



7 November 2024

Filed online

Marc Morin  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Dear Secretary General,

**Re: *Call for comments – Proposed regulations – Code of Conduct Respecting Bargaining in Relation to Online News Content, Online News Notice of Consultation CRTC 2024-236 (Ottawa, 8 October 2024) – Comments of the Forum for Research and Policy in Communications (FRPC)***

The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian communications system that serves the public interest as defined by Parliament in the 1991 *Broadcasting Act*.

The Forum's comments regarding the above-noted notice of consultation are attached.

Monica Auer, M.A., LL.M.  
Executive Director  
Forum for Research and Policy in Communications (FRPC)  
Ottawa, Ontario

[execdir@frpc.net](mailto:execdir@frpc.net)



***Call for comments – Proposed regulations – Code of Conduct  
Respecting Bargaining in Relation to Online News Content,  
Online News Notice of Consultation  
CRTC 2024-236 (Ottawa, 8 October 2024)  
Comments of the Forum for Research and Policy in Communications  
(FRPC)***

Monica L. Auer  
Executive Director

7 November 2024

## Contents

### Executive Summary

<b>I.</b>	<b>Introduction</b>	<b>1</b>	
	<b>A.</b>	<b>Legislative context</b>	<b>1</b>
<b>II.</b>	<b>The Forum’s comments</b>	<b>3</b>	
	<b>A.</b>	<b>Preliminary matters</b>	<b>3</b>
		1. Purpose of the ONA Code of Conduct	3
		2. Guidelines on the ONA Code of Conduct	4
	<b>B.</b>	<b>Fairness and timing of the Online News Act bargaining process</b>	<b>5</b>
<b>III.</b>	<b>Conclusion and summary of recommendations</b>	<b>8</b>	

### Tables

Table 1	CRTC consultations held under the <i>Online News Act</i>	2
Table 2	Regulations Parliament has empowered CRTC to make under the <i>Online News Act</i>	2
Table 3	Examples of CRTC guidelines	5
Table 4	<i>Online News Act</i> stages of bargaining in terms of days	6

### Figures

Figure 1	Average days from the opening to the closing of broadcast arbitration proceedings, by type of proceeding (2015-2021)	7
----------	--	---

### Appendices

Appendix 1	Entry into force of provisions of the <i>Online News Act</i>	1
Appendix 2	September 25, 2024 letter stating that it has no data regarding dates when broadcasting applications are received and published	2
Appendix 3	Comments on CRTC’s proposed Code of Conduct Respecting Bargaining in Relation to Online News Content	4
Appendix 4	Information released by CRTC regarding its ADR processes – separate attachment (pages 9-122)	

## Executive Summary

- ES 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013. It undertakes research, legal analysis and quantitative research about communications, including broadcasting. FRPC believes that the public interest is served when the broadcasting system meets Parliament’s objectives as set out in its statutes, including the *Online News Act* that received Royal Assent on 22 June 2023. that to which significant amendments were made in April 2023.
- ES 2 FRPC welcomes the CRTC’s decision to publish its proposed *ONA Code of Conduct* and agrees this is a worthwhile endeavour even if few instances arise involving its application.
- ES 3 The Forum’s main concern has to do with the timing of ADR processes under the *Online News Act*. Section 19(1) of the *Act* establishes three processes lasting a total of 255 days: 90 for negotiation, 120 for mediation and 45 for final-offer arbitration. Data from the CRTC regarding its ADR processes under the *Broadcasting Act* show, though, that at least 13 of its staff-assisted mediation processes apparently lasted an average of 482 days (more than a year).

Type of ADR process	Number of closed proceedings	Average number of days from opening to closing
Informal	42	191.7
Informal/ NOD	15	85.8
NOD [Notice of dispute?]	19	167.1
MAP/SAM [Staff-assisted mediation]	13	481.9
SAM	46	279.7
MM [mandatory mediation?]	8	116.8
Standstill	9	124.6
Part 1	17	243.4
FOA [Final-offer arbitration]	13	242.2
Average, all ADR proceedings	182	232.0

Source: CRTC ATIP release packages A-2021-00078 and A-2024-00011

- ES 4 Moreover, ADR proceedings that have not yet closed according to the CRTC’s data – being ‘pending’, ‘suspended’ or ‘active’ – have been underway for an average of 1,377.6 days. This result could reflect scarcity in data entries rather than reality – but underscores the necessity for the CRTC to accurately track ADR processes undertaken to meet its legislative mandates.

### FRPC’s recommendations – summary

1. If the CRTC decides to reiterate text from paragraph 6 of ON NoC 2024-236, it should strike the word, “meant”, so as to give effect to Parliament’s statement of the mandatory purpose of the ONA Code of Conduct,

and



2. The CRTC should issue Guidelines on the ONA Code of Conduct when it issues the Code of Conduct and should periodically invite comment regarding changes to these Guidelines.

ES 5 FRPC has made several proposals for changes in the text of the CRTC’s proposed *ONA Code of Conduct* and these are summarized below.

CRTC’s proposed <i>ONA Code of Conduct</i>	Bold font and underlining reflects changes proposed by the Forum
	As a preliminary matter <b><u>FRPC proposes that the CRTC publish Guidelines to the ONA Code of Conduct when it publishes its ONA Code of Conduct.</u></b>
Definitions	It is unclear why the word, “Definitions” is repeated following the subheading, “Definitions”
<del>Definitions</del>	
<i>bargaining activity</i> includes any activities by a party related to negotiation, mediation or arbitration in respect of compensation for making available Canadian news content on a digital news intermediary, whether or not that activity takes place within the bargaining process set out in sections 18 to 44 of the Act. ( <i>activité de négociation</i> )	<i>bargaining activity</i> <del>includes</del> <b>means</b> any activities by a party related to negotiation, mediation or arbitration in respect of compensation for making available Canadian news content on a digital news intermediary, whether or not that activity takes place within the bargaining process set out in sections 18 to 44 of the Act. ( <i>activité de négociation</i> )
2 Parties must engage in bargaining activities in good faith by demonstrating reasonable efforts to arrive at a fair agreement, including by committing time, engaging in meaningful dialogue and readily sharing and explaining positions.	2 Parties must engage in bargaining activities in good faith by demonstrating reasonable efforts to arrive at a fair agreement, including by committing time, <b><u>undertaking to engage in a timely manner,</u></b> engaging in meaningful dialogue and readily sharing and explaining positions.
3 (1) During bargaining activities, parties must not engage in unfair behaviour, including	3(1) During bargaining activities, parties <del>must</del> <b><u>shall</u></b> not engage in unfair behaviour, including
...	
(b) behaviour that is deceptive, such as a party providing false or misleading information when it exchanges information with another party;	(b) behaviour that is deceptive, such as a <del>party providing</del> party’s <b><u>failure to provide relevant information or its provision of</u></b> false or misleading information when it exchanges information with another party;
...	
(d) behaviour that is not in accordance with the procedural obligations agreed to with another party.	(d) behaviour that <del>is not in accordance with</del> <b><u>contravenes</u></b> the <b><u>lawful</u></b> procedural obligations agreed to with another party.
...	
(e) require the eligible news business or group of eligible news businesses to raise a dispute in	(e) require the eligible news business or group of eligible news businesses to <del>raise</del> <b><u>initiate</u></b> a dispute in



<b>CRTC's proposed <i>ONA Code of Conduct</i></b>	<b>Bold font and underlining reflects changes proposed by the Forum</b>
a Canadian jurisdiction in which it does not operate;	a Canadian jurisdiction in which it does not operate:
...	
Format	
(2) The information must be made available in a format that the other party can easily understand.	(2) The information must be made available in a format that the other party can easily understand, <b><u>use or analyze</u></b> .

## I. Introduction

1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including broadcasting and telecommunications. The Forum supports a strong Canadian communications system that serves the public interest as defined by Parliament in its communications-related statutes, including the *Online News Act*.<sup>1</sup>

### A. Legislative context

2 Formerly known as Bill C-18, *An Act respecting online communications platforms that make news content available to persons in Canada*, the *Online News Act* received Royal Assent on 22 June 2023.<sup>2</sup> Its provisions came into force eleven months ago on 19 December 2023.<sup>3</sup>

3 Section 4 of the *Act* states that Parliament’s purpose for the *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.

4 The *Online News Act* requires the Commission to publish a list of the DNIs to which the statute applies:<sup>4</sup> Google Search is currently the only DNI on the [CRTC’s list](#).<sup>5</sup> The *Act* also requires the CRTC to maintain and publish on its website “a list of eligible news businesses” if these agree to be included;<sup>6</sup> the CRTC’s search engine does not currently provide a URL to such a list.

*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*)  
...  
*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)  
*Online News Act*, s. 2(1)

5 Consistent with its goal of “enhancing fairness” Parliament requires the CRTC in the *Online News Act* to establish a code governing the conduct [*ONA Code of Conduct*] of bargaining between ‘digital news intermediaries’ (DNIs) – online communications platforms that make

<sup>1</sup> S.C. 2023, c. 23.

<sup>2</sup> LEGISinfo, “[C-18](#)”: “This bill received royal assent on Thursday, June 22, 2023”.

<sup>3</sup> See Appendix 1.

<sup>4</sup> *Online News Act*, ss. 8(1) and (3).

<sup>5</sup> See CRTC, “[List of digital news intermediaries](#)” (date modified: 2024-10-08).

<sup>6</sup> *Online News Act*, s. 29(1).

news content available to people in Canada, and ‘news outlets’ – undertakings whose primary purpose is producing news.<sup>7</sup> Parliament states that the purpose of the *ONA Code of Conduct* “is to support fairness and transparency in bargaining in relation to news content”<sup>8</sup> and allows the code to “set out examples of unfair behaviour that could arise during the bargaining.”<sup>9</sup>

- 6 Since the enactment of Bill C-18 just over 15 months ago<sup>10</sup> the CRTC has invited the public to comment on how it implements requirements of the Online News Act, how it recovers costs of its regulatory activities under the Online News Act and on whether it should accept Google’s application to be exempted from the Online News Act: Table 1.

**Table 1 CRTC consultations held under the Online News Act**

*Call for comments – Framework under the Online News Act (formerly Bill C-18), [Online News Notice of Consultation 2024-55](#) (Ottawa, 13 March 2024) [CRTC decision not yet published]*  
*Call for comments – Proposed Cost Recovery Regulations, [Online News Notice of Consultation 2024-111](#) (Ottawa, 23 May 2024) [CRTC decision not yet published]*  
*Call for comments – Application for exemption from the Online News Act by Google, [Online News Notice of Consultation 2024-143](#) (Ottawa, 27 June 2024) – decision issued in *Exemption Order from the Online News Act granted to Google*, Online News Decision CRTC 2024-262 (Ottawa, 28 October 2024)*

- 7 CRTC determinations about two of these three consultations and matters such as other regulations that Parliament allows it to make have not yet been published on its website: Table 2.

**Table 2 Regulations Parliament has empowered CRTC to make under the Online News Act**

*Online News Act, section 85:*  
The Commission may make regulations  
...  
(c) respecting requests for designations referred to in subsection 27(1) [“Eligible news businesses — designation”];  
...  
(e) respecting complaints referred to in section 52 [“Complaint {by eligible news businesses}”];  
(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.

<sup>7</sup> *Online News Act, s. 49(1):*

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.

<sup>8</sup> *Online News Act, s. 49(2).*

<sup>9</sup> *Online News Act, s. 59(4)(b)*

<sup>10</sup> 15 months, 2 weeks and 2 calendar days.



- 8 The Forum’s submissions regarding *Call for comments – Proposed regulations – Code of Conduct Respecting Bargaining in Relation to Online News Content*, [Online News Notice of Consultation 2024-236](#) (Ottawa, 8 October 2024) [ON NoC 2024-236] are set out below. ON NoC 2024-236 does not set out specific questions by the CRTC; the Forum addresses timing as an aspect of fairness and makes proposals with respect to transparency. Our conclusion and recommendations follow.

## II. The Forum’s comments

### A. Preliminary matters

#### 1. Purpose of the ONA Code of Conduct

- 9 Before addressing issues related to fairness and transparency FRPC wishes to note its concern about the wording used in ON NoC 2024-236 with respect to the purpose of the *ONA Code of Conduct*. As noted above, Parliament declares in the *Online News Act* that “[t]he purpose of the code is to support fairness and transparency in bargaining in relation to news content” (subsection 49(2)). Parliament then emphasizes this purpose in subsection 49(3) by using the modal verb,<sup>11</sup> “must:

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.

[bold font and italics added]

- 10 ON NoC 2024-236, on the other hand, states at paragraph 6 that the “proposed Code of Conduct *is meant to* support transparency and fairness in bargaining activities [italics and underlining added].” According to the [Cambridge Dictionary](#), the meaning of “be meant to” is “to be intended to”; it offers five examples that express the idea of intentionality:

- *These batteries are meant to last for a year.*

---

<sup>11</sup> According to [Wikipedia](#), a modal verb “is a type of verb that contextually indicates a modality such as a likelihood, ability, permission, request, capacity, suggestion, order, obligation, necessity, possibility or advice. Modal verbs generally accompany the base (infinitive) form of another verb having semantic content.”, citing to [Palmer, F. R., \*Mood and Modality\*](#), Cambridge University Presents, 2001, p. 33. Modality can be distinguished in terms of epistemic modality (theoretical possibility), deontic modality (possibility vs necessity in terms of permission and duty) and dynamic modality (ability or willingness to act). For example:

epistemic: You **must** be starving. (“I think it is almost a certainty that you are starving.”)

deontic: You **must** leave now. (“You are required to leave now.”)

[bold font and italics in original text]

- *This exercise isn't meant to be difficult.*
- *We were meant to have gone away this week, but Debbie's ill so we couldn't go.*
- *You are meant to rub the medicine on the affected area.*
- *He went to India for what was meant to have been a 10-day visit.*

- 11 Intentionality, in FRPC's view, is fundamentally different from the mandatory requirements imposed by Parliament through the *Online News Act*. The legislature required more than mere intentions regarding fairness and transparency – subsections 49(3)(a) through (d) show that it was instead seeking to ensure fairness and transparency. These mandatory requirements are distinguishable from those that the CRTC may (or may not) also choose to include and which are set out in subsection 49(4) of the *Act*:

Mandatory contents

...

49(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.

- 12 The Forum submits that in making and issuing its determinations regarding ON NoC 2024-236 the Commission should reflect Parliament's stated objective rather than, through its use of different language, implying that fairness and transparency are aspirational rather than mandatory objectives. Specifically, the CRTC should exclude the word, "meant" from paragraph 6 of ON NoC 2024-236.

**Recommendation 1** If the CRTC decides to reiterate text from paragraph 6 of ON NoC 2024-236, it should strike the word, "meant", so as to give effect to Parliament's statement of the mandatory purpose of the ONA Code of Conduct

**2. Guidelines on the ONA Code of Conduct**

- 13 The CRTC has issued and issues guidelines to explain certain of its requirements with respect to its legislative responsibilities, including those with regard to the *Online News Act* and to alternative dispute resolution (ADR) mechanisms such as mediation and final-offer arbitration: Table 3.

**Table 3 Examples of CRTC guidelines**

<a href="#"><u>Guidance on practice and procedure under the Online News Act</u></a> , Online News Information Bulletin CRTC 2024-115 (Ottawa, 27 May 2024)
<a href="#"><u>Guidelines for TV and radio broadcasters and TV service providers during an election</u></a>
“ <a href="#"><u>Compliance and enforcement processes: What you should know</u></a> ”, as published in <i>Commission practices in Compliance and Enforcement sector review proceedings</i> , <a href="#"><u>Compliance and Enforcement Information Bulletin CRTC 2023-368</u></a> (Ottawa, 16 November 2023)
<a href="#"><u>Practice and procedure for final offer arbitration to determine mobile virtual network operator access rates</u></a> , Telecom Information Bulletin 2022-337 (Ottawa, 9 December 2022)
<a href="#"><u>Practices and procedures for staff-assisted mediation, final offer arbitration and expedited hearings</u></a> , Broadcasting and Telecom Information Bulletin CRTC 2013-637 (Ottawa, 28 November 2013)

14 Given that the CRTC cannot readily predict which news organizations and DNIs are experienced in and therefore understand its processes, particularly with respect to its ADR systems, the Forum proposes that the Commission issue *Guidelines on the ONA Code of Conduct* when it issues the *ONA Code of Conduct* it finally approves. We also propose that the Commission invite comment from time to time regarding additions to or amendments of these *Guidelines*.

**Recommendation 2** The CRTC should issue *Guidelines on the ONA Code of Conduct* when it issues the *Code of Conduct* and should periodically invite comment regarding changes to these *Guidelines*.

**B. Fairness and timing of the Online News Act bargaining process**

15 The CRTC’s proposed *ONA Code of Conduct* addresses aspects of “unfair behaviour” in bargaining activities. It sets out a non-exclusive list of four types of unfair behaviour:

- 3 (1) During bargaining activities, parties must not engage in unfair behaviour, *including*
    - (a) behaviour that is intended to unreasonably delay or prolong bargaining, such as a party making frivolous applications to the Commission with respect to violations of this Code;
    - (b) behaviour that is deceptive, such as a party providing false or misleading information when it exchanges information with another party;
    - (c) behaviour that is abusive, threatening or violent; and
    - (d) behaviour that is not in accordance with the procedural obligations agreed to with another party.
- [Italics added]

16 Section 3(2) of the proposed *ONA Code of Conduct* then refers to bargaining procedures:

Bargaining procedure  
 3(2) If a bargaining activity takes place within the bargaining process set out in sections 18 to 44 of the Act, parties must comply with any applicable regulations made under paragraph 85(b) of the Act.

17 Section 85(b) of the *Online News Act* – to which section 3(2) of the proposed *Code* refers – concerns “regulations .... respecting the bargaining process set out in sections 18 to 44; ....”

which the CRTC may make at its discretion. These regulations may include those the CRTC enacts as a result of the determinations it makes regarding ON NoC 2024-55 (see Table 1, above).

- 18 The Forum’s concern is that while the proposed *ONA Code of Conduct* says that unreasonable delay is an unfair practice, it does not specifically address timeliness. In theory, timeliness should not be an issue because section 19(1) of the *Online News Act* sets out the timing in days for three different stages of the bargaining process: Table 4.

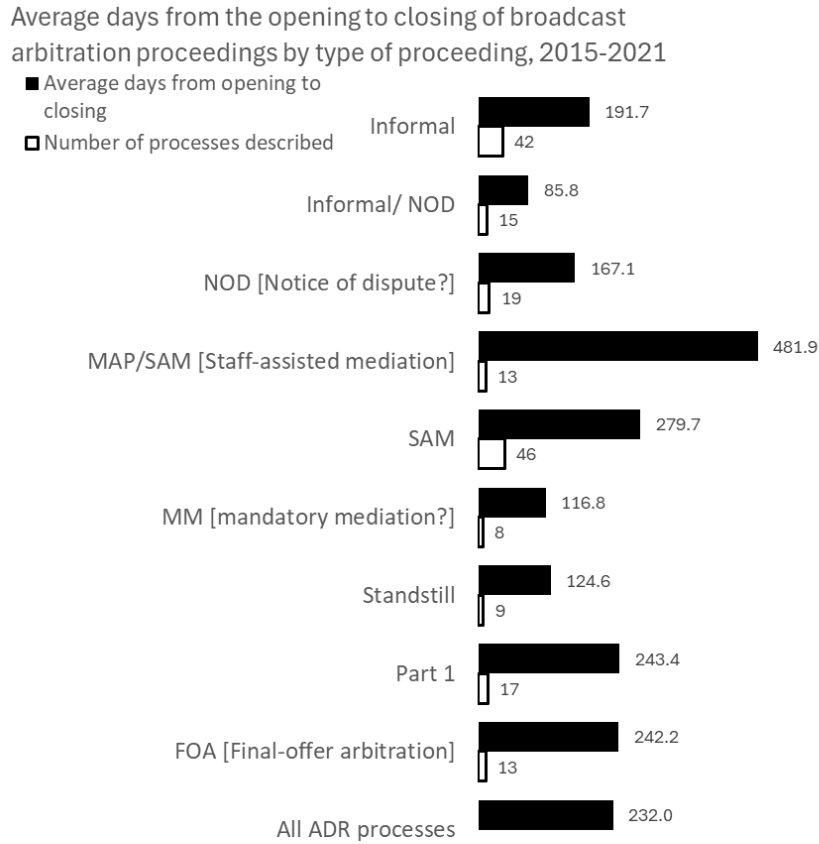
**Table 4 *Online News Act* stages of bargaining in terms of days**

Bargaining process stages set out in section 19(1)	Maximum days allowed by Act	By days
(a) Negotiation or bargaining sessions	90 days	1 through 90
(b) Mediation sessions	120 days	91 through 210
(c) Final offer arbitration (“limited to monetary disputes” <sup>12</sup> )	45 days	211 through to 255
Extensions: 19(1.1) On request of both parties, the Commission may extend a period provided for in any of paragraphs (1)(a) to (c).		

- 19 At the same time, Parliament has empowered the CRTC to extend the time of any of the three stages. Section 19(1.1) states that “the Commission may extend a period provided for in any of paragraphs [19](1)(a) to (c) if both parties make this request.
- 20 Little is known about the timeliness of the CRTC’s proceedings in broadcasting. For example, in September 2024 the CRTC said that it does not have records showing the date when it receives applications in broadcasting and the decisions it makes about these applications (Appendix 2).
- 21 In 2022 and 2024 FRPC asked the CRTC for information about its ADR processes in broadcasting with respect to programming and/or distribution undertakings. We received the information set out in Appendix 4 from the CRTC on 4 November 2024. The data describe 215 ADR processes undertaken under the CRTC’s auspices from January 2015 to December 2021, including the type of ADR process involved, the dates when the ADR processes were ‘Opened’ as well as their associated “Closed Dates”. Of the 215 processes, 182 were described as “Closed” and took an average of 232 days to ‘close’: Figure 1 and Table 5 (next page).
- 22 Insofar as staff-assisted mediations were concerned – and for which the *Online News Act* sets a maximum of 120 days beginning at day 91 of the process – the CRTC’s ADR data show that “SAM” or staff-assisted mediations took an average of 279.7 days to close after they were opened. Assuming that the “Open” date in the CRTC ADR data reflects the date on which proceedings were *first* opened, this would imply that the staff-assisted mediation component of ADR proceedings required a little more than two months more to close than the time provided for mediation sessions in the *Online News Act* (210 days in total; see above, Table 4).

<sup>12</sup> *Online News Act*, s. 19(3).

**Figure 1 Average days from the opening to the closing of broadcast arbitration proceedings, by type of proceeding (2015-2021)**



Source: CRTC release package for Access-to-Information requests A-2021-00078 and A-2024-00011

**Table 5 Type of ADR process by average days from opening to closing of process**

Type of ADR process	Number of closed proceedings	Average number of days from opening to closing
Informal	42	191.7
Informal/ NOD	15	85.8
NOD [Notice of dispute?]	19	167.1
MAP/SAM [Staff-assisted mediation]	13	481.9
SAM	46	279.7
MM [mandatory mediation?]	8	116.8
Standstill	9	124.6
Part 1	17	243.4
FOA [Final-offer arbitration]	13	242.2
Average, all ADR proceedings	182	232.0

Source: CRTC ATIP release packages A-2021-00078 and A-2024-00011

23 Even apart from the days shown between opening and closing of ADR processes in broadcasting, the CRTC data also show that in 33 instances the ADR process had not closed. As indicated in Table 6, these processes were identified as ‘active’, ‘monitoring’, ‘pending’ or

‘suspended’. The processes have (as of today) lasted for an average of 3.77 years (1,377.6 days): Table 6. It may well be, however, that some of these proceedings have in fact closed without necessarily being shown in the CRTC’s data systems.

**Table 6 Duration of proceedings not yet closed in days, from time of opening to today (7 November 2024)**

Status of ADR proceedings as described by CRTC	Number of cases	Average days from opening to 7 Nov/24
Active	12	1,272.8
Monitoring	8	1,305.9
Pending	9	1,433.1
Suspended	4	1,658.0
Total	33	1,377.6

- 24 The point made by these data is that even if the CRTC undertakes very few ADR processes under the *Online News Act*, it should provide all parties with greater certainty regarding timing, especially if it decides to exercise its discretion under s. 19(1.1) to extend the periods of time set out in the *Act* for bargaining activities.

### III. Conclusion and summary of recommendations

- 25 Regardless of its concerns about timing of any ADR processes under the *Online News Act*, FRPC welcomes the CRTC’s publication of ON NoC 2024-236 and has provided additional comments about the CRTC’s proposed *ONA Code of Conduct* in Appendix 3.

- 26 The Forum has made two recommendations:

If the CRTC decides to reiterate text from paragraph 6 of ON NoC 2024-236, it should strike the word, “meant”, so as to give effect to Parliament’s statement of the mandatory purpose of the *ONA Code of Conduct*,

and

The CRTC should issue *Guidelines on the ONA Code of Conduct* when it issues the Code of Conduct and should periodically invite comment regarding changes to these Guidelines.



## Appendices

Appendix 1	Entry into force of provisions of the <i>Online News Act</i>	1
Appendix 2	September 25, 2024 letter stating that it has no data regarding dates when broadcasting applications are received and published	2
Appendix 3	Comments on CRTC's proposed Code of Conduct Respecting Bargaining in Relation to Online News Content	4

Appendix 4 (separate attachment, pages 9-122)

**Appendix 1 Entry into force of provisions of the *Online News Act***

ONA	Section	Date of entry into force		ONA	Section	Date of entry into force
93, Footnote 1	6	19-Dec-23		93, Footnote 3	36	19-Dec-23
93, Footnote 2	7	19-Dec-23		93, Footnote 3	37	19-Dec-23
93, Footnote 2	8	19-Dec-23		93, Footnote 3	38	19-Dec-23
93, Footnote 2	11	19-Dec-23		93, Footnote 3	39	19-Dec-23
93, Footnote 2	12	19-Dec-23		93, Footnote 3	40	19-Dec-23
93, Footnote 2	13	19-Dec-23		93, Footnote 3	41	19-Dec-23
93, Footnote 2	14	19-Dec-23		93, Footnote 3	42	19-Dec-23
93, Footnote 2	15	19-Dec-23		93, Footnote 3	43	19-Dec-23
93, Footnote 2	16	19-Dec-23		93, Footnote 3	44	19-Dec-23
93, Footnote 2	17	19-Dec-23		93, footnote 4	49	19-Dec-23
93, Footnote 3	18	19-Dec-23		93, footnote 4	50	19-Dec-23
93, Footnote 3	19	19-Dec-23		93, footnote 4	51	19-Dec-23
93, Footnote 2	20	19-Dec-23		93, footnote 4	52	19-Dec-23
93, Footnote 3	21	19-Dec-23		93, Footnote 2	53.1	19-Dec-23
93, Footnote 3	22	19-Dec-23		93, Footnote 2	59	19-Dec-23
93, Footnote 2	27	19-Dec-23		93, Footnote 2	60(2)	19-Dec-23
93, Footnote 2	28	19-Dec-23		93, footnote 4	68	19-Dec-23
93, Footnote 2	29	19-Dec-23		93, footnote 5	79	19-Dec-23
93, Footnote 2	30	19-Dec-23		93, footnote 5	80	19-Dec-23
93, Footnote 2	31	19-Dec-23		93, footnote 5	81	19-Dec-23
93, Footnote 3	32	19-Dec-23		93, footnote 5	82	19-Dec-23
93, Footnote 3	33	19-Dec-23		93, footnote 5	83	19-Dec-23
93, Footnote 3	34	19-Dec-23		93, footnote 5	86	19-Dec-23
93, Footnote 3	35	19-Dec-23		93, footnote 5	87	19-Dec-23
				93, footnote 5	90	19-Dec-23

Section 93(6): (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.

[The *Online News Act* entered into force on 22 June 2023 – 19 December 2023 took place 180 days after this date.]



## Appendix 2 September 25, 2024 letter stating that it has no data regarding dates when broadcasting applications are received and published

Access to Information and Privacy Office (ATIP)  
Ottawa, ON K1A 0N2

Our File  
A-2024-00047 / GST

Ms. Monica Auer

...

Dear Monica Auer:

This is further to your request that was received in this office on August 28, 2024. We note that, pursuant to the *Access to Information Act* (ATIA), you wish to obtain the following information:

*“Re: CRTC decisions and dates Hello, Please provide \*\*\*in a machine-readable spreadsheet and not a PDF of a document or a spreadsheet\*\*\*, for the period from 1 January 2000 to 30 June 2024, a list of each decision (whether ‘Decision’, ‘administrative decision’, ‘Letter decision’ or any other style of referring to a decision) made by the CRTC (not its staff) about an application (not regulatory policies or procedural requests) that was submitted to the CRTC by any party, showing in: Column 1 – sector (broadcasting, telecom, compliance and enforcement etc.); Column 2 – date (day, month and year) decision was published by the CRTC on a CRTC website page open to the public (if published and if not, a notation to that effect [NP]); Column 3 - name of applicant; Column 4 – date application was submitted to the CRTC ; Column 5 – date (if any) when application posted on a CRTC website page open to the public; Column 6 - date when, if applicable, CRTC returned an application to an applicant without considering it ; Column 7 - date of deadline (if any) for public to comment on the application; Column 8 – date of CRTC’s decision about the application; Column 9 - the CRTC decision number (if any) for that application; Column 10 - the style of the CRTC decision (such as, but not limited to, ‘Letter decision’ or ‘Decision’); Column 11 - if available in the CRTC’s data systems, a brief (preferably one word) description of the application (such as, but not limited to, Licence, Renewal, Ownership, Amendment etc.) if the CRTC’s data systems already include descriptions, and Column 12 - if available in the CRTC’s data systems, a brief description of the CRTC’s decision (such as, but not limited to, Granted, Granted in part, Denied, Suspended, Adjourned, Combined with another application or proceeding, etc.). Thank you.”*

We regret to inform you that a search of the records under the control of the Canadian Radio-television and Telecommunications Commission has revealed none regarding your request under the *Access to Information Act* (ATIA).



The Access to Information Act creates the right of access to information in existing records. It is not necessary for an institution to create a record in order to respond to a request. Furthermore, section 6 of the Act states that a request for access must provide sufficient detail to enable an experienced employee of the Department with a reasonable effort to identify the relevant records.

However, you may be interested in the information that is housed on our external website. It includes much of the information although not all grouped together in one report as you requested. The information can be found at <https://crtc.gc.ca/eng/dno.htm>.

Please be advised that you are entitled to complain to the Information Commissioner concerning the processing of your request within 60 days after the day that you become aware that grounds for a complaint exist.

In the event you decide to avail yourself of this right, your notice of complaint should be addressed to:

Office of the Information Commissioner  
30 Victoria Street, 7th Floor  
Gatineau, QC K1A 1H3

You may obtain additional information on the complaint process by visiting the website of the Office of the Information Commissioner at [www.oic-ci.gc.ca](http://www.oic-ci.gc.ca).

This completes our processing of your request. Should you have any questions or concerns about your request, do not hesitate to contact Geneviève St-Georges by e-mail at [AIPRP-ATIP@crtc.gc.ca](mailto:AIPRP-ATIP@crtc.gc.ca).

Yours sincerely,

...

ATIP Coordinator



**Appendix 3 Comments on CRTC’s proposed Code of Conduct Respecting Bargaining in Relation to Online News Content**

CRTC’s proposed <i>ONA Code of Conduct</i>	Bold font and underlining reflects changes proposed by the Forum
	As a preliminary matter <b><u>FRPC proposes that the CRTC publish Guidelines to the ONA Code of Conduct when it publishes its ONA Code of Conduct.</u></b>
Definitions	
Definitions	It is unclear why the word, “Definitions” is repeated following the subheading, “Definitions”
1 The following definitions apply in this Code.	
<i>Act</i> means <i>Online News Act. (Loi)</i>	
<p><i>bargaining activity</i> includes any activities by a party related to negotiation, mediation or arbitration in respect of compensation for making available Canadian news content on a digital news intermediary, whether or not that activity takes place within the bargaining process set out in sections 18 to 44 of the Act. (<i>activité de négociation</i>)</p>	<p>The Forum submits that the use of “includes” in the definition of bargaining activity rather than “means” creates uncertainty as to whether “bargaining” includes activities other than those identified specifically in the <i>Online News Act</i>. It states at s. 2(1) states that <i>covered agreement</i> <u>means</u>, as applicable,</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) an arbitration panel’s decision that is deemed to be an agreement under section 42. (<i>accord assujetti</i>) [underlining added]</li> </ul> <p>S. 19 (1) reflects the precise terminology in section 2(1), stating that:</p> <p>[t]he bargaining process <u>consists of</u></p> <ul style="list-style-type: none"> <li>(a) negotiation or bargaining sessions over a period of 90 days;</li> <li>(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</li> <li>(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.” <p>FRPC proposes that the Commission replace “includes” in section 1 of the <i>ONA Code of Conduct</i> with “means” (any needed flexibility with respect to the ambit or scope of “negotiation, mediation or arbitration” is provided by the expression, “related to”):</p> </li></ul>



CRTC's proposed <i>ONA Code of Conduct</i>	Bold font and underlining reflects changes proposed by the Forum
	<p><i>bargaining activity</i> <del>includes</del> <b>means</b> any activities by a party related to negotiation, mediation or arbitration in respect of compensation for making available Canadian news content on a digital news intermediary, whether or not that activity takes place within the bargaining process set out in sections 18 to 44 of the Act. (activité de négociation)</p> <p>=&gt; FRPC assumes that “party” – used above in the definition of ‘bargaining activity’ excludes arbitration panels since the <i>Online News Act</i> defines party at section 18 for the purposes of sections 19 to 44 as “an operator, an eligible news business or a group of eligible news businesses”.</p> <p>That said, rather than presuming that everyone reading the CRTC’s <i>ONA Code of Conduct</i> has both read and retained the definitions in the <i>Online News Act</i>, FRPC proposes that the Commission either repeat the Act’s definition of party in this section of the <i>Code</i>, or reiterate the Act’s definition in the <i>Guidelines to the ONA Code of Conduct</i> that FRPC is proposing the CRTC publish when it publishes its determinations on the <i>ONA Code of Conduct</i>.</p>
Bargaining	
Good faith	
2 Parties must engage in bargaining activities in good faith by demonstrating reasonable efforts to arrive at a fair agreement, including by committing time, engaging in meaningful dialogue and readily sharing and explaining positions.	<p>As FRPC noted above, the concept of ‘fairness’ should include provisions with respect to timeliness. We therefore propose the following change:</p> <p>2 Parties must engage in bargaining activities in good faith by demonstrating reasonable efforts to arrive at a fair agreement, including by committing time, <b><u>undertaking to engage in a timely manner</u></b>, engaging in meaningful dialogue and readily sharing and explaining positions.</p>
Unfair Behaviour	
3 (1) During bargaining activities, parties must not engage in unfair behaviour, including	<p>FRPC submits that the expression, ‘must not’, may be misconstrued as an admonition that implores parties to behave (you must clean up your room!), rather than as the standard of behaviour the CRTC requires of parties. We therefore propose the following change:</p> <p>3(1) During bargaining activities, parties <del>must</del> <b><u>shall</u></b> not engage in unfair behaviour, including</p>
(a) behaviour that is intended to unreasonably delay or prolong bargaining, such as a party making	

CRTC's proposed <i>ONA Code of Conduct</i>	Bold font and underlining reflects changes proposed by the Forum
frivolous applications to the Commission with respect to violations of this Code;	
(b) behaviour that is deceptive, such as a party providing false or misleading information when it exchanges information with another party;	<p><i>Black's Law Dictionary</i> defines "<u>deceptive</u>" in the context of "active concealment" as "[a]ny action or words that are deceptive and are used to conceal the truth." It defines "<u>false statement</u>" as "a statement that is a deceitful and untrue statement that is made for ulterior motives." It defines "<u>misleading</u>" as "Delusive; calculated to lead astray or to lead into error. Instructions which are of such a nature as to be misunderstood by the jury, or to give them a wrong impression, are said to be 'misleading.'"</p> <p>Where false and misleading statements share the characteristics of untruthfulness and error, another aspect of 'deceptive' is active concealment by omission; <i>Black's Law Dictionary</i> states that an "<u>error of omission</u> [o]ccurs when something was left out ..." <sup>13</sup></p> <p>FRPC proposes that the CRTC clarify that omissions are a form of deceptive behaviour, by amending 3(1)(b) as follows:</p> <p style="padding-left: 40px;">behaviour that is deceptive, such as a <del>party providing</del> party's <b><u>failure to provide relevant information or its provision of</u></b> false or misleading information when it exchanges information with another party;</p> <p>This amendment would clarify that each party bears an onus of ensuring that it provides the information needed to ensure fairness in bargaining, and would reinforce the concept of relevant information set out in s. 6(1) of the proposed <i>ONA Code of Conduct</i></p> <p>Even if the Commission declines FRPC' recommendation, FRPC proposes that the text be amended either to include the possessive gerund ("a party's providing false or misleading information") or clearer meaning ("a party's provision of false or misleading information....").</p>
(c) behaviour that is abusive, threatening or violent; and	
(d) behaviour that is not in accordance with the procedural obligations agreed to with another	FRPC proposes that more specific and concise wording be used in this section:

<sup>13</sup> Black's online Law Dictionary:  
[ERROR OF OMISSION](#)  
 Occurs when something was left out or a listed action was not executed.



CRTC's proposed <i>ONA Code of Conduct</i>	Bold font and underlining reflects changes proposed by the Forum
party.	(d) behaviour that <del>is not in accordance with</del> <b><u>contravenes</u></b> the procedural obligations agreed to ...” FRPC also proposes that this text be clarified to clarify that inter-party agreements may not circumvent Parliament’s requirements: “the <b><u>lawful</u></b> procedural obligations agreed” The complete version of the original text and proposed revisions would be as follows: (d) behaviour that <del>is not in accordance with</del> <b><u>contravenes</u></b> the <b><u>lawful</u></b> procedural obligations agreed to with another party.
Bargaining procedure	
(2) If a bargaining activity takes place within the bargaining process set out in sections 18 to 44 of the Act, parties must comply with any applicable regulations made under paragraph 85(b) of the Act.	
Prohibited Provisions – agreements	
4 An agreement between an operator and an eligible news business or group of eligible news businesses reached through bargaining activities must not include provisions that	
(a) limit the ability of	
(i) the operator to enter into an agreement with another news business or groups of news businesses, or	
(ii) the eligible news business or group of eligible news businesses to enter into an agreement with another operator;	
(b) prohibit the operator or the eligible news business or group of eligible news businesses from making available news content on any online communications platform that is not subject to the agreement;	
(c) limit or prevent the recourse to civil remedies provided for in section 45 or section 46 of the Act;	
(d) require disputes to be adjudicated outside Canada;	
(e) require the eligible news business or group of eligible news businesses to raise a dispute in a Canadian jurisdiction in which it does not operate;	Rather than ‘raising a dispute’, would parties “initiate” disputes? If so, FRPC proposes the following amendment: (e) require the eligible news business or group of eligible news businesses to <del>raise</del> <b><u>initiate</u></b> a dispute in a Canadian jurisdiction in which it does not operate:
(f) require the agreement to be interpreted	



CRTC's proposed <i>ONA Code of Conduct</i>	Bold font and underlining reflects changes proposed by the Forum
according to the laws of a jurisdiction outside Canada;	
(g) limit or prevent	
(i) the making, by any party, of any complaint or application to the Commission that is allowed by the Act; or	
(ii) the disclosure, by any party, of relevant information that has been requested by the Commission;	
(h) limit the ability of the eligible news business to join a group of eligible news businesses in order to bargain for future agreements; or	
(i) limit the ability of the eligible news business or group of eligible news businesses to initiate the bargaining process set out in sections 18 to 44 of the Act in a timely manner in order to reach another agreement that will take effect after the current agreement ends.	
Information Sharing	
Confidence	
5 (1) Any information that parties exchange during bargaining activities must be maintained in confidence and used only for the purposes of bargaining activities.	
Conditions and limitations	
(2) Parties may agree to conditions or limitations with respect to the use or safeguarding of information exchanged during bargaining activities.	
Relevant information	
6 (1) If a bargaining activity takes place within the bargaining process set out in sections 18 to 44 of the Act, a party must exchange with the other party any information that could influence its decision to enter into an agreement or its determination of the terms of the agreement, including information on direct interactions between users and news content and information on indirect value, such as improved user profiling or user retention, created because news content is made available by a digital news intermediary.	
Format	
(2) The information must be made available in a format that the other party can easily understand.	The CRTC's proposed <i>ONA Code of Conduct</i> envisages that parties may make complaints or applications under the <i>Online News Act</i> (s. 4(g)(ii)) and that they may exchange information (s. 6(1)). Consequently these



CRTC's proposed <i>ONA Code of Conduct</i>	Bold font and underlining reflects changes proposed by the Forum
	<p>parties may require more than 'understanding' of information they receive from other parties – they will have to use or analyze the information.</p> <p>As currently written s. 6(2) does not require that the information being exchanged be in a usable format – only that it be available in an <i>understandable</i> format. In other words, an entire database could, based on the current wording of s. 6(2), be provided on printed pages or in non-convertible PDF format: the data would be understandable, but not usable.</p> <p>FRPC therefore proposes s. 6(2) be amended as follows:        (2) The information must be made available in a format that the other party can easily understand, <b><u>use or analyze</u></b>.</p>
Period	
(3) The information must contain details of the direct interactions that took place and the indirect value that was created during the period of one year prior to the commencement of the bargaining activities.	It is unclear why the CRTC has selected the period of one year with respect to bargaining information, unless this period reflects the requirement at s. 86(1) of the <i>Online News Act</i> that an independent auditor “prepare an annual auditor’s report in respect of the impact of this Act on the Canadian digital news marketplace.”
Coming into force	
Registration	
7 This Code comes into force on the day on which it is registered.	

\*\*\* End of document apart from separately filed Appendix 4 (113 pages) \*\*\*