** a statement informing the individual or entity that, if they do not pay the penalty or make representations in accordance with the notice, they will be deemed to have committed the violation and the penalty may be imposed.

Undertaking

65 (1) An individual or entity may enter into an undertaking at any time. The undertaking is valid on its acceptance by the Commission or the person designated to accept an undertaking.

Requirements

(2) An undertaking

- **(a)** must set out every act or omission that is covered by the undertaking;
- **(b)** must set out every provision that is at issue;
- **(c)** may contain any conditions that the Commission or the person designated to accept the undertaking considers appropriate; and
- **(d)** may include a requirement to pay a specified amount.

No service of notice of violation

(3) If an individual or entity enters into an undertaking, a notice of violation must not be served on them in connection with any act or omission referred to in the undertaking.

Undertaking after service of notice of violation

(4) If an individual or entity enters into an undertaking after a notice of violation is served on them, the proceeding that is commenced by the notice is ended in respect of that individual or entity in connection with any act or omission referred to in the undertaking.

Payment of penalty

66 (1) If an individual or entity that is served with a notice of violation pays the penalty set out in the notice, they are deemed to have committed the violation and the proceedings in respect of it are ended.

Representations to Commission and decision

(2) If an individual or entity that is served with a notice of violation makes representations in accordance with the notice, the Commission must decide, on a balance of probabilities, after considering any other representations that it considers appropriate, whether the individual or entity committed the violation. If the Commission decides that the individual or entity committed the violation, it may

- **(a)** impose the penalty set out in the notice, a lesser penalty or no penalty; and
- **(b)** suspend payment of the penalty subject to any conditions that the Commission considers necessary to ensure compliance with this Act.

Penalty

(3) If an individual or entity that is served with a notice of violation neither pays the penalty nor makes representations in accordance with the notice, the individual or entity is deemed to have committed the violation and the Commission may impose the penalty.

Copy of decision

(4) The Commission must cause a copy of any decision made under subsection (2) or (3) to be issued and served on the individual or entity.

Evidence

67 In a proceeding in respect of a violation, a notice purporting to be served under subsection 64(1) or a copy of a decision purporting to be served under subsection 66(4) is admissible in evidence without proof of the signature or official character of the person appearing to have signed it.

Burden of proof

68 In a proceeding in respect of a violation in respect of a contravention of section 51, the burden of establishing that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable is on the individual or entity that is believed to have contravened that section.

Defence

69 (1) An individual or entity is not to be found liable for a violation, other than a violation in respect of a contravention of section 22, if they establish that they exercised due diligence to prevent its commission.

Common law principles

(2) Every rule and principle of the common law that makes any circumstance a justification or excuse in relation to a charge for an offence applies in respect of a violation to the extent that it is not inconsistent with this Act.

Directors, officers, etc.

70 A director, officer or agent or mandatary of an entity that commits a violation is liable for the violation if they directed, authorized, assented to, acquiesced in or participated in the commission of the violation, whether or not the entity is proceeded against.

Vicarious liability

71 An individual or entity is liable for a violation that is committed by their employee acting within the scope of their employment or their agent or mandatary acting within the scope of their authority, whether or not the employee or agent or mandatary is identified or proceeded against.

Limitation or prescription period

72 (1) Proceedings in respect of a violation may be instituted within, but not after, three years after the day on which the subject matter of the proceedings became known to the Commission.

Certificate

(2) A document that appears to have been issued by the secretary to the Commission, certifying the day on which the subject matter of any proceedings became known to the Commission, is admissible in evidence without proof of the signature or official character of the person who appears to have signed the document and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

Information made public

73 The Commission must make public

- **(a)** the name of an individual or entity that enters into an undertaking under section 65, the nature of the undertaking, including the acts or omissions and provisions at issue, the conditions included in the undertaking and the amount payable under it, if any; and
- **(b)** the name of an individual or entity that is deemed, or is found by the Commission, to have committed a violation, the acts or omissions and provisions at issue and the amount of the penalty imposed, if any.

Receiver General

74 A penalty paid or recovered in relation to a violation is payable to the Receiver General.

Debt due to Her Majesty

75 (1) The following amounts are debts due to Her Majesty in right of Canada that may be recovered in any court of competent jurisdiction:

- **(a)** the amount of the penalty imposed by the Commission in a decision made in the course of a proceeding before it under this Act in which it finds that a violation referred to in section 60 has been committed;
- **(b)** the amount payable under an undertaking entered into under section 65, beginning on the day specified in the undertaking or, if no day is specified, beginning on the day on which the undertaking is accepted;
- **(c)** the amount of the penalty set out in a notice of violation, beginning on the day on which it is required to be paid in accordance with the notice, unless representations are made in accordance with the notice;
- **(d)** if representations are made, either the amount of the penalty that is imposed by the Commission, beginning on the day specified by the Commission or, if no day is specified, beginning on the day on which the decision is made; and
- **(e)** the amount of any reasonable expenses incurred in attempting to recover an amount referred to in any of paragraphs (a) to (d).

Limitation or prescription period

(2) Proceedings to recover a debt may be instituted within, but not after, three years after the day on which the debt becomes payable.

Certificate of default

(3) The Commission may issue a certificate for the unpaid amount of any debt referred to in subsection (1).

Effect of registration

(4) Registration of a certificate in any court of competent jurisdiction has the same effect as a judgment of that court for a debt of the amount set out in the certificate and all related registration costs.

Regulations

76 The Governor in Council may make regulations

- **(a)** providing for exceptions to paragraph 60(1)(a) or (b);
- **(b)** increasing the penalty amounts set out in subsection 61(1);
- **(c)** for the purpose of paragraph 61(2)(f), establishing other factors to be considered in determining the amount of the penalty;
- **(d)** respecting undertakings referred to in section 65;
- **(e)** respecting the service of documents required or authorized to be served under sections 60 to 75, including the manner and proof of service and the circumstances under which documents are to be considered to be served; and
- **(f)** generally, for carrying out the purposes and provisions of sections 60 to 75.

Other Provisions

Judicial powers

77 In a proceeding under this Act, the Commission has the powers of a superior court with respect to the attendance and examination of witnesses and the production and examination of documents or things.

Sections 126 and 127 of *Criminal Code*

78 Sections 126 and 127 of the *Criminal Code* do not apply in respect of any contravention of a provision of this Act, a provision of the regulations or an order made under this Act.

Financial Provisions

Fees for services

79 (1) The Commission may make regulations respecting fees to be paid for the provision of services — including dealing with a complaint or providing regulatory processes — under this Act, including regulations

- **(a)** fixing those fees or setting out the manner of calculating them;
- **(b)** establishing classes of operators and of news businesses and groups of news businesses for the purposes of paragraph (a);
- **(c)** respecting the payment of those fees, including the time and manner of payment; and
- **(d)** respecting the interest payable in respect of overdue fees.

Commission assistance

(2) For greater certainty, subsection (1) permits the making of regulations respecting the recovery of the Commission's costs for providing assistance to an arbitration panel under section 36.

Amount not to exceed cost

(3) Fees that are payable under regulations made under subsection (1) must not in the aggregate exceed the costs that the Commission determines to be attributable to providing the service.

Criteria

(4) Regulations made under subsection (1) may provide for fees to be calculated by reference to any criteria that the Commission considers appropriate, including

- **(a)** the revenues of the operator, the news business or the group of news businesses; or
- **(b)** the market served by the operator's digital news intermediary or by the news outlets operated by the news business or by the members of the group of news businesses.

Costs apportioned by Commission

80 (1) The Commission may, by order, apportion the costs related to the bargaining process, other than those related to final offer arbitration, including fees payable under regulations made under subsection 79(1), between the parties, if the parties cannot agree, within a period that the Commission considers reasonable, on how to share the costs.

Factors

(2) In making an order, the Commission must take into account each party's ability to pay, their conduct during bargaining and mediation sessions and any other factor that it considers appropriate.

Statutory Instruments Act

(3) For greater certainty, the *Statutory Instruments Act* does not apply in respect of an order made under subsection (1).

Cost recovery

81 (1) With the approval of the Treasury Board, the Commission may make regulations respecting the charges payable by operators in respect of the recovery, in whole or in part, of costs that are incurred in relation to the administration of this Act, including regulations

- **(a)** setting out the manner of calculating those charges;
- **(b)** providing for the establishment of classes of operators for the purposes of paragraph (a);
- **(c)** providing for the payment of any charge payable, including the time and manner of payment; and
- **(d)** respecting the interest payable in respect of any overdue charge.

Amount not to exceed cost

(2) Charges payable under regulations made under subsection (1) must not exceed the costs that the Commission determines to be attributable to exercising its powers and carrying out its duties and functions under this Act and that are not recovered under regulations made under subsection 79(1).

Criteria

(3) Regulations made under subsection (1) may provide for charges to be calculated by reference to any criteria that the Commission considers appropriate, including

- **(a)** the revenues of the operator; or
- **(b)** the market served by the operator's digital news intermediary.

Debt due to Her Majesty

82 (1) Fees and charges payable under regulations made under subsections 79(1) and 81(1), and any interest on them, constitute a debt due to Her Majesty in right of Canada and may be recovered as such in any court of competent jurisdiction.

Deduction, set-off and compensation

(2) Debts due to Her Majesty in right of Canada under regulations made under subsections 79(1) and 81(1) may be recovered at any time by way of deduction from, set-off against or compensation against any sum of money that may be due or payable by Her Majesty in right of Canada to the individual or entity responsible for the debt.

Spending

83 Subject to any conditions imposed by the Treasury Board, the Commission may spend revenues that are received under regulations made under subsections 79(1) and 81(1) for the purposes of exercising its powers and carrying out its duties and functions under this Act. If the Commission spends the revenues, it must do so in the fiscal year in which they are received or, unless an appropriation Act provides otherwise, in the next fiscal year.

Regulations

Regulations — Governor in Council

84 The Governor in Council may make regulations

- **(a)** respecting the factors set out in section 6;
- **(b)** respecting the time at which or the period within which an operator must notify the Commission under subsection 7(1);
- **(c)** respecting how the Commission is to interpret subparagraphs 11(1)(a)(i) to (viii);
- **(d)** setting out conditions for the purposes of paragraph 11(1)(b); and
- **(e)** setting out conditions in respect of a provincial public broadcaster for the purposes of section 28, if the provincial minister responsible for that broadcaster has made a request to the Minister.

Regulations — Commission

85 The Commission may make regulations

- **(a)** respecting requests for orders referred to in subsection 11(1);
- **(b)** respecting the bargaining process set out in sections 18 to 44;
- **(c)** respecting requests for designations referred to in subsection 27(1);
- **(d)** establishing the code of conduct referred to in section 49;

- **(e)** respecting complaints referred to in section 52;
- **(f)** respecting the manner in which groups of eligible news businesses are to be structured and the manner in which they are to exercise their rights or privileges and carry out their obligations under this Act;
- **(g)** respecting the provision of information by groups of eligible news businesses to the Commission respecting their structure;
- **(h)** respecting the exercise by any person appointed under section 8 of the *Canadian Radio-television and Telecommunications Commission Act* of any of the powers — other than the power to make regulations — or the carrying out of any of the duties or functions, of the Commission under this Act; and
- **(i)** respecting the Commission's practices and procedures in relation to this Act.

Independent Review

Annual report — independent auditor

86 (1) The Commission must cause an independent auditor to prepare an annual auditor's report in respect of the impact of this Act on the Canadian digital news marketplace.

Contents

(2) The report must set out an analysis of the impact of the agreements entered into under this Act on the Canadian digital news marketplace and include the following:

- **(a)** information relating to the total commercial value of the agreements entered into under this Act;
- **(b)** information relating to the distribution of the commercial value of those agreements among eligible news businesses, including relative to the expenditures of those businesses on their newsrooms;
- **(c)** information relating to the effect of the agreements on those expenditures;
- **(c.01)** information relating to the impact of this Act on news outlets that produce news content primarily for diverse populations, including local and regional markets in every province and territory, anglophone and francophone communities and Black and other racialized communities;
- **(c.02)** information relating to the total number of those agreements that involve Indigenous news outlets and to the portion of the commercial value of those agreements that benefits these news outlets;
- **(c.03)** information relating to the total number of those agreements that involve official language minority community news outlets and to the portion of the commercial value of those agreements that benefits these news outlets;
- **(c.1)** if the Canadian Broadcasting Corporation has provided an annual report under section 53.1 in the 12 months preceding the preparation of the auditor's report, information related to that annual report; and

- **(d)** any other element that, in the opinion of the auditor, supports the transparency of the impact of this Act on the Canadian digital news marketplace.

Confidential information

(3) The report must not contain any information that is likely to reveal information designated as confidential under subsection 55(1).

Publication of report

(4) The Commission must publish the report on its website within 30 days after the day on which it receives it.

Review of Act

Review

87 Before the fifth anniversary of the day on which this section comes into force, the Minister must cause a review of this Act and its operation to be conducted and cause a report on the review to be laid before each House of Parliament.

Related Amendments

R.S., c. A-1

Access to Information Act

88 Schedule II to the *Access to Information Act* is amended by adding, in alphabetical order, a reference to

Online News Act

Loi sur les nouvelles en ligne

and a corresponding reference to "subsections 55(2) and 58(4)".

R.S., c. C-22

Canadian Radio-television and Telecommunications Commission Act

89 Section 12 of the *Canadian Radio-television and Telecommunications Commission Act* is amended by adding the following after subsection (1):

Digital news

(1.1) The Commission exercises the powers and performs the duties and functions conferred on it under the *Online News Act*.

90 Section 13 of the Act is amended by adding the following after subsection (1):

Online News Act

(1.1) The report must include the contents of the annual auditor's report prepared under section 86 of the *Online News Act*.

1991, c. 11

Broadcasting Act

91 Section 4 of the *Broadcasting Act* is amended by adding the following after subsection (4):

Operators of digital news intermediaries

(5) For greater certainty, this Act does not apply to the operator of a digital news intermediary in respect of which the *Online News Act* applies when the operator acts solely in that capacity. In this subsection, ***digital news intermediary*** and ***operator*** have the same meanings as in subsection 2(1) of that Act.

1993, c. 38

Telecommunications Act

92 The *Telecommunications Act* is amended by adding the following after section 4:

Digital news intermediaries excluded

4.1 (1) This Act does not apply in respect of the making available of news content on or by a digital news intermediary in respect of which the *Online News Act* applies.

Definitions

(2) In this section, ***digital news intermediary*** and ***news content*** have the same meanings as in subsection 2(1) of the *Online News Act*.

Interpretation

(3) For the purposes of this section, news content is made available if

- **(a)** the news content, or any portion of it, is reproduced; or
- **(b)** access to the news content, or any portion of it, is facilitated by any means, including an index, aggregation or ranking of news content.

Coming into Force

Order in council

93 (1) Section 6 comes into force on a day to be fixed by order of the Governor in Council, but that day must not be before the day on which the first regulations made under paragraph 84(a) come into force.

Order in council

(2) Sections 7, 8, 11 to 17, 20, 27 to 31, 53.1 and 59 and subsection 60(2) come into force on a day to be fixed by order of the Governor in Council, but that day must not be before the latest of

- **(a) the day fixed in accordance with subsection (1),**
- **(b) the day on which the first regulations made under paragraph 84(b) come into force, and**
- **(c) the day on which the first regulations made under paragraph 84(c) come into force.**

Order in council

(3) Sections 18, 19, 21, 22 and 32 to 44 come into force on a day to be fixed by order of the Governor in Council, but that day must not be before the day fixed in accordance with subsection (2).

Order in council

(4) Sections 49 to 52 and 68 come into force on a day to be fixed by order of the Governor in Council, but that day must not be before the day fixed in accordance with subsection (3).

Order in council

(5) Sections 79 to 83, 86, 87 and 90 come into force on a day or days to be fixed by order of the Governor in Council.

180 days after royal assent

(6) Despite subsections (1) to (5), any provision of this Act that does not come into force by order before the 180th day following the day on which this Act receives royal assent comes into force 180 days after the day on which this Act receives royal assent.