

Copyright Board
Canada



Commission du droit d'auteur
Canada

Consultation on Inflation Summary of feedback received

One key focus of the Board's Modernization Initiative is to increase transparency and predictability of its proceedings. To this end, the Board proposed a default methodology as a way of setting a consistent approach to calculating inflation adjustments when requested and if no alternative has been raised. The use of this approach does not bind Members in their decision to apply inflation adjustments or not, nor in their decision on how it should be calculated in a given case. It was proposed as a common point of reference for parties to engage on these questions.

On January 9, 2024, the Board reached out to approximately 60 organizations that participated in Board proceedings over recent years. These included collective societies, users, associations and external counsels. Comments on the draft methodology and proposed approach were welcomed until February 9, 2024.

In total, the Board received 10 submissions, representing views from all sides. Most submissions represented the views of more than one organization. The Board wishes to thank all of those that took the time to review the documents and provide feedback. All submissions were carefully considered and analyzed. What follows is a high-level, unattributed summary of the comments received organized by issues, and how the Board intends to adjust the default methodology.

A. Process-related proposals

<p><i>Board proposal for inflation increase requests to be made in Notice of Grounds</i></p>	<ul style="list-style-type: none"> • <i>Provide specific explanations, the adjustment rate used and calculations including calculations to illustrate a range of outcomes.</i> • <i>State that the increase may be higher or lower at the time of approval.</i> • <i>Proposed tariffs may not estimate specific inflation increase. Rates would be increased by inflation at the time of determination.</i>
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I. Reactions

The majority of respondents were of the view that Notices of Grounds (NoGs) should provide a specific estimate of any proposed increase and methodology. Other reactions:

- The Board should avoid any presumptive entitlement to inflationary adjustments. Rather, collectives must bear the burden of justifying why they are required.
- Comments were split on whether proposed inflation adjustments should always include an estimate of the rate increase. On one hand, some felt there should be some flexibility on this point, while others highlighted the importance for users to know and understand what is being proposed.
- The Board should not grant higher inflationary increases than those proposed in NoGs.
- Calculations and explanations should only be required if they differ from the default methodology.
- The Board should provide standard language to be used in NOGs for inflation increases.
- The Board should consider a phased-in period in case of higher rates when the final
- Determination occurs at a point past the period to which the tariff is meant to apply. This would allow users to adjust their business models accordingly if needed.

<p><i>Board proposal to object to inflation increases in NoG for objection</i></p>	<ul style="list-style-type: none"> • <i>Include any issues or concerns on the proposed inflation increase accompanied by explanations and calculations.</i> • <i>The absence of any specific objection will be considered as an acceptance of an inflation increase in principle.</i>
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II. Reactions

Most who responded to this point were opposed to this proposal. More specifically:

- Inflation should be addressed throughout the tariff process, regardless of whether it was addressed in the Notice of Grounds for Objections, and that it be considered at the same time as all of the other issues, not separately.
- The concept of acceptance in principle when objectors did not object specifically to inflation increases in the NoG stage was seen as unfair.
- Users should justify their proposed methodology only if it departs from the Board guidelines.

Board proposal

relating to a formal notification on inflation prior to final approval

- *Notification would be sent if inflation calculation meant final royalty rate higher than the one proposed.*
- *Notification to indicate calculations that lead to the final rate and describes the impact on the proposed royalty rate.*
- *Parties would be able to comment on the Board's Notice.*

III. Reactions

Only collectives reacted to this proposal. They agreed in principle, and further suggested that the notification should not be limited to cases where inflation is higher than the proposed rate.

- Inflation should be addressed throughout the tariff process, regardless of whether it was addressed in the Notice of Grounds for Objections, and that it be considered at the same time as all of the other issues, not separately.
- The concept of acceptance in principle when objectors did not object specifically to inflation increases in the NoG stage was seen as unfair.
- Users should justify their proposed methodology only if it departs from the Board guidelines.

Outcome: process

- ✓ Like all other changes sought to tariffs, the Notice of Grounds accompanying a tariff proposal will need to explain proposed inflation increases. Please see the related [Practice Notice](#) for further details.
- ✓ Like all other concerns with proposed tariffs, objections to a proposed inflation increase should be explained in the Notice of Grounds for Objection. Please see the related [Practice Notice](#) for further details.
- ✓ The absence of an objection to an inflation increase will not be considered an acceptance in principle of the increase.
- ✓ Inflation will be considered at the same time as all other issues of a specific proceeding, not separately.

IV. Methodology-related proposals

<p><i>Board proposal relating to the calculation period and the period of application respectively</i></p>	<ul style="list-style-type: none"> • <i>From the month after the last period for which the Board determines that inflation was considered, up to, and including, the last month of the calendar year before the effective period of the proposed tariff begins.</i> • <i>The period for which the increase was requested in the proposed tariff.</i>
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V. Reactions

Overall, there was support for the definitions, some suggestions to improve precision and clarity:

- The starting point for calculating inflation should be the last date on which there was either a Board approved tariff (whether adjudicated or settled or otherwise), a Board-arbitrated
- licence, or a settlement agreement.
- The inflation increase should be calculated at the time of determination even if that was to occur after the effective period of the tariff. Others opposed this concept.

- The default methodology should apply only to filings from 2024 forward.
- A collective may propose inflation increases for each year of a proposed tariff.
- Two other methods to account for inflation increases should be proposed, one based on forecasting and the other on automatic increases year-over-year.
- The wording “one-time increase” under “Period of Application” and the expression “taken into account” under “Calculation Period” were seen as unclear.

<p><i>Board proposal related to the calculation index and data series, respectively</i></p>	<ul style="list-style-type: none"> • <i>The rate of inflation is measured by the Consumer Price Index (CPI).</i> • <i>The data series is the CPI, all items, monthly series, not seasonally adjusted and not adjusted for taxes.</i>
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Outcome: default methodology

- ✓ The default methodology is adjusted to include rates approved further to the filing of a jointly-submitted text or pursuant to a request made under s. 71(1) of the *Copyright Act*.
- ✓ Clarifications for using the CPI are included in the default methodology. It will be clearly stated that parties are free to propose and explain alternate methodologies in their Notice of Grounds for Proposed Tariff or Notice of Grounds for Objections.
- ✓ The default methodology will not include forecasted inflation increases, in keeping with the approach the Board has often taken in the past. Indeed, even the best prediction is still only an estimation, whereas the Board’s rule of thumb is to improve the predictability of the outcomes of potential inflation adjustments.

Additional comments

<p><i>Board approach to its consultation on default inflation methodology</i></p>	<ul style="list-style-type: none"> • <i>Consultation material consists of a draft guideline on methodology and variables for calculation, a standardized process and questions.</i> • <i>Consultation material sent to collectives, known users and related internal and external counsels.</i> • <i>Consultation instigated via email communication responses received in similar fashion.</i> • <i>Decision not to consult publicly for this matter based on the very technical nature of the questions, and its special relationship to Board practices in considering proposed tariffs.</i>
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VI. Reactions

In general, parties were glad to be consulted on the Board proposals. However, some parties also expressed substantive and procedural concerns with the consultation process. These parties noted that:

- Overall, the Board's consultation approach in this instance lacked transparency and clarity, veering too far into overarching, substantive consideration of issues relevant to a large number of tariffs to be appropriately dealt with in such an informal manner.
- The Board's proposals concerning inflation could be interpreted as an automatic acceptance of inflationary increase, which creates a prejudice against objectors and has an unequal impact on licensees.
- The Board did not provide a list of parties being consulted, so even those who were included did not know who else was invited to comment. By not holding open consultations on this issue or providing a list of consultees, the Board raised concerns that other consultations may have taken place without providing interested stakeholders the opportunity to participate.

Outcome: Approach to consulting

- ✓ The Board's objective is to increase transparency of its practices and engage stakeholders in opportunities to participate in improving Board plans and tools. The Board's decision to limit participation to parties who had appeared before the Board in the past was grounded in the technical nature of this issue and its specific purpose of

developing guidance, not obligations, for parties who propose or object to tariffs. The Board has consulted in this manner on draft Practice Notices over the past four years, without comment.
- ✓ The Board appreciates the feedback and commits to considering these comments and concerns in planning future consultations on guidelines and standards to increase

efficiency and transparency of its processes.
- ✓ To address some of the concerns and signal that the consultations were conducted in good faith, the Board will:
 - Publish the unattributed overview of the submissions on its website (this document), with explanations as to how the submissions were considered and used in adjusting the guidelines; and
 - Provide an advance copy of the summary, a list of all parties consulted and the updated guidelines to its general email distribution list, including to all parties consulted.