

**PBC21: PUBLIC BROADCASTING FOR CANADA IN THE 21<sup>st</sup> CENTURY**  
**DPC21: DIFFUSION PUBLIQUE AU CANADA POUR LE 21<sup>ième</sup> SIECLE**  
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**PETITION TO THE GOVERNOR IN COUNCIL  
TO REFER BACK**

**Broadcasting Decision CRTC 2022-165 and Broadcasting Orders  
CRTC 2022-166 and 2022-167 concerning the Canadian  
Broadcasting Corporation – Various audio and audiovisual  
services – Licence renewals**

**Submitted by**

**Public Broadcasting for Canada in the 21<sup>st</sup> Century (PBC21)/  
Diffusion publique au Canada pour le 21<sup>ième</sup> siècle (DPC21)**

4 August 2022

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## **Re: CRTC Decision 2022-165**

1. The participants in PBC21/DPC21 are a loosely affiliated group of concerned Canadians who care deeply about the CBC/Radio-Canada - especially its future. Each has a history with the Corporation 'on air' or in production, administration or management from the East to West coasts and in the Arctic or through the regulatory process. None of us is currently employed by or contractually committed to the Corporation or any related agency. Furthermore, we understand that the clock cannot be turned back and that nostalgia for a 'golden age' is not a helpful tool for thinking constructively about the future. Since 2011, we have been active participants in the regulatory and policy processes that shape Canada's communications infrastructure and were a party in the CRTC's Broadcasting Notice of Consultation CRTC 2019-379ff.<sup>1</sup>
2. We understand that Canada's media environment is evolving in response to both domestic and international pressures and that, at present, there is little certainty but that of waning resources and constant change. If allowed to stand, CRTC Decision 2022-165 can only exacerbate both vulnerabilities and for the five reasons outlined below, we are therefore respectfully requesting that it be returned to the Canadian Radio-television and Telecommunications Commission for re-consideration.

### **I Inconsistent with Federal Policy**

3. In the aftermath of the 2021 election, the Prime Minister renewed the Liberal Party of Canada's election commitment to continue an additional \$100 million investment in the Corporation's unique French, English and indigenous language programming services in each of the next four years. In his mandate letter to the

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<sup>1</sup> PBC's written submissions can be found at <https://services.crtc.gc.ca/pub/ListeInterventionList/Documents.aspx?ID=282785&en=2019-379&dt=i&lang=e&S=C&PA=b&PT=nc&PST=a> and the oral presentation is at file:///C:/Users/Kealy/Downloads/2d8nn01!.PDF

Minister of Canadian Heritage, Prime Minister Trudeau instructed that these funds should be provided to the CBC/Radio-Canada with a view to *inter alia*:

- Updating CBC/Radio-Canada's mandate to ensure that it meets the needs and expectations of Canadian audiences, with unique programming that distinguishes it from private broadcasters;
  - Increasing the production of national, regional and local news;
  - Making it less reliant on private advertising, with a goal of eliminating advertising during news and other public affairs shows.<sup>2</sup>
4. Nowhere in CRTC Decision 2022-165 is this exhortation acknowledged, nor at any point did the Commission query how (or even if) the Corporation planned to begin such modifications. Nor, in fact, was there any public discussion until just days before CRTC released its renewal decision of CBC's plan to introduce a new FAST (free, advertising-supported television) digital channel of news/information, an offering that will obviously compete with its subscription- and advertising-supported CBC News Network.
  5. In the absence of any regulatory review of this issue, Canadians will inevitably be subject to even more advertising-riddled news and information on their national public broadcaster and there will be no accountability for CBC/Radio-Canada's utilization of these incremental funds. In addition, the decision to eliminate the requirements for a minimum number of hours of local programming each broadcast week in the major Canadian urban markets will inevitably reduce the production of local and regional news.
  6. We recognize that the CRTC is an arm's-length quasi-judicial agency and that CBC/Radio-Canada, as a public rather than a state broadcaster, also functions at arm's-length from government. Nevertheless, both organizations are creatures of federal legislation and subject to federal policy direction. Actively circumventing the latter's unique role while some reconfiguration of the former's responsibilities is underway with Bill C-11 will inevitably jeopardize public confidence in both institutions and should be reviewed.

## II Regulatory Failure and Fairness: 'Expectations' vs COLs

7. The special role and responsibilities of the national public broadcasting service are defined in the Section 3(1)(l) and (m) of the Broadcasting Act (1991). They are not 'optional' or to be delivered at the whim of CBC/Radio-Canada's management. Normal regulatory practice has long utilized Conditions of Licence (COL) as the tool for enforcement because it enables reliable measurement of key service elements and thus provision of **evidence** on which assessment of performance

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<sup>2</sup> Found at <https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-canadian-heritage-mandate-letter>

can be based. In recent decades, significant concerns have arisen concerning CBC (English services), and especially the political neutrality of CBC-TV's news and information programming. The replacement of COLs with the far less specific 'expectations' can only further undermine the Commission's effectiveness because it will erode the evidentiary basis on which public confidence in regulation is founded.

8. Furthermore, while the alteration in regulatory practice established in CRTC 2022-165 currently applies only the CBC/Radio-Canada, equity will demand its application to Canada's private broadcast and digital services sectors as well. It is noteworthy that in Decision 2022-180 on 4 July 2022 the Commission **renewed** the broadcasting licences for the large English-language and French-language television ownership groups from 1 September 2022 to 31 August 2024, subject to the terms and **conditions** in effect under the current licences.<sup>3</sup> If CRTC 2022-165 is allowed to stand, it will establish a two-year period of sectoral regulatory imbalance and the potential appearance of unfair demands applied to Canada's large private television operations when measured against the uncharacteristically lax requirements just issued to CBC/Radio-Canada.
9. If allowed to stand, this laissez-faire approach to broadcast regulation will inevitably become the regulatory model for private as well as public broadcasting in a few years' time and leave Canada's creative sector profoundly vulnerable and increasingly dependent on service productions for foreign clients. The vibrant domestic market foreseen by the policies that emerged from the Commission's earlier "Let's Talk TV" initiative will shrink into insignificance – and will do so without any policy direction from the responsible minister.
10. The expectations of due process require that these elements of Decision 2022-165 be reconsidered by the Commission.

### **III News and Information Key to a Functioning Democracy**

11. Recent political events have focussed attention on the importance of reliable news and information to the proper function of democratic societies. The decline of newspapers has had the effect of increasing reliance on electronic/digital news sources but a recent National Academy of Science study has indicated that in the United States,

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<sup>3</sup> Found at <https://crtc.gc.ca/eng/archive/2022/2022-180.htm>

Online news consumption is a small fraction of overall news consumption, which is dominated by TV by a factor of five to one. Even 18 to 24 y olds consume almost twice as much TV news than online news.<sup>4</sup>

12. Numeris' figures for Canadian TV viewing support the theory that TV news remains very popular in Canada too, with national, regional and local newscasts ranking among the highest rated Canadian programs week after week. It is perplexing that this Decision can be read as allowing significant reduction of the Corporation's responsibility for the provision of regular high-quality regularly scheduled regional TV news programs in urban centres, i.e., where most Canadians chose to live.
13. The fact that alternate digital and electronic news sources are more broadly available in urban environments should not, we suggest, be used to preclude access to Canada's region-specific public television news service. According to Statistics Canada, three in four Canadians (73.7%) lived in one of Canada's large urban centres in 2021<sup>5</sup> and to adopt this apparent 'expectation' would penalize them on the basis of address, despite their mandatory contribution to the annual parliamentary appropriation.
14. This proposed service change does not appear to have been introduced at the behest of the Corporation; its source is unclear but its impact on the availability of public service news and information can only be detrimental and should therefore be reconsidered by the Commission.

#### **IV It's All About Content**

15. A unique feature of this most recent licence renewal process was the dearth of planning data made available by the Corporation. In 2019, it filed with the Commission only a short summary of its strategic plan, "Your Stories, Taken to Heart", that purported to address only the next three years of its operation. A number of interested parties noted this document provided insufficient information about programming or resources to enable serious evaluation.<sup>6</sup> An FOI request by the Forum for Research on Policy in Communications (FRPC)

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<sup>4</sup> Found at <https://www.pnas.org/doi/10.1073/pnas.1912443118>

<sup>5</sup> <https://www150.statcan.gc.ca/n1/daily-quotidien/220209/dq220209b-eng.htm>

<sup>6</sup> The information on which Decision 2022-165 was based relates only to the end of the current fiscal year, 2022-23. Expectations of performance during the five years of the licence period were based on no publicly accessible facts or projections.

resulted in it receiving a slightly more informative document that was posted on the FRPC website but was never made publicly available by the CRTC itself.<sup>7</sup>

16. In the face of Decision 2022-165's focus on expenditure rather than exhibition (i.e., programming), we note that the present governing legislation takes a quite different approach. The eight subsections of Section 3(1)(m) all speak directly to programming requirements<sup>8</sup> and define the service characteristics against which the Corporation's performance is to be assessed. They provide the essential skeleton on which all elements of the national public broadcasting service are constructed and distinguish it from the sector's private components. For decades, the rationale for annual parliamentary appropriations to support CBC/Radio-Canada has been maintenance of these special responsibilities. Taxpayers are not paying out of pocket just to get more of what they already receive from CTV, Global, Rogers, TVA or Noovo.
17. Content matters ... most of the thousands of interveners in this hearing addressed program content issues and Canadians are voting with their remotes. Viewership of CBC-TV has been in steady decline for years (and now sits below 5% of potential viewers) while CBC Radio One attracts by far the largest audience of any radio service. Despite unfortunate budget deprivation, its core programming remains distinctive, varied – and commercial-free. Where Decision 2022-165 addresses programming at all, it mainly does so with respect to specific underserved groups: indigenous, LGBTQ2, OLMC, the disabled and racialized communities. This is an important initiative but to ignore the service needs of the broader population is unwise and risks recasting the CBC/Radio-Canada as a minority rather than a national service.
18. Parliament could properly make that determination as part of its forthcoming policy review and subsequent to broad public discussion but we respectfully submit that it is inappropriate for the regulator to usurp the proper policy function of the Government of Canada and thus this regulatory initiative too should be reconsidered.

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<sup>7</sup> Found at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://frpc.net/wp-content/uploads/2020/08/2020-03-10-Strategic-plan.pdf>

<sup>8</sup> Found at <https://laws.justice.gc.ca/eng/acts/B-9.01/page-1.html#h-34144>

## **V Principles vs \$\$\$: the Tandem Issue**

19. The Corporation's decision to invest in production and carriage of 'sponsored' commercial content, in 2020 given the corporate title 'Tandem', generated passionate concern among former and current journalists and other CBC staff who feared erosion of the credibility of the public broadcaster's information programming. Management's contention that 'everybody does it – even the BBC', was inaccurate; the BBC permits the practice only on its international services, not on those that provide domestic services within Britain. Moreover, the fact that the practice is becoming increasingly common in various media should not be made it a necessary imperative for Canada's national public broadcaster. Rather, it is a fatal compromise, driven by the declining audience for CBC's English-language television network and its plummeting commercial revenues.

20. At the core of the concept of "public broadcasting" is that it serves no masters ... not the state, not the church, not commerce, not the military. It works for no one but the citizens, whom it serves by informing and by sharing the cultures of the people in the various communities that make up its audience.

21. Advertising of any kind, but Tandem in particular, is completely antithetical to that concept. Tandem actively sets out to create masters for the public broadcaster to serve. It opens wide the doors to anyone or any institution with the funds to trade for the right to use the platforms, styles and forms the public broadcaster has traditionally used to serve its audiences.

22. Tandem pretends that the audience has a clear understanding of which information it sees and hears has been bought and paid for, and which has not. But that emperor has no clothes.

23. Tandem is not a neutral source of revenue like a parliamentary appropriation or a license fee meant to support public broadcasting. Tandem allows advertisers to warp the essence of public media. Its only job is to create working relationships with masters of all sorts (they can come from commerce, government, church, etc.) These relationships require that workers at the public network use their human energies and expertise (which are public media's two main resources) to serve up the messages of Tandem clients to their audience. And having done so, they then must pretend that they haven't really done so. Wink, wink!

24. The fallacy behind Tandem should be obvious to anyone with a working understanding of what public broadcasting is really about. But within current corporate management, within many levels of Canada's governments and their agencies, within most of the offices of the regulator - and, therefore,

increasingly, within the public at large - there is little memory or understanding of what makes public media different from most of the other sources of information, data and entertainment.

25. How has that understanding been lost? Over the past 60 years, Canadians have transitioned from having a couple of television channels and a handful of radio stations available in our homes (one of each of those outlets was a public broadcaster) to being swamped by an almost limitless number of media sources from around the globe, sources that are with us anywhere and everywhere we go. Almost all of this media operates on one single principle: filling the eyes and ears of audience members with the messages and opinions of commerce, government, church, state, etc. The digital age is all about tailoring messages to reach each of us in a variety of ways ranging from the straightforward to the clever, devious, funny and fearful.

26. Over the same period that the digital age crept, then leapt into our lives, we've seen fit to cut public funding to the public broadcaster. We've encouraged the public broadcaster to take on more and more of the marketing techniques and programming characteristics used by all the other media in order to make up for its lost income. Thinking up new ways to find that funding has become one of - if not the main - focus of CBC's board and management, of the people who make programs for CBC, and, far too often, of the CBC's own workers. At least one eye has always to be on securing the funds that used to be appropriated for the purpose of CBC's providing *public service*.

27. In little increments over half a decade, we've lost track of what makes public broadcasting the one thing in the media universe that was not meant to be like all the others. And Tandem seals the deal.

28. In Decision 2022-165 the Commission accepted the various protections that CBC has introduced to distinguish Tandem's commercial content from its journalism and its restriction to online services on the grounds that the Corporation needs the additional revenue. There has apparently been no consideration of simply doing somewhat less on one or more of the 19 services and platforms operated by Radio-Canada or the 12 under the banner of CBC.

29. Because it involves such a fundamental principle as journalistic integrity, we assumed the introduction of Tandem must have been the subject of extensive consideration by the Corporation's Board of Directors. Apparently not so. CBC's response to FRPC's FOI Request A-2020-00088 indicated there is no record of this activity, as 'Tandem' or under any other sobriquet, having been approved by the CBC Board.

30. That CBC/Radio-Canada may now continue with its Tandem initiative is clear. Whether it should do so remains highly questionable and an issue of first

principles that neither the Corporation nor the Commission wished to address. But no matter how many “guard rails” the Corporation erects, the essence of paid content’s appeal is its association with, in this case, the CBC and its hard-won reputation for journalistic integrity. Developing that has taken decades of experience and billions of taxpayer dollars and is in no way comparable to the circumstances of commercial operators. Current corporate management does not own the Corporation’s reputation and, thus, is in no position to offer it for sale.

31. Moreover, CBC management’s failure to harness the expertise of its Board of Directors on the Tandem issue has short-changed Canadians and should also be addressed as part of reconsideration of Decision 2022-165.

## Conclusion

32. Since 1936, Canadians have invested billions of dollars in building and operating the French, English and Indigenous-language operations of their national public service broadcasting system. Its legacy radio and television services remain key communications tools even as new 21<sup>st</sup> century digital services are being developed. The role of the regulator remains key to ensuring corporate transparency and accountability that in turn sustain vital public confidence in the institution.

33. But in its present form Decision 2022-165 fails to deliver the facts or the processes that will enable fair and accurate assessment of CBC/Radio-Canada’s performance when the current license term ends in 2027. We therefore respectfully request that it be referred back to the Canadian Radio-television and Telecommunications Commission for reconsideration of the five elements noted in this submission.

Submitted on behalf of PBC21/DPC21 among whose members are,



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Alain Pineau  
Ottawa, ON



Paul Gaffney  
Ottawa, ON



Jeffrey Dvorkin  
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Wade Rowland  
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David Schatzky  
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A handwritten signature in black ink that reads "Kealy Wilkinson". The signature is fluid and cursive, with the first name "Kealy" and last name "Wilkinson" clearly distinguishable.

Kealy Wilkinson  
Toronto, ON