

## **Bill C-10 – Committee motion in respect of proposed amendments**

The Standing Committee on Canadian Heritage (the Committee) is studying Bill C-10, *An Act to amend the Broadcasting Act and to make consequential amendments to other Acts*. During the Committee's clause-by-clause consideration of the bill, an issue was raised about the potential effect on freedom of expression under the *Canadian Charter of Rights and Freedoms* (the Charter) of proposed amendments to the bill that could affect programs uploaded by users of social media.

Section 4.2 of the *Department of Justice Act* requires the Minister of Justice to prepare a Charter Statement for every government bill to help inform public and Parliamentary debate on government bills. A Charter Statement with respect to Bill C-10 was tabled in the House of Commons on November 18, 2020.

In keeping with their purpose, Charter Statements are drafted at a high level and set out, in plain language and in an accessible way, potential effects that a bill may have on rights and freedoms guaranteed by the Charter. Charter Statements do not provide a legal opinion as to those effects. Charter Statements also explain considerations that support the constitutionality of the bill.

Although a bill may change over the course of its passage through Parliament, Charter Statements reflect the bill at the time of introduction. Under section 4.2 of the *Department of Justice Act*, Charter Statements are not updated as a bill progresses through Parliament.

### **Proposed amendments to Bill C-10**

Bill C-10, as tabled in the House of Commons on November 3, 2020, includes a provision in Clause 1 (section 2(2.1)) stating that users of social media services who upload programs for sharing with other users, and are not affiliated with the service provider, would not be subject to broadcasting regulation in that respect. A "program" means audio, visual or audio-visual content that is intended to inform, enlighten or entertain, but it does not include content that is predominantly textual.

The bill also included in Clause 3 (section 4.1) provisions that excluded from the application of the Act (i) programs that are uploaded to an online undertaking that provides a social media service by an unaffiliated user of that service, and (ii) an online undertaking whose broadcasting consists solely of such programs.

Clause 3 was not carried during clause-by-clause consideration of the bill by the Committee on April 23, 2021. The effect of the proposed removal of Clause 3 is that an online undertaking that provides a social media service could be subject to regulation under the Act in respect of the programs uploaded by its unaffiliated users. However, Clause 1 (section 2(2.1)) remains. This means that unaffiliated users of social media services would not be subject to broadcasting regulation in respect of the programs they post.

The Government has proposed amendments to Bill C-10 that would limit the ability of the Canadian Radio-television and Telecommunications Commission (the Commission) to regulate an online undertaking that provides a social media service in respect of programs posted by its

unaffiliated users. In this respect, the Commission's regulatory powers would be limited to only the following discrete matters, and these requirements could only be imposed upon the social media service, not on its unaffiliated users:

- The imposition of expenditure requirements (for example, paying into funds to support, promote and train Canadian creators, and to support the creation of Canadian programming for broadcast by broadcasting undertakings, including online undertakings), and fees that relate to the recovery of the costs of the Commission's activities under the Act;
- Requirements in respect of the discoverability of Canadian creators, so that Canadian creators and their programs may be more easily discovered, prominently displayed and promoted online;
- Registration, so that the Commission is informed of which online undertakings of this type are being carried on at least in part in Canada, and can obtain contact information for those undertakings; and
- The provision of information and the auditing of records, so that the Commission has the information it needs for the purposes of supervising the Canadian broadcasting system and exercising the discretionary powers noted above.

The Commission's power to regulate a social media service would not include program standards (for example, prohibited programming content) or the proportion of programs that must be Canadian.

### **Right to freedom of expression (section 2(b) of the Charter)**

As indicated in the Charter Statement, the bill's regulatory requirements have the potential to engage freedom of expression in section 2(b) of the Charter. The following considerations support the continued consistency of the proposed regulatory requirements with section 2(b) of the *Canadian Charter of Rights and Freedoms*. By virtue of clause 1 (section 2(2.1)), unaffiliated users of social media services would not be subject to broadcasting regulation in respect of the programs they post. The objectives of the bill in updating the Commission's regulatory powers and providing new powers applicable to online services remain. The bill maintains the Commission's role and flexibility in determining what, if any, regulatory requirements to impose on broadcasting undertakings, taking into account the Act's policy and regulatory objectives and the variety of broadcasting undertakings subject to the Act. With respect to the proposal to give the Commission new limited powers in regulating an online undertaking that provides a social media service in respect of programs posted by its unaffiliated users, the relevant Charter considerations include the Commission's discretionary role and flexibility.

The proposed narrowing of the Commission's discretionary powers to regulate a social media service in respect of programs posted by its unaffiliated users, to only the discrete matters outlined above, is an additional consideration. The Commission is subject to the Charter, and

must therefore exercise any discretionary powers it has in a manner that is consistent with the Charter. The Act provides that it must be interpreted and applied in a manner consistent with freedom of expression. As stated in the Charter Statement, in making regulatory decisions, the Commission must proportionately balance the objectives of the Act with the protection of freedom of expression in light of the facts and circumstances. The Commission's decisions on matters of law or jurisdiction are subject to review by the Federal Court of Appeal.

The relevant considerations, as set out in the Charter Statement, remain valid and these considerations are not impacted by the proposed amendments.