

TELECOMMUNICATIONS LAWS OF THE WORLD

Canada



Downloaded: 9 December 2024

CANADA



Last modified 21 November 2022

OVERVIEW OF LEGAL LANDSCAPE

With the exception of telecommunications services providers (“TSPs”) that engage in certain activities (including the use of radio spectrum, as well as the provision of international telecommunications services), TSPs do not require a licence to provide telecommunications services in Canada. However, TSPs must register with the Canadian Radio-television and Telecommunications Commission (the “CRTC”).

Additionally, TSPs are subject to rules restricting foreign ownership and control, as outlined below. These restrictions are derived from the telecommunications policy objective to promote Canadian ownership and control of Canadian TSPs.

The majority of legislative authority for modern telecommunications activities in Canada lies with the federal government. A mix of federal legislation, notably the *Telecommunications Act* and the *Radiocommunication Act*, govern telecommunications activities under federal jurisdiction. The CRTC serves as the main telecommunications regulator, while the Minister of Innovation, Science and Industry (formerly the Minister of Industry) plays a regulatory role with respect to radio spectrum.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The federal *Telecommunications Act* is the primary legislation governing telecommunications in Canada. Coming into force on October 25, 1993, this legislation repealed and replaced the telecommunications-related provisions of the *Railway Act*, as well as federal acts such as the *National Telecommunications Power and Procedures Act*, and the *Telegraphs Act*.

The *Telecommunications Act* outlines the regulatory framework for TSPs and sets out the powers of the CRTC with respect to the administration of the *Telecommunications Act*. The CRTC itself is established under the *Canadian Radio-television and Telecommunications Commission Act*.

Below are key features of the *Telecommunications Act*:

- **The Canadian telecommunications policy:** The *Telecommunications Act* sets out the objectives of this policy, which includes enhancing the efficiency and competitiveness of Canadian telecommunications, public accessibility to high quality services, the promotion of Canadian ownership and control, innovation, privacy protection, and the social requirements of users. In exercising its powers under the *Telecommunications Act*, the CRTC must act with a view to implementing these objectives.
- **Regulatory requirements:** Although TSPs have general authority to operate without licences, (except with respect to certain activities, including the use of spectrum and the carrying of international telecommunications traffic), most are generally subject to basic regulatory requirements relating to rates, resale, roaming and interconnection between carriers. Additionally, the CRTC may impose conditions on TSPs offering telecommunications services.

- **CRTC powers:** The CRTC's mandate includes the power to enquire and make determinations with respect to permitted or prohibited telecommunications activities. Moreover the CRTC may issue orders, guidelines or make regulations for carrying out the purposes and provisions of the *Telecommunications Act*. Decisions of the CRTC may be appealed to the Federal Court of Appeal with leave of that court.

In addition to the *Telecommunications Act*, the following federal legislation and the regulations made thereunder may also impact the provision of communication services and the operation of communication networks in Canada:

- The *Radiocommunication Act*, which sets out the regulatory framework for radiocommunications, equipment and spectrum management in Canada. The Minister of Innovation, Science and Industry, together with the department of the Government of Canada known as Innovation, Science and Economic Development Canada (“**ISED**”), is responsible for regulation under the *Radiocommunication Act*. ISED’s policies on spectrum management can be found [here](#).
- The *Broadcasting Act* sets out the regulatory framework for broadcasting in Canada, including the transmission of programs received by the public. The CRTC is responsible for broadcasting regulation in Canada. In 2022, the Minister of Canadian Heritage introduced a bill to amend the *Broadcasting Act* and to make related and consequential amendments to other Acts. Notably, Bill C-11 creates a new class of broadcast undertakings called “online undertakings”, which aims to capture online, digital media broadcasting undertakings (including streaming platforms such as Netflix or Apple TV+) and requires them to comply with certain obligations such as contributing to the creation of Canadian video and audio content. Bill C-11 is expected to be passed in 2022.
- The *Personal Information Protection and Electronic Documents Act*, which governs the rules for collection, use and disclosure of personal information by TSPs within federal jurisdiction.

At the provincial level, legislation exists relating to local matters that fall outside of federal jurisdiction. Examples include legislation concerning matters related to telephone rates and services as applied locally, as well as TSP access to public utility structures. In addition, many Canadian provinces have consumer protection legislation that is applicable to telecommunications contracts.

REGULATORY BODIES OR AUTHORITIES

Canadian Radio-television and Telecommunications Commission

Les Terrasses de la Chaudière Central Building

1 Promenade du Portage

Gatineau, Quebec J8X 4B1

<http://www.crtc.gc.ca/>

Innovation, Science and Economic Development Canada

C.D. Howe Building

235 Queen Street

Ottawa, Ontario K1A 0H5

<https://www.ic.gc.ca/eic/site/icgc.nsf/eng/home>

Commission for Complaints for Telecom-television Services

P.O. Box 56067 - Minto Place RO

Ottawa, ON

<https://www.ccts-cprst.ca/>

- An independent consumer agency that resolves complaints from individuals and small business retail customers concerning telecommunications and television services. All Canadian telecommunications providers are required to join the Commission for Complaints for Telecom-television Services.

TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

All TSPs that own or operate transmission facilities used to provide telecommunications services are subject to regulation under the *Telecommunications Act*.

A transmission facility is defined as: "any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of intelligence (signs, signals, writing, images, sounds, or intelligence of any nature) between network termination points".

Telecommunications services include those provided by means of a transmission facility, or any other facility or apparatus that is used or capable of being used for similar purposes.

TSPs that do not own or operate facilities may not be subject to the same regulatory requirements as those that own or operate facilities. For example, resellers that merely use the facilities of other TSPs to resell services to the public (i.e. resellers) are exempt from a significant part of the *Telecommunications Act*.

However, all non-facilities-based TSPs (including resellers) must register with the CRTC and must meet certain regulatory obligations set out in various CRTC regulatory policies and decisions.

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

TSPs generally do not require a licence to provide telecommunications services, however, certain activities do require special licences from the CRTC. TSPs carrying international telecommunications traffic, must hold a Basic International Telecommunications ("BITS") License, issued by the CRTC. Additionally, the construction and operation of international submarine cables requires a licence.

TSPs that use radio equipment and spectrum to offer telecommunications services require separate authorizations from the Minister of Innovation, Science and Industry (formerly the Minister of Industry) under the *Radiocommunication Act*. Radio-based activities include, but are not limited to, the use of microwave facilities, cellular telephone systems, and the operation of satellites and satellite earth stations.

TSPs must register on one of the CRTC's registration lists as a BITS Licensee, a Facilities-Based Provider (where the TSP owns or operates a transmission facility used by that provider or another provider to offer telecommunications services to the public for compensation) or a Non-Facilities-Based Provider (where the TSP offers basic telecommunications services to the public including services provided by exempt transmission apparatus). An entity may register on more than one list, provided it meets the obligations associated with each list.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

Subject to exceptions, TSPs that own or operate their own facilities must be Canadian-owned and controlled entities that are incorporated, organised or continued under the laws of Canada or a province of Canada.

Under the *Telecommunications Act*, an entity is Canadian-owned and controlled if:

- in the case of a corporation, not less than 80% of the members of the board of directors are individual Canadians;
- Canadians beneficially own, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 80% of the entity's voting interests; and
- the entity is not otherwise controlled by persons that are not Canadians.

The term "Canadian" is defined in the regulations made under *the Telecommunications Act*, and includes corporations of which Canadian shareholders (either individuals or other entities meeting prescribed criteria) beneficially own and control not less than 66.66% of the issued and outstanding voting shares, and which are not otherwise controlled by non-Canadians. In effect, non-Canadians may own up to 33.33% of the voting shares of the parent of the TSP as well as 20% of the voting shares of the TSP itself.

Entities that hold less than 10% of the Canadian market for telecom services (based on revenue) however, are specifically exempt from Canadian ownership and control requirements under the *Telecommunications Act*.

Canada's right to impose the above foreign ownership restrictions is consistent with Canada's Schedule of Specific Commitments to the WTO Agreement on trade in basic telecommunications services.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Agreements and arrangements relating to the interworking of systems between TSPs that own and operate facilities, and the apportionment of rates or revenues between such TSPs are subject to the approval of the CRTC. Pursuant to the *Telecommunications Act*, the CRTC is authorized to approve arrangements, withhold the approval of arrangements, and amend agreements or arrangements.

Where interconnection cannot be achieved by the mutual consent of the TSP, the CRTC has the power to order a TSP to connect its telecommunications facilities to any other telecommunications facility, and to establish terms and conditions that it deems just and expedient.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The CRTC plays a prominent consumer protection role in the telecommunications space. Key undertakings by the CRTC include the promotion and enforcement of:

- Unsolicited Telecommunications Rules, which aim to regulate telemarketing activities. The CRTC is also responsible for maintaining the National Do Not Call List, through which individuals can register their telephone numbers;
- Canada's anti-spam legislation ("CASL"), which aims to reduce the effects of spam from commercial electronic messages, and mitigate related online threats. The Competition Bureau and Office of the Privacy Commissioner are also responsible for enforcing certain provisions of CASL;
- The Wireless Code, published by the CRTC here, which outlines the rights and responsibilities of consumers of wireless services (including wireless voice and data services). All wireless service providers must comply with the Wireless code.
- The Internet Code, which applies to large facilities-based providers of retail fixed internet. Similar to the Wireless Code, the Internet Code outlines consumers' rights and responsibilities contained in contracts with Internet service providers. Although only applicable to certain TSPs, all TSPs are expected to follow the Internet Code.

In addition, the CRTC has set a "Universal Service Objective", in order to address gaps in access to broadband internet services. Rural and remote areas in Canada historically lag behind urban areas with respect to access to high quality and affordable telecommunications services. To this end, the CRTC has set broadband internet target speeds of 50 megabits per second ("Mbps") download and 10 Mbps upload. To assist in meeting this goal, the CRTC established the "Broadband Fund" to fund projects that will build or upgrade broadband internet infrastructure. TSPs may apply to receive funding under this program.

REGULATORY TAXES AND FEES

Under the *Telecommunications Act*, carriers are subject to annual fees if the carrier meets the following conditions:

- the carrier was in operation on April 1 of that year, and
- the carrier had at least 10 million Canadian dollars in revenue from Canadian telecommunications services for its fiscal year ending in the preceding calendar year.

If the carrier is part of a group of related telecommunications services providers, the conditions apply to the group on aggregate.

The carriers mentioned above are subject to three applicable fees: the “annual fee”, the “supplementary fee”, and the “annual adjustment”. Fee amounts are based on the particular carrier’s revenue in relation to the revenues of the Canadian industry as a whole and are calculated as a proportion of the yearly cost of the regulatory scheme.

Fees for spectrum and radio licences issued under the *Radiocommunication Act* are outlined in the *Radiocommunication Regulations*. Fees are based on the type of station licensed, the type of service used, and in certain cases, the amount of radio frequency spectrum required or assigned, and the location of the operations.

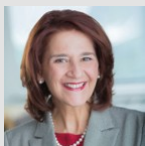
KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

The CRTC has authority to inspect and investigate compliance or non-compliance of the regulatory scheme. Violations of the *Telecommunications Act*, by an act or omission contrary to a provision or a decision made pursuant to the *Telecommunications Act*, may trigger civil liability or administrative monetary penalties. In addition, certain contraventions of the *Telecommunications Act* are considered “offences” and are punishable on summary conviction. The applicable enforcement measure will depend on the nature of the activity. Prosecution of offences punishable on summary conviction may only be commenced with the consent of the CRTC.

The limitation periods for the enforcement of violations vary between two years from the day on which the act or omission occurred, to three years from the day on which the subject-matter of the proceedings became known to the CRTC.

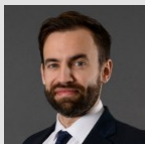
The CRTC and the Minister of Innovation, Science and Industry may also suspend or revoke a licence if they are satisfied that the licence holder has contravened the applicable legislation, regulations or terms of authorisation. Prior to suspension or revocation, the licence holder must first be given written notice and a reasonable opportunity to make representations to the relevant party.

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