



1 December 2017

Mr. Chris Seidl
Acting Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: *Call for comments on the Governor in Council's request for a report on future programming distribution models*, Broadcasting Notice of Consultation CRTC 2017-359 (Ottawa, Ottawa, 12 October 2017), <http://www.crtc.gc.ca/eng/archive/2017/2017-359.htm>

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 telecommunications. The Forum supports a strong Canadian communications system that serves the public interest.

The Forum's response to Broadcasting Notice of Consultation CRTC 2017-359 is attached; at this time we intend to file a submission in Phase 2 of this proceeding.

Sincerely yours,

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Executive Director
Forum for Research and Policy in Communications (FRPC)
Ottawa, Ontario



Walking out the clock

Canadians do not need more reports; they need meaningful government action to serve the public interest in communications – now

Phase I response of the Forum for Research and Policy in Communications (FRPC)

*Call for comments on the Governor in Council's request
for a report on future programming distribution models,*
Broadcasting Notice of Consultation CRTC 2017-359 (Ottawa, Ottawa, 12 October 2017),
<http://www.crtc.gc.ca/eng/archive/2017/2017-359.htm>

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Summary

The CRTC's report to the Minister with respect to OIC 2017-1195 will be at least the 75th federal report on broadcasting, telecommunications or convergence, and the 43rd federal report on broadcasting alone, since 1991. Endless cycles of consultations do not serve the public interest because they continually describe problems without implementing meaningful solutions, they discourage public participation, and leave the field (so to speak) to private interests with deeper pockets and vested interests.

In terms of the overall theme of the Minister's questions in OIC 2017-1195, the Forum considers that models of distribution owe their structure to the laws, regulations and policies that are (or are not) established to govern these models, and as a result, the question to be asked about new models of distribution is how they will – with or without legislation - maintain, enrich and strengthen the cultural, political, social and economic fabric of Canada.

CRTC Q1: This question lacks relevant context; the Forum may respond in Phase 2.

CRTC Q2: This question lacks relevant context; the Forum may respond in Phase 2.

CRTC Q3: This question lacks relevant context; the Forum may respond in Phase 2; that said, the Forum submits that the *Broadcasting Act* must be applied to all programming services operating in whole or in part in Canada, whether by paying appropriate taxes on the sale of its services, and/or by making payments to the broadcasting system to support the production of Canadian programming.

CRTC Q4: This question lacks relevant context; the Forum may respond in Phase 2.

CRTC Q5: This question lacks relevant context; the Forum may respond in Phase 2.

CRTC Q6: This question lacks relevant context; the Forum may respond in Phase 2.

CRTC Q7: This question lacks relevant context; the Forum may respond in Phase 2.

CRTC Q8: This question lacks relevant context; the Forum may respond in Phase 2; the Forum notes, however, that the significant investment in Canadian programming by Netflix provides support for a review of the CRTC's New Media Exemption Order, which exists because the CRTC previously determined that over-the-top streaming services' compliance with the *Broadcasting Act* would not contribute materially to Parliament's broadcasting policy.

CRTC Q9: This question lacks relevant context, and the Forum may respond in Phase 2. We note, however, that problems and gaps in the *Broadcasting Act* have contributed to the CRTC's demonstrable failure to achieve Parliament's broadcasting policy for Canada. Where broadcasting was to "safeguard, enrich and strengthen Canada's cultural, political, social and economic fabric",

- Foreign content predominates in private radio and television, and distribution,

- The presentation of and expenditures on news, necessary to Canadian democracy, has decreased over time, and the CRTC has expanded the definition of ‘news’ to include analysis and interpretation
- The CRTC has not reviewed its policies on “Native Broadcasting”, gender portrayal, violence or ethnic broadcasting since the turn of the century, and
- Private radio and TV broadcasters have reduced employment opportunities, 19% of discretionary TV services operate without any staff (earning \$228 million in revenues), and 99.4% of 9,834 broadcasting decisions issued by the CRTC from 1998 to 2017 in relation to renewals did not mention the concept of “employment opportunities.

The Forum has therefore submitted 8 proposals for legislative change to strengthen the CRTC’s capacity to implement Parliament’s broadcasting policy for Canada.

The Forum’s recommendations

- | | | |
|-----------------------|--|----|
| FRPC recommendation 1 | The CRTC should exercise its jurisdiction under section 70 of the Telecommunications Act to invite public comment on the matters addressed in OIC 2017-1195 from the perspective of Federal telecommunications policy, and report its findings to the Ministers of Canadian Heritage and of Innovation, Science and Economic Development | 5 |
| FRPC recommendation 2 | If it wishes to receive new evidence about the issues raised in Phase 1 of the BNoC 2017-359 proceeding from public-interest organizations, the CRTC should grant interested parties ten weeks to gather evidence and make their submissions | 7 |
| FRPC recommendation 3 | Canada’s laws, regulations and policies should favour distribution systems that are owned, controlled, built, operated and maintained by Canadians using infrastructure in Canada, and that support content created by Canadians | 10 |
| FRPC recommendation 4 | Any new policies with respect to new distribution technologies must make the survival and strengthening of news, including in particular local news, paramount | 13 |
| FRPC recommendation 5 | The \$100 million per year investment by Netflix for the next five years represents a material contribution to the implementation of Canada’s broadcasting policy, and justifies the CRTC’s re-examination of the New Media Exemption Order | 25 |

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FRPC recommendation 11	Parliament should review the CRTC's use of informal regimes to enforce its decisions under the Broadcasting Act to determine whether the regimes are enforced equally across the system, and whether it should be empowered to order compensation	41
FRPC recommendation 12	Parliament should amend the Broadcasting Act to empower the CRTC to establish a costs-order process for public-interest organizations, and to require the CRTC to ensure that its decisions in costs applications begin and conclude in a timely manner	42
FRPC recommendation 13	Until Parliament amends the Broadcasting Act to empower the CRTC to establish a costs-order process, the CRTC should direct up to 1% of broadcast tangible benefits to the BPF	42
FRPC recommendation 14	The CRTC should be directed to consult with Canadians about the data it gathers to measure its implementation of Parliament's broadcasting policy	44

I. Introduction

1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including telecommunications. The Forum supports a strong Canadian communications system, provided it serves the public interest. We define the public interest in terms of the legislative objectives set by Parliament for Canadian communications.

2 The Forum has several preliminary comments about the Order in Council of 22 September 2017 by the Minister of Canadian Heritage (OIC 2017-1195) and Broadcasting Notice of Consultation CRTC 2017-359 of 12 October 2017 which are set out below. The Forum's answers to the Order in Council 2017-1195 (OIC 2017-1195) and to the CRTC's questions follow, along with a summary of the recommendations we are making in this, the first Phase of this process.

A. *Order in Council P.C. 2017-1195 – comments on process*

3 OIC 2017-1195 asks the CRTC to report by 1 June 2018 on three matters:

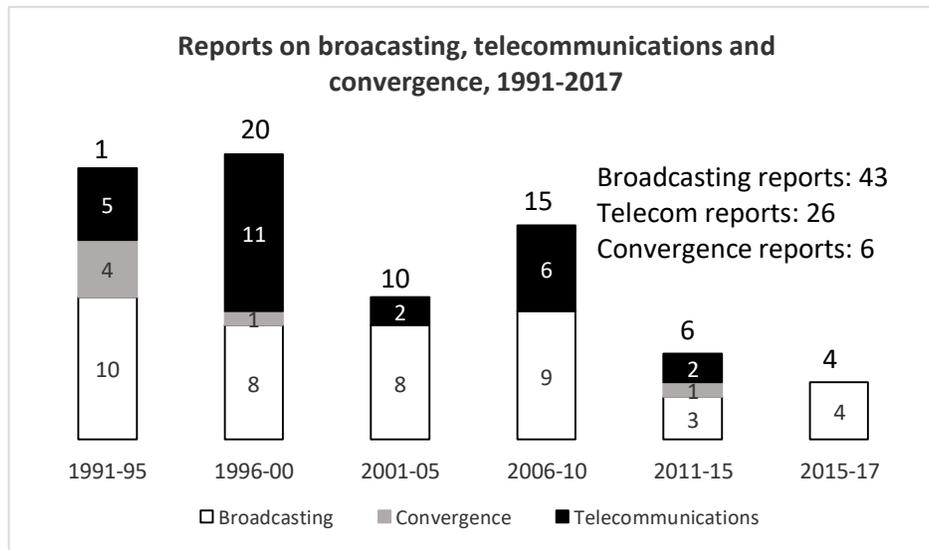
1. the distribution model or models of programming that are likely to exist in the future;
2. how and through whom Canadians will access that programming; and
3. the extent to which these models will ensure a vibrant domestic market that is capable of supporting the continued creation, production and distribution of Canadian programming, in both official languages, including original entertainment and information programming.

1 74 reports on broadcasting and telecom since 1991

4 First, the Forum notes that Parliament, the federal government and the CRTC have issued 74 separate reports on broadcasting, telecommunications and convergence since 1991 (see Figure 1). This list of reports does not include the consultations launched in April 2016 by the Minister of Canadian Heritage “on how to strengthen the creation, discovery and export of Canadian content in a digital world”, or the second phase of this consultation process launched in September 2016.

5 The CRTC's report next June will therefore be the 75th report about communications (excluding reports on film and copyright), and the 43rd report about broadcasting specifically, over the past quarter century. Almost all of these reports invited public comment and public participation.

Figure 1 Parliamentary, government and CRTC reports, 1991-2017



Source: FRPC, “Research note: finding data about Canadian broadcasting, telecommunications and convergence”, (Ottawa, 28 November 2017), <http://frpc.net/research-note-finding-data-about-canadian-broadcasting-telecommunications-and-convergence/>

6 Canada’s communications system is mired in an endless cycle of consultations and reports. Dr. Michael Geist recently described this as a ‘consultation crisis’.¹ He pointed out that excessive consultations are “unsustainable for all but the most deep-pocketed organizations”, that “many of the public interest organizations that participate in hearings and consultations are now stretched to the financial breaking point”, and that the cycle risks

... turning into ‘consultation theatre’, where the government or agencies seek out public participation not as a mechanism to generate ideas or gauge public opinion, but rather as a validation exercise at best or as theatre with no intent to act on submissions at worst. This may alienate Canadians who seek to participate in policy processes in good faith only to be left with the inescapable sense that their opinions mean little to policy outcomes.²

7 We share Dr. Geist’s concerns and believe ongoing, seemingly endless consultation, has negative consequences. At this point, asking Canadians – one

¹ Dr. Michael Geist, “Too Much of a Good Thing: What Lies Behind Canada’s Emerging Consultation Crisis”, (Ottawa, 25 October 2017), <http://www.michaelgeist.ca/2017/10/too-much-of-a-good-thing-what-lies-behind-canadas-emerging-consultation-crisis/>.

² *Ibid.*

more time – for their views on matters that have been canvassed at some length several times since 2000

- a) weakens Canada’s communications system by focussing on problems without implementing meaningful solutions,
- b) diminishes and discourages public participation in the consultation process by repeatedly soliciting the public’s advice without acting on that advice,³ and
- c) due to the absence of meaningful reform in the public interest, and the disenfranchisement of the public from a meaningful public policy-making process, leaves the field (so to speak) to larger and better funded private companies, whose private interests rarely overlap with the public interest in general.

8 The Forum respectfully notes that while it appreciates the opportunity to present its views on the important issues raised by OIC 2017-1195, the government has had the benefit of 35 reports since 2000 about the challenges facing the broadcasting system, almost all of which have made detailed recommendations.

9 We therefore ask: when does the government plan to act on these recommendations? In 2018? Before the next federal election? After the next federal election? Until Canadians are so thoroughly discouraged by a never-ending cycle of consultations that Canada’s communications system can be safely transferred into foreign control without too much public outcry?

2 OIC 2017-1195 is too narrowly focussed on broadcasting

10 While OIC 2017-1195 refers to a review of Canada’s broadcasting and telecommunications statutes,⁴ the CRTC’s proceeding is being undertaken under

³ Considering that so many Canadians opposed growing levels of concentrated media ownership at the CRTC’s ‘Diversity of Voices’ proceeding, it is striking that the CRTC’s response to this opposition was to permit large broadcasters to become even larger.

⁴ The 5th ‘whereas’ in the preamble to OIC 2017-1195:

...
Whereas the Government of Canada has announced a review of the Broadcasting Act and of the Telecommunications Act;

...
Canadian Heritage’ *Creative Canada* policy referred to this review as well:

Budget 2017 announced a review of the Broadcasting Act and Telecommunications Act. It noted, “in this review, the Government will look to examine issues such as telecommunications and content creation in the digital age, net neutrality and cultural diversity, and how to strengthen the future of Canadian media and Canadian content creation.”

the sole jurisdiction of the *Broadcasting Act*, rather than under the jurisdiction of both the *Broadcasting* and the *Telecommunications Act*.

- 11 The Forum's primary concern with a broadcasting-only proceeding is that it may artificially limit discussion to matters under the jurisdiction of the *Broadcasting Act*, despite the fact that the matters addressed by Canada's broadcasting and telecommunications statutes now overlap to a significant degree. The overlap between the two sectors, particularly due to the fact that Canada's largest telecommunications companies also hold the bulk of critical broadcasting licences, has increased the difficulties of analyzing the sectors separately.⁵ Yet rather than addressing the problems raised by convergence so as to solicit possible legislative and regulatory approaches to those problems, OIC 2017-1195 reintroduces legislative silos.
- 12 The Forum's secondary concern with a broadcasting-only proceeding is that it may in turn lead to a follow-up telecommunications-only proceeding in which the same or similar issues are addressed. Many of the same parties would likely submit comments in a telecom proceeding, and many of those comments would address the same issues. For example, question 4 in BNoC 2017-359 addresses broadband network capacity – surely a telecommunications question:

Given Canadians' ever-increasing demand for data to stream audio and video content on fixed and mobile broadband networks, how will these networks keep pace with future capacity requirements, particularly in rural and remote areas?
- 13 The Forum submits that the Order and BNoC 2017-359 represent a wasted opportunity to make meaningful progress on the reviews of both the broadcasting and telecommunications statutes. The Forum therefore recommends that the CRTC exercise its own authority to initiate a joint

The review will address the digital shift and will aim to support diverse quality content and information for Canadians, as well as affordability and access to telecommunications services, among other things.

....

⁵ Three years ago, for example, in analyzing the productivity of the two sectors, for example, Statistics Canada wrote,

The broadcasting and telecommunications industry in Canada consists of two sub-sectors: broadcasting (sub-sector 515 according to North American Industry classification System (NAICS), 2007) and telecommunications (NAICS 517). Telecommunications is dominant, accounting for more than 90% of total sales in the industry since 2000. However, because of growing integration of the two sub-sectors, it is difficult to classify firms into separate broadcasting or telecommunications categories. Therefore, this paper examines the combined broadcasting and telecommunications industry.

Statistics Canada, *Productivity Growth in the Canadian Broadcasting and Telecommunications Industry: Evidence from Micro Data*, Economic Analysis Research Paper Series Cat. 11F0027M, no. 89 (Ottawa, February 2014), <http://www.statcan.gc.ca/pub/11f0027m/2014089/part-partie1-eng.htm> (footnotes excluded)

broadcasting-telecommunications proceeding on the issues raised in OIC 2017-1195, and to submit its findings from both proceedings to the Ministers of Canadian Heritage and Innovation, Science and Economic Development, next June.

FRPC recommendation 1 The CRTC should exercise its jurisdiction under section 70 of the *Telecommunications Act* to invite public comment on the matters addressed in OIC 2017-1195 from the perspective of Federal telecommunications policy, and report its findings to the Ministers of Canadian Heritage and of Innovation, Science and Economic Development

B. BNoC 2017-359 – general comments

14 The Forum has from time to time set out its concerns about fair process and procedure in CRTC proceedings. In this proceeding, the Forum asked the CRTC to extend the 6.1 weeks granted by the CRTC for comment by an additional six weeks. We pointed out that previous proceedings initiated by Cabinet requests for reports provided Canadians with 60% more time (9.8 weeks, on average) and that proceedings involving distribution issues (1994-130, 2002-38 and 2006-72) provided an average of 10.4 weeks.

Orders in Council & date issued	CRTC notice & date issued	Interventions due	Report due or filed	Weeks between notice and interventions	Central Issue
1994-1689 11 Oct/94	1994-130 20 Oct/94	16-Jan-95	19-May-95	12.6	Regulating broadcasting and telecommunications in the convergence era (the “Information Highway”)
1995-398 14 Mar/95	1995-128 28 Jul/95	01-Dec-95	31-Jul-95	18.0	BDU dispute resolution
1997-592 15 Apr/97	1997-48 25 Apr/97	22-Aug-97	06-Feb-98	17.0	National bilingual TV service
1999-1454 6 Aug/99	1999-146 8 Sep/99	08-Oct-99	19-Nov-99	4.3	National French-language arts TV service
2000-511 5 Apr/00	2000-74 31 May/00	31-Jul-00	31-Dec-00	8.7	French-language discretionary TV service availability
2002-1043 12 Jun/02	2002-38 19 Jul/02	06-Sep-02	17-Jan-03	7.0	Internet retransmission of OTA TV and radio signals
2006-519 8 Jun/06	2006-72 12 Jun/06	01-Sep-06	14-Dec-06	11.6	Future environment facing broadcasting system
2008-1293 19 Jun/08	2008-12 16 Oct/08	20-Nov-08	31-Mar-09	5.0	Broadcasting services for linguistic minorities
2009-1569 16 Sep/09	2009-614 2 Oct/09	02-Nov-09	23-Mar-10	4.4	Compensation regime for local TV signals
Total – 9 proceedings			Average:	9.8 weeks	

15 The Forum’s specific reasons for seeking additional time, were to ensure sufficient time for consultation, but as well adequate time to respond to BNoC 2017-359’s explicit request for empirical evidence:

6. To the greatest extent possible, parties should base their responses on empirical evidence, such as domestic and international studies, reports or other research. Parties are also invited to submit any other studies or relevant research that could inform the Commission's examination of the issues identified in the OIC.

16 The CRTC answered our 13 October 2017 request for additional time on 26 October, almost two weeks later (consuming a third of the intervention period at that time). It granted interested parties one additional week to comment, 83% less time than that requested.

17 The problem with the inadequate time granted by the CRTC in this proceeding (and in many others) is that while public-interest organizations such as ours have very limited resource, the duties imposed by CRTC proceedings include (but are not limited to) these steps:

- Consultation with the Forum's members and others
- Review of evidence that is already available
- Development of approaches to gather new evidence
- Consultation with the Forum (and others) with respect to the gathering of new evidence
- Synthesis of results of evidence-gathering process in submission, and
- Circulation of draft submission for approval by the Forum's Board of Directors.

18 The nearly seven weeks granted by the CRTC in this process were clearly inadequate to meet these steps. Our concern is that other parties, such as major broadcasters, have more resources to dedicate to these issues on a daily basis than individual members of the public and public-interest organizations alike: deadlines that disadvantage the public tend not to disadvantage communications companies. The result is that much of the empirical evidence presented to the CRTC comes from those it regulates – the companies not only collect and use these data for their own purposes, but the CRTC's short deadlines limit others from collecting meaningful empirical evidence of their own.

19 For this reason, the Forum welcomed the CRTC's announcement in BNoC 2017-359-1 that all parties will be able to submit new evidence:

5. The Commission wishes to reassure all parties that in the second phase, parties will be allowed to file new evidence, as well as submit further evidence in support of their initial interventions. The Commission will also consider other means of consulting Canadians with a view to providing the best possible response to the Governor in Council's request within the established timeframe.

- 20 We also appreciated the CRTC’s advice in BNoC 2017-359 that it will publish additional evidence in Phase 2:
14. ... Subsequently, the Commission intends to publish further documents and details on the second phase, based on the comments received in the first phase.
- 21 Note, however, that if the CRTC publishes new evidence in Phase 2, it may be impossible for members of the public to identify, gather and present relevant evidence to respond to the CRTC’s new evidence, and to review all relevant submissions being made today (1 December 2017) to determine what evidence may be needed to respond to those submissions, if the CRTC again sets a deadline of six weeks or less.
- 22 To maximize the effectiveness of new evidence submitted by interested parties, the Forum recommends that the CRTC ensure that the Phase 2 deadline provides sufficient time for parties to
- Review the submissions and evidence filed in Phase 1
 - Determine the evidence that parties require
 - Design their empirical research programs
 - Implement the research designs, and
 - Analyze and comment on the resulting data
- 23 In our experience, at least eight weeks will be needed for members of the public to participate meaningfully in Phase 2: week to review other submissions and evidence; 2 weeks to design and consult on research; 4 weeks to collect survey-based data; 1 week for analysis.
- 24 We note, however, that the deadline for Phase 1 falls on December 1st – any deadline that begins in December should be extended past the eight-week period we have just described by an additional two weeks, to account for the holidays that fall in that month.

FRPC recommendation 2 *If it wishes to receive new evidence about the issues raised in Phase 1 of the BNoC 2017-359 proceeding from public-interest organizations, the CRTC should grant interested parties ten weeks to gather evidence and make their submissions*

II. Answers to the questions from the OIC and the CRTC

A. *Future programming distribution model or models*

- 25 OIC 2017-1195 asks about “the distribution model or models of programming that are likely to exist in the future”. Coincidentally the Communications

- Research Centre in Ottawa announced the day before the CRTC's Phase I deadline in this (the BNoC 2017-359) proceeding, that it has developed a new technology "that could extend the signals fundamental to ubiquitous wireless connectivity which could have a significant impact on future 5G deployment in dense, urban environments."⁶ ,
- 26 The Forum's view is that the models of distribution that have existed and now exist in Canada owe their structure to the laws, regulations and policies that are (or are not) established beforehand to govern those models.
- 27 It is also important, we submit, not to ascribe too much to new models of distribution. Consider the future of telephones, from the perspective of the 19th century. People expected that - like the telegraph [!], the telephone would
- ... bring Peace [to] earth, ... revolutionize surgery, ... save the farm by making farmers less lonely[and] let people dial up symphonies, presidential speeches and Shakespeare['s] plays⁷
- 28 Similarly, as community antenna television (CATV, which came to be known as cable TV, or cable) expanded, it was thought that
- ... the elimination of channel scarcity and the sharp reduction of broadcasting cost, can break the hold on the nation's television fare now exercised by a small commercial oligarchy. Television can become far more flexible, far more democratic, far more diversified in content, and far more responsive to the full range of pressing needs in today's cities, neighborhoods, towns, and communities.⁸
- 29 Others had a less rosy perspective:
- ... The nation will be wired primarily for the benefit of private entrepreneurs. Cable will then be much like broadcast television and radio before it. Programming will be restricted to mass-appeal entertainment, superficial reporting of news, and minimal discussion of public affairs. Cable subscribers will be sold to advertisers at so much a thousand, as the over-the-air audience are sold to them today. Community service and public access to the systems will be given lip service only, as they are in most commercial television and radio

⁶ "New wireless-extending tech a 'paradigm shift' for 5G: federal researchers", *The Wire Report* (30 November 2017), <https://thewirereport.ca/2017/11/30/new-wireless-extending-tech-a-paradigm-shift-for-5g-federal-researchers/>.

⁷ Daniel Pearl, "Futurist schlock: Today's cyberhype has a familiar ring", *The Wall Street Journal*, (7 September 1995), at A1.

⁸ R.L. Smith, *The wired nation*, (New York, Harper & Row: 1972), at 8.

broadcasting. The opportunity for a revolution in communication through cable television will be lost.⁹

- 30 The following passage from a research proposal for the International Development Research Centre, in 1996, also emphasizes that a nation’s culture can affect the adaption of technology:

When considering national policies, we must look for actions that may ultimately affect technology adoption in a nation. These actions may come as a result of national policies implemented by the host nations - for example, tax policies, such as investment tax credits aimed at making adoption easier or more accessible to certain groups of firms; or trade agreements between nations, such as the North American Free Trade Agreement (NAFTA), which modify the competitive environment and force firms to react to new market conditions. The actions may also be the result of social programs that favour technical education in schools, colleges, and universities. In some countries, such as the United States, defence procurement practices have a significant impact on the technology-adoption practices of the firms that want to do business with government agencies such as the US Department of Defense. Finally, societal values (which can be partially altered by national policies) and cultural effects have a definite influence on the adoption of IT applications. This remains an underinvestigated field of research, and most efforts to date have been limited to the study of cultural differences between Asiatic and Western, English-speaking cultures.¹⁰

- 31 The Forum’s point is that answering questions about the future, in the absence of context and of any other information about laws, policies and regulations, is a meaningless exercise in hypothetical speculation. We also note that the term, ‘model’, lacks specificity.
- 32 Rather than asking what “will” happen, a more useful question is to ask what “ought” to happen, to best serve the public interest, with guidance from Parliament’s current legislation. In 1991 Parliament decided that Canada’s broadcasting system, should interact with Canada’s cultural, political, social and economic systems – specifically by maintaining, enriching and strengthening them.

3(1) (d) the Canadian broadcasting system should (i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada

⁹ M.E. Price, M. E. & J. Wicklein, Cable television: A guide for citizen action. (Philadelphia, Pilgrim Press: 1972), at 2.

¹⁰ Élisabeth Lefebvre & Louis A. Lefebvre, Information and telecommunication technologies: the impact of their adoption on small and medium-sized enterprises, (Ottawa, September 1996), http://publications.gc.ca/collections/collection_2012/crdi-idrc/E97-48-1996-eng.pdf, “External Factors”, at 37 (citations omitted).

- 33 The principle that technology should serve, rather than be served by, Canada's cultural, political, social and economic systems is as important today, as it was in 1991. To require culture, politics, society and the economy to serve technology, is to put the figurative cart before the horse – or the literal spectrum before the content.
- 34 The Forum therefore considers that the Canadian public interest requires that new Canadian laws, regulations and policies must ensure that existing and new distribution systems in Canada
- Are owned by Canadians
 - Are controlled by Canadians
 - Are built, operated and maintained by Canadians with the use of Canadian infrastructure in Canada,
 - Support content created by Canadians,
 - Safeguard Canada's political system, and
 - Strengthen Canada's culture, society and economy.

FRPC recommendation 3 Canada's laws, regulations and policies should favour distribution systems that are owned, controlled, built, operated and maintained by Canadians using infrastructure in Canada, and that support content created by Canadians

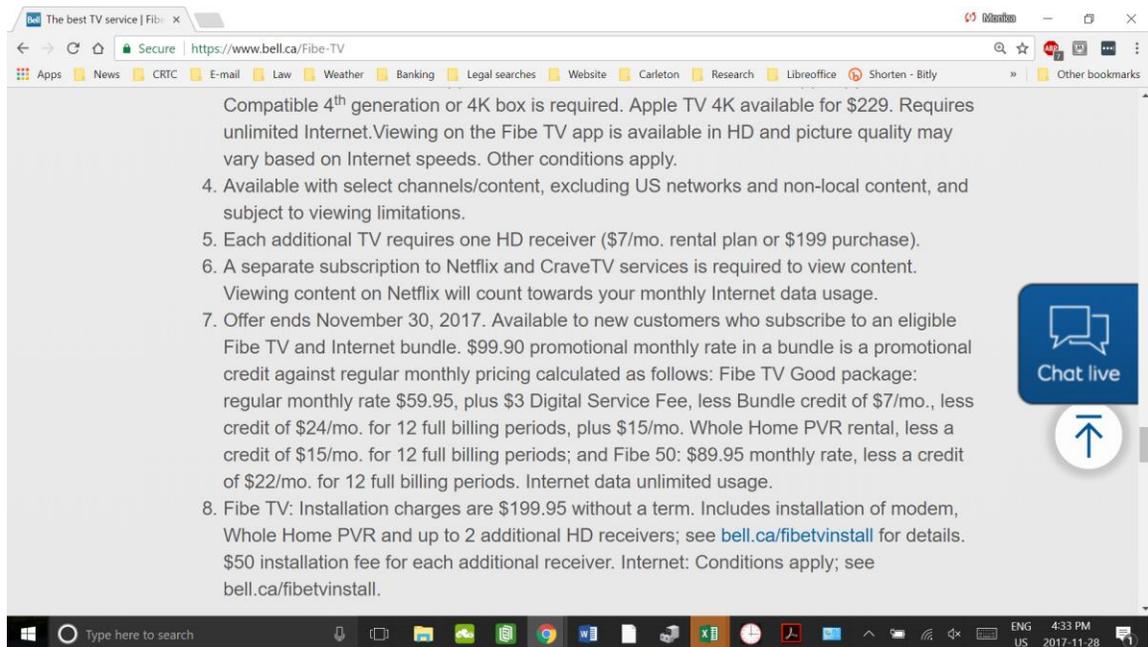
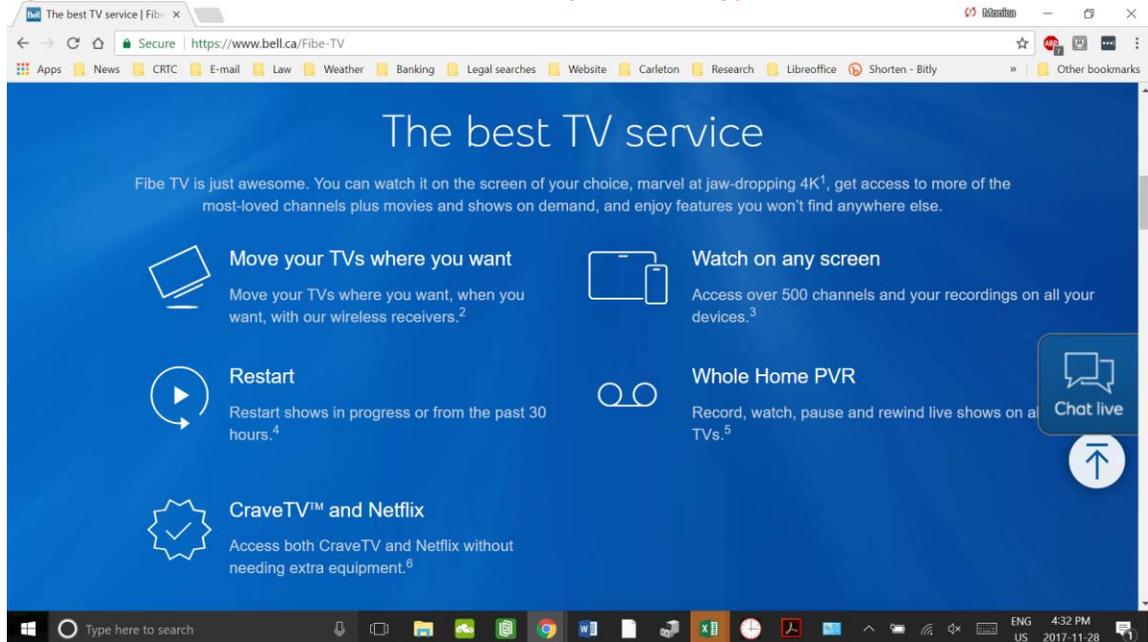
CRTC Q1: Consumption's impact on business models

CRTC question 1: How is the growth in online audio and video consumption changing the business models of program creators and distributors? What are the new models?

- 35 While the Forum may comment on this question in Phase 2, we note that the CRTC has not provided any relevant, contextual information for its question. Specifically, it
- Does not define the period in which the growth to which it refers has occurred
 - Provides no data about online audio consumption or online video consumption in BNoC 2017-359
 - Does not describe the current business models of program creators and distributors
 - Does not clarify how it classifies Internet apps (as Netflix is described by Bell on its Fibe TV Website; see Figure 2) within a policy for distribution
 - Does not describe the current business models of program distributors that are also program creators, and

- Does not explain the link between changes in business models and Parliament’s broadcasting policy for Canada (section 3 of the *Broadcasting Act*).

Figure 2 Bell’s Fibe TV describes Netflix as a subscription-based app



CRTC Q2: New business models' impact on revenue

CRTC question 2: Content is generally monetized through advertising, subscription and/or transaction revenues. How are new business models shaping the evolution of these revenue sources?

- 36 While the Forum may comment on this question in Phase 2, we note that the CRTC has not provided any relevant, contextual information for its question. Specifically, it
- Does not provide any contextual information about the hours of radio and of television programming that are now being produced, in terms of source of revenues, and
 - Does not explain the relationship between the financing future of business models and Parliament's broadcasting policy for Canada (section 3 of the *Broadcasting Act*).

CRTC Q3: Impact of global rights on business models

CRTC question 3: "Many new business models are global. How will the growth of a global content rights market affect business models?"

- 37 While the Forum may comment on this question in greater detail in Phase 2, we note that the CRTC has not provided any relevant, contextual information for its question. Specifically, BNoC 2017-359 provides no information about the impact of the CRTC's many previous policy initiatives to encourage Canadian broadcasters to export more programming (including, for example, CRTC 1987-28, which even thirty years ago was already encouraging the 'twinning' of Canadian and foreign co-productions, to encourage high-quality Canadian drama, variety, documentaries and children's programming).
- 38 The Forum notes, however, that 'global rights' may be code for over-the-top programming services such as Netflix. Canadian programming services have said they fear that non-Canadian companies that make their programming available in Canada, through means of distribution that include cable, satellite or the Internet, will no longer make rights to the over-the-top (OTT, or Internet-based) services' programming available to Canadian broadcasters.
- 39 The complete answer to the fear being alleged is, of course, to apply Canada's laws equally, rather than to de-legislate or de-regulate existing broadcasting services, thereby rendering Parliament's broadcasting policy a nullity. Section 4(2) of the *Broadcasting Act* states that the statute "... applies in respect of broadcasting undertakings carried on in whole or in part within Canada" If Netflix (or any other programming service) is operating an undertaking in part

within Canada, and wants to continue to operate this service, it should be required to apply for a broadcasting licence and to compete with Canadian broadcasters on a level playing field – in particular, with respect to financial support for Canada’s communications system, whether by paying appropriate taxes on the sale of its service, and/or by making payments to the system to support the production of content created by Canadians.

- 40 It is also important to note that in the midst of so much concern about the globalization of programming, and the necessity to increase export sales of Canadian programming, Canadians do not just want, but need, news. Unfortunately, news – and especially local news – is likely to be a difficult sell internationally. In any new policies taken by the government, therefore, the survival and strengthening of news produced in Canada, by Canadians, for Canadians, must be paramount.

FRPC recommendation 4 Any new policies with respect to new distribution technologies must make the survival and strengthening of news, including in particular local news, paramount

CRTC Q4: Broadband networks and future capacity

CRTC question 4: “Given Canadians’ ever-increasing demand for data to stream audio and video content on fixed and mobile broadband networks, how will these networks keep pace with future capacity requirements, particularly in rural and remote areas?”

- 41 The Forum may comment on this question in Phase 2, but notes that this question supports our recommendation that the CRTC exercise its jurisdiction to combine BNoC 2017-359 with a telecommunications proceeding, as broadband network capacity requirements. After all, the CRTC said a year ago in *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496 (Ottawa, 21 December 2016) that it

135. ... expects that governments will continue to fund, and will create new funding programs to support, broadband infrastructure projects in underserved areas. In addition, the private sector will continue to invest in expanding and upgrading its broadband networks, including in underserved areas, to meet the needs of Canadians. As such, the Commission’s broadband funding mechanism will be aligned with existing and future broadband investments and funding initiatives; it will complement and not replace them.

B. Accessing programming in the future

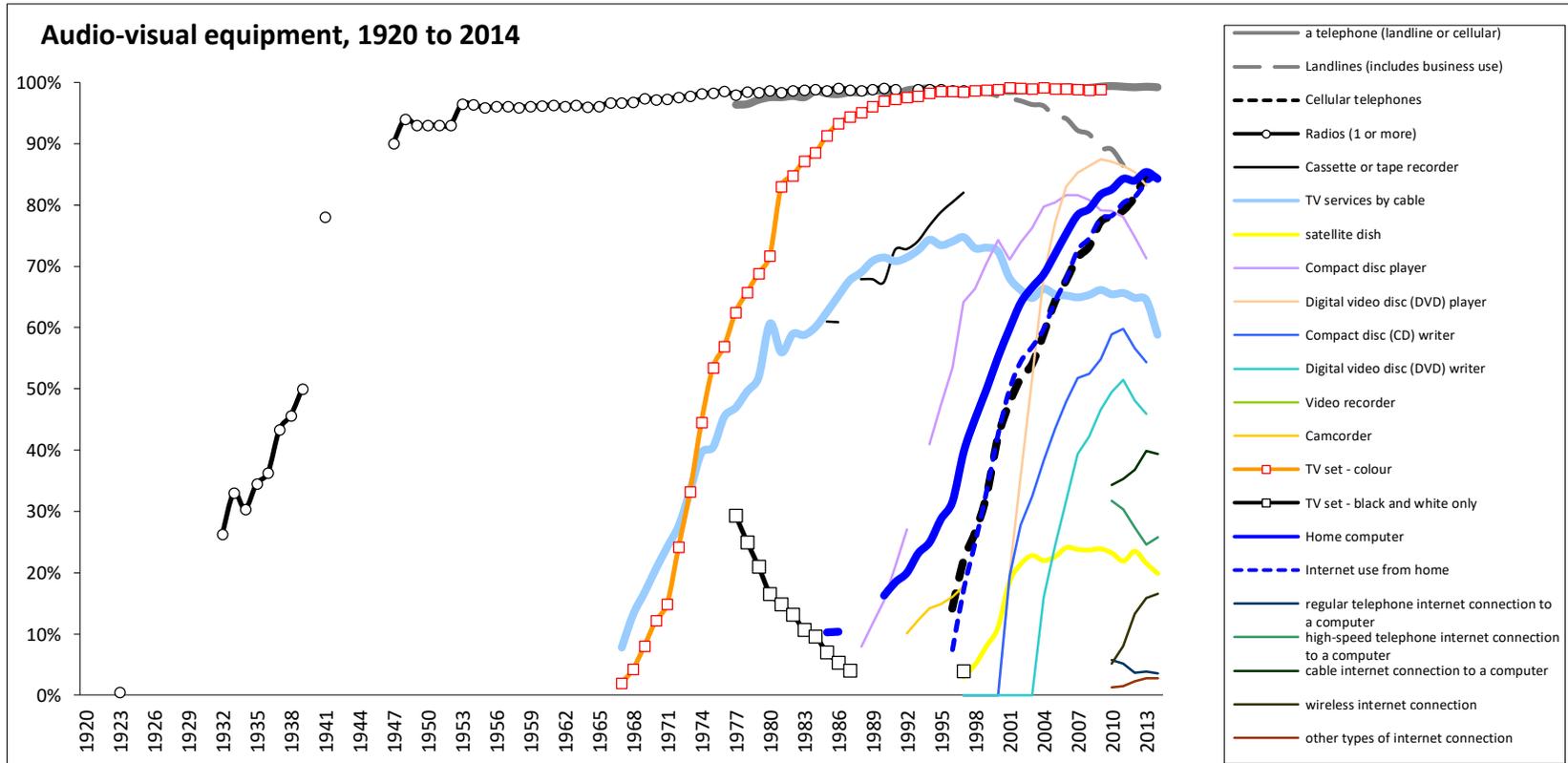
- 42 OIC 2017-1195 asks the CRTC to report on “how and through whom Canadians will access that programming”.

CRTC Q5: Evolution of consumer behaviour

CRTC question 5: “Canadians currently enjoy audio and video content through a combination of traditional broadcast and Internet-based services. How will consumer behaviour evolve in the next five years? What factors will influence this evolution?”

- 43 The Forum may comment on this question in Phase 2, but notes that Canadians’ behaviour is and will be constrained by Canadian law, regulation and policy, and by private companies’ decisions about the services they will provide and the prices they will charge for those services.
- 44 We also consider that it is worth remembering, in the context of this question, that the death knell has been sounded many times for different broadcast media: broadcast radio would end thanks to broadcast TV, broadcast TV would end thanks to VCRs, cable TV would end thanks to programming distributed by satellite ‘deathstars’, and all broadcast programming would end thanks to the Internet.
- 45 Canadian households did not, however, simply jettison their existing broadcast-receiving equipment when new means of receiving programming entered their lives (see Figure 3). They tended instead to adopt new technologies, and adapt those technologies to their needs and wants.

Figure 3 Broadcast-related equipment, 1950-2015



- 46 The one conclusion that could be drawn at this point is that Canadians have always wanted and have always needed audio-visual programming content – and will in the future use any distribution media available to access that content. The Forum’s position is that the government’s role is to ensure through its legislation, regulations and policies that
- content produced by Canadians be well-funded,
 - content produced by Canadians be readily available to all Canadians (coast to coast to coast) across a range of distribution media at a reasonable price,
 - distribution companies operating in whole or in part in Canada provide financial support to the production of Canadian audio-visual content
 - all companies that distribute audio-visual content in Canada distribute Canadian content, and that
 - all Canadians have access to a wide variety of local, regional, national and international news produced to high journalistic standards – as news¹¹ is essential to sustaining Canadian democracy.

CRTC Q6: Future program distributors

CRTC question 6: From whom will Canadians access programming in the future? For instance, will Canadians look to traditional or online providers? Global or domestic providers? Content aggregators or multiple distributors?

- 47 The Forum may comment on this question in Phase 2, but notes that Canadians’ behaviour is and will be constrained by Canadian law, regulation and policy, by private companies’ decisions about the services they will provide and the prices they will charge for those services, along with individuals’ demonstrated desire for easy access on all digital devices to audio-visual content.
- 48 The Forum also notes that Canadian law and regulation should ensure that all “providers” play by the same rules, so to speak: companies that operate in whole or in part in Canada should be required to abide by Canadian laws, regulations and policies. The mere existence of companies that choose to operate in Canada without meeting Canadian laws, regulations and policies (and the CRTC’s failure to enforce Parliament’s broadcasting law with respect to those

¹¹ By which we mean Category 1 news.

companies) must not be used to displace, weaken or eliminate the laws set by legislatures elected by Canadians.

C. *Ensuring support for, production of, and the distribution of programming produced by Canadians*

- 49 OIC 2017-1195 asks the CRTC to report on “the extent to which these models will ensure a vibrant domestic market that is capable of supporting the continued creation, production and distribution of Canadian programming, in both official languages, including original entertainment and information programming.”
- 50 The absence of clear scenarios outlining the laws and policies of the federal government in these areas makes it difficult to speculate about the degree to which any given model would guarantee – ensure – ‘a vibrant domestic market’.
- 51 The Forum also notes that while many national governments have sought answers to this or very similar questions, few have come up with solutions to the central problem they all face – namely, the popularity of well-funded American programming. Some evidence for this popularity is available from UNESCO, to which nations have submitted data on film admissions. The United States ranked 1st in terms of feature film admissions in 34 out of the 38 countries with data for 2015 (see Table 1; note that UNESCO’s admissions dataset excluded India and China).

Table 1 2015 Feature film admissions in 36 countries

Country	Films’ country of origin			
	Country of origin	Admissions	Rank	% of admissions
Australia	United States of America	1,009,691,432	1	82%
Austria	United States of America	10,389,520	1	65%
Brazil	United States of America	135,731,751	1	78%
Canada	United States of America	795,178,477	1	81%
Chile	United States of America	21,964,980	1	89%
Colombia	United States of America	48,176,256	1	81%
Cyprus	United States of America	180,111	1	25%
Czechia	United States of America	7,826,984	1	60%
Denmark	United States of America	6,957,000	1	50%
Finland	United States of America	4,371,483	1	50%
France	United States of America	105,195,317	1	52%
Germany	United States of America	73,571,533	1	54%
Greece	United States of America	7,512,000	1	77%
Hungary	United States of America	10,455,858	1	84%
Italy	United States of America	59,570,627	1	60%
Latvia	United States of America	1,702,626	1	72%
Lithuania	United States of America	2,131,422	1	64%
Malta	United States of America	556,925	1	79%
Mexico	United States of America	240,675,710	1	84%
Morocco	United States of America	796,352	1	43%

Country	Films' country of origin			
	Country of origin	Admissions	Rank	% of admissions
Netherlands	United States of America	22,350,000	1	68%
Norway	United States of America	7,614,751	1	63%
Peru	United States of America	34,626,177	1	75%
Poland	United States of America	24,343,989	1	53%
Portugal	United States of America	8,607,761	1	59%
Romania	United States of America	9,259,088	1	83%
Serbia	United States of America	1,686,646	1	53%
Singapore	United States of America	164,994,907	1	77%
Slovakia	United States of America	3,228,563	1	70%
Slovenia	United States of America	1,550,297	1	74%
Spain	United States of America	59,564,586	1	62%
Switzerland	United States of America	9,426,527	1	65%
The former Yugoslav Republic of Macedonia	United States of America	282,917	1	62%
United Kingdom	United States of America	663,500,000	1	51%
Azerbaijan	Turkmenistan	123,520	1	22%
Lao People's Democratic Rep.	Thailand	21,660	1	13%
Iran (Islamic Republic of)	National (Iran)	10,740,000	1	100%
Senegal	France	2,800	1	10%
Total – 39 countries	US ranked #1 in 35 of 39			

Source: <http://uis.unesco.org/en/topic/feature-films-and-cinema-data>

- 52** In Canada US films ranked first in terms of admissions (comprising 81% of all admissions); Canadian films ranked 4th, with 2% of all admissions. Feature films from Canada ranked once among the top 5 feature films in the other 38 countries in 2015: in Norway (4th, with 179,079, or 1% of all, admissions).
- 53** Yet non-American films may be gaining appeal. Twenty-four countries provided data over a ten-year period and of these, the percentage of admissions of US feature films decreased in 17 countries, and increased in 7 countries (Table 2).

Table 2 US Feature Films' admissions as % of all admissions, 2005-2015

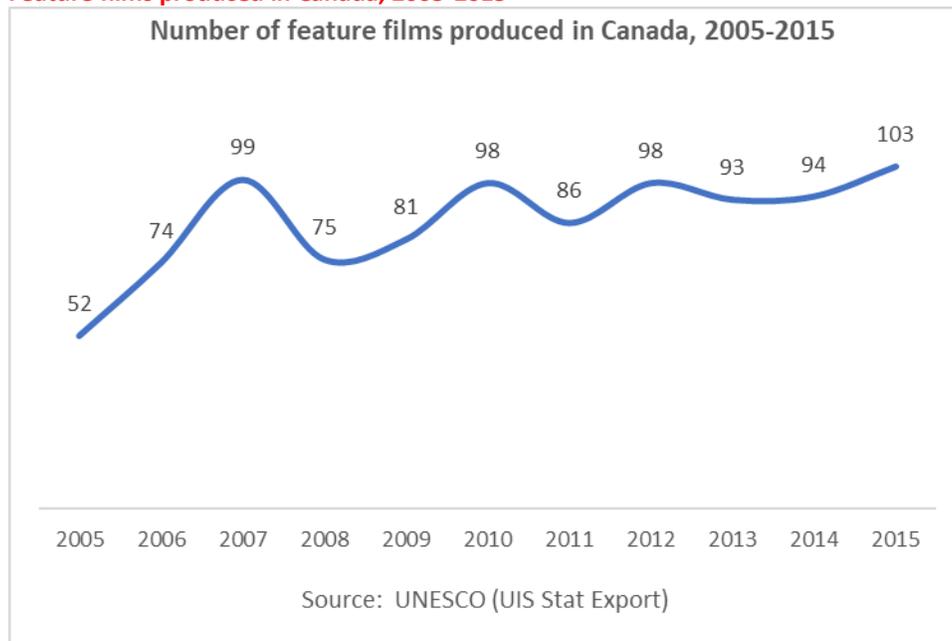
Country of origin of feature films exhibited, by # of admissions	% of feature film admissions of the United States, as % of total admissions			
	2005	2010	2015	Change, 2005 to 2015
Lithuania	78.0%	79.7%	64.0%	-14.0%
Germany	68.4%	66.3%	54.5%	-13.9%
Finland	63.0%	65.9%	50.0%	-13.0%
Poland	63.1%	64.1%	53.2%	-10.0%
Austria	75.0%	80.4%	65.3%	-9.7%
Slovakia	79.2%	73.3%	70.0%	-9.2%
Slovenia	81.9%	87.8%	73.8%	-8.1%
Lao People's Democratic Republic	20.0%		12.3%	-7.7%
Netherlands	74.4%	72.7%	67.8%	-6.6%

Country of origin of feature films exhibited, by # of admissions	% of feature film admissions of the United States, as % of total admissions			
	2005	2010	2015	Change, 2005 to 2015
Morocco	49.0%	37.9%	43.2%	-5.8%
Denmark	56.0%	59.8%	50.5%	-5.5%
Canada	85.5%	92.7%	80.6%	-4.9%
Romania	86.7%	89.0%	82.9%	-3.8%
Brazil	81.8%	78.6%	78.5%	-3.3%
Portugal	62.0%	77.6%	59.2%	-2.8%
Norway	65.0%	62.9%	63.3%	-1.7%
Mexico	85.0%	90.5%	84.1%	-0.9%
Australia	81.2%	83.2%	82.1%	0.9%
Spain	60.1%	69.2%	62.0%	1.8%
France	46.1%	47.6%	52.0%	5.9%
Italy	53.6%		60.0%	6.4%
Switzerland	58.2%	70.8%	65.4%	7.2%
Latvia	63.0%	70.0%	72.4%	9.4%
Hungary	69.5%	46.6%	83.6%	14.1%

Source: <http://data.uis.unesco.org/> [accessed 22 November 2017]

- 54 Of course, the number of people seeking admission to films depends to some extent on the number of films available for people to attend. In Canada the number of feature films produced each year remained flat between 2010 and 2015 (Figure 4).

Figure 4 Feature films produced in Canada, 2005-2015



- 55 The point we are making with these data is not that Parliament’s policy for audio-visual content ought to focus on films, or that Canadian audio-visual

programming in general is of lower quality than the programming of the United States or other countries.

- 56 Rather, we are saying that Canadian public policy has not resulted in a significant increase in the availability of Canadian films: why?
- 57 Other countries have succeeded where Canada has failed. Data from 68 countries about their annual production of feature films in 2005 and 2015 show that 64 countries (including Canada) produced more films in 2015 than in 2005 (see Table 1). But where Canada's feature film output doubled (from 52 to 103), output in China, the UK and the Republic of Korea trebled or quadrupled. Two of the six countries closest to Canada in terms of films produced in 2005 had surpassed Canada's production of films in 2015 (Russia [from to 62 to 121] and Mexico [from 53 to 140]).

Table 3 Feature films produced in 2005 and 2015

Country	2005	2015	% change
India	1041	1907	83.2%
United States of America	699	791	13.2%
Japan	356	581	63.2%
China	260	686	163.8%
France	240	300	25.0%
Germany	146	226	54.8%
Spain	142	255	79.6%
United Kingdom of Great Britain and Northern Ireland	106	298	181.1%
Italy	98	185	88.8%
Republic of Korea	87	269	209.2%
Switzerland	86	102	18.6%
Russian Federation	62	121	95.2%
China, Hong Kong Special Administrative Region	55	59	7.3%
Mexico	53	140	164.2%
Sweden	53	50	-5.7%
Canada	52	103	98.1%
Netherlands	51	87	70.6%
Belgium	46	69	50.0%
Argentina	41	182	343.9%
Cambodia	41	32	-22.0%
Brazil	40	129	222.5%
Denmark	31	71	129.0%
Czech Republic	31	56	80.6%
Poland	30	42	40.0%
Austria	30	40	33.3%
Turkey	28	137	389.3%
Iran (Islamic Republic of)	26	85	226.9%
Hungary	26	41	57.7%
Australia	25	33	32.0%
Greece	24	42	75.0%

Country	2005	2015	% change
Norway	24	23	-4.2%
Malaysia	23	80	247.8%
Egypt	23	34	47.8%
Israel	22	32	45.5%
Portugal	22	31	40.9%
Finland	20	45	125.0%
Romania	20	26	30.0%
Chile	18	38	111.1%
Morocco	16	18	12.5%
South Africa	11	22	100.0%
Armenia	10	37	270.0%
Ireland	10	33	230.0%
Slovenia	10	20	100.0%
Bulgaria	9	25	177.8%
Colombia	8	56	600.0%
Slovakia	8	26	225.0%
Estonia	8	25	212.5%
Singapore	8	21	162.5%
Venezuela (Bolivarian Republic of)	7	29	314.3%
Lebanon	7	15	114.3%
Tunisia	7	11	57.1%
Uruguay	6	11	83.3%
Bolivia (Plurinational State of)	5	6	20.0%
Ukraine	5	3	-40.0%
Peru	4	30	650.0%
Latvia	4	17	325.0%
Burkina Faso	4	5	25.0%
New Zealand	3	28	833.3%
Azerbaijan	2	53	2550.0%
Croatia	2	14	600.0%
Iceland	2	13	550.0%
The former Yugoslav Republic of Macedonia	2	10	400.0%
Lithuania	2	9	350.0%
Puerto Rico	2	3	50.0%
Mongolia	1	41	4000.0%
Malta	1	7	600.0%
Cyprus	1	4	300.0%
Republic of Moldova	1	1	0.0%
Total: 68 countries			
Source: UNESCO			

58 Canadian decision-makers' failure to support the global expansion of Canadian programming is all the more striking because they have heard concrete recommendations for achieving this expansion for more than ten years. In 2006 the Standing Committee on Canadian Heritage reviewed Canada's feature film

sector, and noted “the...absence of a broadcasting policy to support the promotion of Canadian feature films”. It recommended that the government direct the CRTC to develop a policy that supports the promotion as well as the viewing of Canadian feature films. A 2009 report for Telefilm Canada recommended that the CRTC should require more support for Canadian feature films from Canadian broadcasters. In 2011 the Canadian Media Production Association (CMPA) asked the CRTC to examine the role of television broadcasters in supporting Canadian English-language theatrical films, while the Canadian Association of Film Distributors and Exporters pointed out conventional Canadian broadcasters’ decreasing financial support for English-language Canadian films.¹²

- 59 After asking the CRTC to support the global expansion of Canadian films for more than ten years, the result in 2016 – when the CRTC renewed the television licences of Canada’s largest broadcasting groups – was that none of the CRTC’s licensing decisions referred to ‘feature films’, let alone ‘Canadian feature films’:

CRTC decision	Number of mentions of		
	“feature film”	drama	“revenue”
Introductory decision: <i>Renewal of licences for the television services of large English-language ownership groups – Introductory decision</i> , Broadcasting Decision CRTC 2017-148 (Ottawa, Ottawa, 15 May 2017), http://www.crtc.gc.ca/eng/archive/2017/2017-148.htm	0	8	18
<i>Bell Media Inc. – Licence renewals for English-language television stations and services</i> , Broadcasting Decision CRTC 2017-149 (Ottawa, 15 May 2017), http://www.crtc.gc.ca/eng/archive/2017/2017-149.htm	0	4	19
<i>Corus Entertainment Inc. – Licence renewals for English-language television stations and services</i> , Broadcasting Decision CRTC 2017-150 (Ottawa, 15 May 2017), http://www.crtc.gc.ca/eng/archive/2017/2017-150.htm	0	8	22
<i>Rogers Media Inc. – Licence renewals for English-language television stations, services and network</i> , Broadcasting Decision CRTC 2017-151 (Ottawa, 15 May 2017), http://www.crtc.gc.ca/eng/archive/2017/2017-151.htm	0	7	29
Introductory decision: <i>Renewal of licences for the television services of large French-language ownership groups – Introductory decision</i> , Broadcasting Decision CRTC 2017-143 (Ottawa, 15 May 2017),	0	4	18

¹² Communications MDR, *The Canadian Feature Film Distribution Sector in Review: Trends, Policies and Market Developments*, (September 2012), <http://www.omdc.on.ca/Assets/Research/Research+Reports/The+Canadian+Feature+Film+Distribution+Sector/The+Canadian+Feature+Film+Distribution+Sector+in+Review+Trends+Policies+and+Market+Developments.pdf>, pages 69-71.

https://www.crtc.gc.ca/eng/archive/2017/2017-143.htm			
<i>Quebecor Media Inc. – Group-based licence renewals for French-language television stations and services</i> , Broadcasting Decision CRTC 2017-147 (Ottawa, 15 May 2017), https://www.crtc.gc.ca/eng/archive/2017/2017-147.htm	2 (definition of 'independent production company')	6	24
<i>Bell Media Inc. – Licence renewals for French-language television services</i> , Broadcasting Decision CRTC 2017-144 (Ottawa, 15 May 2017), https://www.crtc.gc.ca/eng/archive/2017/2017-144.htm	0	4	12
<i>Corus Entertainment Inc. – Licence renewals for French-language television services</i> , Broadcasting Decision CRTC 2017-145 (Ottawa, 15 May 2017), https://www.crtc.gc.ca/eng/archive/2017/2017-145.htm	0	4	10
Source: CRTC website			

60 If Canada’s decision-makers sincerely wanted to ensure that Canada’s audio-visual exports grew, they would have acted. The federal government, for instance, could have – but has not – issued a Direction to the CRTC about this issue, pursuant to section 7 of the *Broadcasting Act*:

Policy directions

7 (1) Subject to subsection (2) and section 8, the Governor in Council may, by order, issue to the Commission directions of general application on broad policy matters with respect to

(a) any of the objectives of the broadcasting policy set out in subsection 3(1); or

(b) any of the objectives of the regulatory policy set out in subsection 5(2).

61 Rather than continuing to consult with Canadians about this problem, it is time for government to initiate new programs, to measure their results and to determine which mechanisms are most successful.

CRTC Q7: Characteristics of domestic creation and distribution markets

CRTC question 7: What are the characteristics of a vibrant domestic content creation and distribution market?

62 The Forum may comment on this question in Phase 2, but notes that the questions posed by OIC 2017-1195 and BNoC 2017-359 are fundamentally unclear: what do the Minister and the CRTC mean by ‘vibrant’?: financially successful? Drawing large audiences? Offering many employment opportunities for all manner of theatrical personnel? Involving Canadian subjects?

CRTC Q8: New business models' support for domestic creation and distribution

CRTC question 8: Will new business models support a vibrant domestic content and distribution market? If so, which ones and why? If not, what content or distribution services would be missing?

- 63 The Forum may comment on this question in Phase 2.
- 64 We note, however, that we are concerned with the way in which existing business models support the production and distribution of programming content by Canadians, and in particular, with programming services delivered to subscribers online.
- 65 The CRTC is required by the *Broadcasting Act* to exempt broadcasting services from regulation if the services' compliance with the *Act* will not materially contribute to Parliament's objectives for Canadian broadcasting:
- 9(4) The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).
- 66 The CRTC's New Media Exemption Order means that online programming services are not required to support Canadian programming, and the CRTC has declined, despite several requests, to review the basis of the order. Earlier this fall, however, Minister Joly announced that Netflix would invest \$500 million in "new money for Canadian productions" over five years¹³ - \$100 million per year, on average. Considering the scale of this investment – representing 15.9% of private TV stations' expenditures on Canadian programming in 2016 – the Forum submits that the CRTC should review the exemption order.

¹³ Rachel Aiello, "Heritage Minister Joly says Netflix money is new, for full Canadian productions", (Ottawa, 1 October 2017), <http://www.ctvnews.ca/politics/heritage-minister-joly-says-netflix-money-is-new-for-full-canadian-productions-1.3613234>.

FRPC recommendation 5 The \$100 million per year investment by Netflix for the next five years represents a material contribution to the implementation of Canada's broadcasting policy, and justifies the CRTC's re-examination of the New Media Exemption Order

CRTC Q9: Legislative, policy and regulatory measures

CRTC question 9: What are the legislative, public policy or regulatory measures currently in place that will facilitate or hinder a vibrant domestic market? What needs to stay in place? What needs to change?

67 While the Forum may comment in greater detail in Phase 2 of this proceeding, we note that the 1991 *Broadcasting Act* currently has a number of serious problems and gaps that have led to what can only be described as the CRTC's demonstrable failure to achieve Parliament's objectives for Canada's broadcasting policy.

Broadcasting and culture

68 One of the most serious failures has to do with Parliament's requirement that broadcasting must safeguard, enrich and strengthen Canada's culture. This requirement – the principle that programming created by Canadians must predominate in broadcasting – is often described as the core of the *Broadcasting Act*.

69 After 49 years of CRTC control over broadcasting, Canadian content predominate, Canadian content does not predominate in Canadian broadcasting.

70 The CRTC has never regulated radio programming services to ensure that more than half of their programming is Canadian in origin: the CRTC's current radio regulations merely require that 35% of the musical selections broadcast by Canadian radio stations be Canadian – up to 65% of all musical selections can be foreign; there are no Canadian content requirements for non-musical content such as news; and the CRTC does not include any information about levels of or expenditures on Canadian content in its annual statistical reports on radio in Canada.

71 As for television, the CRTC now permits the schedules of private TV s telecommunications to include up to 83% foreign content. The CRTC eliminated its long-standing requirement that at least 55% of private TV stations' schedule be Canadian this past August 2017:¹⁴ as its only requirement now is that 50% of

¹⁴ .Amendments to the *Broadcasting Distribution Regulations and the Television Broadcasting Regulations, 1987 regarding local and community television, and financial support, logging requirements and Canadian exhibition requirements for over-the-air television stations*, Broadcasting Regulatory Policy CRTC 2017-278 (Ottawa, 4 August 2017), <https://www.crtc.gc.ca/eng/archive/2017/2017-278.htm>

the 6-hour evening broadcast period (from 6 pm to midnight) be Canadian, up to 83% of the programming presented by private TV broadcasters during the 18-hour broadcast day (6 am to midnight) can be foreign (the entire 12 hours from 6 am to 6 pm, and three more hours from 6 pm to midnight). Its annual statistical reports on over-the-air television have never included any data about the levels of Canadian programming broadcast by Canada’s conventional television services.

72 Canadian programming levels for discretionary TV programming services are set by conditions presumably tailored to each of the 116 licensees¹⁵ that control these services¹⁶ and as these likely hover in the 35% range, up to 65% of the programming broadcast by these services can be foreign. It is difficult to know what the levels are precisely, as the CRTC does not publish this information in its annual statistical reports about discretionary television programming services, instead advising those seeking the information to review the licence of each programming service.¹⁷

73 In fact, the CRTC online page about “Programming made by Canadians: Understanding Industry Responsibilities”¹⁸ does not mention that the *Broadcasting Act* specifically requires Canadian programming to predominate in the broadcasts of each broadcasting undertaking. It says instead that each “element must contribute” to Canadian programming. In addition to misquoting the *Act*, the CRTC’s website also misleads those who are unfamiliar with the statute’s specific requirements about Canadian programming, namely that each programming and distribution service – “each ... undertaking” – must ensure that Canadian programming predominates in the programs they create and the programs they present ().

Table 4 CRTC’s description of requirements for Canadian content in the *Broadcasting Act*, and the *Act*’s actual requirements

<p>CRTC’s statement about Canadian programming “A strong and diverse Canadian broadcasting system is a primary objective of Canada’s Broadcasting Act, which states:</p>	<p><i>Broadcasting Act</i> 3. (1) It is hereby declared as the broadcasting policy for Canada that (e) each element of the Canadian broadcasting</p>
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¹⁵ See the table of contents of the CRTC’s 2016 *Statistical and Financial Summaries* for discretionary television services

(<http://crtc.gc.ca/eng/publications/reports/BrAnalysis/psp2016/individual/ipsp2016.htm>).

¹⁶ As s. 9(1)(b) only permits the CRTC to impose conditions of licence that are “related to the circumstances of the licensee”.

¹⁷ CRTC, *Programming made by Canadians: Understanding Industry Responsibilities*, “Expenditure requirements for discretionary television services vary and are set by conditions of licence. Check decisions for individual services for details.” http://www.crtc.gc.ca/eng/cancon/c_system.htm, accessed 30 November 2017.

¹⁸ http://www.crtc.gc.ca/eng/cancon/c_system.htm.

<p><i>each element of the system must contribute to the creation and presentation of Canadian programming.</i> http://www.crtc.gc.ca/eng/cancon/c_system.htm</p>	<p>system shall contribute in an appropriate manner to the creation and presentation of Canadian programming; (f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming</p>
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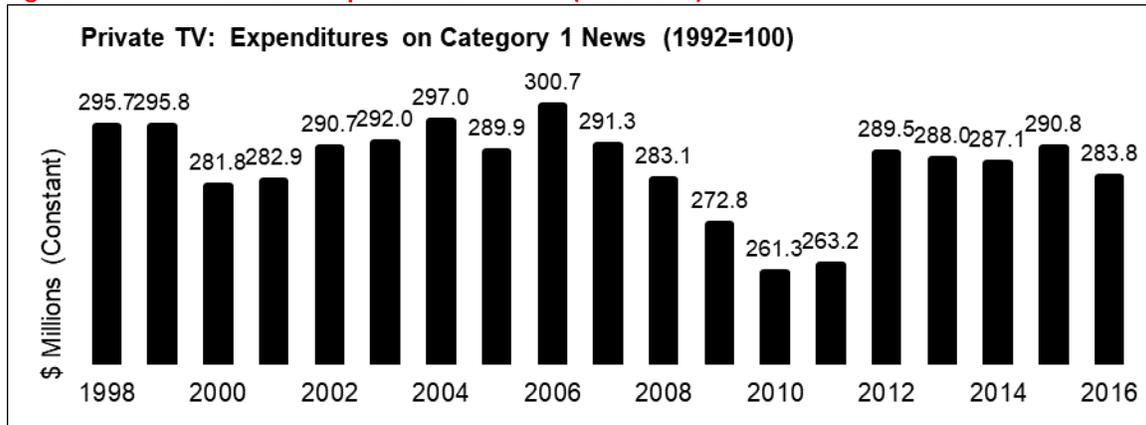
Broadcasting and politics

74 Parliament also requires the CRTC to safeguard, strengthen and enrich Canada’s political fabric. It is somewhat unclear what Parliament intended, but the CRTC has from time to time mentioned that it promotes the availability of broadcast news to ensure that Canadians have the ability to exercise their democratic rights in an informed manner.¹⁹ In 2016, for instance, it said that

A vibrant and dynamic news ecosystem is one of the cornerstones of any democracy, since it permits citizens to remain informed of matters of public concern and thus enables their participation in the democratic system.²⁰

75 The Forum notes that the CRTC began to allow private TV stations to reduce their expenditures on news in 1999, and again after 2006 (see Figure 5).

Figure 5 Private TV stations’ expenditures on news (1998-2016)



¹⁹ The CRTC has also established policies with respect to the allocation of broadcast time during elections, and issues bulletins reiterating these policies whenever a national or provincial election is called.

²⁰ Policy framework for local and community television, Broadcasting Regulatory Policy CRTC 2016-224 (Ottawa, 15 June 2016), <https://www.crtc.gc.ca/eng/archive/2016/2016-224.htm>, at para. 17.

Source: CRTC Statistical and Financial Summaries for private TV; Statistics Canada CPI historical series

- 76 The CRTC does not publish annual information about the level of news broadcast by Canadian radio and television programming services, making it difficult to evaluate the level of news being provided to Canadian audiences. That said, the majority of Canadians who participated in the CRTC's *Let's Talk TV* proceeding told the CRTC that local news "is of great importance to them", with "81% of Canadians [indicating] that local news is important to them".
- 77 Following the *Let's Talk TV* proceeding the CRTC in 2016 redefined TV news to include news, along with analysis and interpretation.²¹ In other words, it expanded the definition of news to include programming not previously considered to be news: where newscasts typically require news to be gathered and reported outside the studio, information and analysis programming can happen in a studio, when guests and hosts engage in discussions.
- 78 While defining analysis and interpretation as news may appear to be a minor change, it may have serious consequences for Canada's political system. Canadian broadcasters have traditionally distinguished carefully between pure news, and other types of analysis; the elimination of the distinction between news and analysis could permit the discussions and talk shows so popular in American television, to count as newscasts in Canada.

Broadcasting and society

- 79 Parliament also requires Canada's broadcasting system to safeguard, enrich and strengthen Canadian society. In terms of programming, it is difficult to know how the programming of Canada's radio television services is maintaining (keeping safe), enriching or strengthening Canadian society when the majority of programming on radio, conventional TV and discretionary TV is foreign, and because the CRTC publishes very little data about social aspects of Canadian broadcasting.
- 80 We note, for example, that while the CRTC reviews its policies for commercial radio and television relatively frequently, it has not reviewed many policies dealing with important social issues in decades. The CRTC issued its first (and only) *Native Broadcasting Policy* in 1990,²² and its most recent Ethnic

²¹ *Ibid.*, at para. 57.

²² *Native Broadcasting Policy*, Public Notice CRTC 1990-89 (Ottawa, 20 September 1990), <http://www.crtc.gc.ca/eng/archive/1990/PB90-89.HTM>.

Broadcasting Policy in 1999.²³ It has not reviewed either its policy on gender portrayal²⁴ or on violence²⁵ since 1992 and 1996, respectively.

Broadcasting and the economy

- 81** Though often viewed as a cultural policy, section 3 of the *Broadcasting Act* also has industrial objectives: section 3(1)(d)(iii) establishes that the broadcasting system should address Canadians’ needs for and interests in employment opportunities. The section also addresses independent production (section 3(1)(i)(v)). The Forum’s focus in this section is on the employment opportunities made available by broadcasters; while the *Act* requires the Commission to ensure that independent producers have opportunities within the broadcasting system, it does not regulate them directly; broadcasters, on the other hand, are directly accountable to the CRTC through its licensing regime.²⁶
- 82** Employment in Canadian broadcasting has grown by almost five times since Parliament delegated responsibility for broadcasting to the CRTC: from 11,434 staff in 1968, to 56,572 in 2016. The introduction of discretionary programming services in the late 1980s created new opportunities for employment; these services employed 5,437 staff in 2016.

Broadcasting	1968	2016	% change, 1968-2016	% change
Radio	6,134	8,885	145%	44.9%
TV	3,933	15,737	4.00%	300.1%
Discretionary	0	5,437		[not applic.]
BdUs	1,367	26,512	19.39489	1839.5%
Total	11,434	56,572	4.947727	394.8%

- 83** Of the four sectors in broadcasting (radio, TV, discretionary TV and BDUs), employment levels are highest in broadcast distribution. BDU employment levels surpassed employment in broadcast programming services in 1994 (Figure 6).

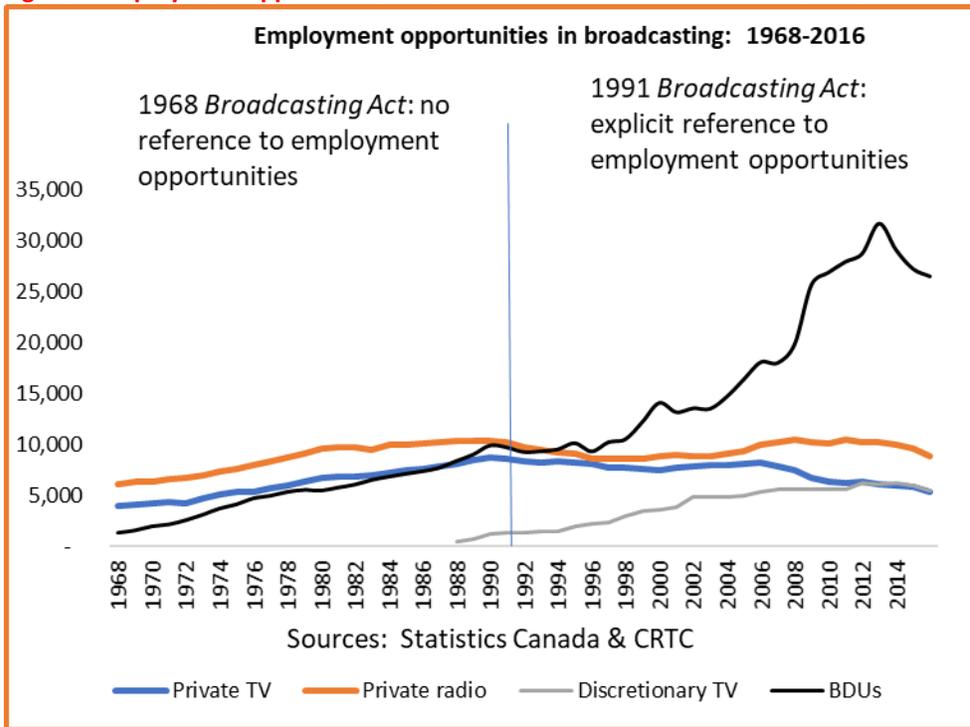
²³ *Ethnic Broadcasting Policy*, Public Notice CRTC 1999-117 (Ottawa, 16 July 1999), <http://www.crtc.gc.ca/eng/archive/1999/PB99-117.HTM>.

²⁴ *POLICY ON GENDER PORTRAYAL*, Public Notice CRTC 1992-58 (Ottawa, 1 September 1992), <http://www.crtc.gc.ca/eng/archive/1992/PB92-58.HTM>.

²⁵ *POLICY ON VIOLENCE IN TELEVISION PROGRAMMING*, Public Notice CRTC 1996-36 (Ottawa, 14 March 1996), <http://www.crtc.gc.ca/eng/archive/1996/PB96-36.HTM>.

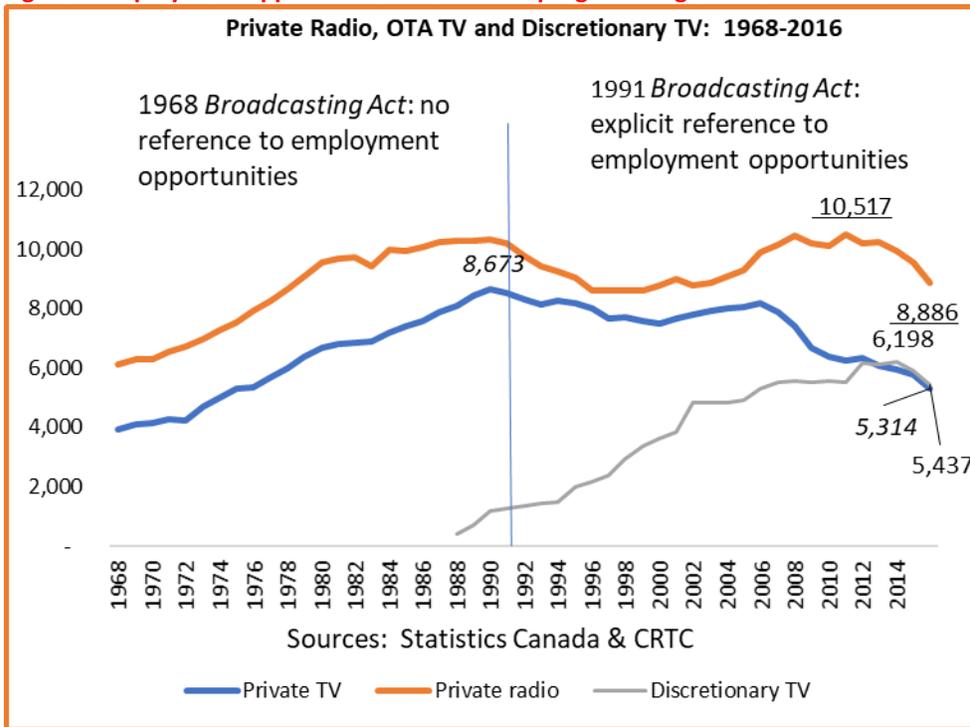
²⁶ Section 10(i) of the *Broadcasting Act* permits the CRTC to make regulations ... requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify

Figure 6 Employment opportunities in Canadian broadcast distribution services



84 Employment opportunities in conventional radio and television programming services grew from 1968 to 1990. After 1991, however, employment in programming services declined to the turn of the century, and declined again over much of the past decade (Figure 7).

Figure 7 Employment opportunities in Canadian programming services



- 85 The discretionary TV sector provides a unique opportunity to undertake more detailed analysis of the sector’s impact on employment opportunities because the CRTC publishes staffing data about many of these individual services. We reviewed these (and other data) using the CRTC’s 2016 *Statistical and Financial Summaries* for individual discretionary and on-demand services. This document presents data about 229 individual services that employed 5,437 people²⁷ (or full-time equivalents) in 2016. Of these services, 117 reported data about their staff levels; they employed 4,631.3 staff.
- 86 We found that at least a fifth of Canada’s discretionary services operated in 2016 without any employees at all. Of the 117 discretionary programming services that reported staffing information in 2016, 22 (19%) reported that they had zero (0) staff, and 14 (12%) reported 0.1 to 2 staff. (The services and their employment levels are set out in Appendix 2.) In other words, almost one in three of discretionary TV services were operated by two or fewer people.
- 87 What is somewhat surprising is that broadcast programming services with no staff make money: the 22 discretionary TV programming services with 0 staff reported \$228 million in revenues and \$38.8 million in profits (see Table 5).

²⁷ CRTC, *Statistical and Financial Summaries: Discretionary and On-Demand Services, 2012-2016*, at 1.

Table 5 Discretionary TV programming services, by level of staffing in 2016

Staffing level in 2016	Number of programming services	Cumulative results		Revenues in 2016		Profits before interest and taxes (\$M)
		Number	Percent	Revenues		
				\$ millions	%	
No staff (0)	22	22	19%	\$228.0	5.6%	\$ 38.8
.1-1	5	27	23%	\$19.0	0.5%	\$ 5.2
1-1.9	4	31	26%	\$69.0	1.7%	\$ 41.4
2	5	36	31%	\$76.9	1.9%	\$ 32.2
3-3.9	7	43	37%	\$80.0	2.0%	\$ 0.8
4-4.9	2	45	38%	\$18.5	0.5%	-\$ 5.1
5-9.9	8	53	45%	\$290.5	7.2%	\$ 41.0
10-49.9	37	90	77%	\$1,139.0	28.1%	\$ 319.8
50-99	18	108	92%	\$671.0	16.6%	\$ 148.5
100-503	9	117	100%	\$1,455.4	36.0%	\$ 216.0
Total services	117			\$4,046.7	100.0%	\$ 838.6

Source: CRTC's *Statistical and Financial Summaries* for individual discretionary TV services, 2012-2016

88 The fact that profitable discretionary television programming services make money without employing anyone is somewhat surprising since, as noted above, Parliament made ‘employment opportunities’ for Canadians one of its objectives in its 1991 broadcasting policy:

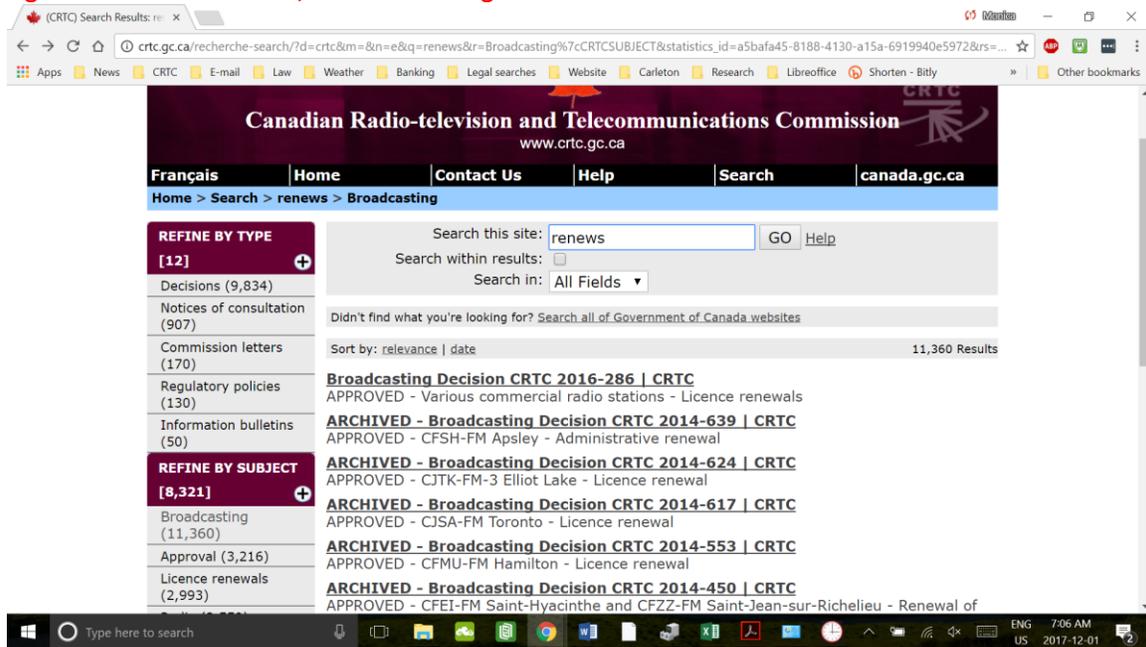
3(1)(d) the Canadian broadcasting system should

...

(iii) through ... the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children

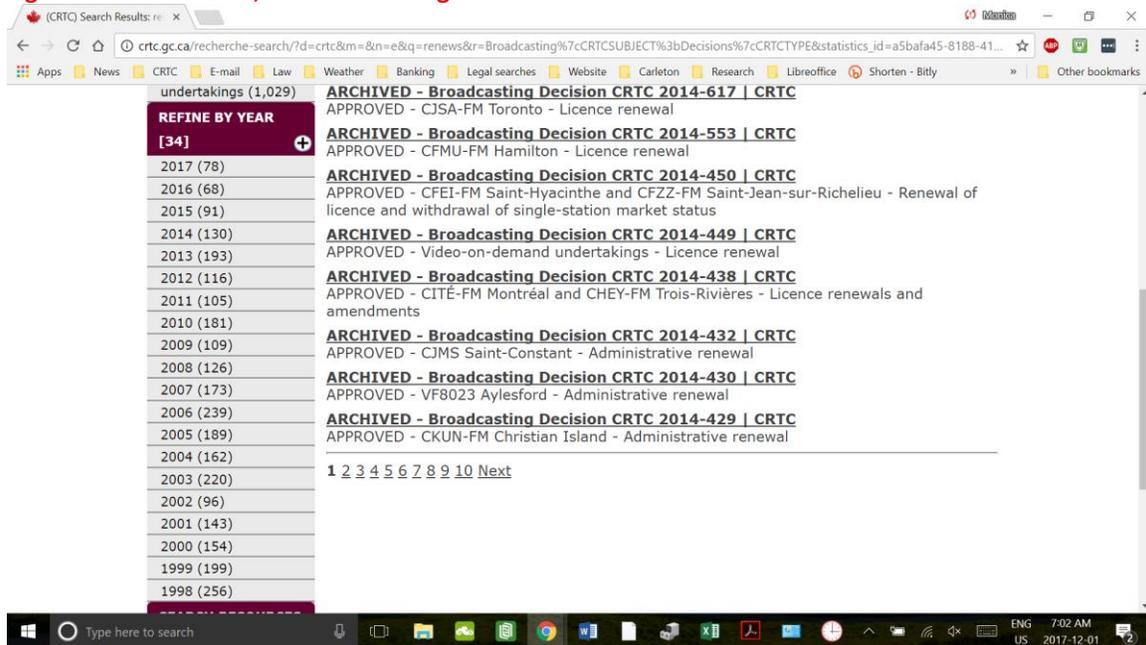
89 It should be acknowledged that Parliament’s use of “should” rather than “shall” obviously provides the CRTC with some discretion in addressing this objective. But does discretion alone account for the fact that of 9,834 CRTC decisions related to the renewal of broadcast licences (Figure 8) ...

Figure 8 CRTC has issued 9,834 broadcasting decisions related to renewal



... issued by the CRTC from 1998 to 2017 (Figure 9)

Figure 9 CRTC issued 9,834 broadcasting decisions related to renewal from 1998 to 2017



... the CRTC mentioned the concept of “employment opportunities” in just 61 (0.6%) of these decisions (Figure 10)?

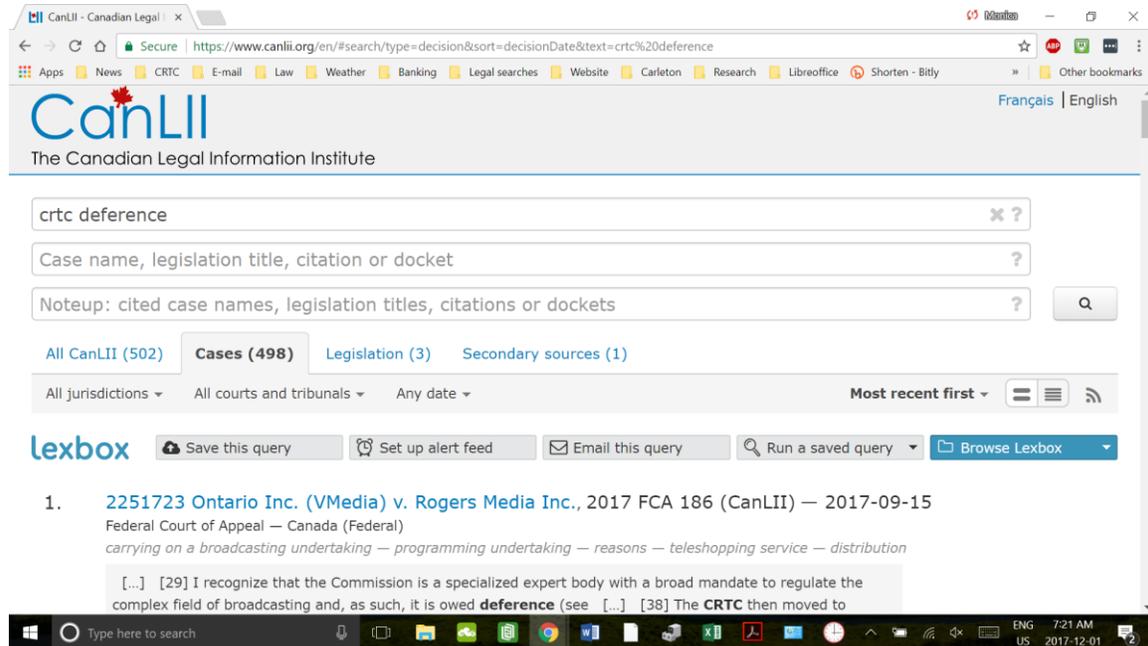
Figure 10 CRTC issued 9,834 broadcasting decisions related to renewal from 1998 to 2017, and referred to “employment opportunities” in just 61



Why is the CRTC failing to safeguard, enrich and strengthen Canada’s cultural, social, political and economic fabric?

- 90 Only the CRTC knows why it permits foreign content to predominate in Canada’s broadcasting system, why it has not undertaken timely reviews of its major social policies, why it has opened the door to reducing the availability of Canadian television news, or why it has chosen not to address the impact of decreasing employment opportunities on Canada’s economy.
- 91 Perhaps the CRTC has simply grown heady from the steady flow of decisions from Canadian courts which repeatedly refer to the deference owed to the Commission (see Figure 11)?

Figure 11 498 court decisions have mentioned the “deference” owed to the CRTC by reviewing courts



The screenshot shows the CanLII website search results for the query "crtc deference". The search results are filtered to show 498 cases. The first result is "2251723 Ontario Inc. (VMedia) v. Rogers Media Inc., 2017 FCA 186 (CanLII) — 2017-09-15". The snippet of the decision text reads: "[...] [29] I recognize that the Commission is a specialized expert body with a broad mandate to regulate the complex field of broadcasting and, as such, it is owed **deference** (see [...] [38] The **CRTC** then moved to

92 Regardless of the reasons for the CRTC’s actions (including its failures to Act), the Forum submits that if Parliament is presented with proposals to revise Canada’s current communications statutes, it ought to determine the degree to which its delegate, the CRTC, is in fact achieving Parliament’s current policies. It must also determine whether, if Parliament’s current broadcasting policy is not being met, legislative change is the remedy.

93 Our key point, though, is that the CRTC’s track record offers little comfort to a Minister who may be hoping that the CRTC will ensure that a ‘vibrant’ audio-visual market emerges in response to new forms of distribution – because after 49 years it has failed to meet aspects of Parliament’s broadcasting policy for Canada.

94 Legislative (and in turn regulatory) changes are needed to ensure that the CRTC meets Parliament’s requirements. We set out our top ten desirable changes for Canada’s broadcasting legislation, below.

1. Re-inforce the CRTC’s duty to implement Parliament’s broadcasting policy for Canada

95 Section 5(1) of the *Broadcasting Act* requires the CRTC to

... regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) ...

- 96 Unfortunately, section 5(1) goes on to hamstring the CRTC by requiring it to regulate in terms of nine other criteria. It must regulate and supervise
- 1) in a flexible manner that
 - 2) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;
 - 3) takes into account regional needs and concerns;
 - 4) is readily adaptable to scientific and technological change;
 - 5) facilitates the provision of broadcasting to Canadians;
 - 6) facilitates the provision of Canadian programs to Canadians;
 - 7) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and
 - 8) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.
- 97 If “a conflict” then emerges between the 8 criteria immediately above, and the dozens of objectives in section 3(1), the section 3(1) objectives are then to be paramount (section 3(3)).
- 98 The burden placed on the CRTC to weigh and consider every aspect of every decision is excessive, and will seriously limit the CRTC’s capacity to regulate new distribution undertakings in the public interest. The Minister should eliminate sections 5(2) and (3) of the *Broadcasting Act* to simplify the CRTC’s role and responsibilities.

FRPC recommendation 6 Parliament should amend the *Broadcasting Act* to simplify the CRTC’s role and responsibilities, by eliminating sections 5(2) and 5(3)

2. Require the CRTC to place the public interest first in its decisions and policies

- 99 The CRTC often sets out its desire to act in the public interest. Chairperson Scott, for example, recently said that “Over the next five years, the CRTC will commit to ensuring that we regulate in the public interest”²⁸
- 100 Unfortunately, the *Broadcasting Act* does not give the CRTC an express mandate to exercise its responsibilities in the public interest. The statute provides three instances where the CRTC may consider the public interest: if there is a conflict between Parliament’s objectives for the CBC and another broadcasting undertaking, the CRTC must resolve the conflict in the public interest (s. 3(1)(n)). The CRTC must hold a public hearing to amend or renew licences if it would be in the public interest to do so (section 18(2)), and the CRTC may hold a public hearing about any matter if this would be in the public interest (section 18(3)).
- 101 The absence of a statutory duty to place the public interest first opens the CRTC to ongoing appellate review by parties dissatisfied with its decisions, and is likely to limit the effectiveness of new CRTC approaches to new distribution services. Parliament should amend section 3 by adding a requirement for the CRTC to exercise its authority in the public interest.

FRPC recommendation 7 The *Broadcasting Act* should be amended by adding a requirement in section 3 for the CRTC to exercise its authority in the public interest

3. Provide Canadians with meaningful appellate review of the CRTC’s actions

- 102 The *Broadcasting Act* currently enables CRTC decisions and orders to be reviewed by Cabinet or the Federal Court of Appeal:

28. (1) ***Where the Commission makes a decision*** to issue, amend or renew a licence, the Governor in Council may, within ninety days after the date of the decision, ... set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission,

31(2) ***An appeal lies from a decision or order of the Commission*** to the Federal Court of Appeal on a question of law or a question of jurisdiction ...

31(4) ***Any document issued by the Commission in the form of a decision or order*** shall, if it relates to the issue, amendment, renewal, revocation

²⁸ Ian Scott, *Speech*, IIC Canada Communications Law and Policy Conference, (Ottawa, 14 November 2017), https://www.canada.ca/en/radio-television-telecommunications/news/2017/11/ian_scott_to_theiiccanadacomunicationslawandpolicyconference.html.

or suspension of a licence, be deemed for the purposes of this section to be a decision or order of the Commission.

103 For most of its existence, however, the CRTC has defined its approaches to broadcast licensing through ‘policies’ – which, based on a straightforward reading of sections 28 and 31, are not decisions or orders. The immunization of CRTC policies from appellate review renders Canadians impotent in the face of policies that harm their interests or are in conflict with section 3.

104 The Minister should amend section 31(2) of the *Broadcasting Act* by including “policies and guidelines” with decisions and orders.

FRPC recommendation 8 Section 31(2) of the *Broadcasting Act* should be amended by including “policies and guidelines” with the decisions and orders that may be appealed to the Federal Court of appeal

4. Provide the CRTC with clarity

105 It is well known that Parliament’s broadcasting policy for Canada has many different components. Of the 40 or more requirements, only seven are mandatory, however, and one is neutered by resource availability:

3(1)(a) the Canadian broadcasting system **shall** be effectively owned and controlled by Canadians;

3(1)(e) each element of the Canadian broadcasting system **shall** contribute in an appropriate manner to the creation and presentation of Canadian programming;

(f) each broadcasting undertaking **shall** make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, ...

(k) a range of broadcasting services in English and in French **shall** be extended to all Canadians *as resources become available*;

(n) where any conflict arises between the objectives of the Corporation set out in paragraphs (l) and (m) and the interests of any other broadcasting undertaking of the Canadian broadcasting system, it **shall** be resolved in the public interest, ...

106 Parliament should clarify for the CRTC whether it has specific priorities that must be met, by using mandatory language (‘shall’ vs ‘should’).

FRPC recommendation 9 Parliament should clarify which of the more-than-40 objectives in section 3 are mandatory

5. Re-institute consensus-based decision-making at the CRTC

107 The 1991 *Broadcasting Act* changed the operation of the CRTC by enabling panels of CRTC Commissioners to make decisions on behalf of the entire Commission:

20. (1) The Chairperson of the Commission may establish panels, each consisting of not fewer than three members of the Commission, to deal with, hear and determine any matter on behalf of the Commission.

(2) A panel that is established under subsection (1) has and may exercise all the powers and may perform all the duties and functions of the Commission in relation to any matter before the panel.

108 As stated in section 20(1), above, the CRTC's Chairperson, rather than individual Commissioners, selects panel members. A CRTC Chairperson who is aware of the views of his or her fellow Commissioners can assure him- or herself of the outcome of a given matter simply by choosing the appropriate panel members. In the Forum's view, the Chairperson's power to determine the outcomes of policies and decisions contradicts a core element of any Commission – that a group of individuals collaborates and achieves consensus with respect to outcomes.

109 Parliament should amend section 20 to enable individual Commissioners to self-select for panels, and limit the Chairperson's power to appoint members to panels to times when fewer than three members agree to be part of a panel

FRPC recommendation 10 Parliament should amend section 20 to permit individual CRTC Commissioners to join panels that interest them, while permitting the CRTC's Chairperson to appoint additional members to panels that lack quorum

6. Consider the CRTC's informal approach to enforcement

110 Parliament made it an offence to breach CRTC regulations and orders, and to breach conditions of licence, in sections 32(2) and 33 of the *Broadcasting Act*:

32(2). Every person who contravenes or fails to comply with any regulation or order made under this Part is guilty of an offence punishable on summary conviction and is liable

(a) in the case of an individual, to a fine not exceeding twenty-five thousand dollars for a first offence and not exceeding fifty thousand dollars for each subsequent offence; or

(b) in the case of a corporation, to a fine not exceeding two hundred and fifty thousand dollars for a first offence and not exceeding five hundred thousand dollars for each subsequent offence.

33. Every person who contravenes or fails to comply with any condition of a licence issued to the person is guilty of an offence punishable on summary conviction.

34. Proceedings for an offence under subsection 32(2) or section 33, may be instituted within, but not after, two years after the time when the subject-matter of the proceedings arose.

- 111 To the best of our knowledge, however, no prosecutions have happened since 1991 to address broadcasters' non-compliance with regulations or conditions of licence. The CRTC has instead implemented its own regimes for non-compliance.
- 112 The CRTC's enforcement approach is relatively informal in broadcasting. It issues bulletins from time to time, for instance, about compliance related issues,²⁹ or makes comments in its licensing decisions. It revokes very, very few licences, and renews virtually all licences except in the most egregious of cases (CHOI-FM, for example).
- 113 What is unclear, however, is whether the CRTC's informal compliance regime is more effective than a regime based on Parliament's statute, whether changes in the informal regime strengthen or weaken compliance, or whether an informal regime yields effective compensation for those affected by non-compliance.
- 114 The concept of compensation for non-compliance is somewhat academic in the context of broadcasting, of course: should Canadians be 'compensated' for the fact that a radio or TV station broadcasts excessive levels of foreign content? But in some cases parties can suffer financial loss. Consider, for example, the case of OUTtv, a national English-language discretionary television programming services. In 2008 it asked the CRTC to investigate its treatment by Shaw, one of Canada's largest BDUs. The CRTC found that Shaw had breached the CRTC's policies and disadvantaged OUTtv by marketing the service in an inequitable manner.³⁰ The CRTC ordered Shaw to report on the steps it would take to ensure that future marketing was not discriminatory – but did not attempt to compensate OUTtv for the disadvantages imposed by Shaw. In 2012 OUTtv asked the CRTC to investigate its treatment by Telus, another major BDU in Canada. The CRTC again found that Telus had subjected OUTtv to

²⁹ *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608 (Ottawa, 21 November 2014).

³⁰ *Complaint by 6166954 Canada Inc., licensee of OUTtv, against Shaw Cablesystems Ltd. pursuant to section 9 of the Broadcasting Distribution Regulations*, Broadcasting Decision CRTC 2008-299, (Ottawa, 4 November 2008), <http://www.crtc.gc.ca/eng/archive/2008/db2008-299.htm>.

disadvantageous behaviour – and again, required the company to submit a report explaining the steps it would take to correct its behaviour, without attempting to compensate OUTtv for the disadvantages imposed by Telus.³¹

- 115 Parliament should revisit the manner in which the CRTC assess regulatory non-compliance, to determine whether (in an era where a few large companies take in nearly all communications revenues) it is time to implement a regime that permits damages to be ordered, and to ensure that if the CRTC uses informal enforcement regimes, it applies these on an equal basis to all broadcasters.

FRPC recommendation 11 Parliament should review the CRTC’s use of informal regimes to enforce its decisions under the *Broadcasting Act* to determine whether the regimes are enforced equally across the system, and whether it should be empowered to order compensation

7. Enable the CRTC to award costs in its broadcasting proceedings

- 116 A small number of public-interest organizations participates in a range of CRTC broadcasting proceedings, and for the past several years some of the costs of their participation were paid by the Broadcast Participation Fund (BPF), which was established by the CRTC as a ‘tangible benefit’ from BCE’s acquisition of CTVglobemedia Inc. in 2011. The BPF’s purpose was “to assist in the representation, research and advocacy of [public interest and consumer groups]” in broadcasting matters.
- 117 The CRTC has not renewed the BPF’s funding since 2011, and it recently posted a caution on its website that its funding will be “materially depleted by early 2018”.³² (The Forum recently posted a research note on the topic of costs orders in telecommunications, at <http://frpc.net/crtc-cost-orders-nov-2017-final-2/>.)
- 118 The CRTC may have used its tangible-benefits policy to establish the BPF because the *Broadcasting Act* does not provide it with the authority to award costs in broadcasting matters. The CRTC uses a different approach in telecommunications, because the Telecommunications Act expressly authorizes the CRTC to issue costs orders in relation to its proceedings:

56 (1) The Commission may award interim or final costs of and incidental to proceedings before it and may fix the amount of the costs or direct that the amount be taxed.

³¹ *Complaint by OUTtv Network Inc. against TELUS Communications Company alleging undue preference and disadvantage*, Broadcasting Decision CRTC 2012-672 (Ottawa, 10 December 2012), <http://www.crtc.gc.ca/eng/archive/2012/2012-672.htm>.

³² David McKendry, Chair, on behalf of the Board of Directors of the BPF, *Caution To Potential Applications For Costs Awards*, accessed 15 November 2017, <http://www.bpf-fpr.ca/en/home.html>.

(2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be taxed and may establish a scale for the taxation of costs.

119 Many Canadians participate in the CRTC’s broadcasting proceedings. The work of the Forum and other public-interest organizations provides a different – and, we submit, a meaningful – perspective in comparison to members of the public because we rely on empirical and legal analysis to make our case, on behalf of the public, to the Commission. If the BPF closes its doors, a number of public-interest organizations are likely to reduce their involvement in, or withdraw entirely from, CRTC broadcasting proceedings.

120 To ensure that, going forward, legal and empirical analysis about new distribution technologies and the policy issues arising from those technologies, continue to be available on behalf of the public, Parliament should amend the *Broadcasting Act* to include a costs-order process, with a requirement for the process to begin and conclude in a timely manner.³³

FRPC recommendation 12 **Parliament should amend the *Broadcasting Act* to empower the CRTC to establish a costs-order process for public-interest organizations, and to require the CRTC to ensure that its decisions in costs applications begin and conclude in a timely manner**

121 Until Parliament amends the *Broadcasting Act*, however, the CRTC should require that a small percentage (up to 1%) of all ownership transactions be directed to the BPF.

FRPC recommendation 13 **Until Parliament amends the *Broadcasting Act* to empower the CRTC to establish a costs-order process, the CRTC should direct up to 1% of broadcast tangible benefits to the BPF**

8. Require the CRTC to report annually to Parliament on its empirical progress in achieving Parliament’s broadcasting policy for Canada

122 The *CRTC Act* currently requires the CRTC to report to the Minister each fiscal year about its activities:

13. The Commission shall, within three months after the end of each fiscal year, submit to the Minister a report, in such form as the Minister may direct, on the activities of the Commission for that fiscal year, and the Minister shall cause a copy of the report to be laid before each

³³ A study by the Forum found that the time taken by the CRTC to issue decisions about costs applications in telecommunications has more than doubled, from 3.7 months after applications were filed in 2013, to 8.6 months after applications were filed in 2017 (see <http://frpc.net/wp-content/uploads/2017/11/CRTC-cost-orders-Nov-2017-Final-1.pdf>, at 13).

House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.

- 123 Neither the *CRTC Act* nor the *Broadcasting Act* requires the CRTC to report on its implementation of Parliament’s broadcasting policy for Canada, however. From 1968 to the early 1990s the CRTC offered basic data about broadcasting and telecommunications in its annual reports. It began to issue annual reports on broadcasting and on telecommunications in 2000 (releasing its [first Broadcasting Policy Monitoring Report](#) in November 2000 at the annual convention of The Canadian Association of Broadcasters in Calgary, Alberta; the earliest of CRTC telecom reports on the federal government collections website appears to be from [2006](#).)
- 124 The CRTC’s first ‘converged’ report, containing data about broadcasting and telecommunications, was issued in [2008](#).
- 125 A fundamental concern with the CRTC’s annual *Communications Monitoring Reports* is that they provide very little data about the core elements of section 3. They do not, for instance, describe the levels of Canadian content or original news being broadcast in the system, or employment opportunities. In particular, the CRTC does not report on the resources allocated to local, regional, national and international news: are broadcasters employing more, fewer or the same numbers of reporters and journalists, for example, or are these staff resources being reduced to reduce local programming expenditures? (Do such stealthy reductions account for the CRTC’s decision to define ‘news’ as ‘analysis and interpretation’? Is there very much need for reporters in the field if an in-studio panel discussion counts as ‘news’?)
- 126 The reports instead tend to focus on the financial performance of Canadian broadcasters and telecommunications companies.
- 127 The absence of data about programming and other section 3 objects means that neither Parliament, nor Canadians, has “an efficient and effective tool to assess the extent to which the Commission's regulatory frameworks and determinations are fulfilling”³⁴ Parliament’s objectives for broadcasting. Other objectives – such as the encouragement of programming exports –cannot be evaluated either, because data are not being reported. The CRTC’s 2017 *Communications Monitoring Report* does not mention the term, “exports”, and Statistics Canada stopped reporting on trade in culture eight years ago (Figure 12).

³⁴ *Monitoring the Canadian telecommunications industry*, (Ottawa, 18 October 2005), <http://www.crtc.gc.ca/eng/archive/2005/pt2005-15.pdf>.

Figure 12 Latest Statistics Canada data from trade are from 2009



128 Regardless of the Minister’s next steps in this process, the CRTC should be directed to consult with Canadians about the type of quantitative and qualitative data it should be gathering and reporting, to permits the public and Parliament to evaluate its progress in implementing the section 3 objectives.

FRPC recommendation 14 The CRTC should be directed to consult with Canadians about the data it gathers to measure its implementation of Parliament’s broadcasting policy

129 The Forum also recommends that the Minister consult with the Minister of Innovation, Science and Economic Development so as to ensure the resumption of data collection about culture in the 21st century.

III. Conclusion and summary of recommendations

130 The Forum has made no specific conclusions at this point in the BNoC 2017-359 proceeding.

131 We note, however, that the questions raised by both the Minister and the CRTC are entirely silent with respect to the public interest in the future of Canada’s communications system. For example, BNoC 2017-359’s questions focus heavily on the concerns of Canadian broadcasters and distributors in the context of business. Of the 9 questions posted by the CRTC,

- four [Questions 1, 2, 3 and 8] focus on business models
- three [Questions 7, 8 and 9] focus on ‘markets’
- one [Question 4] focus on broadband networks’ capacity

- one [Question 5] focus on “consumer behaviour”, and
- none refers to the public interest.)

132 Having expressed our concern at the outset of this submission regarding the Minister’s decision to have the CRTC submit a 75th report on broadcasting (rather than to have her department issue a white paper on communications), the Forum urges the Commission to ensure that its report to the Minister include analysis and recommendations that centre on the public interest in Canada’s communications sector.

133 Focussing solely on business models and consumers diminishes the rights and roles of individuals, of communities and Canadians in general to an unacceptable degree – and effectively places the financial interests of distribution technologies before the interests of Canadian society, Canadian culture and Canada’s political system.

Appendix 1 Reports related to broadcasting, telecommunications and convergence, 1991-2017

Year	Subject	Report
1991	Broadcasting	Report on the Economic Status of Television (Girard-Peters Task Force)
1991	Broadcasting	Royal Commission on Electoral Reform and Party Financing, Reforming Electoral Democracy, Vol 1 (Ottawa, Minister of Supply and Services Canada: 1991), http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1989-2-1-1991-1-eng.pdf
1991	Telecommunications	Marion G. Wrobel, Library of Parliament, <i>Telecommunications: the demise of natural monopoly and its implications for regulation</i> , Backgrounder (Ottawa, 1991)
1992	Broadcasting	Standing Committee on Communications and Culture, <i>The Ties that Bind</i> , (Ottawa, 1992)
1992	Broadcasting	Royal Commission on Electoral Reform and Party Financing, Reforming Electoral Democracy, Vol. 1 http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1989-2-1-1991-1-eng.pdf
1992	Broadcasting	Industry Canada. <i>Communications for the Twenty-First Century: Media and Messages in the Information Age</i> . Ottawa, 1992.
1992	Telecommunications	Communications Canada, <i>A spectrum policy framework for Canada</i> (Ottawa, 1992)
1992	Telecommunications	Communications Canada, <i>Telecommunications in Canada: an overview of the carriage industry</i> , (Ottawa, 1992)
1992	Telecommunications	Communications Canada, <i>Telecommunications privacy principles</i> , (Ottawa, 1992)
1993	Broadcasting	Task Force on the Introduction of Digital Radio, Communications Canada, <i>Digital radio, the sound of the future: the Canadian vision</i> , (Ottawa, 1993)
1993	Broadcasting	Federal working group to "review the CBC's funding situation"
1994	Broadcasting	Parliamentary Standing Committee on Canadian Heritage: "role of the [CBC] .. potential sources of new revenues"
1994	Telecommunications	Communications Development and Planning Branch, Industry Canada, <i>Privacy and the Canadian information highway: building Canada's information and communications infrastructure</i> , (Ottawa, 1994)
1995	Broadcasting	Working Group on Canadian Programming and Private Television: <i>Report on the Future of Canadian Programming and the Role of Private Television: Keeping Canada on the Information Highway</i> .
1995	Broadcasting	Standing Committee on Canadian Heritage, <i>The Future of the Canadian Broadcasting Corporation in the Multi-Channel Universe</i>
1995	Convergence	CRTC, <i>Competition and culture on Canada's information highway: managing the realities of transition</i> , (Ottawa, 19 May 1995),
1995	Convergence	Information Highway Advisory Council, <i>Connection, Community, Content: The Challenge of the Information Highway</i> , (Ottawa, 27 September 1995)
1995	Convergence	Government of Canada, <i>Building the Information Society: Moving Canada into the 21st Century</i> .
1995	Convergence	CRTC, Competition and Culture on Canada's Information Highway: Managing the Realities of Transition, (Ottawa, 19 May 1995), in accordance with Order in Council P.C. 1994-1689 (11 October 1994)

Year	Subject	Report
1996	Broadcasting	Tom Gorman, Services, Science and Technology Division, Statistics Canada, Television: Glorious Past, Uncertain Future, 63F0002XPZB No. 6 (Ottawa, January 1996), http://publications.gc.ca/collections/Collection/Statcan/63F0002XIE/63F0002XIB1995006.pdf
1996	Broadcasting	Task Force on the Future of the Canadian Music Industry, <i>A Time for action: report</i> , (Ottawa, 1996)
1996	Broadcasting	Mandate Review Committee of the CBC, NFB and Telefilm Canada, <i>Making Our Voices Heard</i> , Report (Ottawa, 1996) [Juneau Committee'
1996	Convergence	Industry Canada, Convergence Policy Statement, Policy (Ottawa, 1996), https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf05265.html
1996	Telecommunications	Research Branch, Library of Parliament, <i>Privacy issues in telecommunications</i> , Current issue reviews (Ottawa, 1993, revised January 1996)
1996	Telecommunications	Daniel J. Shaw, Research Branch, Library of Parliament, Telecommunications and Canadian industrial policy, (Ottawa, 1996), http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp430-e.pdf
1996	Telecommunications	Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, THE DEREGULATORY FRAMEWORK FOR TELECOMMUNICATIONS AND BROADCAST DISTRIBUTION (Ottawa, November 1996), http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp432-e.pdf
1996	Telecommunications	Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, THE INFORMATION HIGHWAY: THE CONVERGENCE OF TELECOMMUNICATIONS, BROADCAST DISTRIBUTION AND MICROPROCESSING, (Ottawa, June 1996), http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp420-e.pdf
1996	Telecommunications	Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, The information revolution and international telecommunications, (Ottawa, July 1996), http://publications.gc.ca/collections/Collection-R/LoPBdP/BP-e/bp421-e.pdf
1996	Telecommunications	Human Resources Canada, <i>Human resources study of the Canadian telecommunications industry: detailed report</i> , (Ottawa, 1996)
1996	Telecommunications	Peter Howitt, Industry Canada, Implications of knowledge-based growth for micro-economic policies, cat. Id53-11/6-1996E (Ottawa, 1996)
1996	Telecommunications	Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, <i>Telecommunication services and pricing: from monopoly to competition</i> , (Ottawa, 1995, revised September 1996)
1996	Telecommunications	Élisabeth Lefebvre & Louis A. Lefebvre, Information and telecommunication technologies: the impact of their adoption on small and medium-sized enterprises, (Ottawa, September 1996), http://publications.gc.ca/collections/collection_2012/crdi-idrc/E97-48-1996-eng.pdf
1996	Telecommunications	Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, CANADIAN COMPETITIVENESS IN TELECOMMUNICATIONS AND BROADCAST DISTRIBUTION, (Ottawa, November 1996), http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp427-e.pdf

Year	Subject	Report
1998	Broadcasting	CRTC, ADDITIONAL NATIONAL TELEVISION NETWORKS - A REPORT TO THE GOVERNMENT OF CANADA PURSUANT TO ORDER IN COUNCIL P.C. 1997-592, Public Notice CRTC 1998-8 (Ottawa, 6 February 1998), http://www.crtc.gc.ca/eng/archive/1998/PB98-8.HTM
1999	Broadcasting	Standing Committee on Canadian Heritage, A Sense of Place, A Sense of Being: The evolving role of the Federal government in support of culture in Canada, Ninth Report (Ottawa, June 1999), http://www.ourcommons.ca/DocumentViewer/en/36-1/CHER/report-9/
1999	Broadcasting	The Cultural Industries Sectoral Advisory Group on International Trade, New Strategies for Culture and Trade Canadian Culture in a Global World, (February 1999), http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/ip-pi/canculture.aspx?lang=en
1999	Broadcasting	CRTC, <i>Report on the establishment of a national French-language arts television service</i> , Public Notice CRTC 1999-187 (Ottawa, 19 November 1999), in response to Order in Council P.C. 1999-1454, http://www.crtc.gc.ca/eng/archive/1999/PB99-187.HTM
1999	Film	Canadian Heritage, <i>The Road to Feature Film Success: Report of the Feature Film Advisory Committee</i> , (Ottawa, 1999)
2000	Broadcasting	CRTC, Report to the Governor in Council on measures to ensure that the residents of the Greater Toronto Area receive a range of radio services reflective of the diversity of their languages and cultures, Public Notice CRTC 2001-10 (Ottawa, 31 January 2001), Order In Council P.C. 1464 (Ottawa, 13 September 2000), http://www.crtc.gc.ca/eng/archive/2001/PB2001-10.htm
2000	Film	Canadian Heritage, <i>From Script to Screen: New Policy Directors for Canadian Feature Film</i> , (Ottawa, 2000), http://publications.gc.ca/collections/Collection/CH44-11-2000E.pdf
2000	Telecommunications	CRTC, State of Competition in Canadian telecommunications markets, Order in Council P.C. 2000-1053 (Ottawa, 26 June 2000), http://www.crtc.gc.ca/eng/archive/2005/pt2005-15.pdf
2001	Broadcasting	Federal government announces the <i>Tomorrow Starts Today</i> cultural policy, to foster arts and culture, maximize Canadians' access to arts and culture, and develop partnerships
2001	Broadcasting	CRTC, <i>Achieving a better balance: Report on French-language broadcasting services in a minority environment</i> , Report in response to Order in Council PC 2000-511, (Ottawa, 12 February 2001), http://www.crtc.gc.ca/eng/archive/2001/PB2001-25.htm
2001	Copyright	<i>A Framework for Copyright Reform</i> , (Ottawa, 2001)
2001	Copyright	Intellectual Property Policy Directorate, Industry Canada, <i>Consultation Paper on the Application of the Copyright Act's Compulsory Retransmission Licence to the Internet</i> , (Ottawa, 2001),
2001	Copyright	Consultation Paper on Digital Copyright Issues, (Ottawa, 2001)
2001	Telecommunications	National Broadband Task Force, <i>The New National Dream: Networking the Nation for Broadband Access</i> , (Ottawa, 2001), http://publications.gc.ca/collections/Collection/C2-574-2001E.pdf
2002	Broadcasting	Department of Canadian Heritage, <i>Canadian Content for the 21st Century</i> , Discussion Paper (Ottawa, March 2002), http://publications.gc.ca/collections/Collection/CH44-29-2002E.pdf

Year	Subject	Report
2002	Broadcasting	Department of Canadian Heritage, <i>From Creators to Audience: New Policy Directions for Canadian Sound Recording</i> , (Ottawa, 2002), Policy, http://publications.gc.ca/collections/Collection/CH44-31-2002E.pdf
2003	Broadcasting	Canadian Heritage, Northern Native Broadcast Access Program (NNBAP) & Northern Distribution Program (NDP) Evaluation: Final Report (25 June 2003), http://publications.gc.ca/collections/Collection/CH44-90-2003E.pdf
2003	Broadcasting	Department of Canadian Heritage, Canadian Content in the 21 st Century in Film and Television Productions: A Matter of Cultural Identity (Ottawa, 2003) [Macerola Report]
2003	Broadcasting	Lincoln report: <i>Our Cultural Sovereignty: The Second Century of Canadian Broadcasting</i> , Report of the House of Commons Standing Committee on Canadian Heritage, (Ottawa, 11 June 2003) http://publications.gc.ca/collections/Collection/CH44-48-2005E.pdf
2003	Broadcasting	CRTC, Internet retransmission, Broadcasting Public Notice CRTC 2003-2 (Ottawa, 17 January 2003), in response to Order in Council P.C. 2002-1043 (12 June 2002), http://www.crtc.gc.ca/eng/archive/2003/pb2003-2.htm
2003	Telecommunications	Standing Committee on Industry, Science and Technology, Opening Canadian Communications to the World, Report, (Ottawa, April 2003), https://www.ourcommons.ca/DocumentViewer/en/37-2/INST/report-3/ .
2005	Film	Canadian Heritage, Corporate Review Branch, Evaluation Services, Summative Evaluation of the Canadian Feature Film Policy, (Ottawa, September 2005)
2005	Film	Standing Committee on Canadian Heritage, Scripts, Screens and Audiences: A New Feature Film Policy for the 21st Century, Report (Ottawa, November 2005), http://www.ourcommons.ca/DocumentViewer/en/38-1/CHPC/report-19/
2006	Broadcasting	Standing Senate Committee on Transport and Communications, <i>Final Report on the Canadian News Media</i> (2 volumes)
2006	Broadcasting	CRTC, The Future Environment Facing the Canadian Broadcasting System: a report prepared pursuant to section 15 of the Broadcasting Act (Ottawa, 14 December 2006), http://publications.gc.ca/collections/Collection/BC92-60-2006E.pdf
2006	Broadcasting	CRTC, THE FUTURE ENVIRONMENT FACING THE CANADIAN BROADCASTING SYSTEM, (Ottawa, 14 December 2006), Order in Council P.C. 2006-519 (Ottawa, 8 June 2006), http://publications.gc.ca/collections/Collection/BC92-60-2006E.pdf
2006	Telecommunications	House of Commons Standing Committee on Industry, Science and Technology, Sixth Report, (Ottawa, 30 March 2007), 39th Parl, 1st Sess, https://www.ourcommons.ca/DocumentViewer/en/39-1/INDU/report-6/ :
2006	Telecommunications	March 22, 2006: Telecommunications Policy Review Panel, Final Report, (Ottawa, March 2006), https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tp-rp-final-report-2006.pdf/\$FILE/tp-rp-final-report-2006.pdf
2007	Broadcasting	Standing Committee on Canadian Heritage, The Funding Crisis of the Canadian Television Fund: Report, (Ottawa, March 2007), 39th Parl., 1st Sess., http://www.ourcommons.ca/DocumentViewer/en/39-1/CHPC/report-17/
2007	Broadcasting	L. Dunbar & C. Leblanc, REVIEW OF THE REGULATORY FRAMEWORK FOR BROADCASTING SERVICES IN CANADA (Ottawa, 31 August 2007), http://publications.gc.ca/collections/collection_2008/crtc/BC92-62-2007E.pdf

Year	Subject	Report
2007	Telecommunications	Department of Industry, <i>Spectrum Policy Framework for Canada</i> , Gzette Notice No. DGTP-001-07 (Ottawa, June 2007), http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08776.html
2008	Broadcasting	Standing Committee on Canadian Heritage, CB/Radio-Canada: Defining Distinctiveness in the Changing Media Landscape: Report, (Ottawa, February 2008) 39th Parl., 2nd Sess., http://www.ourcommons.ca/DocumentViewer/en/39-2/CHPC/report-6/
2008	Broadcasting	CRTC, Perspectives on Canadian Broadcasting in New Media a compilation of research and stakeholder views (Ottawa, May 2008) Revised June 2008, http://publications.gc.ca/collections/collection_2009/crtc/BC92-65-2008E.pdf
2008	Telecommunications	Competition Policy Review Panel, Compete to Win: Final Report, (Ottawa, June 2008), https://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/eng/h_00040.html
2009	Broadcasting	CRTC, Report to the Governor in Council on English- and French-language broadcasting services in English and French linguistic minority communities in Canada, (Ottawa, 3 March 2009), Order in Council P.C. 2008-1293 (Ottawa, 19 June 2008),
2010	Broadcasting	CRTC, The implications and advisability of implementing a compensation regime for the value of local television signals, (Ottawa, 23 March 2010), Order in Council P.C. 2009-1569 (Ottawa, 16 September 2009), http://www.crtc.gc.ca/eng/publications/reports/rp100323.htm
2010	Telecommunications	Convergence Policy, Policy Development and Research, CRTC, Navigating Convergence: Charting Canadian Communications Change and Regulatory Implications, (Ottawa, February 2010), https://crtc.gc.ca/eng/publications/reports/rp1002.htm
2010	Telecommunications	Report of the Standing Committee on Industry, Science and Technology CANADA'S FOREIGN OWNERSHIP RULES AND REGULATIONS IN THE TELECOMMUNICATIONS SECTOR, (Ottawa, JUNE 2010) https://www.ourcommons.ca/DocumentViewer/en/40-3/INDU/report-5/ , 40th Parl., 3rd Sess.
2011	Broadcasting	Standing Committee on Canadian Heritage, Impacts of Private Television Ownership Changes and the Move Towards New Viewing Platforms: Report, (Ottawa, March 2011) 40th Parl. 3rd Sess., https://www.ourcommons.ca/DocumentViewer/en/40-3/CHPC/report-9/
2011	Convergence	Standing Committee on Canadian Heritage, Emerging and Digital Media: Opportunities and Challenges, Report (Ottawa, February 2011), 40th Parl. 3rd Sess., http://www.ourcommons.ca/DocumentViewer/en/40-3/CHPC/report-7/
2011	Telecommunications	CRTC, Navigating Convergence II: Charting Canadian Communications Change and Regulatory Implications, (Ottawa, 2011), http://publications.gc.ca/site/eng/9.694893/publication.html
2012	Telecommunications	Report of the Standing Committee on Industry, Science and Technology, <i>E-COMMERCE IN CANADA: PURSUING THE PROMISE</i> , (Ottawa, May 2012) 41 st Parl., 1 st Sess., https://www.ourcommons.ca/DocumentViewer/en/41-1/INDU/report-1/page-5
2014	Broadcasting	Michael Dewing, legal and Social Affairs Division, Parliamentary Information and Research Service, Canadian Broadcasting Policy, Pub. No. 2011-9-E (Ottawa, 23 June 2011), revised 6 Aug 2014, http://publications.gc.ca/collections/collection_2014/bdp-lop/bp/2011-39-2-eng.pdf



Year	Subject	Report
2014	Film	Standing Committee on Canadian Heritage, <i>Review of the Feature Film Industry in Canada: Report</i> , (Ottawa, June 2014), 41st Parl., 2 nd Sess., http://www.ourcommons.ca/DocumentViewer/en/41-2/CHPC/report-14/
2015	Broadcasting	Standing Senate Committee on Transport and Communications, <i>Time for change: the CBC/Radio-Canada in the twenty-first century</i> , Report, (Ottawa, 2015), http://publications.gc.ca/site/eng/9.802332/publication.html
2015	Film	Standing Committee on Canadian Heritage, <i>Review of the Feature Film Industry in Canada: Report</i> , (Ottawa, June 2015), 41st Parl., 2 nd Sess., http://publications.gc.ca/collections/collection_2015/parl/x61-1/XC61-1-1-412-14-eng.pdf .
2016	Broadcasting	House of Commons Standing Committee on Canadian Heritage, <i>INTERIM REPORT ON MEDIA STUDY: The Impact of Digital Technology</i> , Report 3, Presented to the House: December 8, 2016
2017	Broadcasting	Standing Committee on Canadian Heritage, <i>Disruption: Change and churning in Canada's media landscape</i> (Ottawa, 15 June 2017), http://www.ourcommons.ca/DocumentViewer/en/42-1/CHPC/report-6/



Appendix 2 Discretionary television programming services, by number of staff reported in 2016

Services, ranked by staffing levels	Number of staff reported in 2016
No (0) staff	
Access Communications Co-operative Limited, Regina	0
ATN South Asian Television (SATV)	0
Bell TV On Demand (formerly General Interest)	0
Book Television (formerly Book Television - The Channel)	0
Bragg Communications Incorporated, Halifax	0
Cogeco Connexion Inc., Montréal	0
Comedy Gold (formerly TV Land)	0
Cottage Life (formerly Bold)	0
ESPN Classic	0
FashionTelevisionChannel (formerly Fashion Television ...)	0
M3	0
MTV (Canada) (formerly known as Talk TV)	0
MTV2 (formerly Razer)	0
RDS Info (formerly Réseau Info Sports (RIS))	0
Shaw on Demand	0
Shaw Pay-Per-View (formerly Allarcom)	0
Shaw Pay-Per-View (formerly Home Theatre (pay-per-view))	0
TBayTel, Thunder Bay	0
The Comedy Network	0
travel + escape	0
Viewer's Choice Canada (PPV)	0
Wightman Telecom Ltd., Clifford	0
No (0) staff Total	0
.1-1	
Animal Planet	1
Câblevision du Nord de Québec inc., Val d'Or	1
Max Front Row	1
Saskatchewan Telecommunications, Regina	0.25
Sogetel inc., Nicolet	0.42
.1-1 Total	3.67
1-1.9	
Discovery Science (formerly Discovery Civilization Channel)	1.72
Discovery Velocity (formerly Discovery World HD)	1.89
Investigation Discovery (formerly Court TV Canada)	1.72
The Movie Network Encore (formerly Mpix)	1.67
1-1.9 Total	7
2	
Bravo!	2
Canal Indigo	2
Northwestel Inc., Yellowknife	2
Prise 2 (formerly Nostalgie)	2
Sportsnet World (formerly Setanta Sports (Canada))	2
2 Total	10
3-3.9	
Canal D/Investigation	3.32
Casa - (formerly Les idées de ma maison)	3
CINÉPOP (formerly Cinémania)	3
Moi&cie (formerly Mlle)	3
MTS Video on Demand	3.85



Rogers on Demand	3.63
YOOPA (formerly TVA Junior)	3
3-3.9 Total	22.8
4-4.9	
G4 (Canada) (formerly G4techTV)	4.26
Sportsnet PPV	4
4-4.9 Total	8.26
5-9.9	
Documentary (formerly The Canadian Documentary Channel)	9.25
FX (formerly FX Canada)	9.9
FXX (Canada) (formerly Ampersand)	7.95
Outdoor Life Network (OLN)	9.51
Super Écran	6
The Independent Film Channel Canada	9
The Movie Network	5.02
Viceland (formerly The Biography Channel)	9.31
5-9.9 Total	65.94
10-49.9	
AMI-télé	22.33
ARGENT (formerly LCN Argent)	13
Bell TV On Demand (formerly Vu! On Demand)	10
Bell TV On Demand and Vu! (formerly Bell)	30
Canal D	15
Canal Vie	15
CMT (formerly Country Music Television)	29
Crime + Investigation (formerly Mystery)	11
Discovery Channel	19.55
DTOUR (formerly TVtropolis)	19
Encore Avenue	24
Évasion (formerly Canal Évasion)	13
Food Network Canada	38
Fyi (formerly Twist TV)	10
H2 (formerly The Cave, Men TV)	13
HGTV Canada - Home and Garden Television Canada	42
Historia	37
History Television	21
ichannel	11
ICI ARTV	35.29
Illico sur demande	15
MAX (formerly MUSIMAX)	41.77
Movie Central	32
Much (formerly MuchMusic)	44.82
MusiquePlus	41.77
Odyssey (formerly OTN)	10
OUTtv (formerly PrideVision)	11
OWN: The Oprah Winfrey Network (formerly OWN; formerly VIVA)	18
Showcase	22
Slice	22
Space (formerly Space: The Imagination Station)	17.3
Sportsnet One	14
Super Channel (formerly Allarco Entertainment)	31
The Brand New ONE Body, Mind, Spirit, Love Channel	18



TreeHouse TV	19
VRAK.TV	14
Ztélé (formerly Canal Z)	15
10-49.9 Total	814.83
50-99	
AMI-tv (formerly The Accessible Channel)	59.31
Business News Network (BNN) (previously ROBTV)	57
CablePulse 24 (CP24)	87
CTV News Channel (formerly CTV Newsnet)	65.76
E! (formerly Star! TV)	52
Family Channel (formerly Family)	66
Le Canal Nouvelles (LCN)	73
Public Affairs programming/coverage of the HOC proceedings	87
Séries+	57
Sportsnet 360 (formerly The Score)	74
Talentvision	71
Teletatino	55
TELETOON/TÉLÉTOON	88
TV5 - Unis	66
TVA Sports	84
Vision TV	59
W Network	51
YTV	60
50-99 Total	1212.07
100-503	
Aboriginal Peoples Television Network (APTN)	163
CBC News Network (Formerly Newsworld)	447.71
Fairchild TV	292
ICI RDI	348.05
Le Réseau des Sports (RDS)	176
Sportsnet / Hockey Night in Canada	503
TELUS Communications Company, Edmonton	160
The Sports Network (TSN)	226
The Weather Network / MétéoMédia	171
100-503 Total	2486.76
Grand Total	4631.33

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