

# **PETITION TO THE GOVERNOR IN COUNCIL**

**Pursuant to section 28(1) of the *Broadcasting Act***

**To Set Aside or Refer Back for Reconsideration**

*Canadian Broadcasting Corporation – Various audio and audiovisual  
services – Licence renewals,*

[Broadcasting Decision CRTC 2022-165 and Broadcasting Orders CRTC 2022-  
166 and 2022-167,](#)

(Ottawa, 22 June 2022)

Issued by the Canadian Radio-television and Telecommunications  
Commission  
(CRTC)

Submitted by:

FORUM FOR RESEARCH AND POLICY IN COMMUNICATIONS (FRPC)

5 August 2022

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## Executive Summary

- ES 1 This is a petition by the Forum for Research and Policy in Communications (FRPC) (Forum or FRPC) requesting that Their Excellence, the Governor in Council, make an order pursuant to subsection 28 of the *Broadcasting Act* (Act) referring back for reconsideration and hearing Decision 2022-165, issued by the Canadian Radio-television and Telecommunications Commission (CRTC) on June 22, 2022. This decision renewed the broadcasting licences of Canada's national public broadcaster, the Canadian Broadcasting Corporation, for five years to August 2027 despite the absence of any plans describing its programming past April 2023, despite the absence of any discussion of the impact of the decision on employment in the broadcasting system, and despite numerous regulatory breaches by the CBC since 1991 including a serious failure with respect to programming of high standard during the current licence term.
- ES 2 The Forum is a not-for-profit public-interest organization established in 2013 which speaks on behalf of the public interest as set out in Canada's broadcasting, telecommunications and related statutes before the CRTC and other bodies. FRPC undertakes empirical research to provide policy analysis and recommendations based on objective evidence. The Forum intervened in the three-year proceeding initiated by the CRTC in Fall 2019 by Broadcasting Notice of Consultation 2019-379 to consider the applications by Canada's national public broadcaster, the Canadian Broadcasting Corporation (CBC) to renew its radio and television broadcasting licences.
- ES 3 The Forum submits that Decision 2022-165 derogates from the implementation and attainment of Parliament's broadcasting policy for Canada in subsection 3(1) of the *Broadcasting Act* in three ways. It fails to mandate the exhibition of original or first-run local news in the schedules of CBC's licensed services, contrary to subsections 3(1)(f) and 3(1)(m), it ignores a serious complaint related to the broadcasting policy's requirement for programming of high standard in subsection 3(1)(g) and it fails to consider the consequences of its decision on the private element of the broadcasting as required by subsection 3(1)(n), and on the continued existence of employment opportunities as required by subsection 3(1)(d)(iii). The main intent of Decision 2022-165 was to provide CBC with regulatory flexibility – not to implement Parliament's broadcasting policy for Canada.
- ES 4 The Forum respectfully asks that Their Excellency grant the relief sought by FRPC, by returning this decision – unburdened as it is by evidentiary support or mechanisms that enforce implementation of Parliament's broadcasting policy – to the full Commission (rather than a panel handpicked by the CRTC Chairperson) for reconsideration and rehearing.

## I. Broadcasting Decision CRTC 2022-165, the CBC and FRPC

1. This is a Petition by the Forum for Research and Policy in Communications (FRPC) (Forum, FRCP) to Their Excellency the Governor in Council pursuant to section 28 of the *Broadcasting Act*<sup>1</sup> ([Act](#)) asking first, that Their Excellency return the decision issued by the Canadian Radio-television and Telecommunications Commission (CRTC) on June 22, 2022 to renew the broadcasting licences of the Canadian Broadcasting Corporation (CBC) to the CRTC for reconsideration and rehearing, and asking second, that Their Excellency instruct the CRTC to ensure that its decision addresses material matters that its June 2022 decision failed to consider.
2. The decision that is the subject of this petition is [Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence renewals, Broadcasting Decision CRTC 2022-165 \(Ottawa, 22 June 2022\)](#) (Decision 2022-165). Though issued by the CRTC's Secretary General, the CBC's applications were considered and Decision 2022-165 was made by a five-member panel whose members were selected by CRTC Chairperson Ian Scott.<sup>2</sup> Vice-Chairperson Simard and Commissioner Lafontaine dissented from their colleagues' decision (Majority decision) and provided separate, concurring reasons for their dissents.
3. The Majority decision derogates entirely from Parliament's broadcasting policy for Canada by dropping all requirements for CBC's licensed, over-the-air, network and radio and television programming services to exhibit programming made by and for Canadians. Decision 2022-165 also permits CBC to stop broadcasting local television news in large communities. The Majority decision is clearly very sympathetic to the Corporation's situation: but in freeing CBC from these requirements, the Majority decision wilfully or negligently ignored the effect this will have on employment opportunities for Canadians. It ignored the *Act*'s requirement for programming of high standard even though former CBC journalists clearly set out their concerns about the impact of the Tandem, 'branded content' initiative – in which CBC produces and broadcasts programs made entirely for advertisers – on CBC's journalistic integrity during the renewal, and even though the CRTC excoriated CBC one week later for the quality of a program CBC broadcast during the renewal process.
4. The Majority decision wilfully or negligently also ignored other material matters including the salient point that its decision has no evidentiary support whatsoever for CBC's programming or financial plans from 2023 to 2027, because the CRTC purposefully or negligently chose not to ask for this information. The Majority also purposefully or negligently ignored the fact that in the licence term now ending and for the third renewal in a row, CBC was in breach of conditions of its licences – while the same Majority decision oddly explains its decision to require CBC to submit reports about its services, rather than actually maintain specific programming commitments, by intimating that CBC would evade CRTC program-exhibition requirements.<sup>3</sup>
5. The remainder of this Part briefly describes the petitioner and the broadcaster, the test for reconsideration under section 28 and the context of Decision 2022-165. Part II sets out the law that makes implementation of Canada's broadcasting policy its primary, mandatory duty for the CRTC. Part III provides three examples of Decision 2022-165's derogation from Parliament's

broadcasting policy for Canada. Part IV summarizes matters that the Forum respectfully submits are material to the CRTC's reconsideration and rehearing of this important proceeding. Part V sets out the specific relief sought by the petitioner.

**A. Forum for Research and Policy in Communications (FRPC): the petitioner**

6. The Forum for Research and Policy in Communications (the Forum, or FRPC) is a not-for-profit, non-soliciting corporation established in 2013 to undertake research and policy analysis concerning Canadian broadcasting and telecommunications. It participates and intervenes in CRTC and other proceedings, and in 2020 published the first comprehensive study of CBC/SRC's [financial history from 1937 to 2019](#).<sup>4</sup>
7. FRPC's February 2020 [intervention](#) provided evidence about CBC's television programming, analysis of CBC's renewal applications and recommendations for the CRTC's decision. FRPC also [intervened](#) in June 2020 addressing in detail new financial evidence that CBC filed, appeared before the CRTC panel during its January 2021 public hearing and submitted its [final reply](#) in March 2021 to the CBC based on the evidence available at that time.
8. The Forum also made a number of requests in relation to the evidentiary record of this proceeding. FRPC asked that the CRTC obtain and publish CBC's full 3-year strategic plan,<sup>5</sup> financial information about CBC's online programming services,<sup>6</sup> information about the CBC branded-content initiative known as Tandem which was only disclosed in October 2020<sup>7</sup> and confirmation that CBC had followed the CRTC's requirements to notify Canadians about their right to intervene in the CBC renewal process.<sup>8</sup> In December 2020 the Forum also asked the CRTC to adjourn the CRTC renewal process to a later date, after the global pandemic had been resolved and the Corporation would be in a better position to provide up-to-date financial forecasts and programming plans.<sup>9</sup> Finally, when at the end of May 2022 the CBC announced its plan to launch new 'free advertising-supported television services' online – plans that were not disclosed in the CBC's renewal applications or at the CRTC's public hearing – the Forum requested that the CRTC ask CBC about the 'FAST' initiative in an expedited fashion so as to enable the CRTC to ensure that it had a complete understanding of CBC's proposals for the next several years.<sup>10</sup>
9. The CRTC denied all but one of FRPC's requests – the exception being the addition of material about CBC's branded-advertising initiative, Tandem.

**B. The broadcaster whose renewal is the subject of this petition: CBC**

10. CBC's identity and role have changed over the last century. When Parliament established it in 1936<sup>11</sup> CBC was to 'carry on' an otherwise undefined "national broadcasting service" within Canada.<sup>12</sup> The Corporation regulated both its own activities and performance, and those of its private competitors.
11. The Act now expressly identifies CBC as "the national public broadcaster"<sup>13</sup> and removed its regulatory authority. Parliament specifically requires CBC to "provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains"<sup>14</sup>

under the regulation of the CRTC. The CBC is required to implement the entire broadcasting policy for Canada, as well as the more detailed requirements for its programming set out in section 3(1)(m) of the *Act*. In 2009 the Federal Court of Appeal held that CBC is “an integral participant in the attainment of the policy objectives ... embodied in the *Act*.”<sup>15</sup>

12. The CBC today operates dozens of licensed radio, television and discretionary programming services across Canada. It holds licences for six networks, 88 radio stations, 27 television stations and five discretionary television programming services.<sup>16</sup> CBC also operates unlicensed digital programming services available only online; the CRTC has exempted these and all other digital programming services from licensing and regulation since 1999,<sup>17</sup> under the CRTC’s exemption power in subsection 9(4) of the *Act*.
- C. The test and requirements for reconsideration under section 28 of the *Act*
13. Parliament granted Their Excellency the power to set aside or refer back for reconsideration and hearing by the Commission, CRTC’s licensing decisions. This power is set out in section 28 of the *Act*. The test for reconsideration is set out in subsection 28(1): the Governor in Council must be satisfied that a CRTC licensing decision “derogates from the attainment of the objectives” of Parliament’s broadcasting policy for Canada in subsection 3(1).<sup>18</sup>
  14. The second part of section 28 requires that Governor-in-Council orders that refer decisions back to the Commission for reconsideration and hearing “**shall**” set out matters that it believes *may* be material to the CRTC’s reconsideration and hearing. The Governor in Council need not ascertain the factual materiality of individual matters when listing them.
  15. The third part of section 28 sets out the options open to the CRTC once a decision is referred back.<sup>19</sup>
  16. If the CRTC simply reconfirms the decision that Their Excellency ordered it to reconsider, the Governor in Council may then order the reconfirming decision to be set aside, provided it believes the CRTC’s decision still derogates from the broadcasting policy for Canada, and provides reasons.<sup>20</sup>
- D. The context of Decision 2022-165: why does it matter?
17. Decision 2022-165 matters because it betrays the trust of Parliament, Canadians and other broadcasters and ignores the material context in which it was made.
  18. The decision betrays Parliament’s trust. It permits CBC to implement Parliament’s broadcasting policy without constraint or direction, and swaps enforceable programming conditions for reporting and consultation requirements. If Parliament had intended that CBC should meet reporting requirements instead of broadcasting specific types of programming, Parliament would not have given the CRTC the responsibility and authority to regulate and supervise the CBC to ensure that it is fulfilling Parliament’s broadcasting policy for Canada.

19. Decision 2022-165 also betrays Canadians' trust. They have been assured and reassured – often by the CRTC itself – that the CRTC regulates in their interest - before, during and after this process, and that the Commission serves the public interest.

20. Yet in Decision 2022-165 the CRTC chose not to supervise and regulate CBC in the public

interest: it did not offer clear evidence that CBC has met its legal and regulatory requirements; it offered no evidence about CBC's programming plans from April 2023 until 2027 and it traded enforceable conditions for the programming offered by CBC going forward for unenforceable 'expectations' and 'encouragements' whose breach incurs no legal penalty.

21. In discussing Tandem, CBC's multi-year initiative in which it produces and broadcasts long-form advertising for advertisers, the Majority decision acknowledged that "branded content may not always be as easily identifiable as the CBC intends."<sup>24</sup> Rather than setting clear and enforceable conditions of licence to prohibit CBC's broadcast of advertising masquerading as programming or requiring CBC to post a prominent notice that audiences are being presented with long-form advertising instead of the programming they might believe their taxes support, the CRTC defaulted to an unenforceable 'expectation'. Moreover, it decided to have CBC measure the outcome of this expectation by asking Canadians if branded content is confusing.<sup>25</sup> Five years from now, what will Canadians or the CRTC actually know about the national public broadcaster's sale of its reputation through the vehicle of advertising posing as CBC programming? How much programming time was involved? How much money did branded content earn for CBC? Serving the public interest and deserving the public's trust requires the CRTC to evaluate licensees' performance to promote their continued and strengthening implementation of Parliament's broadcasting policy, or to set and enforce requirements that ensure such performance.

22. Third, Decision 2022-165 betrays other broadcasters' trust by granting CBC free rein to maximize its commercial revenues at the expense of the private sector. Decision 2022-165 failed to offer any objective estimates of the impact of CBC's new advertising initiatives on other broadcasters: programs it produces and broadcasts for advertisers willing to pay for them (aka 'Tandem'), and new ad-supported digital services known as Free, Advertising Supported TV channels ('FAST' channels – see CBC's announcement about these services, reproduced in Appendix 4). Decision 2022-165 wholly supports CBC's Tandem work and explicitly declined to learn about the FAST channels CBC announced by out of the blue in May 2022, a month before the CRTC issued Decision 2022-165. Private broadcasters must now rethink any expectation that the CRTC will consider the impact of its decisions about the public element's impact on other broadcasters, especially those that rely on advertising revenue to survive.

2017: "With respect to the consumer issue, I don't like the label. I don't want to be known as 'pro-consumer.' I don't want to be known as 'pro-business.' I'd like to be known, frankly, as 'pro-public interest,' Mr. Scott said."<sup>21</sup>

2020: "The CRTC will continue to regulate broadcasting and telecommunications in the public interest....", says Minister of Canadian Heritage Guilbeault<sup>22</sup>

2021: "... the CRTC will continue to regulate broadcasting and telecommunications in the public interest....", says Minister of Canadian Heritage Ringuette<sup>23</sup>

Today: "Put simply, our role is to regulate in the public interest ...." Chairperson Ian Scott (undated CRTC webpage, "[Meet Ian](#)")

23. Parliament's broadcasting policy also specifically requires regulation within Canada's cultural, political, social and economic fabric.<sup>26</sup> Contrasted with the CRTC's renewal of CBC's licences in 2013 and earlier, major changes are causing tumult in each of these areas:

- a. The **cultural context** in which the CRTC must regulate CBC has changed because today Canadians' access to online digital media enables them to engage with cultures from around the world so that the 'shelf space', for domestic programming that tells Canadians their stories and their news has dwindled commensurately.

Since last renewing CBC's licences in 2013 the CRTC has sharply reduced required levels of Canadian TV programming. It dropped the regulation requiring that, from 6 am to midnight, 50% of the hours broadcast by private television stations and 60% of the hours broadcast by public television stations be Canadian. The CRTC retained the requirement that private TV broadcasters ensure that Canadian programming comprises 50% of the hours they broadcast from 6pm to midnight, and 60% in the case of public TV broadcasters: the CRTC's TV regulations therefore now permit foreign content to make up 83% of private TV stations' programming, and up to 80% of CBC TV's programming.

The CRTC's radio regulations allow up to 65% of the popular music selections played by Canadian commercial radio stations to be foreign, and set no regulations for local or Canadian non-musical programming.

As for news, data published by the CRTC show that – controlling for inflation – private TV broadcasters' expenditures on local news decreased by 6% between 2013 and 2019.<sup>A</sup> The CRTC publishes little information about this programming, but its proceedings over time have disclosed that some broadcasters include national and international stories in their 'local' newscasts, while others replay in the morning their local newscasts from the night before. Broadcasters holding radio and television licences can kill two birds with one stone – televising their radio stations' newscasts. The CRTC has ignored the spread of 'centralcasting' in Canadian broadcasting: this system helps larger broadcasters to reduce costs by having central hubs package local stations' programming segments into a newscast the hubs then transmit; the CRTC has not addressed the issue that stations merely contributing to a central hub generally no longer actually control their own transmitters, making it difficult and potentially impossible for local stations to break into 'their' programming to broadcast emergency alerts to the communities they serve. It is unclear to what extent CBC has adopted the centralcasting model.

The CRTC's regulation of Canadian broadcasters now enables foreign content to make up well over half of the programming broadcast to Canadians, private broadcasters have reduced their spending on local news, and the CRTC's regulatory approach does not clearly ensure the availability of local news when communities need it most.

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<sup>A</sup> The CRTC does not publish financial information about radio broadcasters' expenditures by program genre.



Decision 2022-165 does not address these aspects of its cultural context.

- b. The **political context** in which the CRTC decided to consider CBC's renewal applications was and remains fundamentally different from every other CBC renewal proceeding held since 1991 because the government had presented its draft revision of the 1991 *Act* to the House, and because the Prime Minister had given clear instructions to the Minister of Canadian Heritage about CBC.

First, Parliament was then and is still considering new broadcasting legislation: the House of Commons had been considering Bill C-10 to amend the *Act* in 2019 when CBC filed its applications, and began considering new broadcasting legislation in Bill C-11 in November 2020, just when the CRTC invited comment on CBC's renewal applications.

Although neither Bill C-10 nor Bill C-11 has been enacted CRTC Chairperson Ian Scott established nine "working groups" of some 100 CRTC staff (out of an agency of roughly 380 staff, half of whom work in broadcasting) in December 2020, to address issues related to the new legislation's requirement for "fair contributions to be made to support Canadian content that reflects our country's diversity":<sup>27</sup> Figure 1.

Much in the same way that the Majority decision effectively ignores CBC's broadcasting of Canadian programming, none of the groups established by Chairperson Scott addressed ways of ensuring the broadcast of Canadian programming.

**Figure 1** Purposes of working groups established in CRTC in December 2020 to develop options for implementing new broadcasting legislation (CRTC A-2021-00074)

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Group	Key issues to be addressed
1. Data Collection	What information needs to be collected from online undertakings and traditional undertakings in the future? How should competitively sensitive information be treated?
2. Ownership/Registration/Transactions	How should we determine which undertakings are subject to regulation? What ownership transactions might be in the public interest and/or what conditions could be placed on transactions to ensure they are in the public interest?
3. Contribution Framework	Who might be subject to contribution requirements to support Cancon, and at what level (revenue/subscriber thresholds)? How could we ensure equitability between new online entities and traditional services/groups?
4. Updated Cancon certification and regulatory support	How should Canadian content be defined, and what incentives and other regulatory measures could be used to optimize its production, distribution and promotion in the digital age?
5. Regulatory obligations/regulatory obligations from old to new system	Which of the existing regulations might best be adapted to the new Act, left in place, or eliminated?
6. Operational Change management/Business transformation	What changes will be necessary to the Commission's processes and operations to accommodate its new potential responsibilities? How can the impact of changes be managed most effectively?

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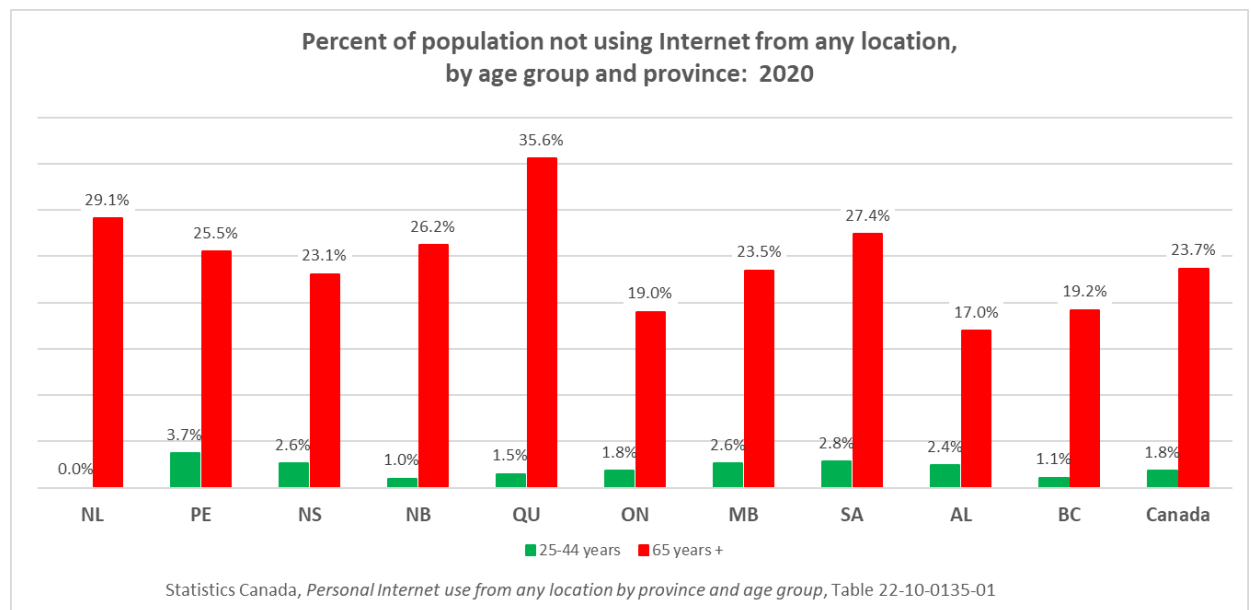
7. AMPs and compliance activities	How could AMPs and other enforcement techniques be used to ensure compliance with the new provisions of the Act?
8. Inclusion	How could we ensure that the needs and interests of diverse groups are served and reflected in Canadian broadcasting? Such groups include Indigenous peoples, persons with disabilities, racialized communities and Canadians of diverse ethno-cultural backgrounds, socioeconomic statuses, sexual orientations, gender identities and expressions and ages.
9. Communicating changes	How should we best communicate all of the changes in the system, both internally and externally, including with existing stakeholders, new stakeholders and the public in general.

In other words, where in the past the CRTC was focussed entirely on meeting its mandate under the 1991 *Act*, today's political context means that the CRTC since at least 2020 has divided its attention between its existing and its prospective legal duties.

Second, the Prime Minister has specifically charged the Minister of Canadian Heritage to whom the CRTC reports in broadcasting matters with the duty to engage in “evidence-based decision-making”<sup>28</sup> and to modernize CBC by, among other things, increasing its “production of national, regional and local news” and providing it with “additional funding to make it less reliant on private advertising, with a goal of eliminating advertising during news and other public affairs shows”.<sup>29</sup> The government subsequently provided CBC with an additional \$400 million, spread over four years, to enable CBC to reduce its reliance on advertising.<sup>30</sup>

- c. The **social context** in which the CRTC must regulate CBC has changed from a society that in the late 1960s was largely young and Caucasian, to one in which half the population is over 40 years of age<sup>31</sup> and four in ten people report multiple ethnic origins.<sup>32</sup> Canadians are also more interconnected thanks to their access to online programming – yet this varies greatly by age: while 95% or more of Canadians from 15 to 64 years of age used the Internet in 2020, 24% of Canadians over the age of 65 did not in that year use the Internet at all (see Figure 2<sup>33</sup>).

**Figure 2** Percent of population not using Internet by province, in 2020



Decision 2022-165 does not address these aspects of its social context.

- d. The **economic context** in which the CRTC is regulating the CBC is in tumult. Canada's broadcasters face unlicensed competition from foreign online streaming services which has reduced audiences to Canadian broadcasters and has also forced broadcasters to compete more strongly for advertising revenues. Moreover, employment opportunities for

Canadians in the broadcasting sector have contracted sharply from 2013 (when the CRTC last renewed CBC's licences) – by 21% (14,453 jobs) for private broadcasters, and by 35% (2,908 jobs) for CBC.<sup>34</sup>

Decision 2022-165 does not address these aspects of its economic context.

24. The process culminating in Decision 2022-165 differed fundamentally from those previous renewals. As Vice-Chairperson Simard wrote in her dissent, the CRTC made its decision in the context of tremendous instability and uncertainty:

... it is being applied in a legislative and regulatory environment of which the levels of instability and uncertainty are of a rare magnitude. Significant amendments to the Act are being deliberated in Parliament. There have been no recent reviews of the regulatory framework for the provision of audio and audiovisual services via digital platforms or of the national public broadcaster's mandate in the digital age.
25. Decision 2022-165 also effectively ignored CBC's history of regulatory non-compliance, usually by its programming networks, but, in at least one case, by a station (see Appendix 3). In 1993 the CRTC noted shortfalls in the level of Canadian content broadcast by three of CBC's four radio networks and renewed CBC's licences for 7 years.<sup>35</sup>
26. In 1994 the Commission noted that CBC had not met all of the CRTC's expectations, and renewed CBC's licences for five years.<sup>36</sup> (In setting these expectations in 1987 the CRTC had "identified a list of expectations to be met during the upcoming licence term, as funds become available. ..." <sup>37</sup>
27. In 2000, after finding that CBC's English-language radio network had broadcast an insufficient level of Canadian content in breach of a condition of its licence,<sup>38</sup> the CRTC renewed CBC's radio and television programming service licences for seven years.<sup>39</sup>
28. In 2004, after finding that CBC had breached the CRTC's radio regulations by submitting inaccurate program logs the CRTC renewed CBVT Quebec for two years – a shorter-than-usual term not because of CBC's regulatory breach, but to consider CBVT's renewal simultaneously with that of CBFT.<sup>40</sup>
29. In 2013, after CBC acknowledged that it had breached the condition of its French-language television service to broadcast four hours of original programming per week, the CRTC renewed its licences for five years, to 2018.<sup>41</sup> (Since 2013 the CRTC has renewed CBC's decisions 'administratively' six times; its current licences expire 31 August 2022.)
30. The CRTC has also found that CBC breached the Act's requirement for programming of high standard five times from 2006 to 2009.<sup>42</sup>
31. Overall then, the CRTC's renewal of CBC was taking place at a time of important change not just in Canadian culture, but also in its political sphere, Canadian society and its economy. It was also taking place at a time when the CBC's programming networks had not met the CRTC's

requirements in any of their licensing decisions since 1991. Decision 2022-165 also ignored much of the broadcasting policy for Canada.

## II. The Act's "Broadcasting Policy for Canada" trumps the CRTC's "Regulatory policy"

32. The *Broadcasting Act* under which the CRTC was required to make its decision<sup>B</sup> about CBC's applications<sup>43</sup> includes Parliament's broadcasting policy for Canada, and a regulatory policy.
- A. The "Broadcasting Policy for Canada" and a "Regulatory policy" for the CRTC
33. The 1991 Act has four Parts. Parliament declares its "Broadcasting Policy for Canada" in Part I – "General", and includes a "Regulatory policy" in Part II – "Objects and Powers of the Commission in Relation to Broadcasting".<sup>C</sup>
34. These two policies are not equal, for three reasons: the structure of the *Broadcasting Act*, the words it uses and its clarifying statements.
35. In terms of structure, the Federal Court of Appeal pointed out in 2000 that "administrative decision-makers interpreting legislative provisions must consider the text, context and purpose of the provisions in order to arrive at the authentic meaning of the provisions".<sup>44</sup> Parliament's structuring of the *Broadcasting Act* – its "scheme and purpose" – signal that its broadcasting and regulatory policies do not have equal standing.<sup>45</sup> By placing the Broadcasting Policy for Canada in Part I Parliament establishes it as the interpretative framework for the entire statute. The "Regulatory policy", by contrast, is not included in Part I but in Part II<sup>46</sup> – in Parliament's description of the CRTC's objects and powers in broadcasting. Parliament offered the CRTC guidance about factors it should consider in meeting its supervisory and regulatory duties.
36. Second, the specific words used by Parliament – 'shall' vs 'should' – confirm that although the CRTC *may* consider different factors in regulating broadcasters, it **must** implement the Broadcasting Policy for Canada. First, subsection 5(1) states that the CRTC "shall" regulate and supervise broadcasters to implement the subsection 3(1) broadcasting policy – "with a view to implementing" the Broadcasting Policy for Canada, and having "regard to" the subsection 5(2) regulatory policy.<sup>47</sup> The [Interpretation Act](#)<sup>48</sup> that defines textual expressions in Parliament's statutes provides that the word, "'shall' is to be construed as an imperative", while 'may' is "permissive".
37. Third, Parliament established that the CRTC's consideration of the regulatory factors in subsection 5(2) is discretionary. Parliament tells the CRTC that "[t]he Canadian broadcasting system **should** be regulated and supervised in a flexible manner ...."<sup>49</sup> The Supreme Court

<sup>B</sup> Permitting administrative agencies established by Parliament to fulfil duties set out in a statute that Parliament has not yet adopted would have serious consequences for the rule of law in Canada – it would imply that Parliament's delegates are free to adopt the mandate they may have in the future, rather than the mandate they actually have at present.

<sup>C</sup> Part III sets out CBC's structure; Part IV makes consequential amendments to other statutes.

explained in 1990 – a year before the *Act* entered into force – that “should” does not impose mandatory or legal duties but instead describes desires or requests:

... use of the term "should" in s. 3(1)(d) [of the *Young Offenders Act*] does not provide evidence of a mandatory duty. ... the word "should" denotes simply a "desire or request" ... and not a legal obligation.<sup>50</sup>

38. Fourth, the subsection immediately following the regulatory policy makes the Broadcasting Policy for Canada primary, stating that in any matter the CRTC “shall” give primary consideration to Canada’s broadcasting policy rather than to flexible or streamlined regulation:

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 [5](2).

39. To summarize, the CRTC’s **primary and mandatory duty** is to implement Canada’s broadcasting policy.
40. The CRTC’s **second mandatory duty** is to exercise its first duty holistically by focussing on outcomes measured on a system-wide basis, not licence by licence. Parliament established in subsection 3(2) that Canadian broadcasting must be regulated as a single system: “[i]t is further declared that the Canadian broadcasting system constitutes a single system ....” Rather than considering each undertaking or each licensee on its own, the CRTC must consider the impact of each decision on the performance of each element of the system, and of the system as a whole.
41. Parliament has therefore established the CRTC’s priority under the *Act*: while permitting the CRTC to be somewhat creative in its regulation and supervision, it **requires** it to implement Parliament’s broadcasting policy and to do so while considering the impact of its decisions on the entire broadcasting system. This mandate requires the CRTC to adhere to the focus of Parliament’s ‘Broadcasting Policy for Canada’.

- B. The Broadcasting Policy for Canada focusses on the presentation and provision of programming – not reports
42. The current broadcasting policy for Canada has several dozen subsections – and four out of five of these – 33 out of 41, or 80% -- involve programming. As **Error! Reference source not found.** shows through red font, references to programming and its exhibition predominate.

**Figure 3**      **References in Canada's broadcasting policy to programming**



43. It refers instead in three separate subsections to requirements for the presentation of Canadian programming. The policy says that each of the public, private and community elements of the system “shall contribute in an appropriate manner to the creation and presentation of Canadian programming” (3(1)(e)). It adds that each individual 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” (3(1)(f)). The policy says the system should ‘provide a wide range of programming’ (3(1)(d)(ii)). CBC is subject to the requirements in the full policy, and to specific requirements in subsections 3(1)(l) and (m).
44. The following snapshot uses red font to show how subsection 3(1)’s main focus is on programming – the text in green font in subsection 3(1)(f) refers indirectly to finances, through the word, “resources” (Appendix 1 sets out subsection 3(1) in a readable font.)
45. Parliament’s broadcasting policy demonstrably focuses on the presentation and provision of programming.
46. By way of comparison, the 154 conditions and ‘sub-conditions’ that Decision 2022-165 imposed on CBC focussed almost entirely on matters other than the presentation or exhibition of

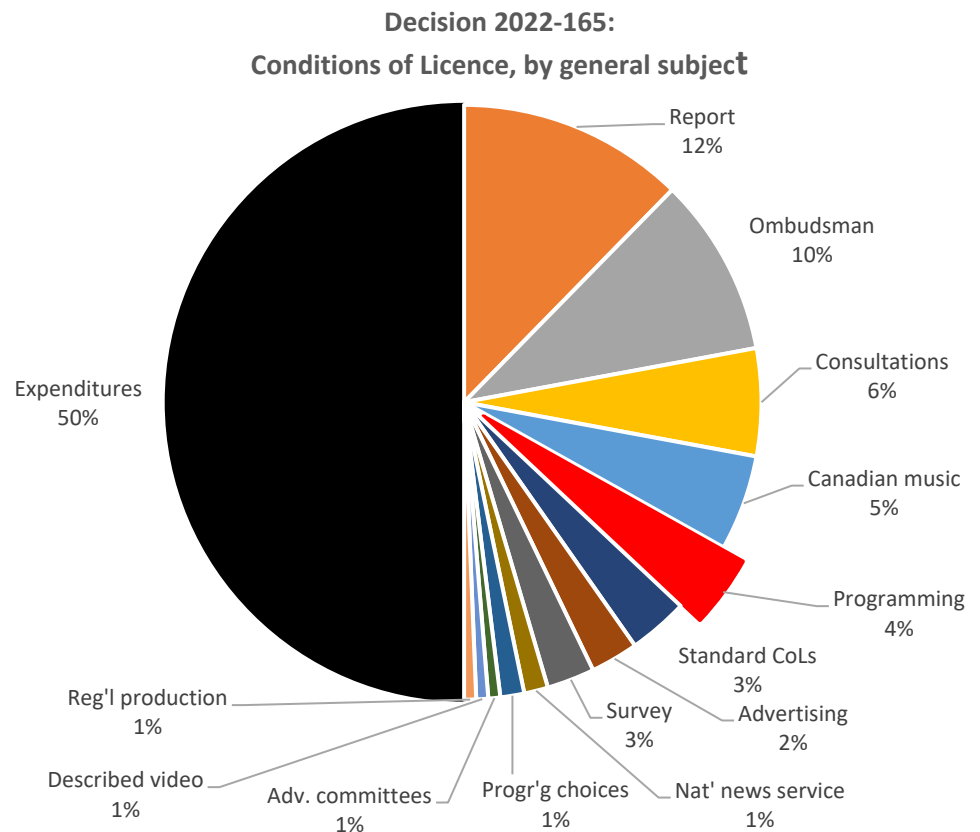
programming: Figure 4 offers a visual depiction of the rarity of programming conditions; Appendix 2 sets the conditions of licence out in a more readable format.

**Figure 4**      **References to programming in Decision 2022-165**

[Red font shows condition of licence that applies to the exhibition of programming by CBC]

I	General subject	Specific topic	General subject	Specific topic	
1	Programming	Reasonably balanced	33 f	Expenditures	Definitions
2 a	Expenditures	Percentage	34 g	Programming	Ch'l'd-en's - 1 hour
2 b	Expenditures	Percentage	35	Programming	-ocal - 7 hours
3	Expenditures	Definitions	36	Programming	-ocal - 5 hours
4 a	Expenditures	Percentage	37	Programming	Local-news - 7 days/wk
4 b	Expenditures	Percentage	38	Described video	4 hours/day
4 c	Expenditures	Percentage	39	Standard Conditions of licence	Standard requirements
4 d	Expenditures	Percentage	40	Standard Conditions of licence	Standard requirements
4 e	Expenditures	Percentage	41	Standard Conditions of licence	Standard requirements
4 f	Expenditures	Percentage	42	Standard Conditions of licence	Standard requirements
5 a	Expenditures	Definitions	43	National news service	RDI
5 b	Expenditures	Definitions	44	Regional production	Percentage
5 c	Expenditures	Definitions	45	National news service	News Network
5 d	Expenditures	Discretion	46	Advertising	Ch'l'dren's Code
5 e	Expenditures	Discretion	47	Advertising	No ads in ch'l'dren's programming
6 a	Expenditures	Percentage	48 a	Canadian music	Percentage
6 b	Expenditures	Percentage	48 b	Canadian music	Percentage
6 c	Expenditures	Percentage	48 c	Canadian music	Percentage
6 d	Expenditures	Percentage	48 d	Canadian music	Percentage
6 e	Expenditures	Percentage	48 e	Canadian music	Percentage
6 f	Expenditures	Percentage	48 f	Canadian music	Percentage
7 a	Expenditures	Definitions	48 g	Canadian music	Percentage
7 b	Expenditures	Definitions	49	Canadian music	Percentage
7 c	Expenditures	Definitions	50	Programming	15 hou-s/wk - CBEF
7 d	Expenditures	Definitions	51	Standard Conditions of licence	Equitable portrayal code
7 e	Expenditures	Definitions	52 a	Advertising	Prohibition' (excl'g sponsored programs)
8 a	Expenditures	Percentage	52 b	Advertising	Prohibition' (excl'g elections)
8 b	Expenditures	Percentage	53	Ombudsman	Two offices
8 c	Expenditures	Percentage	54	Ombudsman	Reports to BoD
8 d	Expenditures	Percentage	55	Ombudsman	BoD response
8 e	Expenditures	Percentage	56	Ombudsman	File annual report
8 f	Expenditures	Percentage	57	Ombudsman	File mana'ement's answer
9 a	Expenditures	Flexibility	58	Ombudsman	Sele-tion - steps
9 b	Expenditures	Flexibility	58 a	Ombudsman	Sele-tion - steps
9 c	Expenditures	Definitions	58 b	Ombudsman	Sele-tion - steps
9 d	Expenditures	Flexibility	58 c	Ombudsman	Sele-tion - steps
9 e	Expenditures	Flexibility	58 d	Ombudsman	Sele-tion - steps
10 a	Expenditures	Percentage	58 e	Ombudsman	Sele-tion - steps
10 b	Expenditures	Percentage	58 f	Ombudsman	Sele-tion - steps
10 c	Expenditures	Percentage	58 g	Ombudsman	Sele-tion - steps
10 d	Expenditures	Percentage	58 h	Ombudsman	Sele-tion - steps
10 e	Expenditures	Percentage	58 i	Ombudsman-Term - 5 years	
10 f	Expenditures	Percentage	59	Consultations	With Indigenous peopl OLMCs
11 a	Expenditures	Definitions	59 a	Consultations	Issues impt to Indigenous peoples
11 b	Expenditures	Definitions	59 b	Consultations	Results of perception researsh
11 c	Expenditures	Definitions	60	Consultations	With lninous & OLMC producers
11 d	Expenditures	Definitions	61	Programming choices	Consider consultations
11 e	Expenditures	Definitions	62	Report	Ind'genous peoples' needs
12 f	Expenditures	Definitions	63	Consultations	With racialized, LGBTQ, disabled
13 g	Expenditures	Definitions	63 a	Consultations	What to discuss
14	Expenditures	Definitions	63 b	Consultations	Public opinion research
15 a	Expenditures	Flexibility	64	Advisory committees	Establish them
15 b	Expenditures	Flexibility	65	Consultations	Report
15 c	Expenditures	Min Requirement	66	Consultations	With racialized and disabled
15 d	Expenditures	Inquiries	67	Programming choices	Consider consultations
15 i expenditures	CBC is responsible		Report		LGBTQ accessibility issues
16	Expenditures	Definitions	69	Report	LGBTQ accessibility issues
17	Expenditures	Percentage	70	Survey	2x / year
18	Expenditures	Definitions	71	Survey	Opinions
19	Expenditures	Definitions	72	Report	Survey results
20	Expenditures	Percentage	73	Survey	Method
21	Expenditures	Definitions	74	Survey	Sample
22	Expenditures	Definitions	75	Report	IP information
23	Expenditures	Percentage	76	Report	IP data
24	Expenditures	Definitions	77	Report	Program staff
25	Expenditures	Definitions	78	Report	Production
26	Expenditures	Percentage	78 a	Report	Production
27	Expenditures	Definitions	78 b	Report	Production
28	Expenditures	Definitions	78 c	Report	Production
29	Expenditures	Percentage	79	Report	Production
30	Expenditures	Definitions	79 a	Report	Children & youth programming
31	Expenditures	Definitions	79 '	Report	Local/reg'l programming hours
32 a	Expenditures	Flexibility	-0	Report	Public - staffing positions
32 b	Expenditures	Definitions	81	Report	Staffing composition
32 c	Expenditures	Minimum requirement	82	Report	Staffing composition
32 d	Expenditures	Report	83	Report	Staffing composition
32 e	Expenditures	CBC is responsible	84	Report	Staffing composition

Total conditions of licence:

**Figure 5 Decision 202-165 – Conditions by subject**

47. To put Decision 2022-165 another way, fully half (77) of the 154 conditions it imposes set limits on CBC's programming "expenditures" – Figure 5– yet the Act only addresses this issue by way of an indirect reference to use of resources in subsection 3(1)(f).

48. At the same time **just 4% - or 6 of the 154 conditions – set requirements for programming** – the main focus of Parliament's Broadcasting Policy for Canada.

49. Decision 2022-165 derogates from Parliament's broadcasting policy for Canada by ignoring the policy's clear focus on the presentation and provision of Canadian programming in favour of expenditure, consultation and reporting requirements.

### III. S. 28(1): how Decision 2022-165 derogates from Parliament's broadcasting policy for Canada

50. This Part briefly by describing the CRTC's legal and informal powers. It then sets out three areas in which Decision 2022-165 derogates from that policy – regarding the exhibition of Canadian content, programming of high standard and the decision's impact on the system as a whole.

#### **The formal and informal powers granted by Parliament to enable the CRTC to implement the broadcasting policy for Canada**

51. Parliament empowers the CRTC to license broadcasters, to set requirements for their performance and to enforce broadcasters' compliance with the CRTC's performance requirements by setting out formal and informal penalties in the Act.



52. The CRTC's power to license broadcasters for a term of up to seven years enables it to ensure that licensees approved to operate broadcasting undertakings in Canada contribute to the implementation of Canada's broadcasting policy,<sup>51</sup> and in turn strengthen Canada's cultural, social, political and economic fabric.
53. The CRTC has four key powers to require licensees to perform in specific ways so as to achieve the objectives set out in Canada's broadcasting policy. The best-known power is to revoke a broadcaster's licence, either by revoking<sup>52</sup> or not renewing it.<sup>53</sup> Another formal power is to enact regulations<sup>54</sup> that apply to licensees operating in one or more of the classes of broadcasting service that CRTC has defined, so as to implement its objects – the implementation of the Broadcasting Policy for Canada.<sup>55</sup> The third power is to impose "conditions related to" individual broadcasters' circumstances on their licences.<sup>56</sup> The last formal power is to issue a mandatory order to a broadcaster that has failed to comply with its regulations, licences, decisions or orders<sup>57</sup> once the CRTC has first held a public hearing.<sup>58</sup>
54. These three powers can be enforced because the *Act* sets penalties for breaching regulations and conditions of licence, and powers are enforceable – that is, the *Act* is it an offence for a licensee to contravene the CRTC's regulations,<sup>59</sup> to contravene conditions of the broadcaster's licence<sup>60</sup> and to breach an order of the CRTC.<sup>61</sup> When the CRTC exercises these powers, it is effectively positioning levelling a sword of Damocles over a broadcaster's figurative head.
55. Parliament has limited ICRTC's exercise of its powers in certain ways. For example, the CRTC cannot impose conditions of licence on a broadcaster's licence unless five years have passed since it last renewed the licence.<sup>62</sup>
56. Rather than relying on the formal powers granted by Parliament, the CRTC has developed its several informal powers to penalize broadcasters' non-compliance by imposing regulatory costs through its procedures. Examples include setting licence terms of one or two years, so that broadcasters must reapply for their licences; denying amendments to licences because of regulatory non-compliance or calling licensees to a public hearing to question them about their performance.
57. The CRTC has also introduced two concepts that, while purporting to establish requirements, are not set out in the *Broadcasting Act* and whose breach, more importantly, incurs no legal consequence whatsoever. Though the CRTC now publishes its "expectations" of licensees, and "encouragements", broadcasters may disregard these 'expectations' and 'encouragements' with very little fear: the CRTC's only remedy when a broadcaster fails in one licence term to meet an expectation, is to impose it as a condition of licence in the next. Where the CRTC's exercise of its formal powers resembles a weighty sword of Damocles, The CRTC's use of its formal powers creates credible, sword-of-Damocles threats; its expectations and encouragements are in fact theatrical foam rubber props – resembling a threat without actually being one.
58. In fact, when the CRTC invited Canadians' comments on the CBC's renewal applications, it assured them of its intent to ensure "that Corporation fulfills its mandate as set out in the *Act* in

the most appropriate fashion....”<sup>63</sup> The CRTC did not state that its key goal was to regulate CBC ‘more flexibly’ but said simply that it had “views regarding flexible regulation of the broadcasting system in the future”.<sup>64</sup>

59. Yet Decision 2022-165 states clearly that the Majority decision’s goal was to establish a “more modern and flexible framework ... to ensure that the CBC continues to meet the programming needs of a diversity of Canadians, while remaining accountable.”<sup>65</sup> The Majority decision refers twice to its 2018 report about the necessity for broadcast regulation to be flexible – without mentioning that this would require legislative change. It even repeated CBC’s flattering repetition of the CRTC’s own views:

452. The CBC further stated that it has proposed a new forward-looking regulatory framework for its broadcasting services, based on the principles listed in the Harnessing Change report. ....

60. In reality, the Majority decision means that CBC (and perhaps other broadcasters, going forward) will submit reports that “monitor specific behaviours required by conditions of licence”.<sup>66</sup> The CRTC itself would apparently no longer monitor broadcasters’ performance – licensees would do that themselves through reports to the Commission: DIY regulation, if you will. The Majority decision’s focus on regulatory ‘flexibility’ abrogates subsection 3(1).
- A. Decision 2022-165 fails to mandate exhibition of original local news by CBC TV stations
61. Programming is at the core of Parliament’s Broadcasting Policy for Canada. CRTC CRTC has spent decades requiring broadcasters to provide specific types of programming.
62. The reason is simple: while a few types of programming may always be exhibited without regulation – national sports, for instance – other types of programming will rarely be exhibited unless required by regulation or condition of licence. This includes local news – as journalistic and production resources are required in the communities serviced. It includes new children’s programming – as it is far less expensive to rebroadcast older ‘evergreen’ children’s programming that young children naturally do not remember ever watching or hearing before. It also includes programming of high standard – as developing, maintaining and ensuring the application of standards requires training and management.
63. FRPC is keenly aware that other types of programming content – drama, comedies and documentaries, for instance – also require regulatory support. Though our petition focusses on the three areas just listed, we support other petitioners’ concerns about the exhibition of other types of programming not addressed through conditions of licence in Decision 2022-165.
64. The Majority decision noted that thousands of the interventions it received about CBC’s licence renewal mentioned the importance of news and information programming.<sup>67</sup> The decision fails to mention, however, that one reason Canadians rely on the CBC for local news is that private radio and TV broadcasters have been reducing the level of original local news they provide over the past twenty years, to reduce their programming expenditures as they lose audience share (and advertising revenues).

65. FRPC’s intervention specifically addressed local news and provided objective evidence from CBC’s program logs for CBLT-DT Toronto and CBFT-DT Montreal – the flagship stations of CBC’s English-language and French-language TV networks – showing that CBC has also reduced hours of local news overall (by 22% and 5.5%, respectively) and reduced hours of original local news even more sharply – by close to 37% for CBLT-DT and nearly 50% by CBFT-DT:

Programming	Station	Nov 2013	Nov 2019	2013-19
Hours of local news	CBLT-DT Toronto	47	36.7	-21.9%
	CBFT-DT Montreal	28.0	26.5	-5.5%
Hours of first-play original local news	CBLT-DT Toronto	137.0	86.7	-36.7%
	CBFT-DT Montreal	158.5	80.8	-49.0%

[FRPC intervention regarding Broadcasting Notice of Consultation 2019-379](#) (20 January 2020), at page 16, para. 68

66. The Majority decision provided no objective evidence about the amount of local or original local news broadcast by CBC’s TV services. Instead, it noted that Canadian television news is “very popular with Canadians”<sup>68</sup> and that “Canadians expect the CBC to disseminate and make available information in the event of an emergency.”<sup>69</sup>
67. Decision 2022-165 also noted that in the midst of the global Covid-19 pandemic “when Canadians have been seeking out information/news about health measures applicable to them”<sup>70</sup> CBC decided to replace its English-language television stations’ newscasts with programming from its national English-language discretionary news service because of concerns about its staff safety. CBC’s French-language television stations continued to operate as usual<sup>71</sup> -- apparently either disregarding staff safety or because they were simply better able to cope.
68. The CRTC could have addressed the Corporation’s breach of Canadians’ expectations about CBC’s provision of local news especially during a crisis. It could have and should have imposed conditions of licence to mandate the daily provision by each CBC originating radio and television station of **original** local news. It did not.
69. The Majority decision instead imposed a condition of licence requiring CBC to provide “local programming” (rather than local news) on its television stations – but only in non-metropolitan communities.<sup>72</sup> <sup>D</sup> It also says, in something of a *non sequitur*, that “... the CBC’s production studios are located in metropolitan markets, and that those markets are therefore very likely to be adequately served by the CBC’s local programming”:<sup>73</sup> the problem is that if difficult times suddenly call for difficult measures to be taken by the CBC, the only mandatory requirement it will have for local news is to maintain service in non-metropolitan communities. If CBC decides to close its metropolitan studies to save money, what could the CRTC actually ‘do’ as long as CBC maintains its non-metropolitan news? While acknowledging, moreover, that “access to high-speed Internet remains an issue in some areas, particularly in rural and remote

<sup>D</sup> Even if the CRTC’s ‘standard’ conditions of licence for all television broadcasters require a minimum level of local news, the application of a specific condition of licence to CBC’s licences overrides this ‘standard’ condition of licence, as it presumably would be interpreted as a condition tailored to the circumstances of the licensee (CBC).

communities, such as Canada's North"<sup>74</sup> the Majority decision does not address the significant gap between older and younger Canadians' access to the Internet (as shown in Figure 2).

70. Decision 2022-165's first rationale for allowing CBC to drop newscasts in metropolitan communities— despite thousands of interveners' emphasizing the importance of local CBC television news – is that Canadians will always have options for news. It adds that the Majority of the hearing panel was "confident that CBC will continue to broadcast local programming that is predominantly news" in those communities.<sup>75</sup> As shown by the evidence of CBC's own broadcast TV logs, however, CBC's English- and French-language flagship TV stations had already reduced their total and first-run local news from 2013 to 2019. The CRTC did not present any evidence showing that private broadcasters had increased – or even maintained – the level of original local news they broadcast (in either television or radio), and offered no evidence to support its belief that private broadcasters would always exist to provide the
71. The Majority's decision to merely maintain a level of local programming – rather than specified levels of local news, and only in communities with fewer than a million people – defies the requirement in the Broadcasting Policy for Canada for CBC to provide programming that informs audiences (3(1)(l)), throughout Canada (3(1)(m)(vii)), including with news (3(1)(d)(ii)).

#### B. Decision 2022-165 fails to address programming standards

72. The Majority decision said that it recognized "that the CBC's operations are held to a higher standard and level of scrutiny compared to other broadcasters. ..." <sup>76</sup> The decision addressed the concept of 'high standard' in relation to CBC's branded-content Tandem initiative<sup>77</sup> and audience advisories finding that the CBC's existing Ombudsmen offices serve "the Canadian public in responding to concerns related to news and information programming".<sup>78</sup>
73. The Majority decision then found that CBC had met all of its regulatory requirements:

23. The Commission recognizes that the CBC's operations are held to a higher standard and level of public scrutiny compared to other broadcasters. During the current licence term, the CBC has met all of its regulatory requirements and has even surpassed a number of them. In consideration of the relative level of confidence that may be placed in the CBC, these and other factors led the Commission to focus on desired public policy results in a number of cases, without specifying the precise means of achieving them.
74. FRPC respectfully notes that, first, it is difficult to understand how the CRTC is focusing on specific public policy results – and are these related to Parliament's broadcasting policy for Canada? – when it does not specify how these results will be achieved.
75. Second, the Forum notes that despite the Commission's assurance that CBC had met all of its regulatory requirements, exactly one week later the CRTC excoriated CBC for a program broadcast by the CBC's French-language radio service in August 2020 – *while CBC was still operating under the terms and conditions of its 2013 licence from the CRTC* – and which the CRTC received on 28 August 2020.<sup>79</sup>
76. In Decision 2022-175 of 29 June 2022 the CRTC said that it

- a. “is dissatisfied with the way the subject matter was treated in this segment”
- b. “the SRC did not exercise sufficient caution and vigilance in its treatment of the subject matter, which may have had a harmful effect on its audience, particularly the Black community”
- c. did “not meet the high programming standard set out in the Act.”<sup>80</sup>
- d. CBC’s broadcast of the program segment “did not contribute to the strengthening of the cultural and social fabric and the reflection of the multicultural and multiracial nature of Canada provided for in paragraph 3(1)(d) and subparagraph 3(1)(m)(viii) of the Act.”<sup>81</sup>

77. The Majority’s decision to ignore a complaint about a program broadcast in mid-2020 within CBC’s current licence - is incomprehensible. After all, the CRTC for decades told people who submit complaints about broadcasters’ programming that it will consider such complaints during the broadcasters’ licence renewals. Postponing the release of its serious accusations about impropriety by the CBC in its programming decisions during its current licence, until a week after renewing the CBC’s licences for five years in a decision that expressed no concern whatsoever about CBC’s programming standards and moreover implied strongly that Canadians can trust the CBC to comply with the CRTC’s ‘expectations’, let alone actual regulations, is evidence of the Majority decision’s disregard for Parliament’s broadcasting policy.

#### C. Decision 2022-165 fails to consider its impact on the broadcasting system

78. Given its size – broadcasting coast to coast to coast in English and in French, by radio and by television – it is obvious that CBC is an important broadcaster.
79. Indeed, CBC is effectively the “public element” in Canada’s broadcasting system. While three out of ten provinces<sup>E</sup> continue to operate provincial public broadcasting services, the CBC is Canada’s national public broadcaster. It is “an integral participant in the attainment of the policy objectives ... embodied in the Act” as the Federal Court of Appeal held in 2009.<sup>82</sup>
80. Though purporting to recognize CBC’s “unique role, mandate and capacities”<sup>83</sup> the Majority decision disregards the impact of its decision on the broadcasting system as a whole, and on the private element of the broadcasting system – private radio and television broadcasters. (The Forum is taking the liberty of assuming that other petitioners will address or have addressed the failure by the Majority decision to impose specific conditions of licence regarding Canadian program production – a failure that FRPC considers will weaken Canada’s domestic program production capacity.)
81. The Majority decision also threatens employment opportunities, however, by permitting CBC to end local newscasts in metropolitan communities. Neither CBC nor the CRTC publishes statistics about the number of people employed to gather, report, produce and broadcast CBC’s newscasts. In March 2021, however, the CBC/SRC had “7,581 employees, 6,525 of whom were

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<sup>E</sup> British Columbia, Ontario and Quebec.

permanent, 351 of whom were temporary and 705 of whom were on contract”.<sup>84</sup> Assuming that half of CBC’s permanent staff work in an administrative capacity – because there are no data to suggest otherwise – some 3,790 of CBC’s staff may work in programming. If one third of these staff work on local programming – 1,263 people – a significant number of employment opportunities may be lost as nothing prevents CBC from terminating its local TV newscasts in large cities.

82. The Majority decision also seems content to ignore both the political context of its decision and the impact of its laissez-faire approach to CBC’s advertising initiatives on private broadcasters. The Prime Minister, after all, specifically directed the Minister of Canadian Heritage to limit CBC’s advertising activities, and the government even “earmarked ... \$400 million over four years” “to make CBC less reliant on private advertising.”<sup>85</sup>

“The CBC likes but Isn’t need it,” said Kevin Desjardins, the president of the Canadian Association of Broadcasters. “They have an ability to skew the advertising market in a way, because it is not as essential as it is for private broadcasters, where that is the lifeblood of their business model.”<sup>86</sup>

83. The CRTC not only ignored CBC’s entry into branded-content advertising, but also refused to consider the impact of its FAST channels – free discretionary television services that will apparently generate their own operating revenue by advertising, among any other things (such as selling data about users). The Majority decision again based its decision on regulatory ‘flexibility’:

587 Consistent with subsection 46(5) of the Broadcasting Act, it is the Commission’s view that **the public broadcaster should be given the flexibility** to experiment with its advertising as the revenues it garners from advertising still play an important role in the fulfilment of its mandate.

[bold font added]

84. It is surprising enough that the Majority decision did not address the impact of the CBC’s deeper foray into advertising, but it is even more surprising that the Majority decision was pleased to let Canada’s national public broadcaster “experiment” with new advertising tools over the Prime Minister’s mandate letter to his Heritage Minister stated a goal of reducing CBC’s reliance on advertising.
85. FRPC respectfully submits, moreover, that it is reasonable to assume that private broadcasters seeking to insulate themselves from the consequences of the Majority decision will apply to the CRTC for the same level of flexibility, before or during their own licence renewal proceedings. What reason would the CRTC have to deny the private element of the system the same flexibility it has already conceded to the public element?
86. The Majority’s failures to consider the impact Its decision on employment opportunities for Canadians and private Canadian broadcasters again demonstrate the CRTC’s disregard for Parliament’s broadcasting policy in subsection 3(1).

#### IV. S. 28(2): Material matters in Decision 2022-165

87. Parliament requires that an order made by the Their Excellency the Governor in Council referring a decision back to the CRTC “shall set out the details of any matter that, in the opinion of the Governor in Council, may be material to the reconsideration and hearing.”<sup>87</sup>
88. The Forum is taking the liberty of summarizing certain matters that were material to its decision to submit a petition to Their Excellency:
  - a. The CRTC (and its panels) must base their decisions on the evidence presented to them. Decisions made without a clear evidentiary foundation run the risk of not only appearing, but being, arbitrary. The CBC presented no evidence about its programming or the resources needed to provide such programming beyond March 2023. The Majority decision’s renewal of CBC’s licences to August 2027 despite having no evidence about CBC’s programming plans for the next four broadcast years (2024, 2025, 2026 and 2027) is a material fact.
  - b. It is a material fact that, while the Majority decision says it is “confident that the CBC will continue to broadcast local programming that is predominantly news in both the English- and French-language metropolitan markets”,<sup>88</sup> the sole evidence it provides to support its confidence consists of hours of local TV programming, not hours of local TV news or first-run local TV news. FRPC’s evidence showing that CBC had sharply reduced hours of first-run local news on its two TV network flagship stations was uncontradicted.
  - c. In Broadcasting Notice of Consultation 2019-379 the CRTC said that it “carefully reviewed ... the Corporation’s current strategic plan....”.<sup>89</sup> The only version of that plan on the 2019-379 public record was two pages long (see Appendix 5), an unusually short length for a document of such apparent importance to CBC. As the CRTC denied procedural requests by Friends<sup>90</sup> and FRPC to have CBC’s complete strategic plan placed on the CRTC public record. FRPC therefore sought the document from CBC under Canada’s *Access to Information Act* and published the [redacted 106-page long PDF presentation made to CBC’s Board of Directors about the plan](#) on FRPC’s website. (The Forum submits that even the quite-redacted version of this plan raises material concerns about CBC’s true ‘strategic plans’ for local programming.) The CRTC subsequently also denied FRPC’s procedural request to have the CBC’s 106-page long briefing on CBC’s strategic plan add to its 2019-379 record.<sup>91</sup> It is therefore a material fact that the Majority decision either relied on an incomplete, 2-page summary of CBC’s full strategic plan or the Majority decision relied on a document not placed on the public record which presented details of CBC’s full strategic plan to the CRTC hearing panel. In other words, it is a material matter that the Majority decision either relied on an incomplete record of relevant evidence, or denied the public access to relevant facts.
  - d. After making it clear that CBC’s unlicensed digital programming services would be integral to the 2019-379 renewal proceeding, the CRTC denied procedural requests asking that aggregated financial information of these services be placed on the public record – forcing

interveners to comment on the role of these services in CBC's programming plans without evidence. The CRTC then published this information four months later (for the years from 2018/19 to 2022/23). Meanwhile, the CBC's applications were entirely silent about its Tandem branded-programming initiative – an initiative that, it turned out, it had been using for years without notifying the CRTC.<sup>92</sup> CBC was also silent about the 'free, ad-supported TV' (FAST) channels whose launch it announced in May 2022 (Appendix 4) – a month before the CRTC hearing panel's decision was released. The CRTC condoned the Tandem initiative and ignored the issue of the FAST channels. Decision 2022-165's wilful disregard of these issues is a material fact.

- e. In rationalizing its decision not to set enforceable conditions of licence for CBC's expenditures on news, the Majority decision appears to argue that CBC cannot be trusted to 'direct' "spending to local programming that includes news"<sup>93</sup> - while simultaneously arguing that Canadians can count on the CBC to maintain the provision of local news. The Majority decision's inconsistency in simultaneously believing and disbelieving the CBC is a material fact.
- f. According to Decision 2022-165 "... the Commission has not identified any issues of non-compliance by the CBC that could result in the Commission considering a short-term renewal for the public broadcaster's services."<sup>94</sup> In 2013, however, the CRTC imposed a condition of licence requiring CBC to reach an agreement with independent producers about 'terms of trade'.<sup>95</sup> There is no evidence on the record that CBC has met this requirement. Notice of Consultation 2019-379 does not mention this fact, or the fact that in decisions renewing CBC's licences in 1993, 1994, 2000, 2004 and 2013 the CRTC found in each case that CBC was in breach of the broadcasting policy's requirement for programming of high standard, CRTC's regulations or its conditions of licence (see Appendix 3). (According to the CRTC's answers to requests made under the *Access to Information Act* it has no records of the written report that subsection 25(1) of the *Act* requires it to submit to the Minister of Canadian Heritage<sup>96</sup> about the CBC's regulatory breaches of 2000, 2004 and 2013.<sup>97</sup>) It is a material fact that the Majority decision ignored CBC's serial non-compliance since 1991, and that the CRTC's notice of consultation was entirely silent about CBC's historic and ongoing regulatory non-compliance.
- g. No less important, FRPC submits, is that information provided by CBC about the "broadcast notifications" CRTC required it to broadcast (by BNoC 2019-379) shows that CBC did not actually make the required broadcast notifications.<sup>98</sup> It is a material fact that the CRTC denied FRPC's procedural request asking that the information about CBC's multiple inaccuracies and apparent failures to broadcast the notifications be placed on the public record, thereby helping to maintain the fiction in the Majority decision that CBC complies with the CRTC's requirements and therefore can be trusted to meet the CRTC's unenforceable expectations.
- h. The Majority decision says that it "granted the CBC flexibility where it has demonstrated a strong record in regard to its regulatory obligations".<sup>99</sup> The Majority decision disregarded the material fact that the CRTC's own licensing decisions show that CBC has repeatedly



breached the CRTC's regulations or conditions of its licences from 1991 to the present. CBC's past failures, including in its current licence term, to meet existing regulatory requirements are material matters.

- i. While purporting to implement requirements that will yield specific outcomes to ensure that CBC's programming achieves specific objectives in Parliament's broadcasting policy, the objectives that Decision 2022-165 in fact can enforce deal with expenditures, reports and consultations by CBC – not the hours of programming it broadcasts. The Majority decision's error in equating reports with programming's achievement of the broadcasting policy's objectives is a material fact.
- j. In announcing the proceeding to consider the renewal of CBC's applications, the CRTC gave no notice that it was considering the idea that the CRTC could rely on results from "perception" reports, "attitudinal research" and/or surveys undertaken by CBC. The CRTC's failure to invite public comment on the idea of relying on such research to evaluate CBC's compliance with Parliament's broadcasting policy for Canada is a material fact.
- k. The Majority decision accepted without question CBC's explanation about the decrease in CBC's news expenditures shown in the financial summaries published by the CRTC: that CBC had changed its accounting practices and in 2016/17 stopped including its unlicensed digital service' revenues and expenditures in the annual returns of its licensed programming services.<sup>100</sup> It is therefore a material fact first, that CBC failed to notify the CRTC that it had changed the accounting basis of its financial statements when completing its annual returns; second, that it included revenues and expenditures of unlicensed programming services in the annual returns it submitted for its licensed services; and third, that despite knowing that the 2019-379 renewal process would focus on the role to be played by CBC's unlicensed digital programming services CBC apparently chose to hope that neither the CRTC nor interveners would notice any 'problems' with the information it had filed with and that CRTC had published.
- l. As the 2019-379 proceeding was focussed on CBC's ability to maintain or hopefully improve the quality (as hours were disregarded) of the programming of its licensed programming services, it is a material fact that the CBC's 12 June 2020 evidence shows that from 2018/19 to 202/23 CBC's expenditures on its digital programming and non-programming services exceeded its revenues from those services by \$1,266 million. The source of the funding of this \$1.3 billion shortfall was not clarified in the Majority decision.

Given CBC's record of serial non-compliance and financial statements with quicksand-like shifting foundations it is therefore astonishing that the Majority decision could conclude that "the CBC has met all of its regulatory requirements and has even Majority decision number of them", and that a "relative level of confidence ... may be placed in the CBC"<sup>101</sup>

- m. Finally, the process on which the Majority decision relied to consider CBC's renewal applications was been unduly long, unduly complicated and obstreperous: Table 1. It is a material fact that the Majority decision issued its decision 1,034 days from when CBC filed

its applications with the CRTC.<sup>102</sup> It is also, as previously mentioned, a material matter that neither the CRTC's notice of consultation nor the Majority decision mentioned the absence of relevant evidence about CBC's regulatory non-compliance during its current licence term, or the fact that the evidence on which the Majority based its decision was stale – only describing one year of the five-year licence that the Decision 2022-165 grants.

**Table 1 CRTC stops and starts in CBC renewal process**

CRTC	Date	Nature of decision	Day since filing	
			Appl'n	Inter'n
<a href="#">2013-263</a>	28 May 2013	CBC licences renewed to August 2018		
	23 May 2019	CRTC asks CBC to file its renewal applications <sup>103</sup>		
	23 Aug 2019	CBC filed its licence renewal applications with CRTC, <sup>104</sup> including limited financial information from the year before the renewal began (2018/19) to 2022/23		
<a href="#">2019-379</a>	<b>25 Nov 2019</b>	<b>Publishes CBC applications; invites comment by 13 February 2020 ('Phase 1')</b>	0	
<a href="#">2019-379-1</a>	28 Jan 2020	Intervention period day 64: new public broadcasting report extends deadline by 1 wk	64	
	28 Jan 2020	<a href="#">CRTC denies Friends' request that CBC file its strategic plan</a> <a href="#">CRTC denies Friends' request for CBC financial information by platform and program genre</a> , but commits to place "total aggregate revenues" of CBC's online services on public record		
	13 Feb 2020	<i>Original deadline for interventions</i>	80	
	17 Feb 2020	CRTC denies FRCP's request that CRTC deny CBC's confidentiality request re financial information about its online service		
	<b>20 Feb 2020</b>	<b>Amends intervention deadline</b>	87	0
<a href="#">2019-379-2</a>	<b>8 Apr 2020</b>	<b>Postpones hearing to later date</b>	135	48
	12 Mar 2020	<a href="#">CRTC denies FRPC's request that CBC's full strategic plan be placed on public record</a>		
	4 May 2020	<a href="#">CRTC requires CBC by 11 May to file date when it will file information about its digital activities, promised for 17 April 2020</a>		
<a href="#">2019-379-3</a>	<b>22 Jun 2020</b>	<b>Adds 2018/19 to 2022/23 financial information about digital programming service revenues and expenditures to public record; invites comment by 13 July 2020</b>	210	123
	13 July 2020	Phase 2 interventions due	231	144
	4 Aug 2020	<a href="#">FRPC asks CRTC to suspend 2019-379 proceeding</a> and to instead hold a consultation on role of public broadcasting in 21 <sup>st</sup> century		
	2 Sep 2020	FRPC asks CBC to add its "broadcast notifications" to the public record, as the list of notifications provided by CBC contained multiple inconsistencies		
<a href="#">2019-379-4</a>	<b>10 Nov 2020</b>	<b>Announces 11 January 2021 public hearing</b>	351	264
	13 Nov 2020	<a href="#">Former CBC employees ask CRTC to add branded-content 'Tandem' initiative to public hearing</a>		
	23 Nov 2020	<a href="#">Former CBC employees ask CRTC to post its Part 1 application on CRTC website as required by CRTC Rules of Practice and Procedure</a>		
	27 Nov 2020	<a href="#">Former CBC employees ask CRTC Secretary General to post their 13 Nov/20 Part 1 Application</a>		
	7 Dec 2020	<a href="#">Former CBC employees ask Minister of Canadian Heritage to ask CRTC to investigate Tandem branded-content initiative</a>		
	8 Dec 2020	<a href="#">CMPA asks CRTC to postpone 2019-379 proceeding for two years due to significant changes in industry and Bill C-10; addresses deficient public record</a>		
	10 Dec 2020	<a href="#">CRTC grants former CBC employees' request to have 'Tandem' added to public hearing</a>		
<a href="#">2019-379-5</a>	<b>18 Dec 2020</b>	<b>CBC has filed additional information with which CRTC is dissatisfied</b>	389	302
	21 Dec 2020	<a href="#">CRTC denies CMPA's 8 Dec/20 request</a>		
	22 Dec 2020	<a href="#">CRTC denies FRPC's 4 Aug/20 request</a>		
	<b>11 Jan 2020</b>	<b>CRTC public hearing on CBC's renewal applications begins</b>		
<a href="#">2019-379-6</a>	14 Jan 2021	Sets deadlines for hearing undertakings and final replies	416	329

CRTC	Date	Nature of decision	Day since filing	
			Appl'n	Inter'n
	27 Jan 2021	<b>CRTC public hearing on CBC's renewal applications ends</b>		
<a href="#">2019-379-7</a>	9 Feb 2021	<b>Sets new deadlines for interveners' final replies</b>	442	355
	24 Feb 2021	<i>Original deadline for interveners' final replies</i>	457	370
	1 Mar 2021	Final deadline for interveners' final replies	462	375
<a href="#">2022-165</a>	22 Jun 2022	<b>Licences renewed to 31 August 2027</b>	940	853
<b>TI since CBC filed its renewal applications on 23 August 2019: 2.8 years</b>			<b>1,034</b>	

## V. Relief Requested

89. FRPC respectfully submits that Decision 2022-165 gravely derogates from the objectives of the broadcasting policy for Canada because it
- a. is silent about CBC's plans for implementing Canada's broadcasting policy for four out of five years of the licence term for the simple reason that the CRTC neither asked for nor received this information from CBC
  - b. removes all but four enforceable requirements for CBC's exhibition of programming across its radio and television services
  - c. is oblivious to the impact of its decision on employment opportunities for Canadians
  - d. ignores the impact of its decision on the broadcasting system in general and private broadcasters in particular, and because it
  - e. disregards all complaints about the quality of CBC's programming, including a serious complaint it received during the CRTC renewal process that it considered separately from that renewal process.
90. The Forum for Research and Policy in Communications (FRPC) is therefore asking Their Excellency, the Governor in Council, to exercise its authority to return Decision 2022-265 to the CRTC for reconsideration by the Full Commission, pursuant to subsection 28(1) of the Broadcasting Act.

All of which is respectfully submitted this 5<sup>th</sup> day of August, 2022.

Forum for Research and Policy in Communications (FRPC)

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## Appendix 1 Parliament's subsection 3(1) broadcasting policy for Canada, showing references to programming in red font

- 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 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;
  - (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 **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 particular provide access for underserved linguistic and cultural minority communities.

Red font: reference to programming

## Appendix 2 Conditions imposed by CRTC on CBC's licences in Decision 2022-165

[Red font added to conditions setting programming requirements]

CoL	General subject	Specific topic	CoL	General subject	Specific topic
1	Programming	Reasonably balanced	33 f	Expenditures	Definitions
2 a	Expenditures	Percentage	34 g	Programming	Children's - 1 hour
2 b	Expenditures	Percentage	35	Programming	Local - 7 hours
3	Expenditures	Definitions	36	Programming	Local - 5 hours
4 a	Expenditures	Percentage	37	Programming	Local news - 7 days/wk
4 b	Expenditures	Percentage	38	Described video	4 hours/day
4 c	Expenditures	Percentage	39	Standard Conditions of licence	Standard requirements
4 d	Expenditures	Percentage	40	Standard Conditions of licence	Standard requirements
4 e	Expenditures	Percentage	41	Standard Conditions of licence	Standard requirements
4 f	Expenditures	Percentage	42	Standard Conditions of licence	Standard requirements
5 a	Expenditures	Definitions	43	National news service	RDI
5 b	Expenditures	Definitions	44	Regional production	Percentage
5 c	Expenditures	Definitions	45	National news service	News Network
5 d	Expenditures	Discretion	46	Advertising	Children's Code
5 e	Expenditures	Discretion	47	Advertising	No ads in children's programming
6 a	Expenditures	Percentage	48 a	Canadian music	Percentage
6 b	Expenditures	Percentage	48 b	Canadian music	Percentage
6 c	Expenditures	Percentage	48 c	Canadian music	Percentage
6 d	Expenditures	Percentage	48 d	Canadian music	Percentage
6 e	Expenditures	Percentage	48 e	Canadian music	Percentage
6 f	Expenditures	Percentage	48 f	Canadian music	Percentage
7 a	Expenditures	Definitions	48 g	Canadian music	Percentage
7 b	Expenditures	Definitions	49	Canadian music	Percentage
7 c	Expenditures	Definitions	50	Programming	15 hours/wk - CBEF
7 d	Expenditures	Definitions	51	Standard Conditions of licence	Equitable portrayal code
7 e	Expenditures	Definitions	52 a	Advertising	Prohibition (excl'g sponsored programs)
8 a	Expenditures	Percentage	52 b	Advertising	Prohibition (excl'g elections)
8 b	Expenditures	Percentage	53	Ombudsman	Two offices
8 c	Expenditures	Percentage	54	Ombudsman	Reports to BoD
8 d	Expenditures	Percentage	55	Ombudsman	BoD response
8 e	Expenditures	Percentage	56	Ombudsman	File annual report
8 f	Expenditures	Percentage	57	Ombudsman	File management's answer
9 a	Expenditures	Flexibility	58	Ombudsman	Selection - steps
9 b	Expenditures	Flexibility	58 a	Ombudsman	Selection - steps
9 c	Expenditures	Definitions	58 b	Ombudsman	Selection - steps
9 d	Expenditures	Flexibility	58 c	Ombudsman	Selection - steps
9 e	Expenditures	Flexibility	58 d	Ombudsman	Selection - steps
10 a	Expenditures	Percentage	58 e	Ombudsman	Selection - steps
10 b	Expenditures	Percentage	58 f	Ombudsman	Selection - steps
10 c	Expenditures	Percentage	58 g	Ombudsman	Selection - steps
10 d	Expenditures	Percentage	58 h	Ombudsman	Selection - steps
10 e	Expenditures	Percentage	58 i	Ombudsman	Term - 5 years

CoL	General subject	Specific topic	CoL	General subject	Specific topic
10 f	Expenditures	Percentage	59	Consultations	With Indigenous peoples & OLMCs
11 a	Expenditures	Definitions	59 a	Consultations	Issues impt to Indigenous peoples
11 b	Expenditures	Definitions	59 b	Consultations	Results of perception research
11 c	Expenditures	Definitions	60	Consultations	With Indigenous & OLMC producers
11 d	Expenditures	Definitions	61	Programming choices	Consider consultations
11 e	Expenditures	Definitions	62	Report	Indigenous peoples' needs
12 f	Expenditures	Definitions	63	Consultations	With racialized, LBGTQ, disabled
13 g	Expenditures	Definitions	63 a	Consultations	What to discuss
14	Expenditures	Definitions	63 b	Consultations	Public opinion research
15 a	Expenditures	Flexibility	64	Advisory committees	Establish them
15 b	Expenditures	Flexibility	65	Consultations	Report
15 c	Expenditures	Min Requirement	66	Consultations	With racialized and disabled
15 d	Expenditures	Inquiries	67	Programming choices	Consider consultations
15 e	Expenditures	CBC is responsible	68	Report	LBGTQ, accessibility issues
16	Expenditures	Definitions	69	Report	LBGTQ, accessibility issues
17	Expenditures	Percentage	70	Survey	2x / year
18	Expenditures	Definitions	71	Survey	Opinions
19	Expenditures	Definitions	72	Report	Survey results
20	Expenditures	Percentage	73	Survey	Method
21	Expenditures	Definitions	74	Survey	Sample
22	Expenditures	Definitions	75	Report	IP information
23	Expenditures	Percentage	76	Report	IP data
24	Expenditures	Definitions	77	Report	Program staff
25	Expenditures	Definitions	78	Report	Production
26	Expenditures	Percentage	78 a	Report	Production
27	Expenditures	Definitions	78 b	Report	Production
28	Expenditures	Definitions	78 c	Report	Production
29	Expenditures	Percentage	79	Report	Production
30	Expenditures	Definitions	79 a	Report	Children & youth programming
31	Expenditures	Definitions	79 b	Report	Local/reg'l programming hours
32 a	Expenditures	Flexibility	80	Report	Public - staffing positions
32 b	Expenditures	Definitions	81	Report	Staffing composition
32 c	Expenditures	Minimum requirement	82	Report	Staffing composition
32 d	Expenditures	Report	83	Report	Staffing composition
32 e	Expenditures	CBC is responsible	84	Report	Staffing composition

Total conditions of licence:



### Appendix 3 CRTC decisions identifying CBC's non-compliance with CRTC regulations or CBC's conditions of licence

Decision	Licence	Regulatory breach?:	Penalty?	Term
<a href="#">93-95</a> , no para #s	English-language stereo, French-language radio and French-language stereo	Insufficient Canadian content	None	7 years
<a href="#">94-437</a> , no para #s	English-language TV	Insufficient family programming	None	5 years
<a href="#">2000-1</a> , para. 92	Radio One	Breach of condition of licence for Canadian content	Quarterly reports	7 years
<a href="#">2001-532</a> , paras 9-10	Radio One stations	Breach of condition of licence re Canadian content	Shorter than possible licence term; reminder to comply	6 years
<a href="#">2001-530</a> , Paras 8-9	CBF-FM Montreal	CBFF-FM had broadcast insufficient Canadian content	None, reminder to comply	6 years
<a href="#">2004-531</a> Paras. 11-13	CBVT television	To consider CBVT's renewal with CBC television network CRTC noted though, that based on logs that had discrepancies, licensee did not appear to meet its local programming commitments	None, reminder to comply	2 years
<a href="#">2006-668</a>	English-language TV	Breached <i>Act</i> 's requirement for programming of high standard	Expects CBC will take necessary steps	[not applicable]
<a href="#">2007-423</a> , Paras 38-41	French-language radio network	Breached <i>Act</i> 's requirement for programming of high standard	Be more vigilant	[not applicable]
<a href="#">2009-548</a>	CBC French-language television network	<i>Bye Bye 2008</i> breached high-standard requirement of the <i>Act</i> and s. 5(1)(b) of the TV regulations	CRTC expects network to apologize to its viewers; CBC to report on mechanisms to ensure compliance in next licence term	
<a href="#">2013-263</a> , Para 83	CBC French-language television network	Breach of condition of licence requiring 4 hrs of original children's programming per week	None	5 years

#### Appendix 4 CBC's 31 May 2022 announcement of its launch of free, ad-supported television (FAST) services

[Yellow highlighting added]

From: **Susan Marjetti** <[susan.marjetti@cbc.ca](mailto:susan.marjetti@cbc.ca)>  
 Date: Tue, May 31, 2022, 5:14 PM  
 Subject: Some leadership updates  
 To: ALL CBC NEWS STAFF <[all-cbc-news-staff-grp@cbc.ca](mailto:all-cbc-news-staff-grp@cbc.ca)>

We are pleased to announce a number of new roles and structure changes that will help position CBC News, Current Affairs and Local for the future of live and on-demand programming. Our goal remains: to provide essential journalism and community connections for all Canadians, while meeting new and younger audiences where they are, on their platform of choice

Driving these changes will be our accelerated push into the world of streaming video. **This year, we will launch a free 24/7 news video channel streaming the best of CBC News and original programs** as a companion offer to our popular live & breaking news subscription channel, CBC News Network.

**We'll have more to say in the future about the CBC News streaming channel and how it will also drive an ambitious digital & social video strategy for our entire division. Stay tuned for an invitation to a special lunch and learn.**

In the meantime, we want to explain some leadership changes that will enable and enhance this work:

- The network News and Current Affairs reporting lines will be reorganized under General Manager **Susan Marjetti**, with **Cathy Perry** as Executive Director of Newsgathering and Operations, and **Brodie Fenlon** as Executive Director of Programs and Standards. Brodie continues as Editor in Chief, accountable for all of CBC's journalism.
- Reporting to Cathy will be **Marc Lefebvre**, our Senior Director of Operations. His responsibilities were outlined in a [previous announcement](#). Cathy will oversee operations and news production services, world bureaus, domestic newsgathering, the content units and national assignment under **Cathrin Bradbury** and **Tracy Seeley**, and the Parliamentary Bureau under **Chris Carter**. With Cathrin preparing to retire at the end of August, we will soon post the job of Senior Director of Newsgathering, reporting to Cathy. We will then post the job of Managing Editor of World Newsgathering with **Greg Reaume's** [recent retirement](#). Until then, Tracy will oversee the world bureaus.
- Reporting to Brodie will be leaders responsible for programming and digital teams, journalistic standards and legal risk. This includes the new position of Senior Director of Digital Publishing and Streaming, which will be posted soon. Also reporting to Brodie are **George Achi** (Journalistic Standards and Public Trust), **Marie Caloz** (Legal Issues and Risk), **Andree Lau** (Digital News) and **Seema Patel** (News Programs). **Alison Broddle** (Current Affairs and Investigative Journalism) will also report to Brodie, with Cathy Perry remaining closely involved with Radio Current Affairs.

- Under Investigative, we hope to soon announce the new Managing Editor of Investigative Journalism, overseeing The Fifth Estate, Marketplace and the Investigative Unit. And congratulations to **Nelisha Vellani**, the new executive producer of Marketplace.
- As Chief of Staff, **Catherine Gregory** will now directly oversee a team that supports our employees in the areas of administration, development and engagement, including **Binay Bajwa, Sharon Easby, Liz Hadfield, Mark Mietkiewicz, Melissa Charles, Laura McIsaac, Tim Richards, Natalie Sheehan** and **Nadia Thadhani**.
- As previously announced, **Michael Gruzuk** now reports to **Susan Marjetti** and leads the [CBC News Studios team](#) with a mandate to support content development, original production and news specials across CBC News, Current Affairs and Local. This team will lead the development of streaming content for our new channel, and help guide the wider video ecosystem across the division. We are pleased to announce **Lara Chatterjee** is the successful candidate for the role of Executive Producer of Original News Programming. Lara will focus on developing the original and special news programming for streaming platforms, including CBC Gem, from within the CBC News Studios team. Michael also continues to oversee CBC News Network.
- We are pleased to announce that **Spencer Walsh** is taking on the role of **Executive Producer of Streaming Curation and Distribution**. Spencer will be focusing with program, operations and technology teams on the curation, packaging of video content for distribution on CBC products and our Free Ad Supported TV (FAST) channels. The team that is focused on packaging our programs for Connected and Smart TVs reports to him and he will work closely with staff already doing video work through our system.

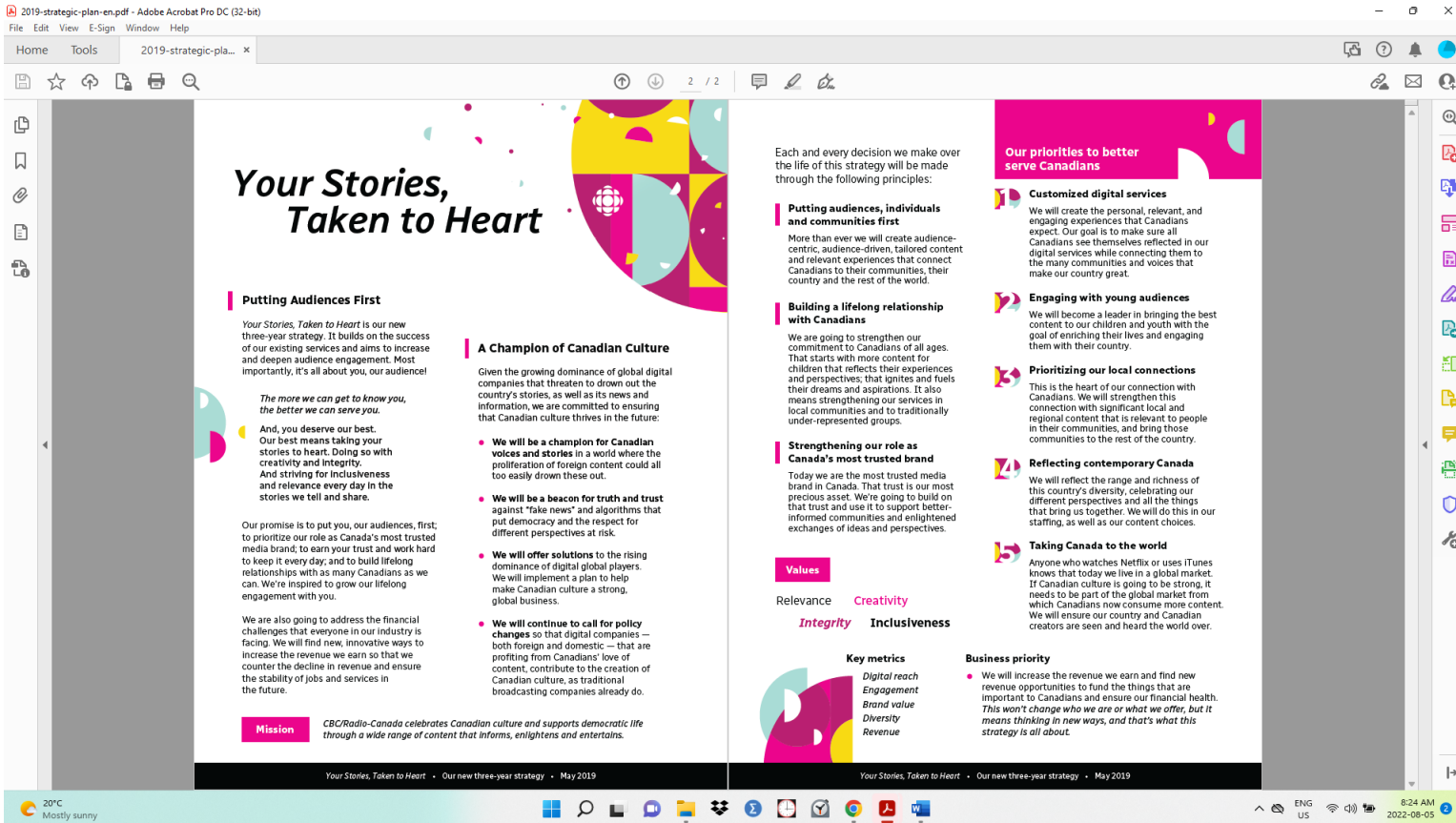
These changes are about innovating to meet CBC audiences where they are now and where they will be in future. In a sentence, our promise is to be “live when you need us, and on-demand when you want us.”

The Local leadership structure under the Senior Managing Director’s remains unchanged.

Please don’t hesitate to reach out to any one of us if you have questions. Everything we are doing is aimed at strengthening our offer, better serving Canadians and positioning CBC News, Current Affairs and Local for a strong and vibrant future.

— *Susan Marjetti on behalf of Brodie Fenlon, Catherine Gregory, Michael Gruzuk, Cathy Perry and Kenny Yum*

## Appendix 5 The two-page strategic plan in CBC's 2019 licence renewal application



Link to the [106-page long presentation made by CBC management to CBC's Board of Directors](#)

## Endnotes

<sup>1</sup> S.C. 1991, C. 11.

<sup>2</sup> The panel – appointed by Chairperson Scott – consisted of: Chairperson Scott, Vice-Chairperson Broadcasting Simard and Commissioners Anderson, Barin and Lafontaine. CRTC’s decisions being unsigned by the Commissioners who vote on them, this list of panel members is obtained from the CRTC Public Hearing Transcript (National Capital Region, [21 January 2021](#)), Vol. 1, p. 1.

<sup>3</sup> Decision 2022-165, at para 99:

Further, imposing exhibition requirements in a multiplatform environment does not guarantee that the programming produced will be reflective of or relevant to these communities as quantity does not necessarily equal quality. Being required to adhere to minimum exhibition thresholds could result in the CBC spreading out certain investments, which could reduce the relevance of certain programming to the audiences served. As such, the Commission does not consider that it would

<sup>4</sup> Forum for Research and Policy in Communications (FRPC), *An Analysis of CBC’s financial history from 1937 to 2019*, [Research paper](#) (Ottawa, February 2020).

<sup>5</sup> To obtain the ‘full’ CBC strategic plan summarized by a 3-page document in CBC’s application (asked on 12 March 2020; DM#3893502) – denied by CRTC on [22 July 2020](#).

<sup>6</sup> FRPC asked the CRTC to ask CBC for financial information about CBC’s digital media services (asked on 23 January 2020; DM#3791911) – denied by CRTC on [17 February 2020](#).

<sup>7</sup> FRPC asked the CRTC to ask CBC for additional information about its decision to sell branded content through the ‘Tandem’ advertising initiative (28 and 30 October 2020; DM#3936954 and DM#3937663) – granted by CRTC on [22 December 2020](#).

<sup>8</sup> FRPC asked the CRTC to obtain and publish confirmation of the notices CBC is required to broadcast about the CRTC’s licence renewal process to inform interested members of the audience of their right to intervene (12 March 2020; DM#3893501), as the CRTC has in the past included such ‘broadcast notifications’ as part of its proceedings’ public record – denied by CRTC on [22 July 2020](#); After obtaining the information from CBC through an access to information request, FRPC then asked the CRTC to publish information showing CBC’s failure to broadcast the notifications required by its rules of procedure (2 September 2020; DM#3913170) – denied by CRTC on [22 December 2020](#).

See *infra* endnote 98.

<sup>9</sup> In light of the absence of evidence, the growing delays, to end the 2019-379 process, maintain CBC’s current conditions of licence and wait for better days (4 August 2020) – denied by CRTC on [22 December 2020](#).

<sup>10</sup> On 22 June 2022 the CRTC denied FRPC’s request because the CRTC apparently knew all about the FAST channels, even though they were not mentioned anywhere in its application, the transcripts of the CRTC January 2021 hearing, CBC’s undertakings or its final reply, and because FRPC should have asked about the FAST channels before March 2022, three months before CBC disclosed their existence:

...  
Commission staff notes that there was extensive discussion with the CBC/SRC and with intervening parties regarding the CBC/SRC’s digital media broadcasting undertakings (DMBUs) as well as discussions regarding the trustworthiness of CBC/SRC’s news offerings and its use of online advertising during this proceeding. Furthermore, the close of record for intervenors was on March 1st 2021 and, as such, this request is received at a very late stage in the process.

....

<sup>11</sup> *Canadian Broadcasting Act, 1936*, 1 Edw. 8, C. 24 (23 June 1936), s. 3(1): “There shall be a Corporation to be known as the Canadian Broadcasting Corporation ....”

Parliament established the CBC again in 1958: *Broadcasting Act*, 7 Eliz. 2, c. 22 (6 September 1958), s. 22(1): “There shall be a corporation to be known as the Canadian Broadcasting Corporation ....” to operate “a national broadcasting service” (s. 29(1)).

Parliament again established the CBC in the 1968 *Broadcasting Act*, 16 & 17 Eliz. 2, c. 25, s. 34(1): “There shall be a corporation to be known as the Canadian Broadcasting Corporation ....” (S. 2(f) then said, “there should be provided, through a corporation established by Parliament for the purpose, a national broadcasting service that is predominantly Canadian in content and character; ....”)

Parliament continued the CBC in the current *Broadcasting Act*, S.C. 1991, c. 11, s. 36(1): “The corporation known as the Canadian Broadcasting Corporation is hereby continued ....”

<sup>12</sup> *Canadian Broadcasting Act*, (23 June 1936) 1 Edw. 8, c. 24, s. 8(c):

The Corporation shall carry on a national broadcasting service within the Dominion of Canada and for that purpose may: -- (c) originate programmes and secure programmes, from within or outside Canada, by purchase or exchange and make arrangements necessary for their transmission;....”

<sup>13</sup> S. 3(1)(l).

<sup>14</sup> *Broadcasting Act*, 1991, s. 3(1)(l): “It is hereby declared as the broadcasting policy for Canada that .... (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; ....”

<sup>15</sup> *Canadian Assn. of Broadcasters v. Canada*, 2008 FCA 157 (CanLII), [2009] 1 FCR 3, <<https://canlii.ca/t/1wtjt>>, at para. 83, per Ryer J.A. (Létourneau and Pelletier, JJ.A., concurring in the outcome), at para. 83:

In my view, the Canadian Broadcasting Corporation has been recognized, at least since the time of *La Presse* [in 1966], as an integral participant in the attainment of the policy objectives of the regulatory scheme that is embodied in the Act ....

<sup>16</sup> CBC, *CBC/Radio-Canada Licence Renewal, Application Numbers: Radio-Canada Audio-Visual (television) - 2019-0281-7, Radio-Canada Audio (radio) 2019-0279-2, CBC Audio-Visual (television) 2019-0282-5 and CBC Audio (radio) 2019-0280-0*, (Ottawa, 23 August 2019), CM#3720733, at para 1.

<sup>17</sup> *Exemption order for new media broadcasting undertakings*, [Public Notice CRTC 1999-197](#), (Ottawa, 17 December 1999).

<sup>18</sup> S. 28(1):

28 (1) Where the Commission makes a decision to issue, amend or renew a licence, the Governor in Council may, within ninety days after the date of the decision, on petition in writing of any person received within forty-five days after that date or on the Governor in Council’s own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1).

<sup>19</sup> S. 28(3):

Where a decision is referred back to the Commission under this section, the Commission shall reconsider the matter and, after a hearing as provided for by subsection (1), may  
(a) rescind the decision or the issue, amendment or renewal of the licence;  
(b) rescind the issue of the licence and issue a licence on the same or different conditions to another person; or  
(c) confirm, either with or without change, variation or alteration, the decision or the issue, amendment or renewal of the licence.

<sup>20</sup> Ss. 28(4) and (5):

Setting aside after confirmation

(4) Where, pursuant to paragraph (3)(c), the Commission confirms a decision or the issue, amendment or renewal of a licence, the Governor in Council may, within sixty days after the confirmation, on petition in writing of any person received within thirty days after that date or on the Governor in Council’s own motion, by order, set aside the decision or the issue, amendment or renewal, if the Governor in Council is satisfied as to any of the matters referred to in subsection (1).

Reasons

- (5) An order made under subsection (4) to set aside a decision or the issue, amendment or renewal of a licence shall set out the reasons of the Governor in Council therefor.
- 21 Christine Dobby, "New CRTC chair Ian Scott sees role as defending public interest," *Globe and Mail* ([21 September 2017](#)).
- 22 CRTC, *Departmental Plan 2020-2021*, "From the Minister", (Ottawa, 2020), [Cat. No. BC9-26E-PDF](#).
- 23 Minister of Canadian Heritage, *Canadian Radio-television and Telecommunications Commission, 2019-20*, [Departmental Plan](#).
- 24 Decision 2022-165, at para. 588.
- 25 Decision 2022-165, at para. 599.
- 26 S. 3(1)(d)(i): "the Canadian broadcasting system should ... serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada ...."
- 27 Ian Scott, CRTC Chairperson, "Message du président aux employés : Préparer les changements législatifs – Votre occasion de contribuer ! / Chairperson's Message to Employees : Preparing for Legislative Change – Your Opportunity to Contribute !", [Response to access-to-information request A-2021-00074](#), at 3.
- 28 Rt. Hon. Justin Trudeau, P.C., M.P., Prime Minister, Canada, [Minister of Canadian Heritage Mandate Letter](#) (Ottawa, 16 December 2021).
- 29 *Ibid.*
- 30 Anja Kardeglia, "Liberals move to 'modernize' CBC, making public broadcaster less reliant on advertising", *National Post* ([18 January 2022](#)).
- 31 Statistics Canada, "Age (in single years), average age and median age and gender: Canada, provinces and territories and economic regions", [Table 98-10-0026-01](#) (Release date: 2022-04-27).
- 32 The 2016 Census reported that 14.2 million people reported being of multiple ethnic origins, with the remaining 20.3 million reporting a single ethnic origin: "[Ethnic Origin \(279\), Single and Multiple Ethnic Origin Responses \(3\), Generation Status \(4\), Age \(12\) and Sex \(3\) for the Population in Private Households of Canada, Provinces and Territories, Census Metropolitan Areas and Census Agglomerations, 2016 Census - 25% Sample Data](#)", 2016 Census.
- 33 Statistics Canada, *Personal Internet use from any location by province and age group*, [Table 22-10-0135-01](#) (2020).
- 34 Source: CRTC *Statistical and Financial Summaries*, (various years).
- 35 [Broadcasting Decision CRTC 93-95](#), renewed CBC/SRC's radio network licences, Two Canadian content analyses of each of the four networks were undertaken by the Commission during the past licence term. The English-language Radio network was found to be in full compliance in both analyses. Minor shortfalls were noted in each analysis for each of the remaining three networks.
- 36 *Renewal of the English-language and French-language television network licences*, [Decision CRTC 94-437](#) (Ottawa, 27 July 1994):
- In the Commission's view, the Corporation has responded adequately to most, but not all, of the expectations articulated in Decision CRTC 87-140. The Commission accepts the CBC's explanation that the fact that some of these expectations have not been met is due to the reduced resources available to the Corporation
- 37 *Canadian Broadcasting Corporation/Société Radio-Canada Applications for the Renewal of the English and French Television Network Licences*, [Broadcasting Decision 87-140](#) (Ottawa, 23 February 1987) (no paragraph numbers).
- 38 *Licences for CBC English-language television and radio renewed for a seven-year term*, [Broadcasting Decision CRTC 2000-1](#), paras. 92-94.
- 39 *Ibid.*
- 40 CBVT Québec and its transmitters - Licence renewal, [Broadcasting Decision CRTC 2004-531](#) (Ottawa, 3 December 2004), paras. 11-13.
- 41 *Canadian Broadcasting Corporation – Licence renewals*, [Broadcasting Decision CRTC 2013-263](#) (Ottawa, 28 May 2013), at para. 83:



CBC French-language television was subject to a condition of licence requiring the broadcast of four hours of original children's programming per week, averaged over the broadcast year, and the CBC has acknowledged non-compliance with this condition for certain years. The CBC argued that it could not comply with the condition of licence because of the restriction imposed on the broadcast of advertising during these programs and the difficulty it had in finding sufficient amounts of Canadian and original interstitial programs to air in the places reserved for advertising.

<sup>42</sup> *Complaints regarding the broadcast by the [English-language TV network of the] Canadian Broadcasting Corporation of Sex Traffic and Old School prior to the watershed hour*, [Broadcasting Decision CRTC 2006-668](#) (Ottawa, 11 December 2006).

*Complaint regarding the broadcast of the program "Fric show" by the French-language network of the Canadian Broadcasting Corporation prior to the watershed hour*, [Broadcasting Decision CRTC 2007-388](#) (Ottawa, 23 October 2007).

*Complaints relating to the broadcast on CBC Radio One of A Literary Atlas of Canada, episodes entitled Whiskeyjack Blues and Room Available*, [Broadcasting Decision CRTC 2007-87](#) (Ottawa, 16 March 2007).

*Complaints relating to the broadcast by the Canadian Broadcasting Corporation of the programs Pourquoi pas dimanche and Samedi et rien d'autre [on the French-language radio network of the CBC]*, [Broadcasting Decision CRTC 2007-423](#) (Ottawa, 12 December 2007).

*Complaints about the broadcast by the [French-language TV network of the] Canadian Broadcasting Corporation of the program Bye Bye 2008*, [Broadcasting Decision CRTC 2009-548](#) (Ottawa, 31 August 2009).

[Locating these decisions through the CRTC's search engine, incidentally, required separate searches for the terms "CBC" and "Canadian Broadcasting Corporation".]

<sup>43</sup> The Federal Court of Appeal recently pointed out that it could not base its decision about a matter on law that was not in force at the time the matter was decided. See *Janssen Inc. v. Canada (Attorney General)*, [2021 FCA 137](#) (CanLII), at para. 57:

Rather than asking us to determine whether the Federal Court properly identified and applied the reasonableness standard of review to OSIP's decision, however, **Janssen is asking us to make an entirely new decision based on a new international instrument that was not in force at the time that the administrative decision under review was made. This Court is acting on appeal from a judicial review of an administrative decision, based on the facts and the law that existed before the administrative decision-maker at that time.** In circumstances such as these, we are restricted to a reviewing capacity. We have no power to act as if we were the administrative decision-maker ourselves, considering new issues, new facts and new law.

Accordingly, the new evidence with respect to CUSMA will not be admitted.

<sup>44</sup> *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, [2020 FCA 100](#), at para. 39, aff'd [2022 SCC 30](#).

<sup>45</sup> The Supreme Court held in 1998 that while legislation must usually be understood through the plain wording it uses, it must also be interpreted by paying attention to its scheme, objects, legislative intention and wording's context:

Although the Court of Appeal looked to the plain meaning of the specific provisions in question in the present case, with respect, I believe that the court did not pay sufficient attention to the scheme of the [Employment Standards Act], its objects or the intention of the legislature; nor was the context of the words in issue appropriately recognized.

(*Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 23 per Iacobucci J.)

<sup>46</sup> Act, "PART II Objects and Powers of the Commission in Relation to Broadcasting".

<sup>47</sup> Act, s. 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 [5](2).

48 R.S.C., 1985, c. I-21, s. 11.

49 S. 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).

S. 5(2): "The Canadian broadcasting system should be regulated and supervised in a flexible manner ...."

50 [R. v. S. \(S.\)](#), 1990 CanLII 65 (SCC), [1990] 2 SCR 254 (paragraph numbers not provided).

51 The CRTC may also exempt broadcasters from licensing through subsection 9(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).

As exempted broadcasters are unable to contribute materially towards the policy's implementation, the exemption power per se does not contribute towards the policy's implementation – but does enable the CRTC to make more effective use of its resources by focussing on broadcasters able to contribute to the policy's implementation.

52 Act, s. 9(1)e):

Subject to this Part, the Commission may, in furtherance of its objects,

...

... suspend or revoke any licence ....

53 In 2005 the Federal Court of Appeal upheld the CRTC's decision not to renew the broadcasting licence held by Genex for CHOI-FM. The Court wrote,

[36]This appeal is doubtless an important one for the appellant, its listeners and the communications milieu in general, for a host of reasons. But we should not lose sight of the purpose of the appeal. It must be clearly understood that this appeal, contrary to the apparent belief and desire of the appellant, does not give rise directly or in general to a comprehensive debate over freedom of expression. The issue is, and remains, whether the CRTC's discretionary decision not to renew the appellant's licence was made judicially and in compliance with the rules of natural justice, the standards of procedural fairness and its own procedures.

[37]A discretionary power is exercised judicially when the holder of that power acts in good faith, in accordance with the law, does not take into account irrelevant factors and does not fail to consider relevant factors: see *Canada (Attorney General) v. Purcell*, 1995 CanLII 3558 (FCA), [1996] 1 F.C. 644 (C.A.).

[38]The rules of natural justice or standards of procedural fairness are breached when a party before a tribunal or administrative agency, whose interests will be affected by the decision that is to be made, is deprived of the right to be heard by an impartial and independent tribunal.

...

[43]Finally--and this is an extremely important consideration, as we will see later--the appeal before us is not challenging a CRTC decision that deprives or strips the appellant of a right. The appeal has to do with a decision not to renew a privilege that had been granted to the appellant. The obtaining or exercise of a privilege is generally accompanied by conditions with which the licensee undertakes to comply subject to penalties for non-compliance, including possible non-renewal or loss of the privilege. In other words, **the appellant not only has no right to a broadcasting licence, it also has no vested interest in the fixed-term privilege that was granted to it**: see *Procureur général du Canada v. Compagnie de Publication La Presse, Ltée (La)*, 1966 CanLII 35 (SCC), [1967] S.C.R. 60, where the Court writes [at page 76]: "there was no contractual relationship between the Crown and respondent, and the latter had no vested or property right in the licence which it held."

[bold font added]

54 S. 10 ("Regulations generally"):

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 the broadcasting of network programs, and respecting the broadcasting times to be reserved for network programs by any such undertakings;

(g) respecting the carriage of any foreign or other programming services by distribution undertakings;

(h) for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings;

(i) requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify;

(j) respecting the audit or examination of the records and books of account of licensees by the Commission or persons acting on behalf of the Commission; and

(k) respecting such other matters as it deems necessary for the furtherance of its objects.

55 S. 9(1)(a): "Subject to this Part, the Commission may, in furtherance of its objects ... establish classes of licences".

56 S. 9(1)(b).

57 Ss. 12(1) and (2).

58 S. 18(1)d) ("Where public hearings required"):

Except where otherwise provided, the Commission shall hold a public hearing in connection with

...

(d) the making of an order under subsection 12(2).

59 S. 32:

32(2) Every person who contravenes or fails to comply with any regulation ... 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.

60 S. 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.

61 S. 32

(2) Every person who contravenes or fails to comply with any ... 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.

62 9(1)(c) ("Licences, etc."):

Subject to this Part, the Commission may, in furtherance of its objects,

...

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; ....

63 *Ibid.*, para. 31.

64 2019-379, para. 15.

65 Decision 2022-165, at para. 24:

24. In reaching its determinations, the Commission weighed the realities of the CBC's accountabilities, as well as the behaviours in which the CBC has engaged to support its cultural objectives. The Commission also examined the CBC's ability to meet its mandate with or without certain current and proposed conditions of licence. The end result is a more modern and flexible framework that uses tools available under the current Broadcasting Act to ensure that the CBC continues to meet the programming needs of a diversity of Canadians, while remaining accountable. The framework also acknowledges areas where the CBC could and should improve, across all of its licensed and exempt broadcasting services.

66 *Ibid.*, at para. 606:

606. In light of the above and in support of the Commission's proposed framework for the CBC, the Commission is setting out enhanced reporting requirements for the CBC that, on the one hand, monitor specific behaviours required by conditions of licence and set out as expectations and encouragements, and, on the other hand, focus on monitoring the strategies chosen by the CBC to meet its mandate and the outcomes set for it by the Commission.

67 *Ibid.*, at para. 444:

More than half of the more than 10,500 individual interventions received noted the importance of the public broadcaster, with most of the comments relating to access to news and information. ...

68 *Ibid.*, at para. 492.

69 *Ibid.*

70 *Ibid.*, at para. 416.

71 *Ibid.*, at para. 491:

After reviewing the CBC's proposal, for the reasons set out above, the Commission is confident that the CBC will continue to broadcast local programming that is predominantly news in both the English- and French-language metropolitan markets. Accordingly, the Commission finds that imposing a condition of licence relating to the broadcast of local programming in metropolitan markets is not necessary for the CBC to achieve the above-noted outcome in this regard.

72 *Ibid.*, conditions of licence 35 and 36.

73 *Ibid.*, at para. 456.

74 *Ibid.*, at para. 458.

75 *Ibid.*, at para. 459.

76 *Ibid.*, at para. 23.

77 *Ibid.*, at paras. 568-580.

78 *Ibid.*, at para. 527.

79 *Complaint against Société Radio-Canada on the use of an offensive word on air*, [Decision CRTC 2022-175](#), (Ottawa, 29 June 2022) at para. 2:

On 28 August 2020, an individual filed a complaint with the Commission and the SRC French Services Ombudsman regarding the broadcast of the "N-word" during the aforementioned segment of the program ....

80 *Ibid.*, at para. 19:

Therefore, the Commission is dissatisfied with the way the subject matter was treated in this segment. It considers that the SRC should have taken all necessary steps to mitigate the impact of the word on the audience, including not repeating it and providing a clear warning at the beginning of the segment. In the Commission's view, the SRC did not exercise sufficient caution and vigilance in its treatment of the subject matter, which may have had a harmful effect on its audience, particularly the Black community. This does not meet the high programming standard set out in the Act.

In light of the above, and for the reasons set out in the preceding paragraph, the Commission also finds that the broadcast of the segment of Le 15-18 did not contribute to the strengthening of the cultural and social fabric and the reflection of the multicultural and multiracial nature of Canada provided for in paragraph 3(1)(d) and subparagraph 3(1)(m)(viii) of the Act.

<sup>81</sup> *Ibid.*, at para. 20.

<sup>82</sup> *Canadian Assn. of Broadcasters v. Canada*, 2008 FCA 157 (CanLII), [2009] 1 FCR 3, <<https://canlii.ca/t/1wtjt>>, at para. 83, per Ryer J.A. (Létourneau and Pelletier, JJ.A., concurring in the outcome), at para. 83:

In my view, the Canadian Broadcasting Corporation has been recognized, at least since the time of *La Presse* [in 1966], as an integral participant in the attainment of the policy objectives of the regulatory scheme that is embodied in the *Act* ....

<sup>83</sup> Decision 2022-165, at para. 22.

<sup>84</sup> CBC/SRC, *2020-2021 Annual Report*, “Our Workforce”: <https://cbc.radio-canada.ca/en/impact-and-accountability/finances/annual-reports/ar-2020-2021/people/our-workforce>.

<sup>85</sup> Anja Karadeglija, “Liberals move to ‘modernize’ CBC, making public broadcaster less reliant on advertising” *National Post* (18 January 2022), <https://nationalpost.com/news/politics/liberals-move-to-modernize-cbc-making-public-broadcaster-less-reliant-on-advertising>.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Act*, s. 28(2).

<sup>88</sup> Decision 2022-165, at paras. 454-455.

<sup>89</sup> BNoC 2019-379, at para. 15.

<sup>90</sup> Friends of Canadian Broadcasting asked for the full three-year plan on 29 November 2019 (CRTC DM [document management] #3761220).

<sup>91</sup> See <https://crtc.gc.ca/eng/archive/2020/lb200722.htm>.

<sup>92</sup> Simon Houpt, “Current, former CBC employees condemn corporation’s branded-content initiative”, *The Globe and Mail* (29 October 2020), <https://www.theglobeandmail.com/arts/article-current-former-cbc-employees-condemn-corporations-branded-content/>:

CBC spokesperson Chuck Thompson said Tandem had been in development for more than a year, with input from all “key stakeholders,” and that the corporation had been satisfied it had established standards that would allow it to proceed. “It’s everyone’s concern at CBC, not just journalists, that we ensure at every step, with every execution, that we protect the integrity of our journalism.”

He added that **CBC/Radio-Canada had been publishing branded content “for years – not weeks, not months – years”** and that it was merely Tandem’s rollout last month that raised hackles. “Everybody woke up to the fact that we’re in the branded content game.”

[bold font added]

<sup>93</sup> Decision 2022-165, at paras. 434-435.

<sup>94</sup> *Ibid.*, at para. 8.

<sup>95</sup> Broadcasting Decision 2013-263, at paras. 335-336:

335. The Commission is imposing a condition of licence, set out in Appendices 3, 5, 6, 7 and 8 of this decision, requiring that the CBC have terms of trade agreements in place with the CMPA and the APFTQ as soon as possible, and in any event, no later than one year from the date of this decision. Until the terms of trade agreements are in place, the CBC must continue to file with the Commission monthly detailed progress reports on the negotiations. The Commission encourages the parties to seek mediation, either from the Commission or a third party.

336. The Commission reminds the parties involved that failure to comply with this condition of licence by the imposed deadline could result in a show cause hearing or final offer arbitration. If the CBC cannot come to an agreement because the MFN clause is being unfairly applied to it notwithstanding its distinctiveness, the CBC could seek an amendment to this condition of licence.

<sup>96</sup> *Act*, s. 25:

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

(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.

**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.

[bold font added]

- 97 The CRTC has no copies of reports to the Minister about the CBC's
- 2000 breach of its condition of licence for Canadian content on CBC Radio ([A-2022-00001](#))
  - 2003 breaches of CRTC's regulation requiring submission of accurate program logs ([A-2021-00077](#))
  - 2013 breaches (over several years) of its condition of licence regarding children's programming on CBC's French-language television service ([A-2020-00055](#))

98 See FRPC's [24 September 2020 commentary](#) on this issue:

The main finding of this research was the level of inaccuracy in CBC's 21 declarations: 15 appeared to describe at least one broadcast inaccurately, and in 7 declarations all the descriptions appeared inaccurate. Among the 82 separate broadcasts described by CBC's declarations there appeared to be 44 inaccuracies:

- 8 broadcasts (or 10% of the total number of announcements) may not have been made: o 2 TV broadcasts were missing from CBC's TV logs. o 6 broadcasts were double-counted, as announcements of the 13 and the 20 February deadlines were certified as having been broadcast by the same service(s) on the same date and at the same time).
- In 8 instances (10%), declarations that announcements had already been made were signed before the dates on which the declarations said the announcements were broadcast.
- 4 (5%) announcements about the extended deadline were broadcast before the CRTC had announced the extension on January 28th, and
- Comparing CBC's declarations about notifications with CBC's TV logs found that the times declared for 24 TV broadcasts (28% of all 82 broadcasts; 65% of all 53 TV broadcasts) were inaccurate by more than 10% of an hour (6 minutes), with the average inaccuracy being half an hour.

(From the commentary's synopsis)

99 Decision 2022-165, para. 25.

100 *Ibid.*, at para. 430:

In reply to the interventions, the CBC stated that the apparent decrease in funding for local programming between 2014 and 2017 was due to a change to its accounting practices for programming expenditures between its traditional and digital platforms. It noted that beginning in the 2016–2017 broadcast year, it began to exclude digital costs and revenues in its conventional television annual returns due to the significance of digital revenues and costs in that broadcast year.

101 *Ibid.*, at para. 23.

102 CBC, *Subject: CBC/Radio-Canada Licence Renewal, Application Numbers: Radio-Canada Audio-Visual (television) - 2019-0281-7, Radio-Canada Audio (radio) 2019-0279-2, CBC Audio-Visual (television) 2019-0282-5 and CBC Audio (radio) 2019-0280-0*, "2019-0282-5\_APP\_CBC\_Cover\_letter\_EN" (Ottawa, 23 August 2019), DM#3720733 at para. 1.

103 CBC, *Subject: CBC/Radio-Canada Licence Renewal, Application Numbers: Radio-Canada Audio-Visual (television) - 2019-0281-7, Radio-Canada Audio (radio) 2019-0279-2, CBC Audio-Visual (television) 2019-0282-5 and CBC Audio (radio) 2019-0280-0*, "2019-0282-5\_APP\_CBC\_Cover\_letter\_EN" (Ottawa, 23 August 2019), DM#3720733 at para. 1.

104 *Ibid.*