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Where Things Stand: Update on the *Digital Charter Implementation Act, 2020*

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In our November 20 privacy [update](#), we flagged key elements of Bill C-11, the *Digital Charter Implementation Act, 2020*, a bill that was introduced on November 17, 2020 by the Minister of Innovation, Science and Industry Navdeep Bains.

Bill C-11 had one day of debate on second reading, on November 24, 2020. Each of the opposition parties signalled support for the general scope of the bill, meaning that it will likely pass this round of debate in principle and be referred to committee to debate the specifics of the proposed bill. Parliament's last day of sitting was on December 11, 2020, and it will not return until January 25, 2021.

Looking ahead, we can expect that if Bill C-11 receives government prioritization and opposition support (and the government does not fall), it could be passed by the end of 2021. Companies would then likely have the whole of 2022 and possibly part of 2023 to prepare for implementation of a new Canadian privacy framework.

Next Steps

Once debate on second reading concludes after January 25, 2021 when the House resumes and assuming Bill C-11 passes a House vote, it will be referred to the Standing Committee on Access to Information, Privacy and Ethics (ETHI). ETHI is currently occupied investigating issues regarding conflict of interest and lobbying in relation to government spending in response to the COVID-19 pandemic.

ETHI's review of Bill C-11 will involve inviting witnesses to speak before the committee and answer questions, receiving briefs submitted by interested parties, reviewing the bill clause by clause, and voting on its contents. During the review, ETHI members will propose, debate and vote on amendments to the draft bill. Once this review is complete, ETHI will vote on the bill as a whole and, if passed, the bill will be returned to Parliament for third reading and a final round of debate on the principles of the bill.

Once the bill passes third reading, it will be sent to the Senate for consideration and passage, after which it is sent to the Governor General for royal assent. The Senate conducts a legislative review process similar to that of Parliament, and may recommend changes to the bill, which can be accepted or rejected by Parliament.

Coming into Force

Bill C-11 does not contain a coming into force date – that is, the date the legislation becomes enforceable and companies will have to abide by its rules. Instead, the legislation will come into force “on a day to be fixed by order” of the federal Cabinet. In a recent interview, Minister Bains indicated that he expects the legislation will come into force 12 to 18 months after royal assent.

Timing Considerations

The timing for review and passage of Bill C-11 is heavily dependent on the priorities – and the survival – of the current minority government. How quickly Bill C-11 makes it through Parliament to the committee stage will depend on its position relative to the government's other legislative priorities.

Further, the government has several pieces of legislation at the second reading stage, including a COVID-19 economic recovery bill; a bill on net-zero emissions; bills proposing amendments to the *Citizenship Act*, the *Broadcasting Act* and the *Criminal Code*; and, most

recently, a bill to implement elements of the Fall Economic Statement. Each piece of legislation is a priority for the government, and will need to be allocated debate time before being sent to committee.

In March 2021, the government is also likely to introduce its first budget in 24 months, which will be high priority legislation, and take up much of Parliament's attention when it is introduced. Legislation involving revenue and spending, such as budgets and the Fall Economic Statement implementation bill, tend to be the highest priority bills, because they permit the government to raise and spend money.

The other major timing consideration is that Canada currently has a minority government. The three opposition parties can vote together on a confidence motion to bring down the government and force an election. Votes on budgets are always confidence votes, and the government can also identify other legislative votes as confidence motions, which it has already done for the Fall Economic Statement implementation bill. This means that there will likely be at least two opportunities for the government to fall on a non-confidence vote in the next six months. In the event that the government falls, all bills currently in the legislative process would die on the Order Paper and would need to be reintroduced after the election. Re-introduction would require support and prioritization by a new government.

Conclusion

During the parliamentary terms of the Liberal majority government from 2015 through 2019, government bills similar to Bill C-11 took, on average, just over one year to receive royal assent. Due to inefficiencies caused by the loss of majority control, the pandemic and the remote sitting Parliament, the legislative process is likely to take longer for the current government.

Despite the multi-year process, engagement with the proposed changes is starting now. Interested parties can prepare briefs to be filed with ETHI for consideration once the bill passes second reading; or they can seek to appear before ETHI to help government understand the proposed legislation's impacts on Canadian businesses.

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