

Court File No.:

**FEDERAL COURT OF APPEAL**

B E T W E E N :

**CANADIAN MEDIA PRODUCTION ASSOCIATION**

Applicant/Moving Party

and

**ATTORNEY GENERAL OF CANADA and CANADIAN BROADCASTING  
CORPORATION**

Respondents

APPLICATION FOR LEAVE TO APPEAL UNDER SECTION 31(2) OF THE  
*BROADCASTING ACT*, S.C. 1991, c. 11 AND MOTION FOR LEAVE TO APPEAL UNDER  
RULE 352 OF THE FEDERAL COURTS RULES, SOR/98-106

**APPLICATION RECORD OF THE APPLICANT/MOVING PARTY  
VOLUME 2**

Date: July 22, 2022

**WADDELL PHILLIPS PC**  
36 Toronto Street, Suite 1120  
Toronto, ON M5C 2C5

**Peter J. Henein (LSO No.: 49330K)**

[peter@waddellphillips.ca](mailto:peter@waddellphillips.ca)

**Tina Q. Yang (LSO No.: 60010N)**

[tina@waddellphillips.ca](mailto:tina@waddellphillips.ca)

**Adam Babiak (LSO No.: 77899C)**

[adam@waddellphillips.ca](mailto:adam@waddellphillips.ca)

Tel: 647.313.1888

Lawyers for the Applicant

**TO: THE ADMINISTRATOR**  
Federal Court

**AND TO: ATTORNEY GENERAL OF CANADA**

Toronto Registry Office  
180 Queen Street West  
Suite 200  
Toronto, Ontario M5V 3L6

Email: TOR\_reception@fct-cf.ca

**AND TO: CANADIAN BROADCASTING CORPORATION**

181 Queen Street  
P.O. Box 3220, Station "C"  
Ottawa ON K1Y 1E4

Dan Ciraco  
dan.ciraco@cbc.ca

Tel: 416-205-3352

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**APPENDIX A - MEMORANDUM OF FACT AND LAW OF THE  
APPLICANT/MOVING PARTY**

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**WADDELL PHILLIPS PC**  
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Toronto, ON M5C 2C5

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[peter@waddellphillips.ca](mailto:peter@waddellphillips.ca)  
**Tina Q. Yang (LSO No.: 60010N)**  
[tina@waddellphillips.ca](mailto:tina@waddellphillips.ca)  
**Adam Babiak (LSO No.: 77899C)**  
[adam@waddellphillips.ca](mailto:adam@waddellphillips.ca)

Tel: 647.313.1888

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Toronto Registry Office  
180 Queen Street West  
Suite 200  
Toronto, Ontario M5V 3L6

Email: [TOR\\_reception@fct-cf.ca](mailto:TOR_reception@fct-cf.ca)

**AND TO: CANADIAN BROADCASTING CORPORATION**

181 Queen Street  
P.O. Box 3220, Station "C"  
Ottawa ON K1Y 1E4

Dan Ciraco  
[dan.ciraco@cbc.ca](mailto:dan.ciraco@cbc.ca)

Tel: 416-205-3352

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## OVERVIEW

1. The Canadian Media Producers Association (“CMPA”) moves for leave to appeal Broadcasting Decision CRTC 2022-165 (the “Decision”), made by the Canadian Radio and Telecommunications Commission (the “CRTC”) on June 22, 2022, to renew various broadcast licences of the Canadian Broadcasting Corporation (the “CBC”) from September 1, 2022 to August 31, 2027, under certain conditions of licence.
2. The Decision is flawed and leave to appeal ought to be granted. The CRTC erred in law by failing to consider, or give sufficient weight to, key mandatory considerations in its licensing renewal process. The CRTC also erred in law by making determinations without any evidentiary basis, and without providing proper notice to the parties of the relevant matters being considered by the CRTC. These legal errors are reviewable on a standard of correctness.
3. The Decision replaces longstanding mandatory licence restrictions guaranteeing production and exhibition of a baseline level of Canadian-produced content with a new, substantially deregulated regime. This is an unprecedented retreat from the CRTC’s established regulatory approach to accomplish its statutory objective of ensuring that the Canadian broadcasting system serves quality Canadian content to Canadian viewers. It also constitutes a legally incorrect exercise of the CRTC’s licensing renewal discretion.
4. Within the substantial materials put before the CRTC by dozens of parties, there is no evidence or other reasonable basis to believe that this substantially deregulated framework would actually advance the *Broadcasting Act*’s policies and objectives. In fact, the evidence and parties’ submissions unanimously suggest that the framework set out in the Decision would be detrimental to these policies.

5. The Decision was made essentially without notice to the parties, either prior to or during the licence renewal hearing process. At no point were the parties, including the CMPA, provided with notice that the CRTC intended to set aside its prevailing policy framework and past practice in preceding new approaches to broadcast licence restrictions with stakeholder consultations and policy review.

6. These failings are set out at length and in detail in Dissenting Opinions by Caroline J. Simard, Vice-Chairperson, Broadcasting (the “Simard Dissent”) and Commissioner Monique Lafontaine (the “Lafontaine Dissent”). Both Dissenting Opinions highlight, in particular, the majority’s fundamental failure to consider the CRTC’s statutory objectives in reaching the Decision, and the lack of evidence to support the majority’s Decision.

7. Without notice, consultation or any clear policy guidelines, the CRTC’s Decision has removed the historical licensing conditions by which the CBC has been held accountable and, in doing so, effectively upended the existing broadcasting regulatory framework. The flaws in the Decision are particularly problematic given the CBC’s unique role as Canada’s public broadcaster and its attendant statutory obligations. The CBC has a particular mandate to provide programming that is “predominantly and distinctively Canadian”, which the CRTC is required to protect and promote, and failed to do with its Decision.

8. The CRTC’s decision to remove significant accountability on the part of the CBC will have a significant and direct impact on the rights and interests of the CMPA and its members, and, moreover, will have broad reaching implications across the Canadian broadcasting industry. For this reason, the CMPA respectfully submits that leave to appeal the Decision ought to be granted by this Honourable Court.

## **PART I - STATEMENT OF FACTS**

### **A. The Parties**

9. The Moving Party, CMPA, is Canada's leading trade association for independent English-language media producers. It represents over 600 member companies engaged in the development, production and distribution of English-language content for television, feature film, and digital media channels.<sup>1</sup>

10. The CMPA participated closely in the proceedings below as an intervenor, making extensive submissions on behalf of its members.

11. The Respondent CBC is Canada's public broadcaster and a national cultural institution. The CBC receives over \$1 billion in public monies annually to advance its statutory purpose, namely to: "provide radio and television services incorporating a wide range of programming that...should be predominantly and distinctively Canadian" and "contribute to shared national consciousness and identity".<sup>2</sup>

12. The Respondent Attorney General of Canada responds on behalf of the CRTC.

13. In renewing the CBC's broadcast licence, the CRTC's burden is to establish a licensing framework that "most effectively ensures that the [CBC] meets the public policy objectives and its statutory mandate set out in the *Broadcasting Act* during the next licence term."<sup>3</sup>

### **B. The CBC's License Renewal Application and the Notice of Consultation**

14. In 2019, the CBC applied to the CRTC to renew its broadcasting licences for various audio and audio-visual programming services.

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<sup>1</sup> Affidavit of Alain Strati, sworn July 22, 2022, at para. 2 [Strati Affidavit].

<sup>2</sup> *Broadcasting Act*, S.C. 1991, c. 11, s. 3(m) [*Broadcasting Act*].

<sup>3</sup> Broadcasting Decision CRTC 2022-165 at Dissent of Commissioner Monique Lafontaine, p 3 [Lafontaine Dissent].

15. On November 25, 2019, the CRTC issued Broadcasting Notice of Consultation CRTC 2019-379 (the “Notice of Consultation”), announcing a hearing schedule to consider the CBC licence renewal applications and inviting the submission of interventions. The Notice of Consultation also provided information about the scope of the CBC’s applications and the topics being considered by the CRTC on the hearing, noting that:<sup>4</sup>

[w]hile the Corporation’s activities are conducted at arm’s length from Parliament, it remains accountable to all Canadians for its programming and other activities. As part of this accountability, the Commission currently ensures that the Corporation meets its mandate by imposing a variety of conditions of licence on its traditional broadcasting services and monitoring whether the Corporation has met these conditions through various means, such as public reporting requirements, the monitoring of program logs and the publication of financial data.

16. The Notice of Consultation referred to the need to ensure CBC programming is reflecting of diversity groups’ needs, is of “high quality” and “supports Canadian producers”, and is “accessible”, as well as the need to ensure a “regulatory approach” which could “include the Corporation’s evolving approach to the delivery of content across multiple platforms, including online platforms”.<sup>5</sup> The Notice of Consultation also canvassed some of the policies and objectives enumerated by the *Broadcasting Act* in the licence renewal process, which include the general policies and regulatory objectives set out at ss. 3(1) and 5, and particularly the CBC-specific licence renewal policies at ss. 3(1)(l) and 3(1)(m):

### **Broadcasting Policy for Canada**

#### **Declaration**

**3 (1)** It is hereby declared as the broadcasting policy for Canada that

...

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<sup>4</sup> Broadcasting Notice of Consultation CRTC 2019-379 at para 7, Exhibit “D” to the Strati Affidavit [Notice of Consultation].

<sup>5</sup> Notice of Consultation at para 12, Exhibit “D” to the Strati Affidavit.

(l) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;

(m) the programming provided by the Corporation should

(i) be predominantly and distinctively Canadian,

(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,

(iii) actively contribute to the flow and exchange of cultural expression,

(iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,

(v) strive to be of equivalent quality in English and in French,

(vi) contribute to shared national consciousness and identity,

(vii) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and

(viii) reflect the multicultural and multiracial nature of Canada; ...

17. The Notice of Consultation broadly invited responses to some 33 questions, but at no point discusses the possibility of substantially removing licensing conditions, nor did it invite parties to provide submissions on the potential elimination of Canadian programming exhibition requirements, establishment of “cross-platform” expenditure requirements, de-linking of expenditure requirements from revenue, or replacement of licensing conditions with reporting and consultation obligations.

### **C. The Decision removes key licence conditions**

18. The majority Decision was rendered by three out of the five Commissioners, with Commissioners Simard and Lafontaine issuing detailed and critical dissents of the majority’s substantial changes to the licensing regulatory framework.

19. Despite the lack of notice and lack of evidence, the majority's Decision makes all of the problematic changes set out in in paragraph 17, above. It drastically reduces the scope of exhibition requirements pertaining to Canadian-produced content, eliminates minimum expenditure requirements specifically for the CBC's licensed television services in favour of "cross-platform" conditions (potentially permitting the CBC to achieve its expenditure obligation entirely by way of its unregulated online offerings),<sup>6</sup> de-links the expenditure requirements from revenue, and replaces the previously existing licensing conditions with non-binding reporting and consultation obligations.

20. Among the conditions removed from the CBC's broadcast licences were, *inter alia*:
- a. all measurable exhibition requirements for "local programming" (which remain applicable to all other "major group" broadcasters, prescribing weekly broadcast requirements in different Canadian markets);<sup>7</sup>
  - b. requirements to broadcast a "predominance" of Canadian programs on the CBC's linear television services;<sup>8</sup>
  - c. minimum requirements for broadcast of independently produced French- and English-language Canadian programming on linear television services;<sup>9</sup>
  - d. minimum requirements for the broadcast of locally focused English- and French-language programming;<sup>10</sup>
  - e. minimum requirements for the broadcast of English- and French-language children's and youth programming;<sup>11</sup> and

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<sup>6</sup> Lafontaine Dissent, pp 2, 6 and 14.

<sup>7</sup> Broadcasting Decision CRTC 2022-165 at Dissent of Vice-Chairperson Caroline J. Simard, p 8.

<sup>8</sup> Lafontaine Dissent, p 2.

<sup>9</sup> Lafontaine Dissent, p 2.

<sup>10</sup> Lafontaine Dissent, pp 14-15.

<sup>11</sup> Lafontaine Dissent, p 16.

- f. minimum requirements for the broadcast of “programs of national interest” during peak broadcasting hours.<sup>12</sup>

**D. None of the parties’ submissions nor their testimony at the hearing contemplated the Decision’s terms**

21. The CRTC hearing to consider the CBC’s licensing renewal applications took place from January 11 to 28, 2021. The CRTC received over 10,500 interventions, with 71 groups and individuals appearing at the public hearing. The CBC filed response to 58 undertakings.<sup>13</sup>

22. In its submissions to the CRTC, the CBC itself took the position that the current regulatory framework was “necessary”, and that continued exhibition and expenditure requirements were “as far as we believe is reasonable in the current context”.<sup>14</sup>

We strongly support the regulatory approach outlined by the Commission in Harnessing Change. However, we also note that the Commission’s proposal assumes there will be amendments to the *Broadcasting Act* which would enable this more comprehensive form of regulation. In the absence of these legislative changes, we believe it is necessary to continue with the regulatory approach currently in place under the Broadcasting Act [...] Our proposals for a transitional regime are based on this regulatory framework and go as far as we believe is reasonable in the current context.

23. As the Lafontaine Dissent summarizes, the CBC expressly rejected a “cross-platform expenditure approach” in its original submissions.<sup>15</sup> It only belatedly proposed a cross-platform expenditure framework in its response to undertakings dated February 3, 2021,<sup>16</sup> and, in its reply

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<sup>12</sup> Lafontaine Dissent, p 16.

<sup>13</sup> Broadcasting Decision CRTC 2022-165 at para 6 [Decision].

<sup>14</sup> CBC Supplementary Brief, p 2, Exhibit “G” to the Strati Affidavit [Supplementary Brief].

<sup>15</sup> The Lafontaine Dissent cites the following materials: the CBC’s licence renewal application filed on 23 August 2019, Exhibit “F” to the Strati Affidavit; the Supplementary Brief, p 11, Exhibit “G” to the Strati Affidavit; the CBC’s response to the CRTC’s deficiency questions dated 30 October 2019, Exhibit “H” to the Strati Affidavit; the CBC’s oral submissions at the public hearing dated 11 January 2021, Exhibit “J” to the Strati Affidavit; and the CBC’s final written submissions dated 17 March 2021, Exhibit “H” to the Strati Affidavit.

<sup>16</sup> Lafontaine Dissent, p 7.

submissions, the CBC reiterated that “comprehensive Canadian programming exhibition requirements” should be maintained as a condition on its television broadcasting licences.<sup>17</sup>

24. The Lafontaine Dissent notes that none of the industry intervenors in the proceeding below, including the CBC’s competitors, called for the “extensive cross-platform flexibility” approved in the Decision. Instead, the intervenors called for exhibition obligations alongside any cross-platform expenditure approach. To the extent that any intervenors made submissions on cross-platform expenditures, they called for limits on the amounts which could be allocated to unregulated online platforms.<sup>18</sup>

25. In the proceeding below, the CBC consistently maintained the position that the CRTC ought to impose various exhibition requirements on its linear television licences. In the CBC’s own words, exhibition requirements “ensure an equitable balance between content broadcast on linear television” and in the unregulated online service offerings.<sup>19</sup>

26. The CBC’s 2019 application for licence renewal also proposed numerous conditions of licence for independent programming, consistent with its current obligations. These proposals were reiterated in its submissions to the CRTC.<sup>20</sup> The Decision, however, sets out no conditions of licence for independently-produced Canadian programming.

**E. The Decision is a break with past practice in that it removes regulatory accountability measures**

27. The Decision breaks with prior precedent of the CRTC.

28. Prior to this licence renewal, there had been no update to the 2015 “Let’s Talk TV” policies, which constitute the current policy framework intended to govern linear (*i.e.* conventional,

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<sup>17</sup> Lafontaine Dissent, p 8; the CBC’s final written submission dated 17 March 2021, Exhibit “H” to the Strati Affidavit.

<sup>18</sup> Lafontaine Dissent, p. 8.

<sup>19</sup> Lafontaine Dissent, p 17.

<sup>20</sup> Lafontaine Dissent, pp. 27-28.

direct/not online) television.<sup>21</sup> The Let's Talk TV policies do not contemplate how to balance or integrate digital media undertakings into the regulation of television broadcasting. The sole extant policy framework for digital media undertakings is the Exemption Order for Digital Media Broadcasting Undertakings (the "Exemption Order") which, as the name suggests, exempts digital media broadcasting from licensing requirements.<sup>22</sup>

29. The Decision does not reflect the Let's Talk TV policy framework nor the Exemption Order in any substantive way, even though both documents remain in effect and ought to have guided the CRTC's decision-making.

30. The Let's Talk TV policy explicitly supported the preferability of "extensive Canadian programming exhibition" and expenditure obligations.<sup>23</sup> Licence renewal decisions for major broadcasting groups applying the Let's Talk TV policy accordingly involved "expenditure and extensive exhibition obligations".<sup>24</sup> Groups covered by these decisions include Rogers Media Inc., Corus Entertainment Inc., Bell Media Inc. and Quebecor Media Inc., which together comprise virtually all of Canada's private broadcasting industry.

31. Prior CRTC licensing decisions have also never imposed an expenditure obligation in terms of broadcaster's programming expenditures – rather, such obligations have exclusively been imposed in terms of the broadcaster's revenues.<sup>25</sup> As the Lafontaine Dissent sets out, the CRTC's established practice has been to refuse expenditure obligations based on a percentage of expenditures, on the basis that they would provide an inappropriate competitive advantage and would undermine regulatory certainty:<sup>26</sup>

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<sup>21</sup> See Broadcasting Regulatory Policy CRTC 2016-224, Exhibit "A" to the Strati Affidavit.

<sup>22</sup> Broadcasting Order CRTC 2012-409, Exhibit "E" to the Strati Affidavit.

<sup>23</sup> Decision; Lafontaine Dissent, p 5.

<sup>24</sup> See the broadcast licensing decisions cited at the Lafontaine Dissent, p 5.

<sup>25</sup> Lafontaine Dissent, p 14.

<sup>26</sup> Broadcasting Decision CRTC 2017-143 at para 42, Exhibit "B" to the Strati Affidavit.

The Commission is of the view that to allow certain groups to use a calculation method that differs from the others would confer a competitive advantage relative to the other groups, since groups have greater control over their expenditures than their revenues. Moreover, the Commission considers that a [Canadian Programming Expenditure] requirement based on the previous year's revenues rather than the previous year's expenditures would make Canadian programming expenditures more predictable for the creative industry, and, to a lesser extent, for the groups themselves.

32. As noted in the Dissents, the Decision releases the CBC from a “critical mass” of previous conditions of licence and does not fashion any meaningful replacements to these conditions.<sup>27</sup> The Decision replaces “binding measurable targets”<sup>28</sup> with only an obligation to show how public opinion research is taken into consideration in the CBC's programming choices. This is an entirely non-binding requirement replacing a slate of mandatory exhibition requirements which the CRTC has imposed on the CBC (and other broadcasting services) in order to successfully meet the *Broadcasting Act's* objectives for over 50 years;

33. Further, as suggested by the existence of the Exemption Order, the Decision reflects the first time that a broadcast licensee's digital media services have been considered in the licensing for its linear television services. As discussed above, this choice was made without any meaningful consideration of the prevailing Let's Talk TV policies and the Exemption Order. It was also made without regard for very significant amendments to the *Broadcasting Act*, targeting the regulation of digital content, which are currently being deliberated in Parliament.<sup>29</sup>

34. As noted in the Simard Dissent, the Decision is “directed at the very heart of the Canadian broadcasting system.”<sup>30</sup> The Decision removes “pivotal protections responsible for the recognized

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<sup>27</sup> Simard Dissent, p 3.

<sup>28</sup> Simard Dissent, p 4.

<sup>29</sup> Simard Dissent, p 2.

<sup>30</sup> Simard Dissent, p 1.

success of the Canadian broadcasting system and of the national public broadcast”,<sup>31</sup> instead imposing a “laissez faire” approach which is not supported by any evidence.

35. The Decision also has the effect of releasing the CBC from the CRTC’s mandatory and coercive powers under the *Broadcasting Act*, as these powers are tied to the enforcement of mandatory conditions of licence (which were almost entirely relaxed in the Decision).<sup>32</sup> While a new set of powers to impose monetary penalties have been proposed for the CRTC, it is most likely that these powers will, like the CRTC’s other coercive powers, be tied to enforcement of mandatory conditions of licence.<sup>33</sup>

## **PART II - STATEMENT OF THE POINTS IN ISSUE**

36. This motion for leave to appeal raises six issues for determination by this Court:
- a. Does the CMPA have standing to seek leave to appeal?
  - b. What is the test for granting leave to appeal?
  - c. After the Supreme Court of Canada’s decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (“*Vavilov*”), what is the appropriate standard for reviewing the Decision?
  - d. Did the CRTC err in law in its exercise of discretion in the Decision?
  - e. Did the CRTC err in law by relying on a material misapprehension of the evidence in the record in making the decision?
  - f. Did the CRTC fail to provide adequate notice of the Decision?

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<sup>31</sup> Simard Dissent, p 1.

<sup>32</sup> The CRTC’s powers under the *Broadcasting Act* include mandatory orders under s. 12(2), a reference to Parliament under s. 25, and a criminal offence regime under s. 33: see Simard Dissent, p 3.

<sup>33</sup> Simard Dissent, p 3.

### PART III -STATEMENT OF SUBMISSIONS

#### A. The CMPA has standing to appeal

37. As an intervenor in the proceeding below, the CMPA has standing to appeal the Decision under s. 31(2) of the *Broadcasting Act*. Section 31(2) does not qualify the interest required for status to appeal, and the CRTC's Rules of Practice and Procedure define a "party" to include an intervenor. On this basis, the Federal Court of Appeal has previously granted standing to appeal a decision of the CRTC under the *Broadcasting Act* to an intervenor in the proceeding at first instance.<sup>34</sup>

#### B. The proposed appeal demonstrates an "arguable case" and leave to appeal should be granted

38. Section 31(2) of the *Broadcasting Act* provides for an appeal, with leave, to the Federal Court of Appeal from a decision of the CRTC on a question of law or jurisdiction. Leave will be granted where the applicant establishes an "arguable case that the decision of the Commission... was based on an error of law or jurisdiction".<sup>35</sup>

39. A motion for leave to appeal under a statutory appeal provision like s. 31(2) of the *Broadcasting Act* is "summary". Whether the leave record discloses an "arguable case" standard is assessed in a "functional and purposive way", based on a single question: "has enough been raised in the motion for leave to appeal to warrant a full review of the administrative decision, a review that will entitle a party to use all of the procedural rights and investigative techniques associated with reviews?"<sup>36</sup>

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<sup>34</sup> [Canadian Broadcasting League v. Canadian Radio-Television and Telecommunications Commission \(1979\)](#), [1980] 1 FC 396 at paras 17-21, 25, Tab 1 of Appendix B. See also [John Graham & Co. Ltd. et al. v. Canadian Radio-Television Commission \(1975\)](#), [1976] 2 FC 82, Tab 2 of Appendix B.

<sup>35</sup> [CKLN Radio Incorporated v. Canada \(Attorney General\)](#), 2011 FCA 135, Tab 3 of Appendix B.

<sup>36</sup> [Lukács v. Swoop Inc.](#), 2019 FCA 145 at para 15, Tab 4 of Appendix B.

**C. The standard of review is correctness**

40. Questions of law are reviewable *de novo* for correctness. This was the Supreme Court of Canada's holding in *Vavilov*, which represents a break from prior practice. Pre-*Vavilov*, the Federal Court of Appeal reviewed questions of law raised from CRTC decisions on a deferential standard of reasonableness.<sup>37</sup> In *Vavilov*, the Supreme Court made clear that, where Parliament has designated statutory appeal rights from an administrative decision maker, those appeals are to be decided according to regular appellate standards of review.

41. Here, *Broadcasting Act* s. 31(2) confers a statutory right of appeal on questions of law and jurisdiction in CRTC orders. It is therefore now the law that these issues are to be reviewed for correctness.<sup>38</sup>

42. Extricable issues of law concern the misidentification of the relevant legal principles or their misapplication to the facts such as to alter the relevant legal test:<sup>39</sup>

The CITT's application of the relevant law may also be reviewable for an error of *law* if, in applying a legal rule or principle, it effectively misinterpreted or undermined the rule or principle. As the Supreme Court, Iacobucci J.A., put it in *Canada (Director of Investigation and Research) v. Southam Inc.*, 1997 CanLII 385 (SCC), [1997] 1 S.C.R. 748, 144 D.L.R. (4th) 1 at para. 39:

[...] After all, if a decision-maker says that the correct test requires him or her to consider A, B, C, and D, but in fact the decision-maker considers only A, B, and C, then the outcome is as if he or she had applied a law that required consideration of only A, B, and C. If the correct test requires him or her to consider D as well, then the decision-maker has in effect applied the wrong law, and so has made an error of law.

43. The proposed appeal raises three overlapping errors: whether the CRTC erred in law in (1) the exercise of its discretion, (2) its assessment of the evidence, and/or (3) its provision of notice

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<sup>37</sup> See, e.g., *Genex Communications Inc. v. Canada (Attorney General)*, [2005 FCA 283](#) at para 49, Tab 5 of Appendix B.

<sup>38</sup> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#) at para 17, [2019] 4 SCR 653, Tab 6 of Appendix B.

<sup>39</sup> *Canada (Attorney General) v. Best Buy Canada Ltd.*, [2021 FCA 161](#) at para 26, Tab 7 of Appendix B.

to the parties. This Honourable Court has previously granted leave to appeal with regard to precisely these types of questions, recognizing that they amount to extricable issues of law. In particular, this Honourable Court has held that the following questions are appealable:

- a. whether the CRTC acted “judicially” in exercising its discretion—that is, whether it exercised its discretion in view of the relevant factors and without giving material weight to irrelevant factors;<sup>40</sup>
- b. whether a decision was made without evidence, or while ignoring relevant evidence (which may amount to an error of law reviewable under *Broadcasting Act* s. 31);<sup>41</sup> and
- c. whether the impugned decision resulted from the CRTC’s breach of principles of procedural fairness, arbitrary decision-making, or reflect the failure to give adequate reasons.<sup>42</sup>

44. Pre-*Vavilov* caselaw reviewing extricable issues of law for reasonableness are no longer applicable. Their approach of near-absolute deference to the CRTC’s adjudicative process, findings and determination should no longer be followed. Instead, the appropriate principles are those developed by appellate courts to review issues of law arising from judicial decisions. The principles specific to each issue of law raised here are set out below.

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<sup>40</sup> [Genex Communications Inc. v. Canada \(Attorney General\)](#), 2005 FCA 283 at para 37, Tab 5 of Appendix B; citing [Canada \(Attorney General\) v. Purcell](#) (1995), [1996] 1 FC 644, Tab 8 of Appendix B.

<sup>41</sup> [Bell Canada v. British Columbia Broadband Association](#), 2020 FCA 140 at para 156, Tab 9 of Appendix B.

<sup>42</sup> [Bell Canada v. British Columbia Broadband Association](#), 2020 FCA 140 at paras 52-54, Tab 9 of Appendix B.

**D. The CRTC erred in law in exercising its discretion in making the Decision**

**(i) Principles governing appellate review of the CRTC's discretionary licence renewal powers**

45. This Honourable Court has repeatedly decided appeals from the CRTC's discretionary licence renewal power under the *Broadcasting Act*, and has set out the general principles respecting the limits of the Court's review in this area. However, these principles were developed under the pre-*Vavilov* reasonableness regime, and must be modified to reflect the post-*Vavilov* correctness review applicable to this proposed appeal.

46. Post-*Vavilov*, instead of the near-absolute deference previously demonstrated, this Court ought to approach the licence renewal decision here under the judicial standard of review for exercises of discretion reaffirmed by the Supreme Court in *Reza v. Canada* to be whether the judge at first instance has given sufficient weight to all relevant considerations.<sup>43</sup>

47. Under this approach, the Court is entitled to explore the weight given by the CRTC to the relevant considerations in the licensing renewal process, rather than being limited to ascertaining whether only the correct factors bore on its exercise of discretion. Appellate authority following *Vavilov* has confirmed that review of administrative decision makers' discretion will be more exacting under the correctness standard.<sup>44</sup>

48. In *Strom v. Saskatchewan Registered Nurses' Association* ("*Strom*"), a registered nurse was disciplined by her licensing body. She unsuccessfully appealed these discipline actions to the Saskatchewan Court of Queen's Bench under a statutory appeal provision, where the Chambers judge applied reasonableness review to uphold the discipline actions.

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<sup>43</sup> *Reza v. Canada* (1994), [1994] 2 SCR 394, Tab 10 of Appendix B.

<sup>44</sup> *Strom v Saskatchewan Registered Nurses' Association*, 2020 SKCA 112 at paras 60-63, Tab 11 of Appendix B.

49. She then brought a further appeal to the Saskatchewan Court of Appeal pursuant to a statutory appeal provision which confers a right of appeal on a “point of law”. The Saskatchewan Court of Appeal granted the appeal and reversed the discipline decision.

50. Noting that the discipline actions were “discretionary decisions”, Barrington Foote J.A. concluded that *Vavilov* required a correctness standard of review to be applied where a challenge to an administrative decision-maker’s exercise of discretion is made under a statutory right of appeal. He referred to the Supreme Court’s commentary on correctness review of discretionary decision-making:

I also note the formulation of the discretionary standard of review adopted by LeBel J. in *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71, [2003] 3 SCR 371 [*Okanagan*], which is also the same in substance as *McVeigh* and *Penner*:

As I observed in *R. v. Regan*, [2002] 1 S.C.R. 297, 2002 SCC 12, however, discretionary decisions are not completely insulated from review (para. 118). An appellate court may and should intervene where it finds that the trial judge has misdirected himself as to the applicable law or made a palpable error in his assessment of the facts. As this Court held in *Pelech v. Pelech*, 1987 CanLII 57 (SCC), [1987] 1 S.C.R. 801, at p. 814-5, the criteria for the exercise of a judicial discretion are legal criteria, and their definition as well as a failure to apply them or a misapplication of them raise questions of law which are subject to appellate review.<sup>45</sup>

51. Applying these principles, he concluded that the nursing disciplinary body had erred in law by failing to “apply the criteria governing the exercise of its discretion”<sup>46</sup> in relation to the charges concerning her complaints about her grandfather’s care. As he reasoned:<sup>47</sup>

I conclude that the Discipline Committee erred in principle by failing to accord sufficient or any weight to important criteria that governed the exercise of their discretion. Its analysis was one dimensional, referring repeatedly to the fact that Ms. Strom made critical comments on social media rather than through proper

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<sup>45</sup> *Strom v Saskatchewan Registered Nurses’ Association*, 2020 SKCA 112 at para 63, Tab 11 of Appendix B.

<sup>46</sup> *Strom v Saskatchewan Registered Nurses’ Association*, 2020 SKCA 112 at para 130, Tab 11 of Appendix B.

<sup>47</sup> *Strom v Saskatchewan Registered Nurses’ Association*, 2020 SKCA 112 at para 128, Tab 11 of Appendix B.

channels. It did not reflect the complete contextual inquiry necessary to determine whether professional misconduct had been made out on the evidence.

52. Here, as in *Strom*, the proposed appeal arises under a statutory right of appeal on a question of law. *Strom* illustrates that appellate review of the Decision must consider whether sufficient weight was accorded to the important criteria governing CRTC's exercise of its discretion to set licence conditions for the CBC's broadcast services. *Strom* further emphasizes that this Court is empowered to consider whether the CRTC engaged in the "complete contextual inquiry" sensitive to the factors governing the exercise of its discretion.

**(ii) The CRTC's jurisdiction**

53. The CRTC enjoys broad jurisdiction under the *Broadcasting Act* to regulate the Canadian broadcasting industry.<sup>48</sup> It is mandated to licence broadcast programming and distribution undertakings and to ensure compliance with these licences.<sup>49</sup> Licences may include any conditions deemed "appropriate" by the CRTC for the implementation of Canadian broadcasting policy.

54. The broadcasting policy to be furthered by the licensing regime is enumerated in *Broadcasting Act* s. 3, and includes policies specific only to the CBC, as discussed above. As a result of the breadth of the broadcasting policy, this Honourable Court has noted that the *Broadcasting Act* requires the CRTC to balance "about forty sometimes conflicting objectives".<sup>50</sup>

55. Under the previous deferential approach, the Court's review of the CRTC's discretionary licence renewal decisions was limited to analyzing whether the discretion was exercised

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<sup>48</sup> [TVA Group Inc. v. Bell Canada](#), 2021 FCA 153 at para 32, Tab 12 of Appendix B.

<sup>49</sup> [Bell Canada v. Canada \(Attorney General\)](#), 2019 SCC 66 at para 8, [2019] 4 SCR 845, Tab 13 of Appendix B.

<sup>50</sup> [Canadian Broadcasting Corp. v. Métromédia CMR Montréal Inc.](#) (1999), 254 NR 266 at paras 3-6, Tab 14 of Appendix B.

“judicially” – that is, whether the CRTC acted “in good faith, in accordance with the law, [did] not take into account irrelevant factors and [did] not fail to consider relevant factors.”<sup>51</sup>

**(iii) The CRTC failed to give sufficient weight to the relevant considerations in the Decision**

56. The CRTC failed to exercise its discretion “judicially” in the licensing renewal at issue. It materially failed to give appropriate (or any) consideration to the relevant factors and policy objectives which should have guided its analysis, and instead gave inappropriate consideration to irrelevant factors supporting its ultimate deregulatory conclusion.

57. The Decision’s deregulatory programme will have significant deleterious impacts on the CRTC’s statutory objectives and arguably reflects an incorrect and unjustified weighing of the relevant policies. Post-*Vavilov*, this Court would be entitled on appeal to apply the appellate standard of review of an exercise of discretion (correctness), and analyze without deference whether the CRTC gave sufficient weight to the relevant considerations, policies and objectives at play in the Decision.<sup>52</sup>

58. While the CRTC is entitled to broadly fashion appropriate licensing conditions to fulfill its mandate, it must consider how those licensing conditions will impinge on the various factors to be advanced by those conditions.

59. Those considerations are materially inadequate or absent from the Decision. The majority simply failed to give due (or any) regard to a number of mandatory policy objectives. The Simard and Lafontaine Dissents catalogue the ways in which the Decision violates various of the CRTC’s mandatory policy objectives.

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<sup>51</sup> [Genex Communications Inc. v. Canada \(Attorney General\)](#), 2005 FCA 283 at para 37, Tab 5 of Appendix B; citing [Canada \(Attorney General\) v. Purcell](#) (1995), [1996] 1 FC 644, Tab 8 of Appendix B.

<sup>52</sup> [Reza v. Canada](#) (1994), [1994] 2 SCR 394, Tab 10 of Appendix B.

60. A fundamental principle in fashioning licence conditions is that they are cumulative. As noted in the Smard Dissent, the “full ensemble must be presented in a coherent and comprehensive manner in keeping with the fulfilment of the CBC’s mandate and the Canadian broadcasting policy set out in subsection 3(1) of the *Act*.”<sup>53</sup>

61. The Commission has a distinct role to require “accountability” from licensees with respect to *Broadcasting Act* compliance.<sup>54</sup> Instead, the Decision released the CBC from a “critical mass” of conditions of licence and did not fashion any meaningful replacements to these conditions.<sup>55</sup> By removing mandatory conditions of licence from CBC, the Decision also strips the CRTC of its coercive powers to force compliance with the licence.<sup>56</sup>

62. Replacing mandatory exhibition and other requirements with a nonbinding “measurement framework” does nothing to ensure that the Canadians will “have access to programming that fulfills the CBC’s mandate”. The lack of “objective and measurable targets” will cause of a “net loss of transparency and objectivity” and ultimately undermine the public interest.<sup>57</sup>

63. As the Simard Dissent states, “conditions of licence and reports serve very different functions” and reports “are not a substitute for applicable binding legal tools, such as conditions of licence, to enforce... compliance.”<sup>58</sup> An “important component of the regulator’s role” consists in imposing “performance targets on the licensee via conditions of licence.”<sup>59</sup> The Decision eliminates a “clear, measurable and pre-established framework” for monitoring and enforcing compliance.<sup>60</sup>

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<sup>53</sup> Simard Dissent, p 2.

<sup>54</sup> Simard Dissent, p 8.

<sup>55</sup> Simard Dissent, p 3.

<sup>56</sup> Simard Dissent, p 3.

<sup>57</sup> Simard Dissent, p 4.

<sup>58</sup> Simard Dissent, p 6.

<sup>59</sup> Simard Dissent, p 7.

<sup>60</sup> Simard Dissent, p 7.

64. Likewise, the Lafontaine Dissent stated that “reporting and consultative measures... will not ensure a minimum number of hours of high-quality and diverse Canadian programs will be developed, commissioned, produced, acquired and broadcast across the Corporation’s linear television services over the next licence term”.<sup>61</sup>

65. The fundamental flaw in the Decision’s move away from accountability and toward mere reporting is particularly noteworthy in light of the CBC’s own admission that perception surveys are “not appropriate regulatory tools for evaluating regulatory compliance”.

66. The move away from outcomes-based regulation essentially makes it impossible for the CRTC and stakeholders to determine whether the CBC is actually meeting its statutory obligations under the *Broadcasting Act*. If the Decision is permitted to stand, there will simply be no objective basis upon which to determine whether licence compliance has been achieved. This in turn significantly diminishes the CBC’s accountability and transparency to Canadians.<sup>62</sup>

67. The exhibition-expenditure model in the Decision “prematurely and unnecessarily sacrificed the requirements for the exhibition of Canadian content on traditional platforms and, on the other hand, given the CBC excessive latitude through expenditure requirements without real limits.”<sup>63</sup> As stated in the Lafontaine Dissent, the Decision eliminates the yardstick for determining whether the CBC is living up to its licensing and statutory obligations.<sup>64</sup>

68. The Decision eliminates minimum spending requirements for the CBC’s licensed television services.<sup>65</sup> Instead, the CBC may spend as much of its annual budget as it chooses on its entirely unregulated online platform during its next licence term.

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<sup>61</sup> Lafontaine Dissent, p 3.

<sup>62</sup> Lafontaine Dissent, p 3.

<sup>63</sup> Simard Dissent, p 8.

<sup>64</sup> Lafontaine Dissent, p 19.

<sup>65</sup> Lafontaine Dissent, p 2.

69. Licensed television services are the most readily accessible to all Canadians. The undisputed evidence before the CRTC was that millions of Canadians rely exclusively on television and have no meaningful access to broadband internet.<sup>66</sup> The CRTC's deregulatory decision thus entirely ignores the interests of these Canadians and cannot be said to advance the *Broadcasting Act's* policy objectives.

70. As discussed above, there is no CRTC policy or past determination supporting the framework adopted for the CBC in the Decision.<sup>67</sup>

71. The Lafontaine Dissent points out further that the Decision will allow “hundreds of millions of dollars a year” to leave the CBC's regulated linear television platforms and flow to its unregulated “online audiovisual platforms”.

72. In fact, the cross-platform expenditure framework approved in the Decision confers an undue competitive advantage on the CBC because it is indexed to expenditures without any limit on allocation to online offerings and does not actually require exhibition of Canadian programming on CBC's linear television service. As well, this expenditure scheme and lack of exhibition requirements undermines the CBC's accountability for exhibiting Canadian programming and, on the CBC's own prior submissions to the CRTC, will likely result in less Canadian content being produced and broadcast.<sup>68</sup>

73. Further, and unlike its competitors, the CBC will enjoy freedom from a predominance of Canadian programming exhibition obligations, local programming exhibition and expenditure obligations, and expenses-denominated Canadian and Programs of National Interest expenditure obligations.<sup>69</sup>

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<sup>66</sup> Lafontaine Dissent, p 10.

<sup>67</sup> Lafontaine Dissent, p 5.

<sup>68</sup> Lafontaine Dissent, p 15.

<sup>69</sup> Lafontaine Dissent, p. 19.

74. The cross-platform expenditure and exhibition framework approved in the Decision was not supported in the submissions of any of the intervenors or the CBC, was not telegraphed in the Notice of Consultation, was contrary to previously promulgated policies (e.g. the “Let’s Talk TV” policy framework), and was not within the reasonable apprehension of the parties in light of how submissions unfolded during the hearing.

75. The decision to remove programming exhibition requirements and replace them with cross-platform revenue-denominated expenditure requirements is inconsistent with a number of public policy objectives as articulated in the *Broadcasting Act*, including, *inter alia*, that the programming provided by the CBC should be predominantly and distinctively Canadian, and that Canadian broadcasters must make a predominant use of Canadian creative resources in the presentation of Canadian programming.

76. Second, the Decision also undermines policy objectives concerning the interests of Canadians without access to broadband internet, those with disabilities, the elderly, children, and Official Minority Language Communities. The majority disregarded the evidence before it that 11% of Canadian cannot or do not access broadband services, with a disproportionate concentration in rural, remote and/or First Nations communities, and among older and younger viewers. The majority’s decision is thus inconsistent with *Broadcasting Act* s. 3(1)(d)(iii), which requires the CBC to respond to the “circumstances” of its viewers.

77. The majority’s decision also disadvantages viewers with disabilities, because accessibility requirements do not apply to the CBC’s digital undertakings, and the majority decision authorizes the CBC to spend unlimited resources on these unregulated offerings. This is inconsistent with s. 3(1)(p) of the *Broadcasting Act*, which directs the CRTC to ensure that “programming accessible by disabled persons” should be provided given resource availability. This is also inconsistent with

the *Accessible Canada Act*, which directs that new barriers for Canadians with disabilities should not be placed through administrative decisions.

78. The Decision also entails the removal of all licensing obligations for the broadcast of French language children's and youth programming.<sup>70</sup> Children's television is essential for development of French-speaking children's language skills and acquisition of cultural heritage. This is especially underscored for Radio-Canada and the CBC which may be the only non-digital French-language media which a given Francophone community may be able to access,<sup>71</sup> and given that the undisputed evidence before the Commission was that a majority of children aged 2-6 and 42% of children aged 7-11 have a preference for linear television.<sup>72</sup>

79. The Decision would impose a minimum obligation of one-hour of original first-run Canadian programming aimed at children under 13 years of age as its sole licence restriction relating to Children's programming. This is considerably less than the 15 hour per week of children's programming which the CBC submitted and which intervenors urged.

80. The Decision is also inconsistent with s. 3(1)(i)(i) of the *Broadcast Act*, which requires programming with in the Canadian broadcasting system to include programming for children,<sup>73</sup> and s. 3(1)(m)(iv) of the *Broadcasting Act*, which states that the programming provided by the Corporation should... refle[t]... the particular needs and circumstances of English and French linguistic minorities.

81. Third, and similarly, the Decision does not require the CBC to broadcast Canadian independently-produced programming as a condition of licence. This is contrary to the CBC's proposal to the CRTC, which essentially reiterated conditions of licence relating to independently

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<sup>70</sup> Lafontaine Dissent, p 21.

<sup>71</sup> Lafontaine Dissent, p 21.

<sup>72</sup> Lafontaine Dissent, p 22.

<sup>73</sup> Lafontaine Dissent, p 22

produced programming similar to those currently in effect.<sup>74</sup> This is contrary to s. 3(1)(i)(v) of the *Broadcasting Act*, which provides that the programming provided by the Canadian broadcasting system should include a significant contribution from the Canadian independent production sector.

82. The Decision also fails to renew the condition of licence that the CBC's network and stations broadcast one Canadian feature film per month, a requirement supported by the CBC in its application as well as by numerous intervenors.<sup>75</sup>

83. Fourth, the Decision fails to account for online platforms' exemption from broadcast standards codes under the prevailing Digital Media Exemption Order. Online platforms are not required to comply with either broadcast standards codes or rules relating to advertising to children. These codes are imposed on television service through conditions of licence, and have been recognized as attaining reflection of diverse groups of Canadian under s. 3(1)(d)(iii) of the *Broadcasting Act*.

84. Fifth, the Decision puts an undue emphasis on reporting and consultation obligations rather than mandatory licensing obligations to ensure compliance with its objectives. This determination is unsupported in the evidence, was made without notice to the parties (and is contradictory to their submissions) and will undermine the *Broadcasting Act's* purposes of promoting the development and broadcast of original Canadian programming. Indeed, the replacement of minimum licence obligations with perception surveys and consultations was criticized by the CBC itself before the CRTC.<sup>76</sup>

85. Sixth, the Decision does not include requirements for broadcast of a minimum number of hours of local programming during broadcast week in the major Canadian metropolitan markets,

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<sup>74</sup> Dissent at p 27.

<sup>75</sup> Dissent at p 30.

<sup>76</sup> Lafontaine Dissent, p 31.

despite the CBC's concession in its submissions that such a minimum obligation was appropriate and the contrary interventions.

86. This undermines access to local/news programming generally, as well as impairing French- and English minority language communities from receiving language-relevant local programming.<sup>77</sup> It disregards the needs of groups who are dependent on linear television. It is inconsistent with ss. 3(1)(d)(ii), 3(1)(d)(iii), 3(1)(i)(i), 3(1)(i)(iii), 3(1)(l), and 3(1)(m) of the *Broadcasting Act*.<sup>78</sup>

#### **E. The CRTC lacked the evidentiary basis to make the Decision**

87. Errors of fact will amount to errors of law where the decision maker commits an error of principle in assessing the facts – for example, making a “egregiously incorrect and unsupported finding of fact”.<sup>79</sup>

88. This Honourable Appeal has recognized that the making of a decision without evidence, or while ignoring relevant evidence, may amount to an error of law reviewable under Section 31.<sup>80</sup>

89. In this case, there is simply no support in the record for the notion that the CBC will fulfill its “operational imperatives” in the absence of mandatory conditions of licence.<sup>81</sup>

90. In the Decision, the majority made determinations without supporting evidence, amounting to an error of law. The Lafontaine Dissent draws attention to two broad, related determinations unsupported by evidence: (1) removal of the CBC's licensing restrictions generally was appropriate given that the CBC had exceeded its licence-mandated targets in the previous licence period and so could be trusted to police itself and (2) mandatory Canadian content exhibition- and

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<sup>77</sup> Dissent at p 25.

<sup>78</sup> Dissent at p 27.

<sup>79</sup> *Canada (Attorney General) v. Best Buy Canada Ltd.*, 2021 FCA 161 at para 25, Tab 7 of Appendix B.

<sup>80</sup> *Bell Canada v. British Columbia Broadband Association*, 2020 FCA 140 at para 156, Tab 9 of Appendix B.

<sup>81</sup> Simard Dissent, p 9.

expenditure obligations could be removed given the modest expansion of reporting and consultative requirements. In addition, as canvassed above, there are numerous other facets of the Decision turning on an absence or misapprehension of the record.

91. As noted above, this Honourable Court has recognized that the making of a decision without evidence, or while ignoring relevant evidence, may amount to an error of law reviewable under *Broadcasting Act* s. 31(2).<sup>82</sup>

**F. The CRTC failed to provide notice of the Decision**

92. The CRTC's departed dramatically from its own precedents and short-circuited the established sequence for a regulatory change of this magnitude. As noted in the Lafontaine Dissent, while the CRTC is not bound by precedent, it must nevertheless give regard to continuity, consistency and predictability in regard to its past decisions to ensure regulatory certainty within the Canadian broadcasting system.

93. As discussed above, the Decision's deregulatory aspects were not contemplated or telegraphed by the Broadcasting Notice of Consultation CRTC 2019-379, and were either not addressed during the hearing or only raised for the first time in reply (which, as a matter of fairness, ought to bar the raising of issues which should have been framed at first instance). This departure from the parties' expectations and the framing of issues in the notice of consultation could itself be the basis for an appeal because of a lack of procedural fairness.

94. The Supreme Court of Canada gave this issue consideration previously and concluded that the CRTC was only obliged to provide notice of its intent to discuss "increased Canadian drama offerings without particulars. The CRTC was not required to give an advance indication of its

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<sup>82</sup> [Bell Canada v. British Columbia Broadband Association, 2020 FCA 140](#) at para 156, Tab 9 of Appendix B.

probable decision”.<sup>83</sup> Unlike in that case, however, the licensing changes ordered by the CRTC here were not contemplated in prior decisions or the parties’ submissions or questioning during the hearing. Rather, the Decision was a radical departure from what was reasonably contemplated as the issues at stake in the proceeding.

95. This failure of notification undermines the “polycentric” and “adversarial” character of the proceeding. The parties’ advocacy, and scope and character of intervenors and public attention will change depending on how the stakes and range of licensing conditions under contemplation are telegraphed.

96. The CRTC’s past practice is also relevant to the question of notice. Given CRTC’s past practice and the currency of the “Let’s Talk TV” policy, the parties would have reasonably expected that CRTC would not undertake deregulation of this magnitude until enactment of a new policy framework.

97. As noted in the Lafontaine Dissent, not only is the Decision unprecedented, but the process used to arrive at the Decision is also unprecedented.<sup>84</sup>

it should be noted that over the last twenty-five years, any fundamental changes to the Commission’s licensing approach to television broadcasting took place within the context of a full-scale policy review where input was provided from Canadians, experts and a broad range of industry stakeholders. At the conclusion of the policy proceedings, the Commission issued detailed public policies, and, where required, updated its regulations. The Commission then applied the new policy frameworks, as appropriate, at the ensuing television broadcasting licence renewal hearings.

98. Another factor contributing to the lack of notice of the Decision was its prematurity. The Decision was made in the absence of any CRTC policy review of the regulatory framework for provision of “audiovisual services via digital platforms or of the national public broadcaster’s

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<sup>83</sup> [\*Canada \(Canadian Radio-Television and Telecommunications Commission\) v. CTV Television Network Ltd.\* \(1982\), \[1982\] 1 SCR 530](#), Tab 15 of Appendix B.

<sup>84</sup> Lafontaine Dissent, p 6.

mandate in the digital age”,<sup>85</sup> and was made in the shadow of Bill C-11, which is pending before Parliament and will introduce significant changes to the Canadian digital regulation. The reasonable expectation of all actors, including the CBC vis-à-vis its submissions, was that regulation of the character and scope seen in the Decision would follow, and not precede, Bill C-11 and the promulgation of a responsive policy framework by the CRTC.

99. The CBC’s “activities and programming are the cornerstone” of the Canadian broadcasting system. Given its “unique role, mandate and capabilities”, the majority decision will “set the bar for determining the regulatory burden of other broadcasting undertakings operating in Canada”.<sup>86</sup> This required “caution in lifting the conditions of licence” prior to the enactment of a legislative direction (in Bill C-11) and a new policy framework concerning how online services were to be integrated with legacy broadcast services subject to conditions of licence.<sup>87</sup>

100. While the CRTC is not strictly bound by precedent, its licensing decisions must fit within stakeholders’ reasonable expectations, as assessed from past decisions and currently in-effect policies.<sup>88</sup> Here, the framework of the Decision departed so drastically from the pre-existing CRTC policy framework that it was not within the contemplation of any of the parties, as reflected by the complete lack of evidence or submissions presented on the new deregulatory framework.

#### **PART IV - STATEMENT OF THE ORDER SOUGHT**

101. For the reasons set out above, the Applicant/Moving Party, CMPA, respectfully requests:

- a. An Order granting the Applicant leave to appeal to this Court from the decision of the Canadian Radio-television and Telecommunications Commission (the “CRTC”) in Broadcasting Decision CRTC 2022-165, issued by the CRTC on June

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<sup>85</sup> Simard Dissent, p 2.

<sup>86</sup> Simard Dissent, pp 6-7.

<sup>87</sup> Simard Dissent, pp 7.

<sup>88</sup> Lafontaine Dissent, p 5.

22, 2022 (the “Decision”), and the related Broadcasting Orders CRTC 2022-166 and CRTC 2022-167; and

- b. An Order dispensing with the service requirement set out in Rule 339(1)(c) of the *Federal Courts Rules*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22<sup>nd</sup> DAY OF JULY, 2022



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Peter Henein – Waddell Phillips PC

## PART V - LIST OF AUTHORITIES

<b>Tab</b>	<b>Title</b>
1	<i>Canadian Broadcasting League v. Canadian Radio-Television and Telecommunications Commission</i> (1979), [1980] 1 FC 396
2	<i>John Graham &amp; Co. Ltd. et al. v. Canadian Radio-Television Commission</i> (1975), [1976] 2 FC 82
3	<i>CKLN Radio Incorporated v. Canada (Attorney General)</i> , 2011 FCA 135
4	<i>Lukács v. Swoop Inc.</i> , 2019 FCA 145
5	<i>Genex Communications Inc. v. Canada (Attorney General)</i> , 2005 FCA 283
6	<i>Canada (Minister of Citizenship and Immigration) v. Vavilov</i> , 2019 SCC 65, [2019] 4 SCR 653
7	<i>Canada (Attorney General) v. Best Buy Canada Ltd.</i> , 2021 FCA 161
8	<i>Canada (Attorney General) v. Purcell</i> (1995), [1996] 1 FC 644
9	<i>Bell Canada v. British Columbia Broadband Association</i> , 2020 FCA 140
10	<i>Reza v. Canada</i> (1994), [1994] 2 SCR 394
11	<i>Strom v Saskatchewan Registered Nurses' Association</i> , 2020 SKCA 112
12	<i>TVA Group Inc. v. Bell Canada</i> , 2021 FCA 153
13	<i>Bell Canada v. Canada (Attorney General)</i> , 2019 SCC 66, [2019] 4 SCR 845
14	<i>Canadian Broadcasting Corp. v. Métromédia CMR Montréal Inc.</i> (1999), 254 NR 266
15	<i>Canada (Canadian Radio-Television and Telecommunications Commission) v. CTV Television Network Ltd.</i> (1982), [1982] 1 SCR 530

**APPENDIX A – PROVISIONS OF STATUTES OR REGULATIONS RELIED UPON**



CANADA

CONSOLIDATION

CODIFICATION

## Broadcasting Act

## Loi sur la radiodiffusion

S.C. 1991, c. 11

L.C. 1991, ch. 11

Current to June 20, 2022

À jour au 20 juin 2022

Last amended on July 1, 2020

Dernière modification le 1 juillet 2020

### Meaning of *other means of telecommunication*

(2) For the purposes of this Act, ***other means of telecommunication*** means any wire, cable, radio, optical or other electromagnetic system, or any similar technical system.

### Interpretation

(3) This Act shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings.

1991, c. 11, s. 2; 1993, c. 38, s. 81; 1995, c. 11, s. 43.

## Broadcasting Policy for Canada

### Declaration

**3 (1)** It is hereby declared as the broadcasting policy for Canada that

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

(b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;

(c) English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;

(d) the Canadian broadcasting system should

(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,

(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,

(iii) through its programming and 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, including equal rights, the linguistic duality

### Moyen de télécommunication

(2) Pour l'application de la présente loi, sont inclus dans les moyens de télécommunication les systèmes électromagnétiques — notamment les fils, les câbles et les systèmes radio ou optiques —, ainsi que les autres procédés techniques semblables.

### Interprétation

(3) L'interprétation et l'application de la présente loi doivent se faire de manière compatible avec la liberté d'expression et l'indépendance, en matière de journalisme, de création et de programmation, dont jouissent les entreprises de radiodiffusion.

1991, ch. 11, art. 2; 1993, ch. 38, art. 81; 1995, ch. 11, art. 43.

## Politique canadienne de radiodiffusion

### Politique canadienne de radiodiffusion

**3 (1)** Il est déclaré que, dans le cadre de la politique canadienne de radiodiffusion :

a) le système canadien de radiodiffusion doit être, effectivement, la propriété des Canadiens et sous leur contrôle;

b) le système canadien de radiodiffusion, composé d'éléments publics, privés et communautaires, utilise des fréquences qui sont du domaine public et offre, par sa programmation essentiellement en français et en anglais, un service public essentiel pour le maintien et la valorisation de l'identité nationale et de la souveraineté culturelle;

c) les radiodiffusions de langues française et anglaise, malgré certains points communs, diffèrent quant à leurs conditions d'exploitation et, éventuellement, quant à leurs besoins;

d) le système canadien de radiodiffusion devrait :

(i) servir à sauvegarder, enrichir et renforcer la structure culturelle, politique, sociale et économique du Canada,

(ii) favoriser l'épanouissement de l'expression canadienne en proposant une très large programmation qui traduise des attitudes, des opinions, des idées, des valeurs et une créativité artistique canadiennes, qui mette en valeur des divertissements faisant appel à des artistes canadiens et qui fournisse de l'information et de l'analyse concernant le Canada et l'étranger considérés d'un point de vue canadien,

and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and

(iv) be readily adaptable to scientific and technological change;

(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, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;

(g) the programming originated by broadcasting undertakings should be of high standard;

(h) all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast;

(i) the programming provided by the Canadian broadcasting system should

(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,

(ii) be drawn from local, regional, national and international sources,

(iii) include educational and community programs,

(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and

(v) include a significant contribution from the Canadian independent production sector;

(j) educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system;

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

(iii) par sa programmation et par les chances que son fonctionnement offre en matière d'emploi, répondre aux besoins et aux intérêts, et refléter la condition et les aspirations, des hommes, des femmes et des enfants canadiens, notamment l'égalité sur le plan des droits, la dualité linguistique et le caractère multiculturel et multiracial de la société canadienne ainsi que la place particulière qu'y occupent les peuples autochtones,

(iv) demeurer aisément adaptable aux progrès scientifiques et techniques;

e) tous les éléments du système doivent contribuer, de la manière qui convient, à la création et la présentation d'une programmation canadienne;

f) toutes les entreprises de radiodiffusion sont tenues de faire appel au maximum, et dans tous les cas au moins de manière prédominante, aux ressources — créatrices et autres — canadiennes pour la création et la présentation de leur programmation à moins qu'une telle pratique ne s'avère difficilement réalisable en raison de la nature du service — notamment, son contenu ou format spécialisé ou l'utilisation qui y est faite de langues autres que le français ou l'anglais — qu'elles fournissent, auquel cas elles devront faire appel aux ressources en question dans toute la mesure du possible;

g) la programmation offerte par les entreprises de radiodiffusion devrait être de haute qualité;

h) les titulaires de licences d'exploitation d'entreprises de radiodiffusion assument la responsabilité de leurs émissions;

i) la programmation offerte par le système canadien de radiodiffusion devrait à la fois :

(i) être variée et aussi large que possible en offrant à l'intention des hommes, femmes et enfants de tous âges, intérêts et goûts une programmation équilibrée qui renseigne, éclaire et divertit,

(ii) puiser aux sources locales, régionales, nationales et internationales,

(iii) renfermer des émissions éducatives et communautaires,

(iv) dans la mesure du possible, offrir au public l'occasion de prendre connaissance d'opinions divergentes sur des sujets qui l'intéressent,

(v) faire appel de façon notable aux producteurs canadiens indépendants;

**(l)** the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;

**(m)** the programming provided by the Corporation should

- (i)** be predominantly and distinctively Canadian,
- (ii)** reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,
- (iii)** actively contribute to the flow and exchange of cultural expression,
- (iv)** be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,
- (v)** strive to be of equivalent quality in English and in French,
- (vi)** contribute to shared national consciousness and identity,
- (vii)** be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and
- (viii)** reflect the multicultural and multiracial nature of Canada;

**(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, and where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (l) and (m);

**(o)** programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;

**(p)** programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;

**(q)** without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (i), alternative television

**j)** la programmation éducative, notamment celle qui est fournie au moyen d'installations d'un organisme éducatif indépendant, fait partie intégrante du système canadien de radiodiffusion;

**k)** une gamme de services de radiodiffusion en français et en anglais doit être progressivement offerte à tous les Canadiens, au fur et à mesure de la disponibilité des moyens;

**l)** la Société Radio-Canada, à titre de radiodiffuseur public national, devrait offrir des services de radio et de télévision qui comportent une très large programmation qui renseigne, éclaire et divertit;

**m)** la programmation de la Société devrait à la fois :

- (i)** être principalement et typiquement canadienne,
- (ii)** refléter la globalité canadienne et rendre compte de la diversité régionale du pays, tant au plan national qu'au niveau régional, tout en répondant aux besoins particuliers des régions,
- (iii)** contribuer activement à l'expression culturelle et à l'échange des diverses formes qu'elle peut prendre,
- (iv)** être offerte en français et en anglais, de manière à refléter la situation et les besoins particuliers des deux collectivités de langue officielle, y compris ceux des minorités de l'une ou l'autre langue,
- (v)** chercher à être de qualité équivalente en français et en anglais,
- (vi)** contribuer au partage d'une conscience et d'une identité nationales,
- (vii)** être offerte partout au Canada de la manière la plus adéquate et efficace, au fur et à mesure de la disponibilité des moyens,
- (viii)** refléter le caractère multiculturel et multiracial du Canada;

**n)** les conflits entre les objectifs de la Société énumérés aux alinéas l) et m) et les intérêts de toute autre entreprise de radiodiffusion du système canadien de radiodiffusion doivent être résolus dans le sens de l'intérêt public ou, si l'intérêt public est également assuré, en faveur des objectifs énumérés aux alinéas l) et m);

programming services in English and in French should be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;

**(r)** the programming provided by alternative television programming services should

**(i)** be innovative and be complementary to the programming provided for mass audiences,

**(ii)** cater to tastes and interests not adequately provided for by the programming provided for mass audiences, and include programming devoted to culture and the arts,

**(iii)** reflect Canada's regions and multicultural nature,

**(iv)** as far as possible, be acquired rather than produced by those services, and

**(v)** be made available throughout Canada by the most cost-efficient means;

**(s)** private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,

**(i)** contribute significantly to the creation and presentation of Canadian programming, and

**(ii)** be responsive to the evolving demands of the public; and

**(t)** distribution undertakings

**(i)** should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,

**(ii)** should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,

**(iii)** should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and

**(iv)** may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in

**o)** le système canadien de radiodiffusion devrait offrir une programmation qui reflète les cultures autochtones du Canada, au fur et à mesure de la disponibilité des moyens;

**p)** le système devrait offrir une programmation adaptée aux besoins des personnes atteintes d'une déficience, au fur et à mesure de la disponibilité des moyens;

**q)** sans qu'il soit porté atteinte à l'obligation qu'ont les entreprises de radiodiffusion de fournir la programmation visée à l'alinéa i), des services de programmation télévisée complémentaires, en anglais et en français, devraient au besoin être offerts afin que le système canadien de radiodiffusion puisse se conformer à cet alinéa;

**r)** la programmation offerte par ces services devrait à la fois :

**(i)** être innovatrice et compléter celle qui est offerte au grand public,

**(ii)** répondre aux intérêts et goûts de ceux que la programmation offerte au grand public laisse insatisfaits et comprendre des émissions consacrées aux arts et à la culture,

**(iii)** refléter le caractère multiculturel du Canada et rendre compte de sa diversité régionale,

**(iv)** comporter, autant que possible, des acquisitions plutôt que des productions propres,

**(v)** être offerte partout au Canada de la manière la plus rentable, compte tenu de la qualité;

**s)** les réseaux et les entreprises de programmation privés devraient, dans la mesure où leurs ressources financières et autres le leur permettent, contribuer de façon notable à la création et à la présentation d'une programmation canadienne tout en demeurant réceptifs à l'évolution de la demande du public;

**t)** les entreprises de distribution :

**(i)** devraient donner priorité à la fourniture des services de programmation canadienne, et ce en particulier par les stations locales canadiennes,

**(ii)** devraient assurer efficacement, à l'aide des techniques les plus efficaces, la fourniture de la programmation à des tarifs abordables,

**(iii)** devraient offrir des conditions acceptables relativement à la fourniture, la combinaison et la

particular provide access for underserved linguistic and cultural minority communities.

#### Further declaration

**(2)** It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

### Application

#### Binding on Her Majesty

**4 (1)** This Act is binding on Her Majesty in right of Canada or a province.

#### Application generally

**(2)** This Act applies in respect of broadcasting undertakings carried on in whole or in part within Canada or on board

- (a)** any ship, vessel or aircraft that is
  - (i)** registered or licensed under an Act of Parliament, or
  - (ii)** owned by, or under the direction or control of, Her Majesty in right of Canada or a province;
- (b)** any spacecraft that is under the direction or control of
  - (i)** Her Majesty in right of Canada or a province,
  - (ii)** a citizen or resident of Canada, or
  - (iii)** a corporation incorporated or resident in Canada; or
- (c)** any platform, rig, structure or formation that is affixed or attached to land situated in the continental shelf of Canada.

vente des services de programmation qui leur sont fournis, aux termes d'un contrat, par les entreprises de radiodiffusion,

**(iv)** peuvent, si le Conseil le juge opportun, créer une programmation — locale ou autre — de nature à favoriser la réalisation des objectifs de la politique canadienne de radiodiffusion, et en particulier à permettre aux minorités linguistiques et culturelles mal desservies d'avoir accès aux services de radiodiffusion.

#### Déclaration

**(2)** Il est déclaré en outre que le système canadien de radiodiffusion constitue un système unique et que la meilleure façon d'atteindre les objectifs de la politique canadienne de radiodiffusion consiste à confier la réglementation et la surveillance du système canadien de radiodiffusion à un seul organisme public autonome.

### Application

#### Obligation de Sa Majesté

**4 (1)** La présente loi lie Sa Majesté du chef du Canada ou d'une province.

#### Application

**(2)** La présente loi s'applique aux entreprises de radiodiffusion exploitées — même en partie — au Canada ou à bord :

- a)** d'un navire, bâtiment ou aéronef soit immatriculé ou bénéficiant d'un permis délivré aux termes d'une loi fédérale, soit appartenant à Sa Majesté du chef du Canada ou d'une province, ou relevant de sa compétence ou de son autorité;
- b)** d'un véhicule spatial relevant de la compétence ou de l'autorité de Sa Majesté du chef du Canada ou d'une province, ou de celle d'un citoyen canadien, d'un résident du Canada ou d'une personne morale constituée ou résidant au Canada;
- c)** d'une plate-forme, installation, construction ou formation fixée au plateau continental du Canada.

### For greater certainty

**(3)** For greater certainty, this Act applies in respect of broadcasting undertakings whether or not they are carried on for profit or as part of, or in connection with, any other undertaking or activity.

### Idem

**(4)** For greater certainty, this Act does not apply to any telecommunications common carrier, as defined in the *Telecommunications Act*, when acting solely in that capacity.

1991, c. 11, s. 4; 1993, c. 38, s. 82; 1996, c. 31, s. 57.

## PART II

# Objects and Powers of the Commission in Relation to Broadcasting

## Objects

### Objects

**5 (1)** Subject to this Act and the *Radiocommunication Act* and to any directions to the Commission issued by the Governor in Council under this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2).

### Regulatory policy

**(2)** The Canadian broadcasting system should be regulated and supervised in a flexible manner that

**(a)** 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;

**(b)** takes into account regional needs and concerns;

**(c)** is readily adaptable to scientific and technological change;

**(d)** facilitates the provision of broadcasting to Canadians;

**(e)** facilitates the provision of Canadian programs to Canadians;

### Idem

**(3)** La présente loi s'applique aux entreprises de radiodiffusion exploitées ou non dans un but lucratif ou dans le cours d'une autre activité.

### Entreprises de télécommunication

**(4)** Il demeure entendu que la présente loi ne s'applique pas aux entreprises de télécommunication — au sens de la *Loi sur les télécommunications* — n'agissant qu'à ce titre.

1991, ch. 11, art. 4; 1993, ch. 38, art. 82; 1996, ch. 31, art. 57.

## PARTIE II

# Mission et pouvoirs du conseil en matière de radiodiffusion

## Mission

### Mission

**5 (1)** Sous réserve des autres dispositions de la présente loi, ainsi que de la *Loi sur la radiocommunication* et des instructions qui lui sont données par le gouverneur en conseil sous le régime de la présente loi, le Conseil réglemente et surveille tous les aspects du système canadien de radiodiffusion en vue de mettre en œuvre la politique canadienne de radiodiffusion.

### Réglementation et surveillance

**(2)** La réglementation et la surveillance du système devraient être souples et à la fois :

**a)** tenir compte des caractéristiques de la radiodiffusion dans les langues française et anglaise et des conditions différentes d'exploitation auxquelles sont soumises les entreprises de radiodiffusion qui diffusent la programmation dans l'une ou l'autre langue;

**b)** tenir compte des préoccupations et des besoins régionaux;

**c)** pouvoir aisément s'adapter aux progrès scientifiques et techniques;

**d)** favoriser la radiodiffusion à l'intention des Canadiens;

**e)** favoriser la présentation d'émissions canadiennes aux Canadiens;

**(f)** does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and

**(g)** is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.

### Conflict

**(3)** The Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2).

### Employment equity

**(4)** Where a broadcasting undertaking is subject to the *Employment Equity Act*, the powers granted to the Commission under this Act do not extend to the regulation or supervision of matters concerning employment equity in relation to that broadcasting undertaking.

1991, c. 11, s. 5; 1995, c. 44, s. 46.

### Policy guidelines and statements

**6** The Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act, but no such guidelines or statements issued by the Commission are binding on the Commission.

### 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).

### Exception

**(2)** No order may be made under subsection (1) in respect of the issuance of a licence to a particular person or in respect of the amendment, renewal, suspension or revocation of a particular licence.

**f)** permettre la mise au point de techniques d'information et leur application ainsi que la fourniture aux Canadiens des services qui en découlent;

**g)** tenir compte du fardeau administratif qu'elles sont susceptibles d'imposer aux exploitants d'entreprises de radiodiffusion.

### Conflit

**(3)** Le Conseil privilégié, dans les affaires dont il connaît, les objectifs de la politique canadienne de radiodiffusion en cas de conflit avec ceux prévus au paragraphe (2).

### Équité en matière d'emploi

**(4)** Les entreprises de radiodiffusion qui sont assujetties à la *Loi sur l'équité en matière d'emploi* ne relèvent pas des pouvoirs du Conseil pour ce qui est de la réglementation et de la surveillance du domaine de l'équité en matière d'emploi.

1991, ch. 11, art. 5; 1995, ch. 44, art. 46.

### Directives du Conseil

**6** Le Conseil peut à tout moment formuler des directives — sans pour autant être lié par celles-ci — sur toute question relevant de sa compétence au titre de la présente loi.

### Instructions du gouverneur en conseil

**7 (1)** Sous réserve du paragraphe (2) et de l'article 8, le gouverneur en conseil peut, par décret, donner au Conseil, au chapitre des grandes questions d'orientation en la matière, des instructions d'application générale relativement à l'un ou l'autre des objectifs de la politique canadienne de radiodiffusion ou de la réglementation et de la surveillance du système canadien de radiodiffusion.

### Effet limité

**(2)** Le décret ne peut toutefois prévoir l'attribution nominative d'une licence ni la modification, le renouvellement, la suspension ou la révocation d'une licence en particulier.

### Consultation

**(4)** The Minister shall consult with the Commission before a proposed order is published or is laid before a House of Parliament under subsection (1).

### Definition of *sitting day of Parliament*

**(5)** In this section, *sitting day of Parliament* means a day on which either House of Parliament sits.

## General Powers

### Licences, etc.

**9 (1)** Subject to this Part, the Commission may, in furtherance of its objects,

- (a)** establish classes of licences;
- (b)** issue licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee
  - (i)** as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1), and
  - (ii)** in the case of licences issued to the Corporation, as the Commission deems consistent with the provision, through the Corporation, of the programming contemplated by paragraphs 3(1)(l) and (m);
- (c)** amend any condition of a licence on application of the licensee or, where five years have expired since the issuance or renewal of the licence, on the Commission's own motion;
- (d)** issue renewals of licences for such terms not exceeding seven years and subject to such conditions as comply with paragraph (b);
- (e)** suspend or revoke any licence;
- (f)** require any licensee to obtain the approval of the Commission before entering into any contract with a telecommunications common carrier for the distribution of programming directly to the public using the facilities of that common carrier;
- (g)** require any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting; and
- (h)** require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and

### Consultation

**(4)** Le ministre consulte le Conseil avant la publication et le dépôt du projet de décret.

### Jour de séance

**(5)** Pour l'application du présent article, *jour de séance du Parlement* s'entend d'un jour où l'une ou l'autre chambre siège.

## Pouvoirs généraux

### Catégories de licences

**9 (1)** Sous réserve des autres dispositions de la présente partie, le Conseil peut, dans l'exécution de sa mission :

- a)** établir des catégories de licences;
- b)** attribuer des licences pour les périodes maximales de sept ans et aux conditions liées à la situation du titulaire qu'il estime indiquées pour la mise en œuvre de la politique canadienne de radiodiffusion, et, dans le cas de licences attribuées à la Société, lui permettant, à son avis, d'offrir la programmation visée aux alinéas 3(1) l) et m);
- c)** modifier les conditions d'une licence soit sur demande du titulaire, soit, plus de cinq ans après son attribution ou son renouvellement, de sa propre initiative;
- d)** renouveler les licences pour les périodes maximales de sept ans et aux conditions visées à l'alinéa b);
- e)** suspendre ou révoquer toute licence;
- f)** obliger les titulaires de licences à obtenir l'approbation préalable par le Conseil des contrats passés avec les exploitants de télécommunications pour la distribution — directement au public — de programmation au moyen de l'équipement de ceux-ci;
- g)** obliger les titulaires de licences d'exploitation d'entreprises de distribution à privilégier la fourniture de radiodiffusion;
- h)** obliger ces titulaires à offrir certains services de programmation selon les modalités qu'il précise.

conditions as the Commission deems appropriate, programming services specified by the Commission.

### Restrictions re conditions

(2) Notwithstanding subsections (1) and 28(3), no licence of a distribution undertaking may be made subject to a condition that requires the licensee to substitute replacement material for commercial messages carried in a broadcasting signal received by that licensee.

### Exception

(3) Subsection (2) does not apply in respect of a condition of a licence renewed after October 4, 1987 where before that date the licensee was complying with such a condition.

### Exemptions

(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).

1991, c. 11, s. 9; 1994, c. 26, s. 10(F).

### Regulations generally

10 (1) The Commission may, in furtherance of its objects, make regulations

- (a) respecting the proportion of time that shall be devoted to the broadcasting of Canadian programs;
- (b) prescribing what constitutes a Canadian program for the purposes of this Act;
- (c) respecting standards of programs and the allocation of broadcasting time for the purpose of giving effect to the broadcasting policy set out in subsection 3(1);
- (d) respecting the character of advertising and the amount of broadcasting time that may be devoted to advertising;
- (e) respecting the proportion of time that may be devoted to the broadcasting of programs, including advertisements or announcements, of a partisan political character and the assignment of that time on an equitable basis to political parties and candidates;
- (f) prescribing the conditions for the operation of programming undertakings as part of a network and for

### Restriction

(2) Malgré les paragraphes (1) et 28(3), les licences des entreprises de distribution ne peuvent être assujetties à l'obligation de substituer tout matériel aux messages publicitaires portés par un signal de radiodiffusion qu'elles reçoivent.

### Exception

(3) Le paragraphe (2) ne s'applique pas aux conditions des licences renouvelées après le 4 octobre 1987 dans la mesure où le titulaire s'y conformait avant cette date.

### Exemptions

(4) Le Conseil soustrait, par ordonnance et aux conditions qu'il juge indiquées, les exploitants d'entreprise de radiodiffusion de la catégorie qu'il précise à toute obligation découlant soit de la présente partie, soit de ses règlements d'application, dont il estime l'exécution sans conséquence majeure sur la mise en œuvre de la politique canadienne de radiodiffusion.

1991, ch. 11, art. 9; 1994, ch. 26, art. 10(F).

### Règlements

10 (1) Dans l'exécution de sa mission, le Conseil peut, par règlement :

- a) fixer la proportion du temps d'antenne à consacrer aux émissions canadiennes;
- b) définir *émission canadienne* pour l'application de la présente loi;
- c) fixer les normes des émissions et l'attribution du temps d'antenne pour mettre en œuvre la politique canadienne de radiodiffusion;
- d) régir la nature de la publicité et le temps qui peut y être consacré;
- e) fixer la proportion du temps d'antenne pouvant être consacrée à la radiodiffusion d'émissions — y compris les messages publicitaires et annonces — de nature partisane, ainsi que la répartition équitable de ce temps entre les partis politiques et les candidats;
- f) fixer les conditions d'exploitation des entreprises de programmation faisant partie d'un réseau ainsi que les conditions de radiodiffusion des émissions de réseau

(e) respecting such other matters as it deems necessary for the purposes of this section.

### Criteria

(2) Regulations made under paragraph (1)(a) may provide for fees to be calculated by reference to any criteria that the Commission deems appropriate, including by reference to

- (a) the revenues of the licensees;
- (b) the performance of the licensees in relation to objectives established by the Commission, including objectives for the broadcasting of Canadian programs; and
- (c) the market served by the licensees.

### Exceptions

(3) No regulations made under subsection (1) shall apply to the Corporation or to licensees carrying on programming undertakings on behalf of Her Majesty in right of a province.

### Debt due to Her Majesty

(4) Fees payable by a licensee under this section and any interest thereon constitute a debt due to Her Majesty in right of Canada and may be recovered as such in any court of competent jurisdiction.

### Publication of proposed regulations

(5) A copy of each regulation that the Commission proposes to make under this section shall be published in the *Canada Gazette* and a reasonable opportunity shall be given to licensees and other interested persons to make representations to the Commission with respect thereto.

### Inquiries

**12 (1)** Where it appears to the Commission that

- (a) any person has failed to do any act or thing that the person is required to do pursuant to this Part or to any regulation, licence, decision or order made or issued by the Commission under this Part, or has done or is doing any act or thing in contravention of this Part or of any such regulation, licence, decision or order,
- (a.1) any person has done or is doing any act or thing in contravention of section 34.1,
- (a.2) any person has failed to do any act or thing that the person is required to do under sections 42 to 44 of the *Accessible Canada Act* or has done or is doing any

e) prendre toute autre mesure d'application du présent article qu'il estime nécessaire.

### Critères

(2) Les règlements d'application de l'alinéa (1) a) peuvent prévoir le calcul des droits en fonction de certains critères que le Conseil juge indiqués notamment :

- a) les revenus des titulaires de licences;
- b) la réalisation par ceux-ci des objectifs fixés par le Conseil, y compris ceux qui concernent la radiodiffusion d'émissions canadiennes;
- c) la clientèle desservie par ces titulaires.

### Application : limite

(3) Les règlements pris en application du paragraphe (1) ne s'appliquent pas à la Société ou aux titulaires de licences d'exploitation — pour le compte de Sa Majesté du chef d'une province — d'entreprises de programmation.

### Créances de Sa Majesté

(4) Les droits imposés au titre du présent article et l'intérêt sur ceux-ci constituent des créances de Sa Majesté du chef du Canada, dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

### Publication et observations

(5) Les projets de règlement sont publiés dans la *Gazette du Canada*, les titulaires de licences et autres intéressés se voyant accorder la possibilité de présenter au Conseil leurs observations à cet égard.

### Compétence

**12 (1)** Le Conseil peut connaître de toute question pour laquelle il estime :

- a) soit qu'il y a eu ou aura manquement — par omission ou commission — aux termes d'une licence, à la présente partie ou aux ordonnances, décisions ou règlements pris par lui en application de celle-ci;
- a.1) soit qu'il y a ou a eu manquement à l'article 34.1;
- a.2) soit qu'il y a ou a eu manquement — par omission ou commission — aux articles 42 à 44 de la *Loi canadienne sur l'accessibilité*;
- b) soit qu'il peut avoir à rendre une décision ou ordonnance ou à donner une permission, sanction ou

act or thing in contravention of any of those sections,  
or

(b) the circumstances may require the Commission to make any decision or order or to give any approval that it is authorized to make or give under this Part or under any regulation or order made under this Part,

the Commission may inquire into, hear and determine the matter.

### Mandatory orders

(2) The Commission may, by order, require any person to do, without delay or within or at any time and in any manner specified by the Commission, any act or thing that the person is or may be required to do under this Part, under any regulation, licence, decision or order made or issued by the Commission under this Part or under any of sections 42 to 44 of the *Accessible Canada Act* and may, by order, forbid the doing or continuing of any act or thing that is contrary to this Part, to any such regulation, licence, decision or order, to section 34.1 or to any of sections 42 to 44 of the *Accessible Canada Act*.

### Referral to Commission

(3) Where an inquiry under subsection (1) is heard by a panel established under subsection 20(1) and the panel issues an order pursuant to subsection (2) of this section, any person who is affected by the order may, within thirty days after the making thereof, apply to the Commission to reconsider any decision or finding made by the panel, and the Commission may rescind or vary any order or decision made by the panel or may re-hear any matter before deciding it.

1991, c. 11, s. 12; 2014, c. 39, s. 191; 2019, c. 10, s. 161.

### Enforcement of mandatory orders

13 (1) Any order made under subsection 12(2) may be made an order of the Federal Court or of any superior court of a province and is enforceable in the same manner as an order of the court.

### Procedure

(2) To make an order under subsection 12(2) an order of a court, the usual practice and procedure of the court in such matters may be followed or, in lieu thereof, the Commission may file with the registrar of the court a certified copy of the order, and thereupon the order becomes an order of the court.

### Effect of variation or rescission

(3) Where an order that has been made an order of a court is rescinded or varied by a subsequent order of the Commission, the order of the court shall be deemed to

approbation dans le cadre de la présente partie ou de ses textes d'application.

### Ordres et interdiction

(2) Le Conseil peut, par ordonnance, soit imposer l'exécution, sans délai ou dans le délai et selon les modalités qu'il détermine, des obligations découlant de la présente partie ou des ordonnances, décisions ou règlements pris par lui ou des licences attribuées par lui en application de celle-ci ou des articles 42 à 44 de la *Loi canadienne sur l'accessibilité*, soit interdire ou faire cesser quoi que ce soit qui y contrevient ou contrevient à l'article 34.1.

### Réexamen par le Conseil

(3) Toute personne touchée par l'ordonnance d'un comité chargé, en application de l'article 20, d'entendre et de décider d'une question visée au paragraphe (1) peut, dans les trente jours suivant l'ordonnance, demander au Conseil de réexaminer la décision ou les conclusions du comité, lesquelles peuvent être annulées ou modifiées par le Conseil, après ou sans nouvelle audition.

1991, ch. 11, art. 12; 2014, ch. 39, art. 191; 2019, ch. 10, art. 161.

### Assimilation à des ordonnances judiciaires

13 (1) Les ordonnances du Conseil visées au paragraphe 12(2) peuvent être assimilées à des ordonnances de la Cour fédérale ou d'une cour supérieure d'une province; le cas échéant, leur exécution s'effectue selon les mêmes modalités.

### Moyens de l'assimilation

(2) L'assimilation peut se faire soit conformément aux règles de pratique et de procédure de la cour applicables en l'occurrence, soit par dépôt, par le Conseil, d'une copie de l'ordonnance certifiée conforme auprès du greffier de la cour. Dans ce dernier cas, l'assimilation est effectuée au moment du dépôt.

### Annulation ou modification

(3) Les ordonnances du Conseil qui annulent ou modifient celles déjà assimilées à des ordonnances d'une cour

**Conditions governing suspension and revocation**

**24 (1)** No licence shall be suspended or revoked under this Part unless the licensee applies for or consents to the suspension or revocation or, in any other case, unless, after a public hearing in accordance with section 18, the Commission is satisfied that

(a) the licensee has contravened or failed to comply with any condition of the licence or with any order made under subsection 12(2) or any regulation made under this Part; or

(b) the licence was, at any time within the two years immediately preceding the date of publication in the *Canada Gazette* of the notice of the public hearing, held by a person to whom the licence could not have been issued at that time by virtue of a direction to the Commission issued by the Governor in Council under this Act.

**Licences of Corporation**

**(2)** No licence issued to the Corporation that is referred to in the schedule may be suspended or revoked under this Part except on application of or with the consent of the Corporation.

**Publication of decision**

**(3)** A copy of a decision of the Commission relating to the suspension or revocation of a licence, together with written reasons for the decision, shall, forthwith after the making of the decision, be forwarded by prepaid registered mail to all persons who were heard at or made any oral representations in connection with the hearing held under subsection (1), and a summary of the decision and of the reasons for the decision shall, at the same time, be published in the *Canada Gazette* and in one or more newspapers of general circulation within any area affected or likely to be affected by the decision.

**Report of alleged contravention or non-compliance by Corporation**

**25 (1)** Where the Commission is satisfied, after a public hearing on the matter, that the Corporation has contravened or failed to comply with any condition of a licence referred to in the schedule, any order made under subsection 12(2) or any regulation made under this Part, the Commission shall forward to the Minister a report setting out the circumstances of the alleged contravention or failure, the findings of the Commission and any observations or recommendations of the Commission in connection therewith.

**Conditions de révocation et de suspension**

**24 (1)** Sauf sur demande du titulaire ou avec son consentement, il est interdit de révoquer ou de suspendre une licence, dans le cadre de la présente partie, à moins qu'au terme d'une audience publique le Conseil ne soit convaincu que le titulaire :

a) soit ne s'est pas conformé aux conditions attachées à sa licence, aux ordonnances rendues au titre du paragraphe 12(2) ou aux règlements d'application de la présente partie;

b) soit à un moment donné au cours des deux ans précédant la publication de l'avis de l'audience, s'est trouvé être une personne à qui la licence n'aurait pas alors pu être attribuée aux termes des instructions données par le gouverneur en conseil au titre de la présente loi.

**Licences de la Société**

**(2)** Les licences attribuées à la Société et mentionnées à l'annexe ne peuvent, sauf avec son consentement ou à sa demande, être suspendues ou révoquées en application de la présente partie.

**Transmission et publication de la décision**

**(3)** Copie de la décision de révocation ou de suspension d'une licence et de ses motifs est sans délai adressée par courrier recommandé affranchi à toutes les personnes entendues à l'audience publique ou ayant présenté des observations verbales relativement à celle-ci. Le résumé de la décision et des motifs est simultanément publié dans la *Gazette du Canada* et dans un ou plusieurs journaux largement diffusés dans la région touchée ou susceptible de l'être.

**Manquement reproché à la Société**

**25 (1)** Lorsqu'il est convaincu, après avoir tenu une audience publique sur la question, que la Société ne s'est pas conformée à une condition attachée à une licence mentionnée à l'annexe, à une ordonnance rendue au titre du paragraphe 12(2) ou aux règlements d'application de la présente partie, le Conseil remet au ministre un rapport exposant les circonstances du manquement reproché, ses conclusions ainsi que, le cas échéant, ses observations ou recommandations à ce sujet.

**Report to be tabled**

**(2)** The Minister shall cause a copy of the report referred to in subsection (1) to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is received by the Minister.

## General Powers of the Governor in Council

**Directions**

**26 (1)** The Governor in Council may, by order, issue directions to the Commission

**(a)** respecting the maximum number of channels or frequencies for the use of which licences may be issued within a geographical area designated in the order;

**(b)** respecting the reservation of channels or frequencies for the use of the Corporation or for any special purpose designated in the order;

**(c)** respecting the classes of applicants to whom licences may not be issued or to whom amendments or renewals thereof may not be granted; and

**(d)** prescribing the circumstances in which the Commission may issue licences to applicants that are agents of a province and are otherwise ineligible to hold a licence, and the conditions on which those licences may be issued.

**Idem**

**(2)** Where the Governor in Council deems the broadcast of any program to be of urgent importance to Canadians generally or to persons resident in any area of Canada, the Governor in Council may, by order, direct the Commission to issue a notice to licensees throughout Canada or throughout any area of Canada, of any class specified in the order, requiring the licensees to broadcast the program in accordance with the order, and licensees to whom any such notice is addressed shall comply with the notice.

**Publication and tabling**

**(3)** An order made under subsection (1) or (2) shall be published forthwith in the *Canada Gazette* and a copy thereof shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the making of the order.

**Dépôt**

**(2)** Le ministre fait déposer une copie du rapport devant chaque chambre du Parlement dans les quinze jours de séance de celle-ci suivant sa réception.

## Pouvoirs généraux du gouverneur en conseil

**Instructions**

**26 (1)** Le gouverneur en conseil peut, par décret, donner des instructions au Conseil en ce qui touche :

**a)** le nombre maximal de canaux ou de fréquences pour l'utilisation desquels des licences peuvent être attribuées dans une région donnée;

**b)** les canaux ou les fréquences à réserver à l'usage de la Société ou à toute fin particulière;

**c)** les catégories de demandeurs non admissibles à l'attribution, à la modification ou au renouvellement de licences;

**d)** les cas dans lesquels il peut attribuer des licences à des demandeurs qui agissent à titre de mandataires d'une province et qui n'ont normalement pas droit à celles-ci et leurs conditions d'attribution.

**Idem**

**(2)** Le gouverneur en conseil peut, par décret, ordonner au Conseil d'adresser aux titulaires de licences de catégories données, sur l'ensemble ou une partie du territoire canadien, un avis leur enjoignant de radiodiffuser toute émission jugée par lui-même avoir un caractère d'urgence et une grande importance pour la population canadienne ou pour les personnes qui résident dans la région en cause. Le destinataire est lié par l'avis.

**Publication et dépôt**

**(3)** Les décrets pris en application du présent article sont publiés sans délai dans la *Gazette du Canada* et copie en est déposée devant chaque chambre du Parlement dans les quinze jours de séance suivant leur prise.

**Register**

**(3)** The Commission shall establish and maintain a public register in which shall be kept a copy of each petition received by the Commission under subsection 28(1) or (4).

**Amendment of schedule**

**30** The Governor in Council may, on the recommendation of the Minister made on the request of the Commission and with the consent of the Corporation, amend the schedule.

**Decisions and Orders****Decisions and orders final**

**31 (1)** Except as provided in this Part, every decision and order of the Commission is final and conclusive.

**Appeal to Federal Court of Appeal**

**(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 if leave therefor is obtained from that Court on application made within one month after the making of the decision or order sought to be appealed from or within such further time as that Court under special circumstances allows.

**Entry of appeal**

**(3)** No appeal lies after leave therefor has been obtained under subsection (2) unless it is entered in the Federal Court of Appeal within sixty days after the making of the order granting leave to appeal.

**Document deemed decision or order**

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

**Offences****Broadcasting without or contrary to licence**

**32 (1)** Every person who, not being exempt from the requirement to hold a licence, carries on a broadcasting undertaking without a licence therefor is guilty of an offence punishable on summary conviction and is liable

**Registre**

**(3)** Le Conseil tient un registre public dans lequel sont conservées les copies de demandes reçues par lui.

**Modification de l'annexe**

**30** Le gouverneur en conseil peut, sur recommandation du ministre faite à la demande du Conseil et avec l'accord de la Société, modifier l'annexe de la présente loi.

**Décisions et ordonnances****Caractère définitif**

**31 (1)** Sauf exceptions prévues par la présente partie, les décisions et ordonnances du Conseil sont définitives et sans appel.

**Cas d'appel : Cour fédérale**

**(2)** Les décisions et ordonnances du Conseil sont susceptibles d'appel, sur une question de droit ou de compétence, devant la Cour d'appel fédérale. L'exercice de cet appel est toutefois subordonné à l'autorisation de la cour, la demande en ce sens devant être présentée dans le mois qui suit la prise de la décision ou ordonnance attaquée ou dans le délai supplémentaire accordé par la cour dans des circonstances particulières.

**Délai d'appel**

**(3)** L'appel doit être interjeté dans les soixante jours suivant l'autorisation.

**Assimilation à des décisions ou ordonnances du Conseil**

**(4)** Les documents émanant du Conseil sous forme de décision ou d'ordonnance, s'ils concernent l'attribution, la modification, le renouvellement, l'annulation, ou la suspension d'une licence, sont censés être, pour l'application du présent article, des décisions ou ordonnances du Conseil.

**Infractions****Exploitation illégale ou irrégulière**

**32 (1)** Quiconque exploite une entreprise de radiodiffusion sans licence et sans avoir été soustrait à l'obligation d'en détenir une commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, pour

**(a)** in the case of an individual, to a fine not exceeding twenty thousand dollars for each day that the offence continues; or

**(b)** in the case of a corporation, to a fine not exceeding two hundred thousand dollars for each day that the offence continues.

### Contravention of regulation or order

**(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.

### Contravention of conditions of licence

**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.

### Limitation

**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.

## PART II.1

# Offence — Paper Bill

### Prohibition

**34.1** No person who carries on a broadcasting undertaking shall charge a subscriber for providing the subscriber with a paper bill.

2014, c. 39, s. 192.

### Offence

**34.2** Every person who contravenes section 34.1 is guilty of an offence punishable on summary conviction and is liable

**(a)** in the case of an individual, to a fine not exceeding \$25,000 for a first offence and not exceeding \$50,000 for each subsequent offence; or

chacun des jours au cours desquels se continue l'infraction :

**a)** dans le cas d'une personne physique, une amende maximale de vingt mille dollars;

**b)** dans le cas d'une personne morale, une amende maximale de deux cent mille dollars.

### Contravention à un règlement

**(2)** Quiconque ne se conforme pas à un décret, un règlement ou une ordonnance pris en application de la présente partie commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire :

**a)** dans le cas d'une personne physique, une amende maximale de vingt-cinq mille dollars pour la première infraction et de cinquante mille dollars en cas de récidive;

**b)** dans le cas d'une personne morale, une amende maximale de deux cent cinquante mille dollars pour la première infraction et de cinq cent mille dollars en cas de récidive.

### Inobservation des conditions d'une licence

**33** Quiconque ne se conforme pas aux conditions attachées à sa licence commet une infraction punissable sur déclaration de culpabilité par procédure sommaire.

### Prescription

**34** La poursuite d'une infraction visée au paragraphe 32(2) ou à l'article 33 se prescrit par deux ans à compter de la perpétration.

## PARTIE II.1

# Infraction — factures papier

### Interdiction

**34.1** Il est interdit à toute personne qui exploite une entreprise de radiodiffusion d'imposer des frais à un abonné pour l'obtention de factures papier.

2014, ch. 39, art. 192.

### Infraction

**34.2** Quiconque contrevient à l'article 34.1 commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire :

**a)** dans le cas d'une personne physique, une amende maximale de vingt-cinq mille dollars pour la première



CANADA

CONSOLIDATION

CODIFICATION

Canadian Radio-television and  
Telecommunications  
Commission Rules of Practice  
and Procedure

Règles de pratique et de  
procédure du Conseil de la  
radiodiffusion et des  
télécommunications  
canadiennes

SOR/2010-277

DORS/2010-277

Current to June 20, 2022

À jour au 20 juin 2022

Last amended on April 8, 2021

Dernière modification le 8 avril 2021

## Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure

### Definitions

#### Definitions

**1** The following definitions apply in these Rules.

**document** has the meaning assigned by the definition **record** in section 3 of the *Access to Information Act*. (*document*)

**party** means an applicant, respondent or intervener. (*partie*)

**person** has the same meaning as in subsection 2(1) of the *Telecommunications Act*. (*personne*)

**respondent** means a person that is adverse in interest to an applicant. (*intimé*)

### Application

#### Application

**2 (1)** Except if they provide otherwise, these Rules apply to all proceedings before the Commission other than a proceeding arising from an application listed in Schedule 1 or from a contravention of a prohibition or requirement of the Commission for which a person is liable to an administrative monetary penalty under any of sections 72.001 to 72.19 of the *Telecommunications Act*, unless the penalty is imposed in the course of a proceeding referred to in section 72.003 of that Act.

#### Non-application

**(2)** These Rules do not apply to proceedings before the Commission under sections 6 to 46 of *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*.

SOR/2015-215, s. 1.

## Règles de pratique et de procédure du Conseil de la radiodiffusion et des télécommunications canadiennes

### Définitions

#### Définitions

**1** Les définitions qui suivent s'appliquent aux présentes règles.

**document** S'entend au sens de l'article 3 de la *Loi sur l'accès à l'information*. (*document*)

**intimé** Toute personne dont les intérêts sont opposés à ceux du demandeur. (*respondent*)

**partie** Tout demandeur, intimé ou intervenant. (*party*)

**personne** S'entend au sens du paragraphe 2(1) de la *Loi sur les télécommunications*. (*person*)

### Application

#### Application

**2 (1)** Sauf disposition contraire des présentes règles, celles-ci s'appliquent à toutes les instances devant le Conseil, à l'exception des instances découlant soit d'une demande figurant à l'annexe 1, soit de la contravention ou du manquement à une mesure prise par le Conseil exposant son auteur à une pénalité au titre de l'un des articles 72.001 à 72.19 de la *Loi sur les télécommunications*, à moins que la pénalité ne soit imposée dans le cadre d'une affaire visée à l'article 72.003 de cette loi.

#### Non-application

**(2)** Les présentes règles ne s'appliquent pas aux instances devant le Conseil visées aux articles 6 à 46 de la *Loi visant à promouvoir l'efficacité et la capacité d'adaptation de l'économie canadienne par la réglementation de certaines pratiques qui découragent l'exercice des activités commerciales par voie électronique et modifiant la Loi sur le Conseil de la radiodiffusion et des télécommunications canadiennes, la Loi sur la concurrence, la Loi sur la protection des renseignements personnels et les documents électroniques et la Loi sur les télécommunications*.

DORS/2015-215, art. 1.

Court File No.:

**FEDERAL COURT OF APPEAL**

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B E T W E E N :

**CANADIAN MEDIA PRODUCTION ASSOCIATION**

Applicant

and

**ATTORNEY GENERAL OF CANADA and CANADIAN  
BROADCASTING CORPORATION**

Respondents

APPLICATION FOR LEAVE TO APPEAL UNDER SECTION 31(2) OF  
THE BROADCASTING ACT, S.C. 1991, c. 11 AND MOTION FOR  
LEAVE TO APPEAL UNDER RULE 352 OF THE FEDERAL COURTS  
RULES, SOR/98-106

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**APPLICATION RECORD OF THE APPLICANT/  
MOVING PARTY – VOLUME 2**

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**WADDELL PHILLIPS PC**  
36 Toronto Street, Suite 1120  
Toronto, ON M5C 2C5

**Peter J. Henein (LSO No.: 49330K)**

[peter@waddellphillips.ca](mailto:peter@waddellphillips.ca)

**Tina Q. Yang (LSO No.: 60010N)**

[tina@waddellphillips.ca](mailto:tina@waddellphillips.ca)

**Adam Babiak (LSO No.: 77899C)**

[adam@waddellphillips.ca](mailto:adam@waddellphillips.ca)

Tel: 647.313.1888

Lawyers for the Applicant