



26 January 2021

Members of the
Canadian Heritage Standing Committee
House of Commons
Ottawa, Ontario

Dear Committee Members,

The Forum for Research and Policy in Communications (CRTC) is a federally incorporated not-for-profit organization.

We undertake [research](#) and [analysis](#) concerning broadcast policy, appear before the CRTC and Parliament, and made submissions to the Broadcasting and Telecommunications Legislative Review Panel. In early 2020 we published a study of the CBC's financial history from 1936 to 2019, and in January 2021 we undertook an empirical analysis of the CRTC's approach to the applications it receives (a summary is attached).

The Forum welcomes the government's introduction of Bill C-10 to address the growth of online programming services. We respectfully submit the attached proposals to amend the Bill so that it achieves Parliament's objectives.

At the outset, the Forum submits that Canadians must retain effective ownership and control of the broadcasting system, as the courts have already held that this does not mean that every undertaking must be Canadian.

Our remaining proposals are made with a view towards strengthening accountability and transparency, ensuring consistency in the interpretation of key terms, and clarifying the areas in which the CRTC must follow Parliament's wishes.

le 26 janvier 2021

Membres du
Comité permanent du patrimoine canadien
Chambre des communes
Ottawa, Ontario

Chers membres du Comité,

Le forum de recherche et de politiques en communications (CRTC) est un organisme sans but lucratif, incorporé au fédéral.

Nous faisons de la [recherche](#) quantitative et de [l'analyse](#) des politiques de la radiodiffusion, nous comparaissons devant le CRTC et le parlement, et nous avons déposé un mémoire au Comité d'examen de la législation en matière de radiodiffusion et de télécommunications. Nous avons publié une étude de l'histoire financière de CBC de 1936 à 2019 au début de 2020 et, en janvier 2021, nous avons entrepris une analyse empirique de l'approche du CRTC à l'égard des demandes qu'il reçoit (un résumé de nos résultats est joint).

Le forum se réjouit de l'introduction du projet de loi C-10 pour répondre à la croissance des services de programmation en ligne. Nous soumettons respectueusement les propositions ci-jointes pour modifier le projet de loi afin qu'il atteigne les objectifs du Parlement.

Comme point de départ, le Forum soutient que les Canadiens doivent conserver, effectivement, la propriété et le contrôle du système de radiodiffusion canadien, car les tribunaux ont déjà statué que cela ne signifie pas que chaque entreprise doit être canadienne.

Nos autres propositions visent d'abord à renforcer la responsabilité et la transparence, à assurer la cohérence dans l'interprétation des termes clés, et en suite à clarifier les domaines dans lesquels le CRTC doit suivre les souhaits du parlement.



Our proposals are summarized below:

1. Retain effective ownership and control of Canada's broadcasting system
2. Ensure consistency between the broadcasting and telecommunications statutes' definition of "decision"
3. Limit the CRTC's current discretion to ignore Parliament's priorities, especially with respect to jobs, affordability and Canadian content: generally, use "shall" instead of "should" in section 3 ("Broadcasting Policy for Canada")
4. Ensure the independence and equality of Commissioners to hear matters on behalf of the CRTC
5. Retain time limits for licensing and set time limits for registration
6. Clarify registration authority
 - a. Who must register
 - b. Penalties for not registering
 - c. Penalties for operating without registering
7. Strengthen CRTC accountability
 - a. Signed decisions with reasons (now only required for revocation/suspension)
 - b. Limitation period for decisions (can now be delayed for many months)
 - c. Publication in *Canada Gazette* and online
 - d. Report on levels of Canadian content
 - e. Report on hearings held
 - f. *Monitoring report* by September each year
8. Strengthen CBC transparency by requiring reports that include
 - a. First-run program hour data
 - b. Historical financial data
9. Before granting the CRTC more power, review its performance
10. Parliamentary review of the new *Act* in 2031

A synopsis of a recent study examining several aspects of procedural fairness at the CRTC is also included.

Nos propositions sont résumées ci-dessous:

1. Conserver, effectivement, la propriété et le contrôle du système de radiodiffusion canadien
2. Assurer la cohérence entre les lois sur la radiodiffusion et sur les télécommunications dans la définition de «décision»
3. Limiter le pouvoir discrétionnaire actuel du CRTC d'ignorer les priorités du parlement, en particulier pour les emplois, l'abordabilité et le contenu canadien: en générale, utiliser "doit" au lieu de "devrait" dans l'article 3 ("Politique canadienne de radiodiffusion")
4. Assurer l'indépendance et l'égalité des conseillers du CRTC pour entendre les affaires au nom du Conseil
5. Conserver les échéances des licences actuelles et fixer des délais d'enregistrement
6. Clarification de l'autorité d'enregistrement
 - a) Qui doit s'enregistrer
 - b) Sanctions pour omission de s'inscrire
 - c) Sanction pour l'exploitation d'un service de programmation en ligne sans inscription
7. Renforcer la responsabilité du CRTC
 - a) Décisions motivées et signées (exigées seulement pour la suspension ou la révocation d'une licence)
 - b) Limiter les délais pour rendre les décisions (celles-ci peuvent être retardées pendant plusieurs mois)
 - c) Publication dans la *Gazette du Canada* et en ligne
 - d) Rapports sur les niveaux de contenu canadien
 - e) Rapports sur le nombre d'audiences publiques
 - f) Publication du *Rapport de surveillance* d'ici septembre
8. Renforcer la transparence de la Société Radio Canada en exigeant des rapports qui comprennent
 - a) Données sur les heures de programmation de première diffusion
 - b) Historique des données financières
9. Avant d'accorder plus de pouvoir au CRTC, revoir son rendement
10. Examen parlementaire de la nouvelle loi en 2031

Un résumé d'une étude récente portant sur plusieurs aspects de l'équité procédurale au CRTC est également inclus.



The Forum would appreciate the opportunity to appear before the Committee to answer its questions about our proposals.

Sincerely,

Monica Auer
Executive Director
Forum for Research and Policy in Communications

Nous apprécierions avoir la possibilité de comparaître devant le Comité pour répondre à ses questions sur nos propositions.

Veuillez agréer, Messieurs et Mesdames, l'expression de nos sentiments distingués,

Monica Auer
Directrice générale
Forum de recherche et des politiques en communications

Bill C-10 and the CRTC: Ensuring procedural fairness (January 2021)

Research paper by Forum for Research and Policy in Communications (FRPC) - Synopsis

In November 2020 the Minister of Canadian Heritage submitted Bill C-10 to the House of Commons. If approved C-10 would give the CRTC new authority to regulate online programming services and to levy administrative monetary penalties for breaches of its requirements.

The CRTC's responsibilities have already grown since the enactment of the current *Broadcasting Act* in 1991 and the *Telecommunications Act* in 1993. It now also regulates telemarketing, spam and electoral fairness. Since 1991 its expenditures and staff have grown by 95.4% (\$2002) and 20.7%, respectively.

Bill C-10 offers no new guidance for the CRTC to exercise its current or proposed powers, apparently assuming that the CRTC will implement its existing and new responsibilities fairly and reasonably. The CRTC's operations and processes have not been reviewed in any detail since the early 1980s.

The Forum for Research and Policy in Communications (FRPC), an independent and non-partisan public-interest organization focussed on communications analysis and policy, reviewed the CRTC's approach to procedural fairness with respect to broadcasting applications that it receives. We found that the CRTC no longer publishes the numbers of applications, interventions and representations it receives and that it has effectively delegated complaints about broadcast programming and distribution to industry-established organizations.

As for the fairness of its procedures, the CRTC currently measures this by counting the number of times courts in a given year overturn a CRTC decision due to unfair process; in 2019 there were none. Measuring procedural fairness by numbers of court cases offers little meaningful information, however: courts evaluate the procedural fairness in the specific CRTC cases they hear rather than some, most or all CRTC decisions; parties that perceive the CRTC's procedures to be unfair may not launch court cases due to lack of time, resources or other reasons; and as the cases that are filed may take more than a year to resolve, a court decision that the CRTC procedures were unfair in any given year may reflect practices of a prior year.

Other factors can be used to measure procedural fairness. Immigration, Refugees and Citizen Canada (IRCC) – another institution that, like the CRTC, hears and makes thousands of decisions about the applications it receives – has published a list of criteria for procedural fairness in its proceedings. When applied these help to ensure that regardless of the outcome of their applications, applicants are heard rather than ignored, that applicants' requests are assessed using stated procedures, that decisions about applicants' requests are made in a timely way, that such decisions are made by those legally empowered to make them, and that decision-makers not just are, but are perceived by applicants to be, fair and impartial.

Results from analyzing broadcasting applications submitted to the CRTC in 2019 in terms of these criteria regarding fair process are summarized below:

1. Applicants' right to be heard – not met consistently

The CRTC's 2010 *Rules of Practice and Procedure (Rules)* state that it will post all 'Part 1' applications it receives when these comply with the *Rules*, implying that it will consider such requests.

In response to access-to-information requests the CRTC said that it does not consider some applications even when they comply with its *Rules*. It explained that it does this because it thinks the applications are "inconsistent" with its current policies or because it feels these applications should be considered through another procedure.

While it is known that the CRTC ignored a Part 1 application made in 2018 by a union asking the CRTC to review its Digital Media Exemption Order, and in 2020 ignored a Part 1 application by a public-interest organization asking it to review contact-tracing apps for mobile phones, the CRTC does not have a written process for dealing with applications it does not want to consider, does not necessarily inform applicants that it will not consider their applications and does

not track the number of applications it treats in this manner. The absence of written decisions about their applications prolongs applicants' uncertainty about the status of their applications and limits their legal remedies (as it is difficult to appeal a decision that is not made).

It appears that the CRTC is not granting an unknown number of applicants their right to be heard.

2. Applicants' right to expect that stated procedures will be followed – not met consistently

The *Broadcasting Act* requires the CRTC to hold a public hearing before it issues, suspends or revokes licences, before it issues a mandatory order, or if it sets requirements for Canadian programming. It may hold a public hearing to amend or renew licences when it believes the hearing would serve the public interest.

A Broadcast Applications Report (BAR) published by the CRTC for 2019 lists 484 broadcasting applications and the process applied to them. The 2019 BAR shows that the CRTC held 9 public hearings of which 5 were "non-appearing" – the CRTC did not invite either applicants or interveners to attend the hearing. Among the 35 applications that the CRTC considered in these non-appearing hearings were 7 applicants seeking new licences, and 11 broadcasting undertakings up for renewal whose operations had raised serious non-compliance concerns (including 4 that had previously breached mandatory orders); two of the non-appearing applications resulted in new mandatory orders being issued.

The CRTC's *Rules* also state that it will post all 'Part 1' applications it receives which follow Part 1 of its 2010 *Rules of Practice and Procedure (Rules)*. Yet of the 484 applications listed in the CRTC's 2019 BAR 39 (8%) were not published until or after the CRTC issued 'Letter Decisions' (also not published) about the applications.

It appears that the CRTC is not consistently following its stated procedures and may be using the device of 'non-appearing hearings' to meet the wording rather than the spirit of the *Broadcasting Act's* requirements for hearings before issuing new licences or mandatory orders.

3. Decisions issued on a timely basis – not met consistently

The CRTC's *Departmental Plan 2018-2019* said that it "expects to deliver its decisions in a ... timely manner" and that by March 2019 it issued decisions about 81% of an unstated number of Part 1 broadcasting and telecom applications within 4 months of the close of record in the proceedings.

The date of the 'close of record' is set by the CRTC when it decides to publish applications for public comment. The Forum added the date when applications were signed and therefore likely to have been submitted to the CRTC to the one hundred Part 1 applications listed in the 2019 BAR which were unrelated to the routine process of licence renewals (time constraints prevented our analyzing the 301 Part 1 [paper] proceedings used by the CRTC to renew broadcasting licences in 2019).

The CRTC posted 80% of these applications within one month of their submission; of the remaining 20 applications, just over half (11) were posted within four months, while 4 took nine months to post and 5 took fourteen months to post: in other words, even if decisions were issued within 4 months of being posted, the applications may have been submitted to the CRTC a year or before then. Analysis of the time between applications' submission and the CRTC decision found that the CRTC issued decisions for 51% of the applications within four months of their submission. Decisions were issued for 10% of the applications from five to eleven months after submission, while for 16% of the applications decisions were made from twelve to sixteen months after submission. Just over a fifth (23%) of the applications listed (submitted from June to December 2019) did not show a decision at the time of writing (December 2020). It should be noted that the CRTC may have made decisions in these matters but did not include them in its Broadcast Applications Report for 2019; time constraints prevented our double-checking each application lacking a decision.

The timeliness of decision-making with respect to broadcasting applications unrelated to licence renewal proceedings is difficult to ascertain from the information posted by the CRTC on its website, although the available evidence suggests that in 2019 the CRTC took more time to issue decisions about broadcasting applications than its own metric suggests.

4. Decisions made by those authorized to do so – not met consistently

The *Broadcasting Act* empowers panels of at least three CRTC Commissioners to make decisions on behalf of the CRTC. Parties may appeal such decisions to the Federal Court of Appeal (section 31(2)) or, in the case of new licences, licence renewals or licence amendments, may petition the Governor in Council (Cabinet) to intervene (section 28(1)).

The Federal Court of Appeal held in 2000 and in 2008 that letters from an Executive Director and a Commissioner (Vice-Chair of Broadcasting) of the CRTC, respectively, which purported to respond to applicants' concerns were not CRTC decisions (and were therefore not subject to the *Broadcasting Act's* appeal provisions). Although in each case the court advised the CRTC to explain its decision-making processes and remedies to parties affected by its decisions, the CRTC's Secretary General in November 2020 responded to a Part 1 application without specifically identifying his legal authority to do so – and only provided a formal decision about the application on behalf of the CRTC after the applicant asked the Minister of Canadian Heritage to intervene.

It is unclear whether all applicants receive determinations from persons authorized by statute to make decisions on behalf of the CRTC.

5. Impartiality of CRTC decision-makers in fact and in appearance – may not be met consistently

The IRCC criterion for impartiality explains that applicants have the right to fair and impartial decision-makers and that the perception of bias must be avoided.

An unknown number of applicants have met (and may still meet, via Zoom) with CRTC officials to discuss their applications before submitting these. At least one of the parties that in January 2018 submitted an application asking the CRTC (under the *Telecommunications Act*) to block certain Internet websites presented detailed policy and legal arguments about the proposal to the CRTC in September 2017 while stating an intention to file an application about the proposal to the Commission. This pre-application meeting was not disclosed to the Commissioner of Lobbying or in the CRTC's ultimate decision on the application. In mid-2020 the Canadian Association of Broadcasters submitted a Part 1 application to the CRTC for urgent regulatory relief from the Covid-19 pandemic's impact – following what the CAB itself described as "months of discussion" with the CRTC's staff.

Once the CRTC decides to consider a matter, the CRTC Commissioners appointed to the panel that hears the matter make a decision on behalf of the CRTC by majority vote. As CRTC decisions are not signed, the identity of the Commissioners who make these decisions can only be determined by reviewing transcripts of the CRTC's hearings. The Forum reviewed 231 CRTC transcripts of its hearings from 1998 to 2016 and found that CRTC Commissioners did not have an equal chance of being appointed to CRTC hearing panels: some Commissioners were appointed to hear and make decisions on behalf of the Commission six and seven times more frequently than their colleagues appointed to the CRTC in the same period. The *Broadcasting Act* gives the CRTC's Chairperson the authority to appoint the members of these panels; changes in the person appointed as Chairperson of the CRTC coincided with changes to the chances of individual Commissioners' being appointed to hearing panels.

It is unclear whether private meetings between applicants and CRTC officials and the appointment of some CRTC Commissioners to hearing panels more often than their colleagues support both the fact and the perception of impartiality in decision-making.

To summarize the findings of the Forum's research, the CRTC has not been independently reviewed in terms of its performance since the early 1980s. Its approach to its legislated responsibilities is less transparent, timely and fair than a first glance might suggest. The degree to which its processes are fair is time-consuming to evaluate empirically, as so much of its applications process is obscure and requires detailed knowledge and research. The CRTC's own measures of its efficiency and fairness are misleading and unreliable. It has acknowledged denying consideration of some applications for unknown reasons, while also permitting its officials to meet with certain applicants to discuss matters later submitted to the CRTC for its approval. CRTC Commissioners do not have the same chances of being appointed to the panels that make decisions on behalf of the full Commission, and Commissioners' chances of being appointed

change depending on the CRTC's Chairperson who appoints them to hearing panels. These empirical results provide grounds for concerns about applicants' right to both the fact and the appearance of impartial decision-makers.

Recommendations

- | | |
|------------------|--|
| Recommendation 1 | Before granting the CRTC significant new powers, review its actual practices and performance in meeting its responsibilities under its enabling statutes |
| Recommendation 2 | Amend section 15 of the <i>Broadcasting Act</i> to require the CRTC to report to Parliament each year on all submissions it receives, including but not limited to complaints, representations, applications or interventions |
| Recommendation 3 | Amend section 21 of the <i>Broadcasting Act</i> to permit the CRTC to make rules regarding interventions, guidelines and matters of broadcasting policy |
| Recommendation 4 | Amend section 18(3) of the <i>Broadcasting Act</i> to enable the CRTC to review the performance of bodies that administer complaints about programming and distribution services |
| Recommendation 6 | Amend section 20(1)(a) of the <i>Broadcasting Act</i> to authorize the Chairperson of the Commission to appoint members to panels when panels would otherwise lack quorum or would include members with conflicts of interest. |

***C-10, An Act to amend the Broadcasting Act
and to make related and consequential
amendments to other Acts***

***C-10, Loi modifiant la Loi sur la radiodiffusion
et apportant des modifications connexes et corrélatives
à d'autres lois***

Forum for Research and Policy in Communications
(FRPC)

Forum de recherche et de politiques en communications
(FRPC)

29 January 2021

le 29 janvier 2021

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Broadcasting Act – Loi sur la radiodiffusion

2: Define ‘decision’, ‘international service’ et ‘social media service’

2: Définition de «décision», de «service international» et de «service de média social»

decision includes a determination made by the Commission in any form; (décision)	décision Toute mesure prise par le Conseil, quelle qu’en soit la forme. (decision)
<p>Rationale:</p> <p>Under the <i>Telecommunications Act</i>, CRTC regulatory policies are decisions, but not under the <i>Broadcasting Act</i></p> <p><i>BELL CANADA V. CANADA (ATTORNEY GENERAL)</i>, 2016 FCA 217:</p> <p>[1] THIS IS A CONSOLIDATION OF THREE STATUTORY APPEALS UNDER SUBSECTION 31(2) OF THE <i>BROADCASTING ACT</i>, S.C. 1991, c. 11 (THE <i>BROADCASTING ACT</i> OR THE <i>ACT</i>). THE APPELLANTS ARE SEEKING TO QUASH TWO BROADCASTING REGULATORY POLICIES ISSUED BY THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (THE COMMISSION) REGARDING SIMULTANEOUS SUBSTITUTION</p> <p>[28] ... “POLICY ‘DECISIONS’ OF THE COMMISSION, LIKE THE FIRST POLICY, SHARE MANY OF THE CHARACTERISTICS OF WHITE PAPERS, WHEREBY GOVERNMENTS PRESENT THEIR POLICY PREFERENCES BEFORE TABLING LEGISLATION AND SEEK REACTIONS FROM STAKEHOLDERS AND ALL THOSE AFFECTED BY THE CONTEMPLATED POLICY CHANGE. THESE ARE CLEARLY NOT JUSTICIABLE, AND THE SAME GOES FOR THE IMPUGNED POLICIES OF THE COMMISSION INsofar AS THEY HAVE NOT BEEN IMPLEMENTED BY REGULATION OR ORDER.”</p>	<p>Raisonnement:</p> <p>En vertu de la <i>Loi sur les télécommunications</i>, les politiques réglementaires du CRTC sont des décisions, mais pas en vertu de la <i>Loi sur la radiodiffusion</i></p> <p><i>BELL CANADA C. CANADA (PROCUREUR GÉNÉRAL)</i>, 2016 CAF 217:</p> <p>[1] LA COUR EST SAISIE DE TROIS APPELS RÉUNIS, INTERJETÉS EN VERTU DU PARAGRAPHE 31(2) DE LA <i>LOI SUR LA RADIODIFFUSION</i> L.C. 1991, CH. 11 (LA <i>LOI</i>). LES APPELANTES DEMANDENT LA CASSATION DE DEUX POLITIQUES RÉGLEMENTAIRES DE RADIODIFFUSION ADOPTÉES PAR LE CONSEIL DE LA RADIODIFFUSION ET DES TÉLÉCOMMUNICATIONS CANADIENNES (LE CONSEIL) CONCERNANT LA SUBSTITUTION SIMULTANÉE</p> <p>[28]: ... EN FAIT, LES « DÉCISIONS » DE POLITIQUE DU CONSEIL, COMME LA PREMIÈRE POLITIQUE, RAPPELLENT DE NOMBREUSES CARACTÉRISTIQUES DES LIVRES BLANCS DANS LESQUELS LES GOUVERNEMENTS SOUMETTENT LEURS PRÉFÉRENCES POLITIQUES AVANT DE DÉPOSER UN PROJET DE LOI ET POUR OBTENIR LES RÉACTIONS DES INTÉRESSÉS ET DES PARTIES TOUCHÉES PAR LE CHANGEMENT POLITIQUE ENVISAGÉ. CES DOCUMENTS NE SONT MANIFESTEMENT PAS JUSTICIABLES ET IL EN VA DE MÊME POUR LES POLITIQUES CONTESTÉES DU CONSEIL, CAR CELLES-CI N’ONT PAS ÉTÉ MISES EN APPLICATION PAR VOIE DE RÈGLEMENT OU D’ORDONNANCE.”</p>
<p>International service</p> <p>Rationale:</p> <p>What is an ‘international service’</p> <p>46(2) <i>The Corporation shall, within the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission, provide an <u>international service</u> in accordance with such directions as the Governor in Council may issue.</i></p>	<p>Service international</p> <p>Raisonnement:</p> <p>Qu’est-ce que c’est qu’un ‘service international’?</p> <p>46(2) <i>La Société fournit, dans le cadre des licences qui lui sont attribuées par le Conseil et sous réserve des règlements de celui-ci, un <u>service international</u>, et ce conformément aux instructions que le gouverneur en conseil peut donner.</i></p>
<p>social media service an online communications platform the predominant use of which is social interaction through user publication of personal content, hosting of user-generated content and use of communications technologies within the platform such as chat and email.</p>	<p>Service de média social une plateforme de communication en ligne dont l’usage prédominant est l’interaction sociale par la publication de contenu personnel par l’utilisateur, l’hébergement de contenu généré par l’utilisateur et l’utilisation de technologies de communication de la plateforme telles que la messagerie instantanée et le courrier électronique.</p>

Shading: addition recommended by the Forum

Strikethrough: recommended removal

Italics: 1991 Act

SMALL CAPS: caselaw and other documents

Surligné: ajout recommandé par le Forum

Barre: recommandation de retrait

Italiques: Loi de 1991

LETTRES MAJUSCULES: jurisprudence et des autres textes

Rationale:

The definition should focus on users' actual use of a platform, rather than platforms' stated purposes

Raisonnement:

La définition devrait se concentrer sur l'utilisation réelle qui est faite d'une plateforme par les utilisateurs, plutôt que sur les objectifs déclarés des plates-formes

3(1) Canadian control

3(1) Contrôle canadien

Retain ownership and control provision

3 (1) It is hereby declared as the broadcasting policy for Canada that the Canadian broadcasting system shall be effectively owned and controlled by Canadians, and that

Conserver l'exigence que le système de radiodiffusion soit, effectivement, la propriété des Canadiens et sous leur contrôle
3 (1) Il est déclaré que, dans le cadre de la politique canadienne de radiodiffusion, le système canadien de radiodiffusion doit être, effectivement, la propriété des Canadiens et sous leur contrôle, et que

Rationale:

ROGERS COMMUNICATIONS INC. v. CANADA (ATTORNEY GENERAL), 1998 CANLII 7494 (FC), <HTTP://CANLII.CA/T/4CDB>

"26. SECTION 3(1)(A) IS AN EXPRESSION OF BROADCASTING POLICY IN RELATION TO THE SYSTEM AS A WHOLE RATHER THAN TO EACH LICENSED UNDERTAKING. **HAD PARLIAMENT INTENDED THAT EACH AND EVERY BROADCASTING UNDERTAKING BE WHOLLY OWNED AND CONTROLLED BY CANADIANS, IT WOULD HAVE SO PRESCRIBED, AS IT HAS EXPLICITLY DONE WITH REGARD TO OTHER POLICY OBJECTIVES AND REQUIREMENTS CONTAINED IN SECTION 3.** HAVING NOT DONE SO, PARLIAMENT CLEARLY DID NOT INTEND TO DICTATE THAT ALL INDIVIDUAL BROADCASTING UNDERTAKINGS BE ENTIRELY OR WHOLLY CANADIAN OWNED AND CONTROLLED.

27. MOREOVER, THE POLICY THAT SECTION 3(1)(A) SEEKS TO ADDRESS IS AN "EFFECTIVE", AS WELL AS A CONJUNCTIVE, "OWNED AND CONTROLLED" CONCEPT, AS DISTINCT FROM STRICTLY FORMALISTIC LEGAL AND NUMERICAL DISJUNCTIVE CONCEPTS OF OWNERSHIP AND CONTROL. IN DOING SO, **THE LEGISLATION CLEARLY CONTEMPLATES A FLEXIBLE APPROACH TO THE ACHIEVEMENT OF THE BROAD, MULTIFACETED AND COMPLEX OBJECTIVES OF CANADA'S BROADCASTING POLICY** THAT INCLUDE "TO SERVE TO SAFEGUARD, ENRICH AND STRENGTHEN THE CULTURE, POLITICAL, SOCIAL AND ECONOMIC FABRIC OF CANADA" (SECTION 3(D)(I)) AND "BE READILY ADAPTABLE TO SCIENTIFIC AND TECHNOLOGICAL CHANGE" (3(1)(D)(IV)).

Raisonnement:

ROGERS COMMUNICATIONS INC. c. CANADA (PROCUREUR GÉNÉRAL), 1998 CANLII 7494 (CF)

26. L'ALINÉA 3(1)A) EST UNE EXPRESSION DE LA POLITIQUE DE RADIODIFFUSION À L'ÉGARD DU SYSTÈME DANS SON ENSEMBLE PLUTÔT QU'À L'ÉGARD DE CHAQUE ENTREPRISE AUTORISÉE. **SI LE LÉGISLATEUR FÉDÉRAL AVAIT VOULU QUE CHAQUE ENTREPRISE DE RADIODIFFUSION SOIT ENTIÈREMENT DÉTENUE ET CONTRÔLÉE PAR DES CANADIENS, IL L'AURAIT PRESCRIT, COMME IL L'A EXPRESSÉMENT FAIT À L'ÉGARD DES AUTRES OBJECTIFS ET EXIGENCES DE POLITIQUE QUE RENFERMENT L'ARTICLE 3.** COMME CE N'EST PAS LE CAS, IL EST CLAIR QUE LE LÉGISLATEUR FÉDÉRAL NE VOULAIT PAS DICTER QUE LES ENTREPRISES DE RADIODIFFUSION INDIVIDUELLES SOIENT ENTIÈREMENT OU TOTALEMENT DÉTENUES ET CONTRÔLÉES PAR DES CANADIENS.

27. EN OUTRE, LA POLITIQUE QUE L'ALINÉA 3(1)A) VISE À APPLIQUER EST UNE NOTION DE « PROPRIÉTÉ ET CONTRÔLE » « EFFECTIVE » AINSI QUE CONJONCTIVE PAR OPPOSITION À DES NOTIONS DE PROPRIÉTÉ ET DE CONTRÔLE STRICTEMENT FORMALISTES ET JURIDIQUES AINSI QUE NUMÉRIQUES ET DISJONCTIVES. EN CE FAISANT, **LA LOI VISE CLAIREMENT L'APPLICATION D'UNE MÉTHODE SOUPLE POUR ATTEINDRE LES OBJECTIFS LARGES, MULTIPLES ET COMPLEXES DE LA POLITIQUE CANADIENNE DE RADIODIFFUSION, QUI CONSISTENT NOTAMMENT À « SERVIR À SAUVEGARDER, ENRICHIR ET RENFORCER LA STRUCTURE CULTURELLE, POLITIQUE, SOCIALE ET ÉCONOMIQUE DU CANADA » (SOUS-ALINÉA 3(1)D)(I)) ET À « DEMEURER AISÉMENT ADAPTABLE AUX PROGRÈS SCIENTIFIQUES ET TECHNIQUES » (3(1)D)(IV)).**

3(1)(a) 'Contribution'

3(1)(a) 'Contribution'

(a) each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection ~~in a manner that is~~

a) chaque entreprise de radiodiffusion est tenue de contribuer à la réalisation des objectifs de cette

Shading: addition recommended by the Forum

~~**Strikethrough:**~~ recommended removal

Italics: 1991 Act

SMALL CAPS: caselaw and other documents

Surligné: ajout recommandé par le Forum

~~**Barre:**~~ recommandation de retrait

Italiques: Loi de 1991

LETTRES MAJUSCULES: jurisprudence et des autres textes

~~appropriate in consideration of the nature of the services provided by the undertaking;~~

Rationale:

(a) Proposed change weakens the concept of the broadcasting 'system' and Parliament's broadcasting policy for Canada: how will the CRTC ensure Parliament's objectives are met when every undertaking supports the system to a different degree?

(b) Gives too much discretion to the CRTC

~~politique, de la manière appropriée en fonction de la nature des services qu'elle fournit;~~

Raisonnement:

(a) Le changement proposé affaiblit le concept de «système» de radiodiffusion et la politique canadienne de radiodiffusion: comment le CRTC veillera-t-il à ce que les objectifs du Parlement soient atteints alors que chaque entreprise appuie le système à un degré différent?

(b) Donne trop de discrétion au CRTC

3(1)(d) *Shall vs should*

3(1)(d) *Doit versus devrait*

(d) the Canadian broadcasting system ~~should~~ **shall**:
(iii) ... through ... the employment opportunities arising out of its operations, serve the needs and interests of all Canadians

Rationale:

Few CRTC decisions since 1991 address employment opportunities. When the CRTC heard the licence renewal applications of large private ownership groups in 2015, it did not ask any questions about employment levels, even though employment by radio and television services has decreased by 24% since 1991:

[Remainder of page left intentionally blank]

(d) le système canadien de radiodiffusion ~~devrait~~ **doit**:
(iii) ... par les chances que son fonctionnement offre en matière d'emploi, répondre aux besoins et aux intérêts de l'ensemble des Canadiens

Raisonnement:

Peu de décisions du CRTC depuis 1991 se sont préoccupées des chances que le système offre en matière d'emploi. Lorsque le CRTC a entendu les demandes de renouvellement de licence des grands groupes de propriété privée, il n'a pas posé de questions aux radiodiffuseurs sur les niveaux d'emploi, même si l'emploi par les services de radio et de télévision a diminué de 24% depuis 1991:

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Programming services - employment, 1968-2019

Services de programmation - les emplois, 1968-2019

1968 Broadcasting Act (no reference to employment)
Loi sur la radiodiffusion, 1968 (ne mentionne pas les emplois)

1991 Broadcasting Act 3(1)(d)(iii)
Loi sur la radiodiffusion, 1991, 3(1)(d)(iii)

Changes in employment levels, 1991-2019

Changements des niveaux d'emploi, 1991-2019

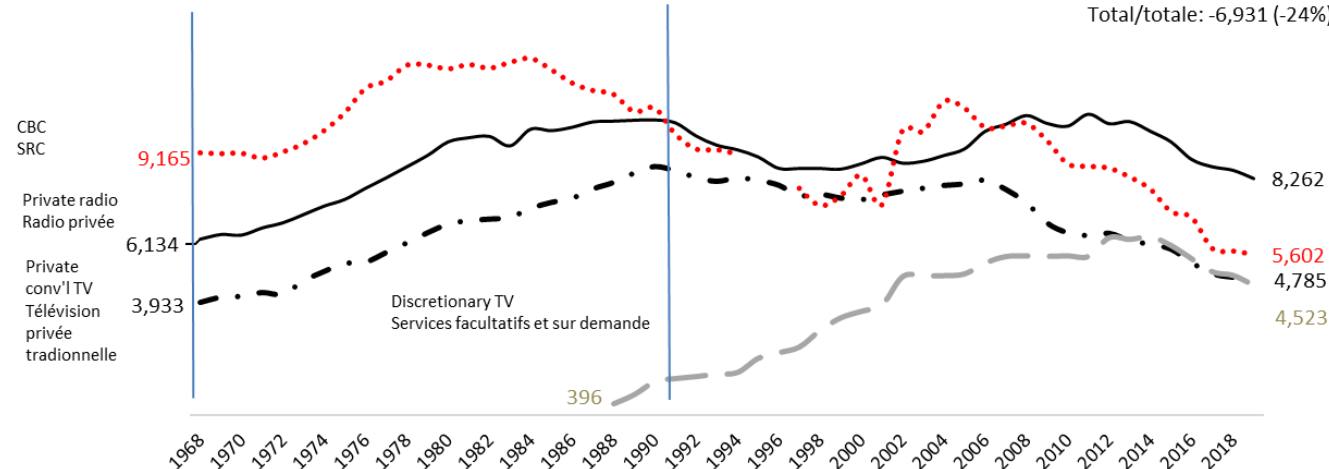
CBC/SRC: -4,342 (-44%)

Private radio/radio privée: -2,055 (-20%)

Private TV/télévision conventionnelle: -3,888 (-44%)

Discretionary/facultatifs: +3,354 (287%)

Total/totale: -6,931 (-24%)



Sources: Statistics Canada/Statistique Canada & CRTC

In 2019 47% of Canada's 188 discretionary services employed fewer than one staff person, including 10 services with than \$1 million in profits before interest and taxes:

En 2019 47% de 188 services facultatifs canadiens employaient moins d'une personne, incluant 10 services qui ont chacun rapporté plus d'un million de dollars en bénéfices avant intérêts et impôts.

Discretionary service/service facultatif - 2019

Profit before interest & taxes/ Bénéfices avant intérêts et impôts

Total staff count/ Effectifs totaux

CTV Drama (formerly Bravo!)	\$28,669,296	0.0
CTV Comedy (formerly The Comedy Network)	\$25,304,042	0.0
E! (formerly Star! TV)	\$11,571,376	0.0
Bell TV On Demand and Vu! (formerly Bell)	\$7,789,150	0.0
Shaw Pay-Per-View (formerly Home Theatre (pay-per-view))	\$5,748,609	0.0
Cogeco Connexion Inc., Montréal	\$4,124,453	0.0
Shaw on Demand	\$4,099,505	0.0
CTV Life (formerly Gusto)	\$3,565,013	0.0
Shaw Pay-Per-View (formerly Allarcom)	\$2,338,372	0.0
Comedy Gold (formerly TV Land)	\$1,739,564	0.0
Total	\$94,949,380	0.0

Source:

CRTC, [Individual Discretionary and On-demand Services: Statistical and Financial Summaries 2015-2019](#)

CRTC, [Services individuels facultatifs et sur demande: relevés statistiques et financiers, 2015-2019](#)

'Shall' establishes that employment is a priority

'Doit' établit que l'emploi est une priorité

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3(1)(f) Financial resources

3(1)(f) Ressources financières

(f) each broadcasting undertaking shall make use of Canadian creative, financial and other resources in the creation and presentation of Canadian programming ~~to the extent that is appropriate for the nature of the undertaking;~~

f) les entreprises de radiodiffusion sont tenues de faire appel aux ressources — créatrices, financières et autres — canadiennes pour la création et la présentation de leur programmation ~~canadienne, dans la mesure appropriée à leur nature;~~

Rationale:

Ensures that CRTC considers expenditures on and investment in Canadian programming

Raisonnement:

Pour que le conseil porte attention aux dépenses pour, et aux investissements dans, la programmation canadienne

3(1)(g) High standard

3(1)(g) Haute qualité

(g) the programming ~~over which a person who~~ offered by ~~carries on a broadcasting undertaking has programming control~~ should be of high standard;

g) la programmation ~~sur laquelle les~~ offerte par les entreprises de radiodiffusion ~~exercent le contrôle de la programmation~~ devrait être de haute qualité;

3(1)(h) Responsibility

3(1)(h) Responsabilité

(h) all persons who carry on broadcasting undertakings have a responsibility for the programs that they broadcast ~~and over which they have programming control;~~

h) les exploitants d'entreprises de radiodiffusion assument la responsabilité des émissions qu'ils diffusent ~~et sur lesquelles ils exercent un contrôle de la programmation;~~

3(1)(m) The CBC shall

3(1)(m) Radio Canada doit

(m) the programming provided by the Corporation ~~should~~ shall

(m) la programmation de la Société devrait ~~à la fois~~ doit

...

(vii) be made available throughout Canada by the most appropriate and efficient means ~~and as resources become available for the purpose, and~~

...

(vii) être offerte partout au Canada de la manière la plus adéquate et efficace, ~~au fur et à mesure de la disponibilité des moyens,~~

Rationale:

CBC is publicly funded

Raisonnement:

La Société Radio-Canada touche des crédits parlementaires

3(1)(o) Indigenous programming

3(1)(o) Programmation autochtones

(o) programming that reflects the Indigenous cultures of Canada and programming that is in Indigenous languages ~~should~~ shall be provided within the Canadian broadcasting system, including by programming undertakings that are carried on by Indigenous persons;

(o) le système canadien de radiodiffusion ~~devrait~~ doit offrir une programmation qui reflète les cultures autochtones du Canada, notamment par l'intermédiaire d'entreprises de programmation exploitées par des Autochtones;

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3(1)(p) Accessibility – shall

3(1)(p) Accessibilité - doit

(p) programming that is accessible without barriers to persons with disabilities ~~should~~ **shall** be provided within the Canadian broadcasting system; and

le système ~~devrait~~ **doit** offrir une programmation accessible aux personnes handicapées et exempté d'obstacles;

3(1)(q) Alternative to CBC - retain

3(1)(q) Alternatif à Radio Canada – à retenir

(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~~ **shall** be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;

s) les ~~réseaux et les entreprises de programmation~~ **radiodiffusion** ~~privés devraient~~ **doivent**, dans la mesure où leurs ressources financières et autres le leur permettent,
i) ~~contribuer de façon notable à la création et à la présentation d'une programmation canadienne, et~~
ii) ~~demeurer~~ **réceptifs** à l'évolution de la demande du public;

3(1)(r) Alternative programming - retain

3(1)(r) Programmation alternative – à retenir

(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;

r) la programmation offerte par ces services **de programmation** ~~alternatifs devrait à la fois~~:
(i) être innovatrice et compléter celle qui est offerte au grand public,
(ii) répondre aux intérêts et goûts de ceux que la programmation offerte au grand public laisse insatisfaits et comprendre des émissions consacrées aux arts et à la culture,
(iii) refléter le caractère multiculturel du Canada et rendre compte de sa diversité régionale,
(iv) comporter, autant que possible, des acquisitions plutôt que des productions propres,
(v) être offerte partout au Canada de la manière la plus rentable, compte tenu de la qualité;

3(1)(s) Broadcasting undertakings

3(1)(s) Entreprises de radiodiffusion

(s) private ~~networks and programming~~ **broadcasting** undertakings ~~should~~ **shall**, 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

s) les ~~réseaux et les entreprises de programmation~~ **radiodiffusion** ~~privées devraient~~ **doivent**, dans la mesure où leurs ressources financières et autres le leur permettent,
i) ~~contribuer de façon notable à la création et à la présentation d'une programmation canadienne, et~~
ii) ~~demeurer~~ **réceptifs** à l'évolution de la demande du public;

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Barre: recommandation de retrait
Italiques: Loi de 1991
LETTRES MAJUSCULES: jurisprudence et des autres textes

3(1)(t) *Distribution undertakings*

3(1)(t) *Entreprises de distribution*

(t) *distribution undertakings*

(i) ~~should~~ **shall** give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,

(ii) ~~should~~ **shall** provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,

Rationale:

Telecommunications Workers Union v. Canadian Radio-television and Telecommunications Commission, [2003 FCA 381 \(CanLII\)](#), [\[2004\] 2 FCR 3](#)

[67] THE STATUTORY PROVISIONS IN THESE CASES DEMONSTRATE THAT **WHEN PARLIAMENT INTENDS TO REQUIRE A TRIBUNAL TO SET OR APPROVE ALL RATES, IT USES CLEAR LANGUAGE**. YET ANOTHER EXAMPLE OF THIS IS SUBSECTION 25(1) OF THE *TELECOMMUNICATIONS ACT*, S.C. 1993, c. 38:

25. (1) NO CANADIAN CARRIER SHALL PROVIDE A TELECOMMUNICATIONS SERVICE EXCEPT IN ACCORDANCE WITH A TARIFF FILED WITH AND APPROVED BY THE COMMISSION THAT SPECIFIES THE RATE OR THE MAXIMUM OR MINIMUM RATE, OR BOTH, TO BE CHARGED FOR THE SERVICE. [EMPHASIS ADDED.]

[68] THERE IS NO SIMILAR PROVISION IN THE *BROADCASTING ACT*, WHICH DEMONSTRATES THAT **PARLIAMENT DID NOT INTEND TO PROVIDE FOR THE STRICT REGULATION OF RATES**. WHILE IT IS A POLICY OBJECTIVE UNDER SUBPARAGRAPH 3(1)(t)(ii) OF THE ACT THAT RATES SHOULD BE AFFORDABLE, THE ACT DOES NOT DICTATE HOW THE CRTC IS TO ACHIEVE THIS POLICY OBJECTIVE. THE CRTC IS GIVEN THE DISCRETION TO DETERMINE WHEN AND HOW THESE POWERS SHOULD BE EXERCISED, TAKING INTO ACCOUNT THE POLICIES SET FORTH IN THE ACT. IT IS CLEAR THAT PARLIAMENT INTENDED THE CRTC TO BE THE ONLY AUTHORITY WITH THE BROAD DISCRETION TO DECIDE HOW BEST TO IMPLEMENT BROADCASTING POLICY

(iii) ~~should~~ **shall** 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

t) *les entreprises de distribution :*

(i) ~~devraient~~ **doivent** donner priorité à la fourniture des services de programmation canadienne, et ce en particulier par les stations locales canadiennes,

(ii) ~~devraient~~ **doivent** assurer efficacement, à l'aide des techniques les plus efficaces, la fourniture de la programmation à des tarifs abordables,

Raisonnement:

Syndicat des travailleurs en télécommunications c. Conseil de la radiodiffusion et des télécommunications canadiennes, [2003 CAF 381 \(CanLII\)](#), [\[2004\] 2 RCF 3](#)

[67] LES DISPOSITIONS LÉGISLATIVES EN LITIGE DANS CES AFFAIRES DÉMONTRENT QUE **LORSQUE LE LÉGISLATEUR ENTEND EXIGER D'UN TRIBUNAL QU'IL FIXE OU APPROUVE TOUS LES TARIFS, IL LE DIT CLAIEMENT**. ON EN TROUVE UN AUTRE EXEMPLE AU PARAGRAPHE 25(1) DE LA LOI SUR LES TÉLÉCOMMUNICATIONS, L.C. 1993, CH. 38:

25. (1) L'ENTREPRISE CANADIENNE DOIT FOURNIR LES SERVICES DE TÉLÉCOMMUNICATION EN CONFORMITÉ AVEC LA TARIFICATION DÉPOSÉE AUPRÈS DU CONSEIL ET APPROUVÉE PAR CELUI-CI FIXANT--NOTAMMENT SOUS FORME DE MAXIMUM, DE MINIMUM OU DES DEUX--LES TAUX À IMPOSER OU À PERCEVOIR. [C'EST MOI QUI SOULIGNE.]

[68] IL N'EXISTE AUCUNE DISPOSITION SEMBLABLE DANS LA LOI SUR LA RADIODIFFUSION, CE QUI DÉMONTRE QUE **LE LÉGISLATEUR N'AVAIT PAS L'INTENTION DE PRÉVOIR UNE RÉGLEMENTATION STRICTE DES TARIFS**. BIEN QUE L'ABORDABILITÉ DES TARIFS SOIT UN OBJECTIF DE POLITIQUE EN VERTU DU SOUS-ALINÉA 3(1)t)(ii) DE LA LOI, CELLE-CI NE DICTE PAS AU CRTC COMMENT ATTEINDRE CET OBJECTIF. LE CRTC A LE POUVOIR DISCRÉTIONNAIRE DE DÉCIDER QUAND ET COMMENT CES POUVOIRS DEVRAIENT ÊTRE EXERCÉS, COMPTE TENU DES POLITIQUES ÉNONCÉES DANS LA LOI. IL EST CLAIR QUE L'INTENTION DU LÉGISLATEUR ÉTAIT QUE LE CRTC SOIT LA SEULE AUTORITÉ HABILITÉE À EXERCER LE LARGE POUVOIR DISCRÉTIONNAIRE DE DÉCIDER DE LA MEILLEURE FAÇON DE METTRE EN ŒUVRE LA POLITIQUE DE RADIODIFFUSION.

(iii) ~~devraient~~ **doivent** offrir des conditions acceptables relativement à la fourniture, la combinaison et la vente des services de programmation qui leur sont fournis, aux termes d'un contrat, par les entreprises de radiodiffusion,

Shading: ajout recommandé par le Forum

~~Strikethrough~~: recommandé removal

Italics: 1991 Act

SMALL CAPS: caselaw and other documents

Surligné: ajout recommandé par le Forum

~~Barre~~: recommandation de retrait

Italiques: Loi de 1991

LETTRES MAJUSCULES: jurisprudence et des autres textes

9 Duration of licence

9 Durée des termes de licences

9 (1) Subject to this Part, the Commission may, in furtherance of its objects,

(b) issue a licence, for a term of up to five years ~~the term of which may be indefinite or fixed by the Commission~~, and subject to such conditions related to the circumstances of the licensee, and in the case of a licence issued to the Corporation, as the Commission deems consistent with the provision, through the Corporation, of the programming contemplated by paragraphs 3(1)(l) ~~and~~, 3(1)(m) and 46(5);

(c) amend a licence as to its term, on the application of the licensee or, where three years have expired since the issuance or renewal of the licence, on the Commission's own motion;

(e) renew a licence for a term not exceeding five years ~~the term of which may be indefinite or fixed by the Commission~~; and

9.1(i) Registrants - ownership

9.1(i) Registration - propriété

(i) the provision to the Commission, by persons that are licensees, that are registrants, or that are exempt from the requirement to hold a licence under an order made under subsection 9(4), of information related to

9.1(j)(ii.2) Algorithms

9.1(j)(ii.2) Algorithmes

(j) the provision to the Commission, by persons carrying on broadcasting undertakings, of any other information that the Commission considers necessary for the administration of this Act, including

...

(ii) information related to programming, including but not limited to computer software such as algorithms,

9.1(5) Publish orders in 30 days

9.1(5) Publier les ordres dans les 30 jours

(5) The Commission shall publish each order that is made under this section on its website within thirty days of the making of the order.

9 (1) Sous réserve des autres dispositions de la présente partie, le Conseil peut, dans l'exécution de sa mission :

b) attribuer une licence pour ~~une période de validité fixe ou indéterminée~~ une période maximale de cinq ans, et dans le cas d'une licence attribuée à la Société, lui permettant, selon ~~son~~ ~~avis~~ le Conseil, d'offrir la programmation visée aux alinéas 3(1) l) ~~, et m)~~ et 46(5);

c) modifier les conditions d'une licence soit sur demande du titulaire soit, plus de trois ans après son attribution ou son renouvellement, de la propre initiative du Conseil;

e) renouveler une licence pour une période ~~de validité fixe ou indéterminée~~ maximale de cinq ans;

i) la communication de renseignements au Conseil par des personnes morales qui sont soit titulaires de licences, soit enregistrés, soit des exploitants soustraits à l'obligation d'en détenir une en vertu d'une ordonnance prise en application du paragraphe 9(4), relatifs à :

j) la communication de tout autre renseignement au Conseil par les exploitants d'entreprises de radiodiffusion qu'il estime nécessaire pour l'exécution de la présente loi, y compris des renseignements :

...

(ii) sur la programmation, y compris les logiciels et les algorithmes

(5) Les ordonnances prises par le Conseil en vertu du présent article sont publiées sur son site Web dans les trente jours suivant la prise de l'ordre.

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LETTRES MAJUSCULES: jurisprudence et des autres textes

10 Regulations

10 Règlements

~~Règlements~~ Regulations

10 (1) *The Commission may, in furtherance of its objects, make regulations*

(e) respecting, in relation to a broadcasting undertaking other than ~~an~~ a non-Canadian online undertaking, 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;

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

(j.1) respecting the audit or examination of records and books of account of persons carrying on broadcasting undertakings by the Commission or persons acting on behalf of the Commission; and

(j.2) respecting the examination by the Commission or persons acting on behalf of the Commission of algorithms used by persons carrying on broadcasting undertakings and

11 Licence fees

11 Droits

11(2) Regulations made under paragraph (1)(a) may provide for fees to be calculated by reference to any criteria that the Commission considers appropriate, including by reference to

(c) the ~~market~~ communities served by the persons carrying on broadcasting undertakings.

11.1 Communities

11.1 Communautés

11.1(5)(c) the ~~market~~ communities served by the persons carrying on broadcasting undertakings

Règlements

10 (1) *Dans l'exécution de sa mission, le Conseil peut, par règlement :*

e) concernant, en ce qui a trait aux entreprises de radiodiffusion autres que les entreprises en ligne ~~non-Canadiennes~~, la proportion du temps d'antenne pouvant être consacrée à la radiodiffusion d'émissions — y compris les messages publicitaires et annonces — de nature partisane ainsi que la répartition équitable de ce temps entre les partis politiques et les candidats;

h) pourvoyant au règlement — notamment par la médiation — de différends concernant la fourniture de programmation et survenant entre les entreprises de programmation qui la transmettent ~~et les entreprises de distribution,~~

, les entreprises de distribution et les entreprises en ligne;

j.1) concernant la vérification et l'examen des livres de comptes et registres des exploitants d'entreprises de radiodiffusion par le Conseil ou ses représentants;

j.2) concernant l'examen des algorithmes des exploitants d'entreprises de radiodiffusion par le Conseil ou ses représentants;

(2) Les règlements d'application de l'alinéa (1) a) peuvent prévoir le calcul des droits en fonction de certains critères que le Conseil juge indiqués notamment :

c) ~~la clientèle desservie~~ les communautés desservies par ces titulaires.

11.1 5) c) ~~le marché desservi~~ les communautés desservies par ces exploitants.

Shading: addition recommended by the Forum

Strikethrough: recommended removal

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Italiques: Loi de 1991

LETTRES MAJUSCULES: jurisprudence et des autres textes

14 Research

14 Recherche

14 (1) The Commission may undertake, sponsor, promote or assist in research relating to any matter within its jurisdiction under this Act and in so doing it shall,

(a) wherever appropriate, utilize technical, economic and statistical information and advice from the Corporation or departments or agencies of the Government of Canada, and

(b) invite comment from interested parties regarding the design or methodology of any surveys before undertaking the surveys.

Rationale:

SEE E.G. FEDERAL COMMUNICATIONS COMMISSION (UNITED STATES OF AMERICAN), [*IN THE MATTER OF INQUIRY CONCERNING DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY TO ALL AMERICANS IN A REASONABLE AND TIMELY FASHION*](#), FCC 20-112, AT 3:

6. ... WE PROPOSE TO TAKE A HOLISTIC VIEW OF PROGRESS IN THE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY, AND ... CONSIDER A RANGE OF SPEEDS PROVIDED OVER BOTH FIXED AND MOBILE TECHNOLOGIES.... BELOW, WE PROPOSE AN EVALUATIVE FRAMEWORK FOR THE NEXT REPORT AND **SEEK COMMENT ON OUR PROPOSED METHODOLOGY.**

18(3.1) Reasons

18(3.1) Raisons

18(3.1) The decisions of the CRTC shall include reasons.

Rationale:

[*CANADA \(MINISTER OF CITIZENSHIP AND IMMIGRATION\) V. VAVILOV*](#), 2019 SCC 65 (CANLII)

[79] NOTWITHSTANDING THE IMPORTANT DIFFERENCES BETWEEN THE ADMINISTRATIVE CONTEXT AND THE JUDICIAL CONTEXT, REASONS GENERALLY SERVE MANY OF THE SAME PURPOSES IN THE FORMER AS IN THE LATTER [CITATION OMITTED]. **REASONS EXPLAIN HOW AND WHY A DECISION WAS MADE. THEY HELP TO SHOW AFFECTED PARTIES THAT THEIR ARGUMENTS HAVE BEEN CONSIDERED AND DEMONSTRATE THAT THE DECISION WAS MADE IN A FAIR AND LAWFUL MANNER. REASONS SHIELD AGAINST ARBITRARINESS AS WELL AS THE PERCEPTION OF ARBITRARINESS IN THE EXERCISE OF PUBLIC POWER.**

14 (1) Le Conseil peut entreprendre, parrainer, promouvoir ou aider toute recherche sur des questions relevant de sa compétence au titre de la présente loi; ce faisant, il doit,

a) s'il y a lieu et si cela est possible, utiliser l'information et les conseils d'ordre technique, économique et statistique de la Société ou des ministères ou autres organismes fédéraux, et

b) inviter les intéressés à faire leurs observations envers la conception ou la méthodologie des sondages avant d'entreprendre ces sondages.

Raisonnement:

[texte original fourni par fcc en anglais uniquement;

[traduction de l'anglais:]

... NOUS PROPOSONS D'ADOPTER UNE VISION HOLISTIQUE DES PROGRÈS RÉALISÉS DANS LE DÉPLOIEMENT DE LA CAPACITÉ DE TÉLÉCOMMUNICATIONS DE POINTE, ET ... ENVISAGER UNE GAMME DE VITESSES OFFERTES PAR RAPPORT AUX TECHNOLOGIES FIXES ET MOBILES.... CI-DESSOUS, NOUS PROPOSONS UN CADRE D'ÉVALUATION POUR LE PROCHAIN RAPPORT ET SOLLICITONS LES OBSERVATIONS SUR NOTRE MÉTHODOLOGIE PROPOSÉE.

18 3.1) Le Conseil rend des décisions motivées.

Raisonnement:

[*CANADA \(MINISTRE DE LA CITOYENNETÉ ET DE L'IMMIGRATION\) C. VAVILOV*](#), 2019 CSC 65 (CANLII)

[79] NONOBTANT LES DIFFÉRENCES IMPORTANTES QUI EXISTENT ENTRE LE CONTEXTE ADMINISTRATIF ET LE CONTEXTE JUDICIAIRE, LES MOTIFS RÉPONDENT À BON NOMBRE DES MÊMES BESOINS DANS LES DEUX CONTEXTES. **LES MOTIFS DONNÉS PAR LES DÉCIDEURS ADMINISTRATIFS SERVENT À EXPLIQUER LE PROCESSUS DÉCISIONNEL ET LA RAISON D'ÊTRE DE LA DÉCISION EN CAUSE. ILS PERMETTENT DE MONTRER AUX PARTIES CONCERNÉES QUE LEURS ARGUMENTS ONT ÉTÉ PRIS EN COMPTE ET DÉMONTRENT QUE LA DÉCISION A ÉTÉ RENDUE DE MANIÈRE ÉQUITABLE ET LICITE. LES MOTIFS SERVENT DE BOUCLIER CONTRE L'ARBITRAIRE ET LA PERCEPTION D'ARBITRAIRE DANS L'EXERCICE D'UN POUVOIR PUBLIC.**

Shading: addition recommended by the Forum

Strikethrough: recommended removal

Italics: 1991 Act

SMALL CAPS: caselaw and other documents

Surligné: ajout recommandé par le Forum

Barre: recommandation de retrait

Italiques: Loi de 1991

LETTRES MAJUSCULES: jurisprudence et des autres textes

[citations omitted]

[citations omises]

19 Notice

19 Avis

19 The Commission shall cause notice of

19 Le Conseil donne avis, dans la Gazette du Canada ~~et~~, dans un ou plusieurs journaux largement diffusés dans la région touchée ou susceptible de l'être, et sur son site Web,

(a) any application received by it for the issue, amendment or renewal of a licence, other than a licence to carry on a temporary network operation,

a) de toute demande d'attribution, de modification ou de renouvellement de licences — à l'exception des licences d'exploitation temporaire d'un réseau — reçue par lui,

(b) any decision made by it to issue, amend or renew a licence, and

b) des décisions découlant du paragraphe 19 a)

(c) any public hearing to be held by it under section 18 to be published in the Canada Gazette, on the Commission's website and in one or more newspapers of general circulation within any area affected or likely to be affected by the application, decision or matter to which the public hearing relates.

c) des audiences publiques à venir en relation avec l'article 18

20(1) Panels of Commission

20(1) Comités du Conseil

~~20 (1) The Chairperson of the Commission may establish panels, each consisting of not fewer than three members of the Commission, to deal with, hear and determine any matter on behalf of the Commission.~~

~~20 (1) Le président du Conseil peut former des comités composés d'au moins trois conseillers chargés de connaître et décider, au nom du Conseil, des affaires dont celui-ci est saisi.~~

20 (1) (a) The Commission may establish panels of not fewer than three members of the Commission to deal with, hear and determine any matter on behalf of the Commission.

20(1)(a) Le conseil peut former des comités — composés d'au moins trois conseillers — chargés de connaître et décider, au nom du Conseil, des affaires dont celui-ci est saisi.

(b) When a panel established by the Commission lacks quorum the Chairperson of the Commission may assign a member or members of the Commission to the panel.

(b) Quand un comité formé par le Conseil n'atteint pas le quorum le président du Conseil peut nommer au comité un conseiller ou des conseillers.

Rationale:

The Chairperson's power to appoint hearing panel members permits him or her to influence panel decisions.

Raisonnement:

Le pouvoir du président de nommer les membres du comité d'audience lui permet d'influencer les décisions du comité.

[Research by the Forum of all CRTC hearings from 1998 to 2017](#) found that Commissioners appointed by a government of same party affiliation as the government that appointed the CRTC Chairperson were more likely to participate on CRTC hearing panels than their colleagues (appointed by governments with a different party affiliation).

Une étude menée par le Forum sur toutes les audiences du CRTC de 1998 à 2017 [\[disponible seulement en anglais\]](#) a révélé que les conseillers nommés par un gouvernement de même parti que le gouvernement qui a nommé le président du CRTC étaient plus susceptibles de participer aux comités d'audience du CRTC que leurs collègues (nommés par des gouvernements ayant une affiliation de parti différente).

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LETTRES MAJUSCULES: jurisprudence et des autres textes

21 Regulations for registration

21 Regulations for registration

21 The Commission may make rules

- (a) respecting the procedure for
- (i) online undertakings to register
- (ii) making applications for licences, for the amendment, renewal, suspension or revocation of licences, and
- (iii) for making representations and complaints to the Commission; and

26(2) Urgent broadcast

26(2) Émission urgente

26 (2) Where the Governor in Council deems the broadcast of any program to be of urgent importance to Canadians generally or to persons resident in any area of Canada, the Governor in Council may, by order, direct the Commission to issue a notice to licensees broadcasting undertakings throughout Canada or throughout any area of Canada, of any class specified in the order, requiring the licensees broadcasting undertakings to broadcast the program in accordance with the order, and licensees to whom any such notice is addressed shall comply with the notice.

29 Registry

29 Registre

29(3) The Commission shall

- (a) establish and maintain a public register in which shall be kept a copy of each petition received by the Commission, and
- (b) post a copy of the petition on its website.

31 Decisions

31 Décisions

~~31(4) Any document issued by the Commission in the form of a decision or order shall, if it relates to the issue, amendment, renewal, revocation or suspension of a licence, be deemed for the purposes of this section to be a decision or order of the Commission.~~

Rationale:

The purpose of this section is unclear.

Originally in the 1968 Act, s. 26(5): Any minute or other record of the Commission or any document issued by

21 Le Conseil peut établir des règles

- a) régissant l'instruction des affaires dont il est saisi notamment
- i) l'enregistrement des entreprises en ligne
- ii) la procédure applicable à la présentation des demandes d'attribution, de modification, de renouvellement, de suspension ou de révocation de licences, et
- iii) la présentation des observations et des plaintes; et

26(2) Le gouverneur en conseil peut, par décret, ordonner au Conseil d'adresser aux ~~titulaires de licences~~ entreprises de radiodiffusion de catégories données, sur l'ensemble ou une partie du territoire canadien, un avis leur enjoignant de radiodiffuser toute émission jugée par lui-même avoir un caractère d'urgence et une grande importance pour la population canadienne ou pour les personnes qui résident dans la région en cause. Le destinataire est lié par l'avis.

29(3) a) Le Conseil tient un registre public dans lequel sont conservées les copies de demandes reçues par lui.

b) Le Conseil publie sur son site Internet une copie des demandes d'intervention du gouverneur en conseil qu'il reçoit.

~~31 (4) Les documents émanant du Conseil sous forme de décision ou d'ordonnance, s'ils concernent l'attribution, la modification, le renouvellement, l'annulation, ou la suspension d'une licence, sont censés être, pour l'application du présent article, des décisions ou ordonnances du Conseil.~~

Raisonnement:

Le but de cet article n'est pas clair.

À l'origine dans la Loi de 1968, s. 26(5): Tout procès-verbal ou autre dossier du Conseil ou tout document publié par le

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LETTRES MAJUSCULES: jurisprudence et des autres textes

the Commission in the form of a decision or order shall, if it relates to the issue, amendment, renewal, revocation or suspension of a broadcasting licence, be deemed for the purposes of section 25 and this section to be a decision or order of the Commission.

This section was considered in:

PACHUL V. CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION, 2002 FCA 165 (CANLII):

..
[16] IN MY VIEW, ... SUBSECTION 31(4).... SIMPLY ENSURES THAT CERTAIN DOCUMENTS ISSUED BY THE CRTC ARE DEEMED TO BE DECISIONS OR ORDERS. IT IS NOT CLEAR WHETHER SUBSECTION 31(4) WAS ENACTED FOR GREATER CERTAINTY OR IS INTENDED TO EXPAND THE SCOPE OF THE PHRASE "DECISION OR ORDER"

31.1 Registration

31.1 Enregistrement

31.1(2) Despite subsection (1), a person may carry on an online undertaking and without being so exempt **after they have registered with the Commission.**

34.996 Reasonable grounds

34.996 Motifs raisonnables

34.996 A person designated under paragraph 34.7(a) who ~~believes~~ **has reasonable grounds to believe** that a person is in possession of information that is reasonably considered to be relevant for the purpose of verifying whether a violation referred to in section 34.4 has been committed may, by notice, require that person to submit the information to the designated person in the form and manner and within the reasonable time that is stipulated in the notice. A person to whom any such notice is addressed shall comply with the notice.

71 CBC programming hours

71 Heures de programmation du Radio Canada

71(3) *The annual report of the Corporation shall include*

(d) quantitative information respecting the performance of the Corporation, including first-run programming hours by programming category, including its wholly-owned subsidiaries, if any, relative to the Corporation's objectives, and

Conseil sous la forme d'une décision ou d'une ordonnance est considéré, s'il se rapporte à la délivrance, à la modification, au renouvellement, à la révocation ou à la suspension d'une licence de radiodiffusion, aux fins de l'article 25 et cet article, comme une décision ou une ordonnance de la Commission.

Cet article été examinée dans:

PACHUL C. CONSEIL DE LA RADIODIFFUSION ET DES TÉLÉCOMMUNICATIONS CANADIENNES, 2002 CAF 165 (CANLII)

...
[16] À MON AVIS ... LE PARAGRAPHE 31(4) DIT SIMPLEMENT QUE CERTAINS DOCUMENTS ÉMANANT DU CRTC SONT RÉPUTÉS DES DÉCISIONS OU ORDONNANCES. ON NE SAIT TROP SI LE PARAGRAPHE 31(4) A ÉTÉ ÉDICTÉ PAR SOUCI DE CERTITUDE OU S'IL VISE À ÉLARGIR LE CHAMP DE L'EXPRESSION « DÉCISION OU ORDONNANCE »

(2) Il est toutefois permis d'exploiter une entreprise en ligne sans détenir une licence et sans être soustrait à l'obligation d'en détenir une aux termes d'une telle ordonnance **après s'être enregistré auprès du Conseil.**

34.996 Si elle ~~croit~~ **a des motifs raisonnables de croire** qu'une personne détient des renseignements dont il est raisonnable de croire qu'ils lui seraient utiles pour lui permettre de vérifier si une violation visée à l'article 34.4 a été commise, toute personne désignée en vertu de l'alinéa 34.7a) peut, par avis, l'obliger à les lui communiquer, dans le délai raisonnable et selon les autres modalités, notamment de forme, que précise l'avis. Le destinataire de l'avis est lié par celui-ci.

(3) *Le rapport d'activité contient notamment les éléments suivants :*

...
d) les renseignements chiffrés sur les résultats de la Société par rapport à ses objectifs, incluant le nombre d'heures de première diffusion de programmation par catégories d'émissions et, le cas échéant, ceux de ses filiales à cent pour cent;

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Rationale:

CBC's *Annual Report, 2019-2020* has just one reference to hours of programming broadcast:

P. 19: "ON CBC TELEVISION, WE INCREASED THE HOURS OF CBC KIDS CONTENT BROADCAST IN THE MORNINGS DURING THE PANDEMIC TO ENSURE EXCELLENT KIDS CONTENT WOULD BE AVAILABLE TO FAMILIES UNTIL 11:00 A.M. EVERY WEEKDAY MORNING.

P. 85: \$399.4 MILLION SPENT ON PROGRAMS

See also, FRPC, [An Analysis of CBC's financial history from 1937 to 2019: We tried to follow the money. Frodo had it easier](#), (Ottawa, February 2020)

Raisonnement:

Le *Rapport annuel, 2019-2020* de Radio-Canada n'a qu'une seule référence aux heures de programmation diffusées:

p. 19: "DU CÔTÉ DE CBC TELEVISION, NOUS AVONS ALLONGÉ LA PLAGE DE DIFFUSION DU CONTENU DE CBC KIDS LE MATIN DURANT LA PANDÉMIE DE SORTE QUE LES FAMILLES AIENT ACCÈS À D'EXCELLENTS CONTENUS JEUNESSE JUSQU'À 11 H TOUS LES JOURS DE LA SEMAINE,...."

P. 85: \$399.4 MILLIONS DÉPENSÉS POUR DES ÉMISSIONS

[étude par FRPC: [en anglais seulement](#)]

CRTC Act – Loi sur le CRTC

12(1.1) Timeliness

12(1.1) Rapidité

12 (1.1) *The objects and powers of the Commission in relation to broadcasting are as set out in the Broadcasting Act.*

12(1.2) The Commission shall issue decisions about matters it hears within nine months after the first day on which it begins to hear the matters.

Rationale:

A [study by the Forum](#) found that from 2013 to 2018 the time taken by the CRTC to issue decisions about costs applications (in telecommunications) increased from an average of 3.7 months after applicants submitted their applications, to 9.6 months in 2018.

12 (1.1) *La mission et les pouvoirs du Conseil en matière de radiodiffusion sont énoncés dans la Loi sur la radiodiffusion.*

12(1.2) Le Conseil rend des décisions sur les questions qu'il entend dans les neuf mois qui suivent le premier jour de l'audience.

Raisonnement:

Une étude du Forum [\[English-language only\]](#) a révélé que, de 2013 à 2018, le temps pris par le CRTC pour rendre des décisions sur les demandes de frais (en télécommunications) est passé d'une moyenne de 3,7 mois après le dépôt des demandes par les demandeurs à 9,6 mois en 2018.

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SMALL CAPS: caselaw and other documents

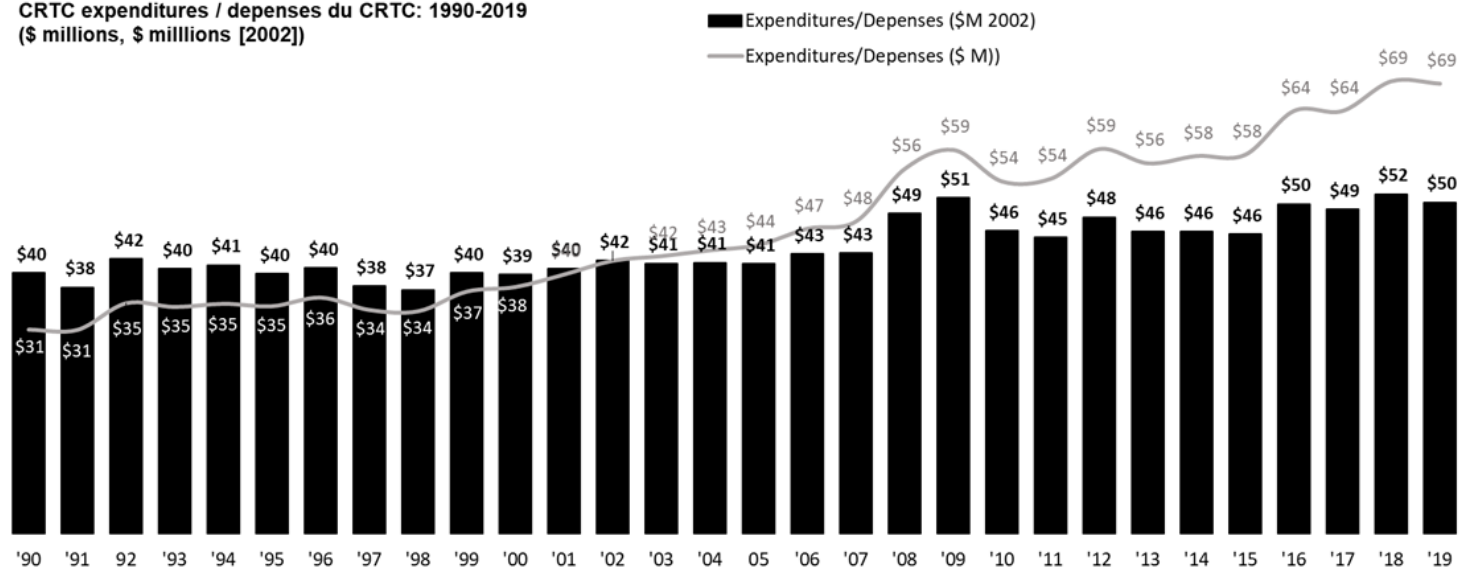
Surligné: ajout recommandé par le Forum

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CRTC expenditures / dépenses du CRTC: 1990-2019
(\$ millions, \$ millions [2002])



Source: CRTC reports/rapports du CRTC

13(2) CRTC Annual Report

13(2) Rapport annuel du Conseil

13(2) The report must include information about the following in respect of the fiscal year, including their number:

(a.2) hours of Canadian and non-Canadian programming broadcast by programming undertakings, online undertakings and networks

...

(d.1) number of public hearings held under sections 18(1)(a), (b), (c) and (d), including the number of appearing interveners,

(d.2) number of decisions issued under sections 18(1)(a), (b), (c) and (d) and the number of days between the date of the related hearings and when the decisions were issued;

(d.3) number of CRTC decisions made by administrative letter;

13(2) Le rapport contient notamment les renseignements, au regard de l'exercice, concernant les éléments ci-après, y compris leur nombre :

(a.2) les heures de présentation de programmation canadienne et non-canadienne des entreprises de programmation, des entreprises en ligne et des réseaux

(d.1) le nombre d'audiences publiques tenues au titre de l'article 18(1)(a), (b), (c) et (d) incluant le nombre des intervenants qui ont comparu,

(d.2) le nombre de décisions publiées au titre de l'article 18(1)(a), (b), (c) et (d) et la moyenne du nombre de jours entre les dates des audiences publiques et les dates de publication des décisions;

(d.3) le nombre de décisions du Conseil rendues par lettres administratives

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Italiques: Loi de 1991

LETTRES MAJUSCULES: jurisprudence et des autres textes