

# Canadian Broadcasting and Telecommunications Legislative Review Panel releases Final Report

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On January 29, 2020, an expert panel issued its long-awaited Final Report, entitled *Canada's Communications Future: Time to Act*, on how to modernize the regulation of Canada's communications sector. The Broadcasting and Telecommunications Legislative Review (BTLR) Panel's recommendations address issues ranging from affordability, competition, and efficient and universal network rollout, to network neutrality, cultural sovereignty, accessibility, consumer rights, privacy, network security and online safety. The report is intended to provide a model for the federal government to consider as it prepares new legislation to amend or replace the decades-old *Telecommunications Act*, *Radiocommunication Act* and *Broadcasting Act*.

The report calls for a shift away from regulating actors based on their ownership and operation of transmission facilities to regulating a re-framed set of communications activities, and proposes to establish jurisdiction over all persons and entities providing newly defined electronic communications and media content services, even if they do not have a physical presence in Canada. Taken together – or even in part – the 97 recommendations would expand the scope of regulation over organizations and activities that have, to date, existed outside of the *Broadcasting Act* and *Telecommunications Act*.

The report has been anticipated since the panel was constituted in June 2018, but calls for reform had been coming for years, as new technologies and business models challenged an ageing legislative framework. This note highlights certain of the 97 recommendations that, if pursued, may have the biggest impact on the industry.

## Institutional reform

- Jettison references to radio, television, broadcasting and telecommunications, and adopt new names and titles: the Canadian Communications Commission (CCC), the *Media Communications Act*, and the *Electronic Communications Act*.
- Allow more information sharing with the Commissioner of Competition and the Office of the Privacy Commissioner of Canada.
- Reorient the CCC to a more proactive and accountable approach to monitor access to services, competition, affordability, accessibility, digital literacy, data use and consumer protection.
- Charge the CCC with studying and auditing the use of data algorithms and artificial intelligence by service providers regulated under the *Media Communications Act* and *Electronic Communications Act*.
- Charge the CCC, the Competition Bureau, the Office of the Privacy Commissioner and Statistics Canada with working together to develop recommendations for legislation to control threats to privacy, competition, consumer protection, cultural sovereignty, democratic institutions and taxation arising from the use of aggregated personal

information by “dominant online platform providers”.

## Electronic communications

- Subject to exemptions established by the Commission, most of Part III of the *Telecommunications Act* is to apply to all providers of electronic communications services, rather than solely to Canadian carriers.
- Retain potential for mandated wholesale access where competition is insufficient to protect the interests of users.
- No levy imposed on ISPs to support the creation and distribution of media content, but support for universal broadband service may be achieved through a potentially expanded set of contributors.
- Impose a positive duty on the CCC to consult with stakeholders, including local land use and planning authorities, but equip the CCC with powers to determine disputes over antenna sharing and siting, access to public places, access to utility support structures and access to multi-dwelling unit buildings in a timely fashion.
- Expand scope of devices or things regulated under the *Radiocommunications Act* to include any thing that can block, interfere with, distort or alter radiocommunications.
- Equip the spectrum regulator, the Minister of Innovation, Science and Industry, with powers other than mere licensing and exemptions from licensing, e.g., mechanisms to facilitate trading or leasing of licences, and the power to delegate administrative powers to third parties.
- Facilitate the introduction of new wireless technologies by updating and aligning the prohibitions and approval processes for terminal equipment and radio apparatus, and conferring on the Minister the power to exempt the operation of radio apparatus from licensing requirements.
- Expressly require the CCC and the spectrum regulator to regulate with a view to promoting the security and reliability of telecommunications networks and electronic communications services, the protection of the privacy and confidentiality of user information, and the safeguarding of open access to the Internet.

## Media communications

- Expand beyond audio and audiovisual content to include alphanumeric news content made available to the public by means of telecommunications, collectively known as “media content.”
- With a focus on regulating activities, establish regulatory requirements based on media “curation” (programming and streaming services), “aggregation” (distribution services), and “sharing” (user / interactive platforms).
- Require media content undertakings to contribute in an “equitable” manner, as a means of “generating investment in Canadian content”. This would include spending obligations for all media curators (except those focused on alphanumeric news content), and a levy on media aggregators and sharing services.
- Equip the CCC with powers to “regulate economic relationships between media content undertakings and content producers, including terms of trade”, and help Canadian producers to retain commercial rights over their content.
- Take immediate action to impose spending and discoverability requirements on media content curators with more than \$10 million in Canadian programming revenue, and require sales tax on foreign media content undertakings.

# What's Next?

Both the Minister of Innovation, Science and Industry, the Honourable Navdeep Bains, and the Minister of Canadian Heritage, the Honourable Steven Guilbeault, have indicated they will “act as quickly as possible to modernize Canada’s legislative framework in the broadcasting and telecommunications sector,” with indications from Minister Guilbeault that certain changes may come before the end of the 2020 calendar year. As they work toward that goal, elected officials and the responsible government departments will consider the recommendations, and continue to hear from interested stakeholders from Canada, the United States, and beyond.

*Dentons has a leading Canadian Communication Law practice, whose members advise on a comprehensive range of legal issues related to content services, including audio-visual content, and connectivity services provided by traditional means as well as over-the-top. The group is chaired by Y. Monica Song, a Dentons partner and member of the BTLR Panel. For more information about how our Communications Law group can assist you, please contact us.*

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