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Fédération  
culturelle  
canadienne-  
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## POSITION PAPER: BILL C-10 REGARDING CANADIAN BROADCASTING

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## Introduction and Background

Minister Steven Guilbeault tabled Bill C-10, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts, in the House of Commons on November 3, 2020. Having welcomed this positive step, the Fédération culturelle canadienne-française (FCCF) set about analyzing the content of the legislation from the dual perspective inherent to its mandate: that of the arts and culture sector and that of Francophone and Acadian communities.

The *Yale Report*, tabled in February 2020, achieved a decisive breakthrough in how key issues in Canadian broadcasting are framed. At the time, the FCCF analyzed the document and identified those recommendations that could serve to reshape the entire arts and culture sector in Canada's Francophone and Acadian communities in a way that would ensure their full participation in the Canadian broadcasting system. The ideas put forward in this position paper draw on that earlier analysis.

This is a watershed moment for the Canadian broadcasting system. The *Broadcasting Act* is crucial to maintaining a Canadian identity and the country's cultural sovereignty. The arts and culture sector in Canada's Francophone and Acadian communities is acutely aware of the role this legislation plays as the bedrock of a fragile ecosystem. Upcoming decisions with regard to broadcasting will have a major impact on the ability of these communities to see and hear themselves reflected in the country's culture, to create and perform in French, and to access this content. The FCCF believes that action must be taken not only on the legislative front, but also in terms of the mandate and powers granted to the Canadian Radio-television and Telecommunications Commission. This agency must be in a position to ensure the full participation of all the country's cultural communities.

Recognizing the need for stakeholders to rally around common objectives, the FCCF works closely with member organizations active in the broadcasting sector, with the Fédération des communautés francophones et acadienne (FCFA) du Canada and with the Coalition for the Diversity of Cultural Expressions (CDCE). Beyond these alliances with Francophone organizations, we have also been able to count on the support "in principle" of several Anglo-Quebec organizations—the Quebec English-language Production Council (QEPC), the Quebec Community Groups Network (QCGN) and the English-language Arts Network (ELAN)—in terms of ensuring that the legislation includes an explicit reference to official minority language communities (OLMCs).

Likewise, as reflected in the wording of the amendments we have proposed on behalf of all OLMCs and with regard to the need for promoting original French-language content, the FCCF agrees with the position put forward by Anglo-Quebec organizations respecting the need for a more robust interpretation of the *Broadcasting Act* as it relates to the Canadian government's commitment to enhancing the vitality of our communities and to supporting their development (Part VII, *Official Languages Act*). We also remain highly interested in their perspective on the consultation requirement and how it will be applied to all aspects of the CRTC's work. The FCCF believes that the Order in Council that will follow the adoption of Bill C-10 should explicitly address this question.

# 1. Ensuring that the broadcasting policy for Canada takes into account the unique circumstances of official language minority communities (OLMCs), as well as the challenges and issues specific to Francophone minority communities

The FCCF proposes an amendment to section 3 of Bill C-10, setting out the broadcasting policy for Canada. The proposed amendment involves adding subparagraph 3(1)(d)(iii.2). It is directly based on Recommendation 53 of the *Yale Report*, which aims to ensure representativeness and guarantee that Canadians, including OLMCs, have access to Canadian content. This amendment serves to achieve a series of objectives that were to be met by updating the Canadian legislative framework, including a reference to broadcasting's essential role in maintaining Canadian identity and the country's sovereignty.

**Commented [SC1]:** clause 2(2) of Bill C-10 amends section 3 of the *Broadcasting Act*

Current wording of the <i>Broadcasting Act</i>	Proposed wording in Bill C-10	Amendment proposed by the FCCF	Comments
<p>3(1) It is hereby declared as the broadcasting policy for Canada that</p> <p>(d) the Canadian broadcasting system should</p> <p>(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</p>	<p>The new wording proposed in Bill C-10 fails to specifically mention OLMCs.</p> <p>3(1) It is hereby declared as the broadcasting policy for Canada that</p> <p>(d) the Canadian broadcasting system should</p> <p>(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests of all Canadians—including Canadians from racialized communities and Canadians of diverse ethnocultural backgrounds, socio-economic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages—and reflect their circumstances and aspirations, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Indigenous peoples within that society,</p>	<p>The FCCF proposes adding subparagraph 3(1)(d)(iii.2), which would read as follows:</p> <p><u>(iii.2) provide opportunities for official language minority communities that take into account their unique needs and interests, especially in relation to accessing programming in French or English.</u></p>	<p>The proposed amendment is aligned with the objectives put forward in Recommendation 53 of the <i>Yale Report</i>—which the FCCF supports.</p> <p>The goal is to update the series of objectives by adding a reference to broadcasting's essential role in maintaining Canadian identity and the country's sovereignty, as well as in safeguarding, enriching and strengthening the social and economic fabric of Canada and its regions.</p> <p>Our proposed amendment empowers the Commission and will have a significant impact on us, as well as on any policy or decision. It creates an obligation to provide the means for achieving our desired results. Furthermore, it serves to explicitly enshrine the underlying political objectives with regard to the French language. This will help ensure that it will not be weakened in response to any future shifts in ideology or political power. The use of broad terms—such as “opportunities” and “unique needs and interests”—is based on section 12 of Canada's <i>Interpretation Act</i>.</p>

## 2. Clarifying the mission of the Canadian Radio-television and Telecommunications Commission in terms of accounting for the unique needs and circumstances of official language minority communities (OLMCs)

The FCCF proposes an amendment to **section 5 of Bill C-10**, regarding the mission and powers of the Canadian Radio-television and Telecommunications Commission.

**Commented [SC2]:** clause 4(1) of Bill C-10 amends section 5 of the *Broadcasting Act*

Unequal access to resources and expertise has a significant impact on the ability of OLMCs to fully participate in the CRTC's consultation and representation processes. The FCCF would like to see legislative changes introduced to establish or strengthen institutional mechanisms that OLMCs can rely on to ensure their needs and concerns are reflected in the decision-making process, from the planning cycle through impact assessment. Of course, the existing CRTC-OLMC Discussion Group has an important role to play. This information-sharing framework should be evaluated with the aim of transforming it into a truly effective tool for engaging and consulting with OLMCs.

Current wording of the <i>Broadcasting Act</i>	Proposed wording in Bill C-10	Amendment proposed by the FCCF	Comments
<p>Mission of the CRTC</p> <p>5(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that</p> <p>(a) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;</p>	<p>Mission of the CRTC</p> <p>5(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that</p> <p>(a) takes into account the different characteristics of English, French and Indigenous language broadcasting and the different conditions under which broadcasting undertakings that provide English, French or Indigenous language programming operate;</p>	<p>The FCCF believes that the wording of Bill C-10 should be more explicit in terms of recognizing the needs of OLMCs.</p> <p>5(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that</p> <p>(a) takes into account the different characteristics of English, French and Indigenous language broadcasting, <u>including the unique circumstances of official language minority communities</u>, and the different conditions under which broadcasting undertakings that provide programming <u>in these languages</u> operate;</p>	<p>This amendment serves to address the recognized structural challenges facing the CRTC. The changes echo the <i>Yale Report</i> recommendations regarding the need to make the Commission more representative and more in tune with realities on the ground.</p> <p>At a structural level, there is a need for better recognition of the circumstances and needs of OLMCs. To this end, the CRTC needs to implement appropriate approaches and measures.</p> <p>The amendment also aims to strengthen the ability of OLMCs to participate in regulatory proceedings and to ensure their perspectives are heard within the Commission's decision-making processes.</p>

### 3. Building on objectives related to original French-language content in order to account for the unique position of French in Canada

Given the unique position of the French language in North America, the accelerated transition to digital broadcasting and the associated linguistic challenges for French-speaking Canadians, amendments are absolutely needed to certain provisions of the *Broadcasting Act*. The Francophone linguistic minority must be taken into consideration. It must receive consistent support for its efforts to achieve sustainable cultural development. This is a vital issue not only for the arts and culture sector in Canada's Francophone and Acadian communities, but also for Canada's cultural sovereignty and the country's international identity.

In terms of original French-language content, the FCCF's position can be summarized as follows:

- Enhancing support for original French-language content in order to account for the unique position of French in Canada.
- Providing guarantees that recognize the increasingly critical needs faced by the Canadian Francophonie.

On these issues, the FCCF is aligned with the Coalition for the Diversity of Cultural Expressions (CDCE), of which it is a member. The FCCF supports two of the CDCE's recommendations (see the table below). The following three amendments are intended to ensure the creation, production and presentation of original French-language programs, as well as the showcasing of French-language content. Of course, alongside the proposed amendments, any related government orders should provide clear indicators for more precisely measuring success.

Current wording of the <i>Broadcasting Act</i>	Proposed wording in Bill C-10	Amendment proposed by the FCCF	Comments
3(1) It is hereby declared as the broadcasting policy for Canada that d) the Canadian broadcasting system should (...) (i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,	No change	The FCCF proposes adding a new paragraph to section 3(1)(d)(i): 3(1)(d)(i)(bis) recognize and support Canada's linguistic duality by giving prominence to the production and broadcasting of original French-language programs, including those of francophone minorities;	Note that the wording of this amendment is the same as that proposed by the CDCE. Amending section 3 of the <i>Broadcasting Act</i> will serve to create obligations on the Canadian broadcasting system as a whole. The proposed amendment does not establish a quota or minimum threshold for original French-language content, but nevertheless requires "giving prominence" to the production of such content, including that produced by Francophone minorities.

5(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that (e) facilitates the provision of Canadian programs to Canadians;	No change	The FCCF proposes an amendment to the wording in section 5(2)(e): 5(2)(e) facilitates the provision of Canadian programs <u>created and produced in both official languages as well as in Indigenous languages</u> to Canadians;	Note that the wording of this amendment is the same as that proposed by the CDCE.
Not contained in the current legislation	9.1(1) The Commission may, in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting	The FCCF proposes adding a new paragraph to section 9.1(1)(b): <u>9.1(1)(b)(bis) the proportion of Canadian programs that must be original French-language programs and the proportion of air time to be devoted to them, ensuring that they constitute a significant proportion of Canadian programs.</u>	As proposed by the FCCF, this amendment aims to impose stricter obligations on the CRTC with regard to implementing the objectives of the broadcasting policy for Canada. It has the benefit of clarifying the need to ensure both a significant share of original French-language programming and optimal visibility for such content.

#### 4. Regulating online broadcast distribution companies in a way that allows the CRTC to issue them mandatory distribution orders to ensure equitable access to Francophone content

Through long-established linkage rules, the CRTC has been able to ensure that all Canadian households subscribing to cable television have access to a minimum number of French-language channels. This provides an essential protection for Francophone minority communities, by making French-language services available regardless of the provider a consumer may choose. In its current form, Bill C-10 establishes different categories of distribution undertakings based on the technology they use to deliver their programming services to Canadian customers.

Most foreign providers that operate online and offer Canadian channels only have English-language channels available. As it stands, Bill C-10 would not allow the CRTC to require these companies to include a minimum number of French-language broadcasting services in the channel bundles they offer to Canadian consumers. Given that the orders issued by the CRTC help ensure that Francophones have access to content in their language, it is essential that this aspect of its role not be diminished. The ever-increasing popularity of online companies highlights the importance of not establishing separate categories. For example, in the fall of 2017, the Media Technology Monitor (MTM) reported that online programming services continued to enjoy growing popularity. Subscriptions to online broadcast services, such as Netflix, accounted for 54% of the market in 2017, compared to just 17% in 2012.

Current wording of the <i>Broadcasting Act</i>	Proposed wording in Bill C-10	Amendment proposed by the FCCF	Comments
Not contained in the current legislation	<p>9.1(1) (b) the presentation of programs for selection by the public, including the discoverability of Canadian programs;</p> <p>(e) a requirement for a person carrying on a distribution undertaking to carry, on the terms and conditions that the Commission considers appropriate, programming services specified by the Commission;</p>	<p>9.1(1) (b) the presentation of programs <b>and programming services</b> for selection by the public, including the discoverability of Canadian programs <b>and of programming services</b>;</p> <p>(e) a requirement for a person carrying on a <b>broadcasting</b> undertaking to carry, on the terms and conditions that the Commission considers appropriate, programming services specified by the Commission;</p>	<p>Note that the wording of this amendment is the same as that proposed by the CDCE. These changes aim to ensure that the relevant provisions apply to the distribution activities of online companies. They would also allow the CRTC to ensure that Canadian applications and services are offered and discoverable on online platforms.</p> <p>The proposed amendment to paragraph 9.1(1)(e) introduces some repetition into the French version of the Bill. However, it makes what we consider to be an essential change to the English version of the legislation.</p>
<p>10(1) (g) respecting the carriage of any foreign or other programming services by distribution undertakings;</p> <p>(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;</p>	<p>10(1) (g) respecting the carriage of any foreign or other programming services by distribution undertakings;</p> <p>(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;</p>	<p>10(1) (g) respecting the carriage of any foreign or other programming services by <b>broadcasting</b> undertakings;</p> <p>(h) for resolving, by way of mediation or otherwise, any disputes arising between <b>broadcasting</b> undertakings concerning the carriage of programming <b>services</b>;</p>	<p>Note that the wording of this amendment is the same as that proposed by the CDCE. These changes will allow the CRTC to adopt regulations and intervene to resolve disputes related to the distribution of programming services by online companies.</p>