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**RE: Application to the Governor in Council under section 28 (2)
of the Broadcasting Act**

1. This is an Application to the Governor in Council (GIC) under section 28 (2) of the Broadcasting Act to review the CRTC's Broadcasting Decision 2022-165 and its Broadcasting Orders CRTC 2022-166 and 2022-167, and to refer to these back to the CRTC for reconsideration in accordance with the instructions and comments of the GIC.
2. The Applicant, John P. Roman, was an intervener¹ in the CRTC's hearing of the CBC/ Radio-Canada's licence renewal application that led to the Decision and Orders in issue.
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3. The GIC has the statutory authority under section 28(2) of the Broadcasting Act to refer the decision back to the Commission for reconsideration.
4. This application raises four public policy issues for the GIC's consideration. These issues - individually, and collectively, demonstrate that the Commission's decision needs to be re-considered, to arrive at a different decision that is consistent with Canada's broadcasting policy as applicable to Canada's national broadcasting service.

I A three-year plan with a 5 year licence (paragraph 8)

The CBC's application for its five-year license renewal provided no more than a three-year financial plan. It was not in fact a five-year application, but a three-year application for a five-year license. The Broadcasting Act empowers the Commission to determine the licence period based on supporting evidence provided to it by the applicant. That the CBC asked for a five-year licence renewal with only a three-year plan was extraordinary and clearly incomplete. That the Commission granted that five-year licence on the basis of a three-year application means that there was no basis for granting a five-year application. This sets a dangerous precedent, not just for the CBC but for CRTC licensing in general. If a three-year plan is enough for a five-year license then why not a two-year plan or a one year plan? In effect the CRTC issued a regulatory carte blanche for two years of a five-year license term. Not only is there nothing in the Broadcasting Act authorizing this, it is unacceptable as a licensing policy. A five-year license should only be granted with an appropriate five-year plan. The CRTC had no way of knowing whether the CBC had an appropriate five-year plan because it never saw such a plan.

¹ CRTC hearing 2019-379 - Intervention 4283

The Government of Canada – Canadian taxpayers – contribute more than \$1 billion annually to the CBC. For the undisclosed last two years of the CBC's five-year license there is currently no way to know for what those approximately \$2 billion will be spent. At present, there is no way to know because the Corporation tabled no plan that would even outline – let alone commit to – its usage in those years. Canadians deserve better, and they certainly have the right to expect that a responsible regulatory process will provide a careful review of their multi-year payment.

II Licensed v Unlicensed

Canada's broadcasting legislation grants the CRTC the authority – and the duty – to regulate so as, to ensure that the services provided by CBC/Radio-Canada are in full compliance with the statutory policy in Part 3.1(l) and (m) of the Act. This legislation does not expressly authorize the CRTC to regulate digital services, or to impose license conditions on these unregulated digital services. Technologies change and, as this occurs, the Commission must adapt, but always within the four corners of its statutory authority. The CRTC properly recognized this with the introduction of CBC GEM, when it held that issuing a licence for the digital service was unnecessary. For the CRTC now to prioritize the service offerings that a contemporary broadcaster may undertake, some of which fall outside of its traditional statutory mandate is to pursue an untenable policy that must be reconsidered. The CRTC cannot amend the Broadcasting Act, only Parliament can do that.

One potential solution to the provision of coherent, consistent regulation may be for the Commission to licence the Corporation's digital services.² This would conflict with the Digital Media Exemption Order (DMEO) but, if only applied to the digital services of the national public broadcaster, it may be the most effective and accountable means by which to regulate CBC/Radio-Canada's expenditure of the public funds provided by Parliament

III The Outcomes/Results-based Approach

There are two things to consider here. The first is metrics such as Canadian Content or program expenditure requirements. The Commission did review these in its decision, which was fair.

The second, however, is audiences. According to Numeris' measurement of audience numbers, none of CBC-TV's programs reached the list of Top 30 shows for the end of June this year, including its major newscast, "The National". The lowest rated of the most popular programs that week had an audience of 452,000, meaning that the cumulative 6-night average for CBC-TV's flagship news show was no more than 75,000 per evening. In comparison, CTV National News was the highest rated program on any Canadian channel.

CBC-TV's audience has dropped from its record low of 5% in 2014 to roughly 3% in 2021. It is noteworthy that nowhere in Decision 2022-165 does the CRTC address that the CBC's main English-language television service fails to attract most Canadians. Judged by these and other equally disappointing audience numbers, it appears that CBC management's current strategy is

² This was explored by others and the Commission. See paragraph 39 of the decision.

to appeal to fewer and fewer Canadians; this should be examined and addressed to ensure rational and responsible use of public funds over the next licence period. ³

In CRTC 2022-165, paragraph 34 - 1b, the Commission states: “The CBC produces, commissions and makes available audio and audiovisual programming on all its licensed services and DMBUs that meets the needs of, is relevant to, and reflects the diverse populations of Canada...”⁴

In recent years, CBC has begun to make content that reflects this country’s diverse population, but how can it be said to meet their needs or be relevant to them if audiences are declining year by year? Why aren’t Canadians watching CBC-TV? Perhaps a clue can be found in the consistently strong audiences for CBC Radio One, where distinctive programming and lack of advertising combine to generate a unique service. It may also now be a fact that if people want to revisit Schitts Creek, they’d rather do it on Netflix than on a commercial-laden CBC-TV.

I acknowledge that determining how much of what content should be broadcast where is not my specialty. But renewal of a licence based solely on what has and will be BROADCAST through radio and television services is exactly what the CRTC has the authority to consider (currently), and it must make and explain its decisions based on this legal authority. As an example, what if CBC decided to exclusively provide indigenous and LGBTQ2 programming on its OTA TV service and opted to deliver content for other diverse populations in Canada, as well as news, children’s programming, etc. exclusively online? If there are no licence requirements (i.e. conditions of licence) that address where content is displayed, in future, what will the Commission’s recourse be in the absence of defined performance requirements?

In my oral presentation to the hearing, I proposed that whatever new content the CBC generated with public funds, should be broadcast on a universally available licensed service (i.e. OTA radio and television) before its digital release. That departs from the Corporation’s ‘Digital First’ Strategy, but this was a licence renewal hearing for TV and Radio - not for GEM or ICI TOU-TV, which in the context of providing a thorough performance review is surely counter-productive.⁵ As noted above, there is a clear need to integrate consideration of ALL the Corporation’s activities if any truly accountable performance review is contemplated.

IV The Diversion to Digital Services

In the course of the public hearing, CBC/Radio-Canada’s management indicated they anticipated spending roughly \$1 billion in the period 2021-2023 for development of its digital services. The Corporation’s financial fortunes and viewership have been severely stressed in recent years. TV’s advertising revenue has dropped substantially as audiences have migrated

³ The “Measurement Framework and Reporting Requirements” as described in the decision will only be relevant if, when random samplings of Canadians are asked about the service, when they say they don’t watch it and why, are also factored into the reports. If instead the questioners don’t include those who don’t watch CBC in the metrics, then we will have an inaccurate assessment of the success of the service.

⁴ <https://crtc.gc.ca/eng/archive/2022/2022-165.htm#appx7> Para 34 - 1b

⁵ This was superficially discussed in paragraph 65 of the decision.

elsewhere and its minor digital revenues will not pay 10% of that digital budget over those three years. So where is the deficit for these digital expenditures going to come from? The answer, of course, is that there will have to be more cuts to the budgets of Radio and TV to pay for Digital.

The inevitable result is that CBC management is compelling its least valued and least viewed and unregulated operation to become a lamprey eel sucking the life blood out of the Corporation's licensed services. Retaining those funds for Radio and TV, and even restoring their former budget, would be most helpful. In fact, the Government of Canada's parliamentary appropriation is intended to be for the licensed services. And in the past 7 decades, a much more expensive TV (i.e. video) didn't kill off CBC Radio; it's the diversion to the digital services that are doing that!

Worse, from a public policy perspective, Quebec will quickly recognize that CBC will be channeling ad revenue from the more successful ICI Télé French service to cross-subsidize English services. Since the English advertising revenues are now proportionally far less than those generated in the French-language market, dollars from this pool will have to be directed to the English services to help keep them afloat. The GIC can expect Quebec to object to the Federal government knowingly tolerating such a cultural cross-subsidy, to the detriment of the Quebec nation and Francophone audiences across Canada.

This is a dangerous CRTC policy to leave unreviewed at the GIC level. This policy can only be effectively addressed by enforceable five-year licensing requirements that define (and therefore protect) the resources essential to achieve the objectives of Radio-Canada's services. The CRTC decision and orders in question fail to do this, and therefore, required GIC review.

For these aforementioned reasons, I would ask the Governor in Council to request that the Canadian Radio-television and Telecommunications Commission review and reconsider the content of CRTC 2022-165.

Additionally, I would ask the Government to suggest the Commission focus less on what would benefit the CBC/Radio-Canada itself, and harness it as the proverbial rising tide that all other Canadian broadcasters compare themselves to. Using CBC/Radio-Canada as the litmus test, the question becomes: what do we want from Canada's broadcasting sector? How much domestic children's programming should be on Canadian 'airwaves', how much regional and local news, documentary and drama, etc. Clearly CBC-TV needs guidelines that nudge it away from 'Family Feud' and towards the Nature of Things. CBC Radio One needs far less re-used content and promotion of TV programs as filler... which it has been forced to do by the pilfering of resources to support first, TV and, now, digital.

It's time the Commission re-examined its requirements for the National Public Broadcaster to enable it to become exactly that – and NOT the publicly subsidized commercial broadcaster into which it has evolved. This will be achieved if the Governor in Council encourages the Commission to refocus its Decisions 2022-165 based on s7(1) and the CBC's mandate under Part 3(l) and (m).

Yours sincerely,

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c.c.

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