



Joint Petition to the Governor in Council

Pursuant to s. 28(1) of the *Broadcasting Act*

To Set Aside or Refer Back for Reconsideration

**BROADCASTING DECISION CRTC 2022-165: Canadian Broadcasting Corporation –
Various audio and audiovisual services – Licence renewals**

Submitted by:

**The Directors Guild of Canada and the Alliance of Canadian Cinema, Television and
Radio Artists**

August 05, 2022

I. Executive Summary

1. Pursuant to section 28(1) of the Broadcasting Act, the Directors Guild of Canada (DGC) and the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), the “Petitioners”, are respectfully requesting the Governor in Council to set aside or refer back for reconsideration and hearing Broadcasting Decision CRTC 2022-165, for the licence renewal of the Canadian Broadcasting Corporation (CBC).
2. The majority Decision derogates from the Broadcast Policy set out in the *Broadcasting Act* by removing long-standing policy principles and pivotal protections that ensured the public broadcaster’s transparency and accountability and high levels of Canadian-produced programming. Implementing the new deregulated framework would set a dangerous precedent for the Canadian Broadcasting sector and raise issues of consistency, predictability and fairness.
3. This Petition is limited to specific factors and policy objectives which should have been considered by the CRTC and included in binding Conditions of License. The Petitioners do not dispute or oppose those parts of the Decision that are consistent with CRTC discretionary powers, including the Commission’s use of a cross-platform expenditure approach.
4. The Petitioners see three problematic elements in the CRTC Decision that warrant review and reconsideration:
 - i. The absence of clear commitments to Programs of National Interest (PNI), particularly feature film;
 - ii. The decision to base Canadian programming requirements on a percentage of program expenditures rather than total revenues (as it is currently the case for private broadcasters); and
 - iii. The failure to define an expenditure requirement for independent production despite the fact that expenditure commitments to Indigenous and diversity production use independent production as their denominator.
5. General CPE and PNI cross-platform requirements are simply not sufficient. At minimum, the Commission should have maintained current PNI exhibition requirements or added more specific conditions of licence with minimum PNI and genre-specific PNI, together with expenditure requirements. The health of domestic audiovisual creation and production sector can be attributed to the rules the Commission has historically put in place to prioritize the creation and presentation of Canadian programming.

6. It is not necessary at this time to conclude whether the CRTC should reinstate key exhibition-based conditions of licence for PNI for the CBC, and/or create new binding expenditure-based provisions. What is imperative is to ensure that the public broadcaster is required to lead by example – it should be the essential provider of Programs of National Interest to Canadians.
7. The Petitioners submit that the new method of calculation based on total programming expenditures as the denominator to calculate CPE and PNI is not as reliable as using total revenues. The calculation of total programming expenses for its audiovisual services is contingent on the spending on administration and other expense categories. In other words, CBC total programming expenses can fluctuate or may decrease without warning, whereas a CPE based on total revenues will not erode the resources allocated to programming.
8. Consequently, for it to be meaningful and legally binding, the foundational requirement of 85% of programming expenses going into Canadian programming has to be translated into a minimum percentage of revenue requirement.
9. The Petitioners support a transition from exhibition requirements to expenditure requirements for independent production. CBC should accordingly be required to devote a minimum of 80% of Canadian programming expenditures (except for news, sports and current affairs programs) to independent production, or such other level as is appropriate given its historic average performance.
10. The *Broadcasting Act* requires that the CRTC exercise its regulatory authority to ensure regulatory balance between the public broadcaster and the large private broadcasters. A coherent and consistent regulatory approach is necessary.
11. While it can be disputable whether new PNI requirements should best be exhibition and/or expenditure based, diversity programming cannot be the only way to achieve the CBC mandate set out in the Act.
12. The CRTC's statutory mandate in the licence renewal process is to impose meaningful conditions of licence which will best advance the Canadian public interest as articulated in the policies and objectives set out in the *Broadcasting Act* for the Canadian broadcasting industry generally, and for the CBC as Canada's national public broadcaster specifically.

II. Introduction

13. This is a Petition by the Directors Guild of Canada (“DGC”) and the Alliance of Canadian Cinema, Television and Radio Artists (“ACTRA”), (the “Petitioners”), to His Excellency the Governor in Council pursuant to section 28 of the *Broadcasting Act* (Canada), S.C. 1991, c. 11 (the “*Broadcasting Act*”). This Petition is made with respect to the decision of the CRTC to renew the licence of CBC/Radio-Canada in Broadcasting Decision CRTC 2022-165 (the “CRTC Decision”).
14. The DGC is a national labour organization that represents key creative and logistical personnel in the film, television and digital media industries. It was created in 1962 as an association of Canada’s film and television directors. Today, it has approximately 6,000 members drawn from 47 different craft and occupational categories covering all areas of direction, production, editing and design of screen-based programming in Canada.
15. ACTRA is the national union of over 28,000 professional performers working in English-language recorded media in Canada, including TV, film, radio and digital media. ACTRA represents actors, recording artists, comedians, announcers, stunt co-ordinators and performers, dancers, narrators, voice performers, hosts, choreographers, models, singers, background performers, puppeteers and more.
16. DGC and ACTRA members are significant players in the independent production sector, which employs creatives and film and television industry workers across the country. These professionals work in highly-skilled jobs that contribute to the creation of audiovisual works, in all media, and in all parts of Canada and Quebec. In 2020-21, this industry generated 217,000 jobs with CBC/Radio-Canada (CBC) being an important employer and key contributor. In this sector, CBC programs bring a unique perspective through the prism of distinctly Canadian stories.
17. The success of domestic audiovisual creation and production and its impact on Canadian storytelling is directly linked to the rules the Commission has historically put in place to ensure that both our public and private broadcasters support the creation and presentation of Canadian programming, including Programs of National Interest (PNI) and the significant contributions of independent producers.
18. The CRTC Decision is one of the most anticipated decisions of the last few years, as it represents a milestone in the future regulatory framework the Commission is seeking to adopt in the coming years. It is clear that the CBC’s 2022 licence renewal could potentially have long-term consequences for Canadian programming and the future livelihood of the creative and independent production community.

19. The Petitioners are concerned that the Commission's majority decision presents material risks of undermining the mandate of the CBC and the Canadian broadcasting policy as set out in the *Broadcasting Act*.
20. In the rapidly evolving legislative context for broadcasting in Canada, we accordingly believe that the CRTC Decision derogates from the policy objectives laid out in Subsection 3(1) of the *Broadcasting Act*¹: the Broadcasting Policy.

Problematic elements found in the CRTC decision

21. The Petitioners see three problematic elements in the CRTC Decision that warrant review and reconsideration:
- i. The absence of clear commitments to Programs of National Interest (PNI), particularly feature film;
 - ii. The decision to base Canadian programming requirements on a percentage of program expenditures rather than total revenues (as it is currently the case for private broadcasters); and
 - iii. The failure to define an expenditure requirement for independent production despite the fact that expenditure commitments to Indigenous and diversity production use independent production as their denominator.
22. The CRTC Vice-Chair of Broadcasting Caroline Simard and the Commissioner for Ontario Monique Lafontaine expressed dissent with the Majority decision, describing how it derogates from fundamental CRTC mandatory policy objectives.
23. The Vice-Chair, Caroline Simard states in her written dissent that the CRTC majority decision not only weakens the CBC mandate, but the Canadian broadcasting policy as a whole:

"The list of conditions of licence that are abandoned in the majority decision is long and includes the pivotal protections responsible for the recognized success of the Canadian broadcasting system and of the national public broadcaster. I consider that the general laissez-faire approach proposed in the majority decision in regard to traditional and digital platforms carries real and unnecessary risks of undermining the mandate of the Canadian Broadcasting Corporation (CBC) and the Canadian broadcasting policy as set out in the Broadcasting Act (the Act)."

[...]

"does this mean that the majority decision has set the bar for determining the regulatory burden of other broadcasting undertakings operating in Canada?"²

¹ *Broadcasting Act*, S.C. 1991, c. 11

² Reasons for the dissenting opinion of Dr. Caroline J. Simard, Vice-Chairperson, Broadcasting

“These irregularities raise issues of consistency, predictability, fairness and the future performance assessment of the CBC in delivering programming in accordance with its mandate as set out in paragraphs 3(1)(l) and (m) of the Act.”

24. As stated by Caroline Simard, the CRTC decision sets a dangerous precedent for future broadcasting policies with regards to Canadian private broadcasters. How can we justify that the CBC will have advantages over private broadcasters? And if this cannot be justified, does it mean that private broadcasters will have legitimate grounds to seek deregulation?
25. The Decision may also destabilize the audiovisual industry as a whole. Not only does it depart from historic CRTC broadcasting policies based on the application of the *Broadcasting Act*, it introduces a form of deregulation, *before* regulatory changes proposed in Bill C-11³ have materialized. The Online Streaming Act, which represents a modernization of the *Broadcasting Act*, is currently at second reading in the Senate; it remains possible that the Bill will not become law.
26. The *Broadcasting Act* requires that the public broadcaster be subject to the highest requirements and expectations, in fulfillment of its mandate. By contrast, the Decision represents a departure from results-focused regulation, to one of greater flexibility for the CBC and increased reliance on monitoring. The value of legally binding conditions of Licence is that they force the public broadcaster to meet certain minimum thresholds, in the public interest. Policies in support of CPE and PNI cannot be ensured or enforced with the progressive disintegration of key pillars that underpin this regulatory framework.
27. As pointed out by Caroline Simard, the elimination of minimum exhibition and spending requirements for the CBC’s licensed television services provides flexibility to the CBC without regulatory oversight. The CBC may choose the share of programming budget to dedicate to an entirely unregulated online platform such as Gem during its next licence term, without specific consideration for endangered genres and formats such as documentary and feature films, CBC also does not need to maintain a strong broadcasting presence despite the fact significant numbers of Canadians watch Canadian programs on linear television, nor does it need to finance Canadian programming.
28. In its written submissions to the CRTC, the DGC had recommended the establishment of an expenditure-based approach for all of CBC’s audiovisual services. The Petitioners appreciate the fact that the Commission’s general

³ Bill C-11, The *Online Streaming Act*, An Act to amend the *Broadcasting Act* and to make related and consequential amendments to other Acts

regulatory approach has moved from exhibition to expenditures requirements, which is necessary and appropriate in an increasingly on-demand world. We also acknowledge that the CRTC Decision has, of necessity, been made before we transition into a modernized *Broadcasting Act*.

29. Nevertheless, the Petitioners agree with the Minority that the decision prematurely erases certain exhibition requirements on Canadian content without a replacement that provides binding measurable targets. In the absence of such requirements, the CRTC has lost its capacity to ensure that CBC remains compliant under a clear, measurable and predictable framework. This is not in the public interest.
30. CBC's lack of accountability and transparency are issues that were raised by many stakeholders during CBC's licence renewal proceedings and remain today a primary concern.
31. Nevertheless, this Petition is limited to specific factors and policy objectives which should have been considered by the CRTC and included in binding Conditions of License (COL). The Petitioners do not dispute or oppose those parts of the Decision that are consistent with CRTC discretionary powers, including the Commission's use of a cross-platform expenditure approach.
32. The Petitioners also support the CMPA Petition and understand that many peer organizations from the film and television sector are also calling for a reconsideration of the CRTC Decision (AQPM, AQTIS 514-IATSE, ARRQ, SARTEC and UDA).

III. The absence of clear commitments for PNI and other significant programming genres

33. In its Decision, the CRTC deletes a range of exhibition requirements related to Canadian content. It eliminates requirements for CBC to broadcast drama, scripted comedy, and other Programs of National Interest (PNI) at the times when Canadians most watch linear television. It removes existing requirements for the broadcast of documentaries and programs for children and youth. It also eliminates the important requirement for CBC to broadcast a Canadian feature film at least once each month.
34. The exhibition requirements eliminated by the CRTC have played a vital role in Canada's audiovisual industry success. They have also been essential in ensuring the CBC meets its core mandate, which is "to inform, enlighten and entertain; to contribute to the development of a shared national consciousness and identity; to

reflect the regional and cultural diversity of Canada; and to contribute to the development of Canadian talent and culture.⁴”

35. In the 2015 Let’s Talk TV decision⁵, the Commission recognized the importance of PNI to the broadcasting system and confirmed and maintained PNI requirements for private broadcasters:

“The Commission considers that there is a continuing need for regulatory support for key genres of Canadian programming. The Commission notes that over 40% of all viewing to English-language television in Canada is to drama programs; drama is thus the genre of programming that Canadians choose to watch more than all others. Drama programs and documentary programs are expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values.”

36. In 2017, the Petitioners, among other organizations filed a petition⁶ to the Governor in Council (GIC) for reconsideration on the CRTC decision on group licence renewals⁷. In a subsequent order, the GIC accepted these Petitions and concluded that the CRTC had derogated from the attainment of the objectives of Canada’s Broadcasting Policy as set out in the *Broadcasting Act*.⁸

37. The GIC referred back the 2017 CRTC decision to the Commission for reconsideration and hearing, resulting in new decisions that, among other things, increased minimum legally binding PNI levels in 2018⁹. The parallels with the CBC Decision are clear, as both initial decisions decreased or eliminated broadcaster obligations to PNI. As it was the case in 2017, stable support for PNI remains vitally important in 2022 within the Canadian broadcasting system. Requiring legally binding minimum exhibition hours and/or expenditures on PNI genres is one of the key ways that the CRTC fulfils the objectives of Canada’s broadcasting policy. The 2017 petitions and this Petition carry the same key message: to ensure the public interest is protected, the Broadcasting system must not be deregulated.

38. For decades, CBC has been at the forefront of creating and exhibiting new and innovative audiovisual content that “informs, enlightens and entertains” Canadians. In its written submissions submitted in the context of CBC licence renewal proceeding, the DGC and ACTRA said that the Corporation should not be a

⁴ *Broadcasting Act*, S.C. 1991, c. 11

⁵ Broadcasting Regulatory Policy CRTC 2015-96: Let’s Talk TV

⁶ [Petition to the Governor in Council for reconsideration on the CRTC decision on Group License Renewals CRTC 2017-148, 2017-149, 2017-150, 2017-151](#) - June 28, 2017

⁷ Group License Renewals CRTC 2017-148, 2017-149, 2017-150, 2017-151

⁸ Order Referring Back to the CRTC Decisions CRTC 2017-143 to 2017-151 to Renew the Broadcasting Licences, P.C. 2017-1060 August 14, 2017

⁹ Broadcasting Decision CRTC 2018-335

duplicate of private broadcasters. Instead, CBC should be responding to market shortfalls, especially in underrepresented genres of programming. And that means precisely that CBC must support these underrepresented genres of programming.

39. The “BTLR report”¹⁰, made public at the end of January 2020 offers recommendations to the government to review Canada’s communications laws, including a new role for CBC: “we recommend that the *Broadcasting Act* be amended to add the following elements to the mandate of CBC/Radio-Canada: showcasing Canadian content to international audiences; and taking creative risks”.
40. The CRTC Decision’s new PNI requirement for CBC is that it must be a minimum of 55% of the amount the CBC allocates to CPE on its English-language audiovisual programming services. While this cross-platform expenditure requirement is commendable, the Decision fails to establish a binding baseline level or to recognize that individual requirements for specific PNI genres are also necessary. PNI is the most appropriate category of storytelling to convey high quality, distinctive and innovative Canadian programming. The CRTC Decision now gives CBC permission to do less on documentaries, children’s programming and feature films.
41. CBC (conventional television and its online audiovisual services) should be the leader in providing high-quality, distinctive and innovative programming, with the assurance that all the genres within PNI are appropriately supported. Pursuant to the *Broadcasting Act*, that leadership should be reflected in higher legally binding obligations overall than those of private broadcasters and specific commitments to distinctive genres of PNI, including feature film and documentary.
42. General CPE and PNI cross-platform requirements are simply not sufficient. At minimum, the Commission should have maintained current PNI exhibition requirements on CBC conventional television. Alternatively, it could have added more granular conditions of licence with minimum PNI and genre-specific PNI, together with expenditure requirements. Detailed PNI requirements of this kind would have a positive and material effect on the diversity and quality of the programming produced.
43. It is not necessary at this time to conclude whether the CRTC should reinstate key exhibition-based conditions of licence for PNI for the CBC, and/or create new binding expenditure-based provisions. What is necessary is to ensure that the public broadcaster is required to lead by example – it should be the essential provider of Programs of National Interest to Canadians.

¹⁰ Canada’s Communication Future: Time to Act, Broadcasting and Telecommunications Legislative Review, January 2020

Failure to impose specific requirements on documentaries, feature films and children's programming

44. The Petitioners believe that eliminating all previous exhibition-based conditions of licence is a step backwards from ensuring that the Corporation takes creative risks. For example, the already light requirements for the creation and exhibition of feature films have been abandoned. The Commission's explanation is that "since 2013, with more Canadians turning to subscription video-on-demand (SVOD) services and to digital services, where they can watch movies at their own convenience and without advertising" and that CBC Gem already has a library of feature films.
45. In other words, according to the Commission, because SVOD and other video on-demand services already provide feature films, CBC Television shouldn't have to. The Decision ignores the fact that film is an important genre, and one that is very difficult to finance. If not the public broadcaster, who will invest in this important genre? Private broadcasters don't.
46. It is also important to note that the Federal government recently renewed its support for the federal funding agency which finances feature films, Telefilm Canada. The Federal Budget 2021¹¹ provides \$105 million over three years, starting in 2021-22, for Telefilm Canada to modernize its suite of programs and better support feature films. The Petitioners find it counterintuitive that the CRTC has removed the COLs for feature films when the government, key public and significant private stakeholders have recognized that this genre should be better supported.
47. 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.
48. In addition, other genres have not been spared in the Decision. The elimination of important exhibition requirements for documentaries and programming for children and youth have not been replaced with an equivalent. The Petitioners maintain that regardless of the regulatory tool, conditions of licence should have been preserved for conventional English television, especially the two weekly hours dedicated to long-form documentary and drama and comedy, and the 15 hours per week of children's programming¹².

¹¹ Federal Budget 2021, A Recovery Plan for Jobs, Growth, and Resilience, Chapter 6, page 204

¹² Broadcasting Decision CRTC 2013-263, COL 19: The licensee shall broadcast a minimum of 15 hours per week, averaged over the broadcast year, of Canadian programming aimed at children under 12 years of age. Of these 15 hours, a minimum of one hour, averaged over the broadcast year, shall be devoted to original Canadian programming.

IV. CRTC decision to base CPE requirements on a percentage of program expenditures rather than total revenues

49. In its decision, the CRTC introduced a new method¹³ to calculate Canadian Programming Expenditures (CPE) for the public broadcaster's audiovisual services, namely one based on a percentage of *programming expenditures*. In its written submissions to the CRTC, the DGC had recommended that the CRTC use the expenditure methodology already used to calculate private broadcasters CPE, namely a percentage of *revenues*.

50. As stated in the 2019 call for comments on the Commission's policy on Canadian programming expenditure¹⁴, "The Commission views Canadian programming expenditure (CPE) requirements as an effective tool in the achievement of the policy objectives set out in the Act. As such, the Commission requires television programming services to make expenditures on Canadian programming, which may include expenditures made on the production, acquisition or other investments in such programming."

51. The Petitioners consider the wholesale adoption in the Decision of this new method of calculation for CPE to be a profound shift in the CRTC broadcasting policy.¹⁵ Canadian programming requirements of various kinds have been imposed on broadcasters since the 1970s. CPE requirements have been, since 2010¹⁶, the cornerstone policy that supports the creation of Canadian programming by broadcasters. The standard CPE denominator is the broadcaster's total revenues, an objective measure that can be applied to all broadcasters as the data is collected and publicly shared by the Commission.

52. The new 2022 method creates a unique exception to the existing CPE rules. The CRTC's justification for this new method of CPE/PNI calculation is that CBC/Radio-Canada is a public broadcaster and the widely used methodology based on total revenues should not be applied: "Given that the CBC's revenues are largely

¹³ CRTC Broadcasting Decision 2022-165, Para 61.

¹⁴ Broadcasting Notice of Consultation CRTC 2019-91

¹⁵ In its 2013 Renewal, CBC had a percentage of programming expenditure requirement applied for OLMC production; a measure unique to CBC and not replicated with private broadcasters. Extending the use of a percentage of program expenditures approach to PNI and all other CPE requirements is, however, a novel approach, and without a clear legally binding baseline, we submit is inappropriate. Appendix 3 to Broadcasting Decision CRTC 2013-263, Conditions of licence and expectations for French-language conventional television (network and stations), No. 16.

¹⁶ Broadcasting Regulatory Policy CRTC 2010-167, A group-based approach to the licensing of private television services, Para 52

dependent on government funding, and given that its goal is not to be profitable in the same way most private broadcasters strive to be”¹⁷

53. The Petitioners disagree with the CRTC’s analysis and decision. Just because it is a non-profit does not mean that CBC is not capable of making poor decisions on resource allocation.
54. As is the case for private broadcasters, CBC’s total revenues, including the parliamentary appropriation, the advertising revenues, the subscription revenues and the sales revenues are clearly understandable, known to the Commission and already shared in an aggregated form in CRTC’s annual monitoring report and other aggregate annual returns.
55. The Petitioners submit that using total programming expenditures as the denominator to calculate CPE and PNI is not as reliable as using total revenues. The calculation of total programming expenses for its audiovisual services is contingent on the spending on administration and other expense categories (such as the online platforms maintenance costs). In other words, CBC total programming expenses can fluctuate or may decrease without warning, whereas CPE requires that non-programming expenditures not be allowed erode the resources allocated to programming.
56. The Petitioners recognize that the CRTC Decision to include Digital Media Broadcasting Undertakings (DMBUs) under the regulatory fold represents a positive regulatory change. However, to bring DMBUs into the fold without creating a firm legal baseline for programming expenses is, in DGC’s view, contrary to the Commission’s responsibilities under the Act.
57. Over the years, percentage of revenue CPE requirements have been responsible for providing a level of predictability for both the broadcasters and the production industry. The percentage of revenue CPE requirements also have the virtue of providing flexibility to broadcasters: when revenues go down, so do Canadian programming expenditures. Basing CPE solely on total programming expenditures disconnects the link between available resources and Canadian programming expenditure requirements.
58. In the 2018 CRTC Harnessing Change Report¹⁸, the Commission suggested that the transition to an increasingly online world makes it challenging to apply regulations designed for traditional television to digital media services, including those relating to requirements to make financial contributions to Canadian production.

¹⁷ CRTC Broadcasting Decision 2020-165, para 61

¹⁸ CRTC Harnessing Change Report

59. The Decision's application of CPE requirements to CBC in a cross-platform manner is the appropriate response to that challenge.

60. For it to be meaningful and legally binding, however, the foundational requirement of 85% of programming expenses going into Canadian programming has to be translated into a minimum percentage of revenue requirement. With that change, and as discussed below a new expenditure requirement for independent production, CBC's other programming new expenditure requirements become appropriate.

V. Failure to define an expenditure requirement for independent production despite the fact that expenditure commitments to diversity production use independent production as their denominator

61. CBC's current COLs include exhibition requirements for independent production, pursuant 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.

62. The Decision slightly increases these requirements, but turns them into expectations.

63. The Petitioners applaud the fact that, under the Decision, the Canadian public broadcaster will be required to invest at least 30% of its program expenditures into independent production by Indigenous, racialized, disabled, bilingual and LGBTQ2 creators to help level an uneven playing field for content creators.

64. However, without a clearly defined baseline, these and other independent production expenditure requirements are rendered, at best, ill-defined, at worst, potentially meaningless.

65. The Petitioners support a move from exhibition requirements to expenditure requirements for independent production. CBC should accordingly be required to devote a minimum of 80% of Canadian programming expenditures (except for news, sports and current affairs programs) to independent production, or such other level as is appropriate given its historic average performance.

VI. Conclusion: CBC's licence renewal decision should be reconsidered

66. The CRTC Decision has the real potential to undermine the important work being undertaken by the Minister of Canadian Heritage to update the *Broadcasting Act* in order to create a modern framework that will showcase, promote and support Canadian stories.
67. This new framework must consider applying broadcast regulation in an equitable fashion to bring both the traditional and online broadcasting realities under the regulatory tent. A cross-platform approach is certainly a step in the right direction, but not eliminating proven policies that could be applied seamlessly on all distribution platforms.
68. The CRTC's Decision points towards deregulation. Instead of facilitating Canadians' access to great Canadian programming, building domestic audiences for that programming, and ultimately celebrating Canadian excellence, the Decision could instead lead to a progressive reduction in the number of Canadian scripted programs.
69. The *Broadcasting Act* requires that the CRTC exercise its regulatory authority to ensure regulatory balance between the public broadcaster and the large private broadcasters. A coherent and consistent regulatory approach is necessary.
70. While it can be debatable whether new PNI requirements should best be exhibition and/or expenditure based, diversity programming¹⁹ cannot be the only way to achieve the Broadcasting objectives set out in the Act.
71. The CRTC's statutory mandate in the licence renewal process is to impose conditions of licence which will best advance the Canadian public interest as articulated in the policies and objectives set out in the *Broadcasting Act* for the Canadian broadcasting industry generally, and for the CBC as Canada's national public broadcaster specifically.
72. The Broadcasting Policy for Canada²⁰ in the *Broadcasting Act* details the nature of programming that the CBC must offer:

¹⁹ Programming by and for Indigenous Peoples, OLMCs, racialized Canadians, Canadians with disabilities, Canadians who self-identify as LGBTQ2, and women who self-identify as belonging to these communities

²⁰ *Broadcasting Act*, S.C. 1991, c. 11

(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

- a. be predominantly and distinctively Canadian, reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,
- b. actively contribute to the flow and exchange of cultural expression,
- c. 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,
- d. strive to be of equivalent quality in English and in French,
- e. contribute to shared national consciousness and identity,
- f. be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and
- g. reflect the multicultural and multiracial nature of Canada;

73. In our respectful submission, the Decision derogates from the attainment of the objectives of the broadcasting policy for Canada set out in subsection 3(1) of the *Broadcasting Act* for three principal reasons.

74. First, in failing to establish legally binding obligations on the public broadcaster that are materially higher than those in place for private broadcasters, the Commission has contravened the Act's requirements that CBC's programming to be "predominantly and distinctively Canadian" (s. 3(1)(m)(i)). Private undertakings need only "to an extent consistent with the financial and other resources available to them, (i) contribute significantly to the creation and presentation of Canadian programming" (s.3(1)(s))

75. Second, in favouring flexibility for the public broadcaster, rather than imposing legally binding obligations, the Commission has given preference to the subsection 5(2) regulatory policy objectives of the Act, contrary to subsection 5(3), which states that the Commission shall "give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1)" in the event of any conflict.

76. Third, in inappropriately removing Conditions of Licence related to the exhibition of feature film, documentary and children's programming, the Commission has allowed CBC's programming to become less distinctive, contrary to subsection 3(1)(m)(i).

77. For all the above reasons, the Petitioners respectfully request that the Governor in Council set aside or refer back Broadcasting Decision 2022-165 renewing CBC's broadcast licence to the CRTC for a reconsideration and hearing and:

- i. Restore the calculation method for CPE to total revenues;
- ii. Re-establish a minimum expenditure requirement for independent production;
- iii. Re-establish minimum requirements for PNI, in particular for the following genres:
 - a. Documentaries
 - b. Children's programming
 - c. Feature films

All of which is respectfully submitted.



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National Executive Director, ACTRA