



## **Submission to the Review of the Canadian Communications Legislative Framework**

*Sent to the Broadcasting and Telecommunications Legislative Review Panel*

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The Consumers Council of Canada offers its views on public policy from a consumer perspective. The Council's view is that a 'consumer lens' should be applied to an examination of the many issues to be considered as part of a review of the Canadian Communications Legislative Framework. Both the review and framework are intended to serve the public interest. Canadian consumers should see their needs and interests presented in any report or reports issued as a consequence of this review, in ways they can clearly recognize demonstrate their interest in it. They need to be able to understand the immediate and long-term implications of the Panel's recommendations and findings for them.

The Council observes that rapid change in technology, sustainability of related business models and consumer expectations contributes to the importance of reviewing Canada's communications legislative framework at this time. However, the ability for the Council and other groups representing consumers to contribute to this consultation is significantly hindered by the lack of appropriate support in public policy for them to play a meaningful role.

Do not interpret the depth of the Council's response as indicating a lack of interest or concern, because its resources available to commit to this consultation are not in equal measure to the consultation's importance. This point is elaborated upon in later parts of this submission.

### **Here are the Panel's questions and the Council's responses:**

*1.1 Are the right legislative tools in place to further the objective of affordable high quality access for all Canadians, including those in rural, remote and Indigenous communities?*

No. More options need to be considered than exist within the status quo frameworks. If the existing marketplace structure was going to deliver the outcomes consumers have been seeking, it would have done so already.

*1.2 Given the importance of passive infrastructure for network deployment and the expected growth of 5G wireless, are the right provisions in place for governance of these assets?*

No. There are essential needs and rights to be considered that may go beyond usual considerations in regulating private enterprise, including achieving economies of scale without market dominance by anyone.

*2.1 Are legislative changes warranted to better promote competition, innovation, and affordability?*

Yes. But many of the challenges may not be solved through unregulated competition at some levels of the supply chain, which extends from production of capacity to service to the consumer, given many factors including Canada's geography, a seeming tendency of "network effects" to transition to monopoly or oligopoly, etc. Many consumers have a perception that the broadcast and telecommunications sectors are distinguished by anti-competitive practices. Neither the government or licensees have not made sufficient efforts likely to disabuse these consumers of the idea that perception is reality.

*3.1 Are current legislative provisions well-positioned to protect net neutrality principles in the future?*

No. There are already too many signs of regulatory capture by industry, which discourages, in particular, competition in content production and access for content creators to offer their products at scale. Certainly at the high end of the quality spectrum in broadcast content creation, for example, Canada tolerates oligopolies and vertical integration of services within them, presuming scale leads to quality and global competitiveness. And, yet, new global competitors in the market are overtaking domestic operators at their own game. Fomenting a race to dominance seldom favours neutrality in any setting.

*4.1 Are further improvements pertaining to consumer protection, rights, and accessibility required in legislation?*

Yes.. A good starting point would be funding meaningful participation of consumer groups in decision-making processes, because working this out will not be solved in total at the level of legislation or even regulation. Witness recent events where the Council and other groups declined to participate in the CRTC hearing concerning an Internet Code. Powerful voices from business, with views based solely on financial interests and enormous resources to pursue them, tend to dominate and defy the regulatory process and disproportionately influence all public discourse in the country.

*5.1 Keeping in mind the broader legislative framework, to what extent should the concepts of safety and security be included in the Telecommunications Act/Radiocommunication Act?*

Safety and Security are significant considerations. Working to improve security may be handled within these acts, but Canada is quickly finding itself in a world where defence of

telecommunications infrastructure and the integrity of applications services is now better understood to be important. The actions of domestic and international actors of many descriptions, from individuals, to groups, to state-sponsored activity are now repeatedly impacting consumers, waking them up to dangers, always present but often ignored, on the Internet, and amplified by conventional broadcasting. A comprehensive set of responses is urgently needed to protect Canadians at the individual consumer level.

*6.1 Are the right legislative tools in place to balance the need for flexibility to rapidly introduce new wireless technologies with the need to ensure devices can be used safely, securely, and free of interference?*

No. A starting point will be to assure that only real security concerns stand in the way of competitiveness, in services and in technology. Canada will need methods to protect itself within a global marketplace that includes regulation that is objective and fair with clear standards of conduct for all.

*7.1 Is the current allocation of responsibilities among the CRTC and other government departments appropriate in the modern context and able to support competition in the telecommunications market?*

No. Many of the problems that exist are because some departments do not adequately perform their roles. And, also, not all levels of government perform well.

A big game of “it’s not my job” continues unabated in the area of consumer protection, with lack of enforcement and penalties to bring about fair and reasonable conduct by sellers. The boundaries between Acts, regulations, and interpretations of federal and provincial authority provide many gaps through which consumer rights often disappear.

*7.2 Does the legislation strike the right balance between enabling government to set overall policy direction while maintaining regulatory independence in an efficient and effective way?*

Many pressing issues confronting broadcasting and telecommunications are often outside the existing legal and regulatory framework. In this case, a big challenge is obtaining or developing leadership within legislative processes at the policy level.

*8.1 How can the concept of broadcasting remain relevant in an open and shifting communications landscape?*

This policy conversation needs to be broken down more into constituent parts and the rhetoric around it clarified. ‘Broadcasting’ has been traditionally understood to be point-to-multipoint transmission of content without intermediation or monitoring of individual users. Let’s start talking about the services – and their terms of service – delivered today. Let’s approach law, regulation and marketplace expectations through that lens.

*8.2 How can legislation promote access to Canadian voices on the Internet, in both official languages, and on all platforms?*

What is meant by “access to Canadian voices”? A cacophony of “Canadian voices”, in both official languages, and, in fact, all languages, exists on the Internet. It’s more absent in traditional broadcasting or print media, actually. It’s a tidal wave of communication, swelling over and even destroying the business models of ‘legacy media’. This issue needs to be reframed to address what should be priority content that’s in the public interest to be communicated over the Internet, however accessed. The Council doubts there is a need to sell franchise rights to anti-competitive behaviour on the Internet as a way to foster content development, and it doubts this will promote access. The country is still discussing the extent to which this intrusive model, as manifested by “legacy media”, has fallen short in providing sufficient access to Canadian voices. The Panel should look at what can enable a competitive marketplace, free of monopoly or oligopoly and open to new entrants, dedicated to meeting the essential information needs of Canadians.

*9.1 How can the objectives of the Broadcasting Act be adapted to ensure that they are relevant in today's more open, global, and competitive environment?*

Public policy and the actions and omissions of regulators keeps the public and freely associated persons within it at arm’s length from an important national conversations about this. This should change, because the Broadcasting Act creates and regulates an industry that uses and controls access to a significant share of an important asset belonging to all Canadians – the country’s radio spectrum.

*9.2 Should certain objectives be prioritized? If so, which ones? What should be added?*

Significantly reform the processes that enable the public to participate meaningfully, broadly, regularly, and representatively in public policy formation and regulatory policy, supervision and enforcement.

*9.3 What might a new approach to achieving the Act's policy objectives in a modern legislative context look like?*

Determine how the public’s bandwidth should be best allocated in the near and distant future. Substantial capacity in the telecom system is wasted or segregated for the use of ‘legacy’ interests, probably today less necessarily than in the past. A need exists to transition away from the former siloed approach to content delivered by means of telecommunications. Business and government should make it easier for consumers of Internet service and services delivered using the Internet to have their rights protected. The Act cannot cover all these needs, but it will have an impact on meeting many of them. A huge transition is necessary that will constantly impact current uses of capital within both the broadcast and telecommunications system, and not just at the ‘company level’. The vast majority of Canadians are or are becoming equipped to participate directly in the online economy. They should be protected by preventing the monopolization of distribution systems and intellectual property protection schemes, which may limit rather than

promote individual Canadian's enjoyment of the fruits of copyright or the fair use of others' copyright-protected creations.

*10.1 How can we ensure that Canadian and non-Canadian online players play a role in supporting the creation, production, and distribution of Canadian content?*

Many Canadian narratives are being created at lower cost and in greater quantity than ever. This is a discussion about how to have the marketplace better recognize the value of content, in many cases. And a need exists to consider the public-interest-based conditions of providing subsidies and how said subsidies will be administered appropriately.

*10.2 How can the CRTC be empowered to implement and regulate according to a modernized Broadcasting Act in order to protect, support, and promote our culture in both official languages?*

The Council cannot offer a comprehensive answer to this question. It would suggest the Panel consider mandating the CRTC to do two things: (1) Provide for intervenor funding in broadcast applications, and (2) recognize a class of 'super intervenors', with a way to enter that class, who are funded through the CRTC by licensees to administer their engagement with the Broadcasting Act (and the Telecommunications Act, for that matter) and CRTC processes arising from its related responsibilities. This would lead to more thoughtfully produced evidence and ideas being placed before the regulator for its independent consideration and for the public to reflect upon.

*10.3 How should legislative tools ensure the availability of Canadian content on the different types of platforms and devices that Canadians use to access content?*

The Council suggest a public discussion, first, about the categories of content that deserve subsidy or marketplace regulation. For example, should advertising content pricing be regulated to reflect national as well as commercial priorities, especially given the fact free-market business models in advertising seem to fail to deliver certain outcomes, like quality news and information. Answering this depends on the competitive landscape of content services and whether there is a basis to intervene to meet essential needs of consumers, for example to quality, supply or choice of particular kinds of content. One such category of content frequently discussed is local news coverage. The primary obstacles to producing this content at present appear to lie with business model and competition problems, regardless of the platforms or devices involved. Although we would note there do appear barriers to some kind of device specific application services for the presentation of content that are offered outside Canada being offered inside Canada. For example, Apple News can be used presently by a content producer in Canada to serve consumers in the UK, Australia or the United States, but not in Canada, for some unknown reason, leaving one of the largest distribution channels for content in Canada closed to Canadian content producers.

*11.1 Are current legislative provisions sufficient to ensure the provision of trusted, accurate, and quality news and information?*

No. This answer deserves elaboration, but the Council would require more resources to do that.

*11.2 Are there specific changes that should be made to legislation to ensure the continuing viability of local news?*

Yes. Large companies should not be free to “dump” news onto the market. Some, like newspapers, have begun to understand the perils of using that practice to try to suppress competition, arguably an initial goal of free news sites offered by otherwise subscription newspapers. Advertising platforms service providers should be reviewed for anti-competitive conduct and possible abuse of dominance in price setting. Thought could be given to whether to regulate advertising rates or the dispersal of proceeds in priority information markets, if market-based approaches do not emerge soon. Consumers might be rewarded through the tax system for purchasing content that contributes to their exercise of citizenship responsibilities. Clear action should be taken to promote competition down to the local level for services that meet essential needs of a democratic state to be a home to competitive news and information sources and promote the dissemination of facts.

*12.1 How can the principle of cultural diversity be addressed in a modern legislative context?*

Open markets should promote diversity. Is the Panel sure it’s not mostly concerned about how regulation of broadcasting and telecommunications contributes to or detracts from cross-cultural respect and understanding?

*13.1 How should the mandate of the national public broadcaster be updated in light of the more open, global, and competitive communications environment?*

Because an important overriding purpose of the national public broadcast has been to facilitate the connection of Canadians to one another simply and economically, a new element of this role might be to become a service provider, providing affordable, easy-to-use, rights-protected, largely unfiltered distribution and payment systems for any Canadian seeking to produce and sell legal content. This would be consistent with the public interest role to protect the fundamental principles of copyright, from fair use to the fair remuneration of original content creators. Many questions exist about whether some systems of distribution are treating content creators — that includes even moms and dads sharing family stories to their private audiences — fairly.

*13.2 Through what mechanisms can government enhance the independence and stability of CBC/Radio-Canada?*

A new revenue stream could be created as an open-access, local, national and international distributor of content and as a technical facilitator of copyright protection. Direct subsidy of national priorities, as at present, continues to be appropriate.

CBC has been and can be much more than a content creator and provider. It could have a widened role as a non-competing facilitator of other content producers, including individuals.

*13.3 How can CBC/Radio-Canada play a role as a leader among cultural and news organizations and in showcasing Canadian content, including local news?*

See previous.

*13.4 How can CBC/Radio-Canada promote Canadian culture and voices to the world, including on the Internet?*

See previous.

*13.5 How can CBC/Radio-Canada contribute to reconciliation with Indigenous Peoples and the telling of Indigenous stories by Indigenous Peoples?*

See previous.

*13.6 How can CBC/Radio-Canada support and protect the vitality of Canada's official languages and official language minority communities?*

See previous.

*14.1 Does the Broadcasting Act strike the right balance between enabling government to set overall policy direction while maintaining regulatory independence in an efficient and effective way?*

No. Consumer groups are not sufficiently facilitated to be able to provide effective, organized input into the establishment and assessment of licensee's public interest obligations.

*14.2 What is the appropriate level of government oversight of CRTC broadcasting licencing and policy decisions?*

Improving and liberalizing the access of consumers to the CRTC's decision-making processes, so they work better and more inclusively. Prescribe more of how this will happen.

*14.3 How can a modernized Broadcasting Act improve the functioning and efficiency of the CRTC and the regulatory framework?*

Set accountability standards for facilitating the public's access to regulatory processes. It's totally unacceptable that intervenor costs are not compensated in broadcast proceedings, and that consumer and public interest intervenors must wait an eternity for reimbursement of costs related to CRTC telecommunications proceedings. Groups don't participate at the CRTC because they can't recover their costs or because cost recovery that does exist is not timely, creating cashflow risks and uncompensated costs, in the form of administrative time or cost of money.

*14.4 Are there tools that the CRTC does not have in the Broadcasting Act that it should?*

The Council cannot answer this question at this time. See previous expressed concerns about resource constraints.

*14.5 How can accountability and transparency in the availability and discovery of digital cultural content be enabled, notably with access to local content?*

See our points about a new activity for the CBC stated previously (answers to 13.1 and 13.2).

Consider the potential benefits of creating regulated options for search monopolies/oligopolies operating in Canada, to make it easy to separately identify Canadian content without taking away Canadians' opportunities to obtain globally optimized search. It's OK that search engine companies offer AI directed assistance to consumers, but perhaps they should also be required to facilitate user-controlled searches using competing search applications.