



**Brief presented to the Standing Committee on Canadian Heritage in the context of the study of Bill C-10, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts***

March 26, 2021

**Introduction**

The Alliance des producteurs francophones du Canada (APFC) is a professional association made up of independent French-speaking producers working in francophone minority communities (FMCs) across Canada, including in Newfoundland and Labrador, Nova Scotia, New Brunswick, Ontario, Manitoba, Alberta, British Columbia and Yukon. Through their activities, our members and everyone they work with—screenwriters, directors, performers, technicians, set designers, editors and musicians—contribute to the economic well-being, cultural vitality and sustainability of their communities by ensuring the expression of a diversity of francophone voices across the country.

From the CRTC’s “Let’s Talk TV” consultation process in 2013, to the study of The Future of Programming Distribution in Canada in 2018 and the Broadcasting and Telecommunications Legislative Review Panel chaired by Janet Yale, to the introduction of the bill by the Minister of Canadian Heritage and its ongoing study by the parliamentary committee, the APFC has made its position clear to all of the appropriate authorities regarding the principles it feels should guide the current review of the *Broadcasting Act*.

The first principle is the absolute necessity to end the current regulatory asymmetry which exempts online undertakings from any obligation to support the creation and broadcasting of Canadian content. Bill C-10 would put an end to that fundamental unfairness by requiring them to make an appropriate and equitable contribution to Canadian expression and to the overall objectives of the Canadian broadcasting policy. We welcome and wholeheartedly support this change.

The second principle is especially important to us: the crucial need to include in the Act clear provisions in the objectives of the broadcasting policy that would mandate the entire Canadian broadcasting system to reflect the situation of official language minority communities (OLMCs) and encourage OLMC-produced programs.

Currently, only the Canadian Broadcasting Corporation is required under the Act to reflect the particular needs and circumstances of OLMCs. No such objective applies to the system as a whole.

As a result, the Canadian Radio-television and Telecommunications Commission (CRTC) imposed specific conditions of licence on the public broadcaster regarding the share of independent programming expenditures that must be allocated to OLMC producers. Other than vague expectations that were not met and an incentive that proved equally ineffective, the CRTC did not impose similar requirements on private broadcasting undertakings.

This underscores the importance of including a clear provision in section 3 giving the CRTC the ability to implement concrete, effective measures aimed at enhancing the vitality of OLMCs.

This also shows that the *Official Languages Act* alone is not enough to ensure that the regulations governing Canada's broadcasting system meet the overall objectives of the broadcasting policy. Experience has shown that the CRTC often makes decisions that undermine the interests and vitality of OLMCs.

It is paramount that the *Broadcasting Act* mention the objectives relating to OLMCs if those objectives are to become a reality. On that point, representatives of both English and French OLMCs agree across the board.

We have attached our proposed amendments to that end. They pertain to certain paragraphs in sections 3 and 5.

The third principle for which we wish to advocate is the undeniable importance of incorporating meaningful provisions in the Act to strengthen the foothold of original French-language programming in the Canadian broadcasting system.

Certainly, members of OLMCs are minorities in their respective provinces and territories, but francophones as a whole are a minority in Canada, and even more so in North America. This places them in a precarious situation if their ability to express themselves hinges on market forces alone. For that reason, we are proposing amendments to sections 3 and 11, which are also attached.

We have attached to our brief proposed amendments to sections of the Act with specific wording giving effect to these three principles.

Finally, we have proposed an amendment that would give the CRTC the power to oversee the commercial relationship between independent producers and the giants of the media world, as is done elsewhere in the world, including in the United Kingdom.

As noted in the Yale Report, the balance of power between the independent production sector, made up of numerous medium- and often small-scale companies, and the

increasingly reduced number of large Canadian broadcasting groups that control access to broadcasting, enables these large groups to disproportionately impose their conditions on independent producers. Furthermore, the introduction of online multinational undertakings with their colossal earnings will only make the situation worse. It is therefore imperative, in our view, that the CRTC be given the power to examine and regulate this power imbalance.

Thus, as an association that represents independent producers, we urge lawmakers to include a provision, in sections 9 and 10, that would give the CRTC the power to regulate commercial relations between independent producers and broadcasting undertakings.

### **Ensure the creation of and access to content by and for OLMCs**

Culture is a strong concept that embodies the aforementioned principles. By that, we mean the culture that promotes our vitality, enhances our identity and gives expression to our language. This same great principle of diversity of cultural expression should constitute the foundation of the Canadian broadcasting system and be at the heart of its guiding principles.

Bill C-10 offers a compelling opportunity to ensure that the priorities identified in the September 23 Speech from the Throne become a central part of the legislative framework for Canadian broadcasting and thus given tangible form:

*Our two official languages are woven into the fabric of our country. The defence of the rights of Francophones outside Quebec, and the defence of the rights of the Anglophone minority within Quebec, is a priority for the Government.*

*The Government of Canada must also recognize that the situation of French is unique. There are almost 8 million Francophones in Canada within a region of over 360 million inhabitants who are almost exclusively Anglophone. The Government therefore has the responsibility to protect and promote French not only outside of Quebec, but also within Quebec.*

On February 19, 2021, Minister Joly tabled a white paper that could eventually lead to a review of the *Official Languages Act*. Some claim this potential review may suffice to ensure that the objective of our second principle is achieved.

We completely disagree with this claim. Although this reform acknowledges that it is important to support the creation and broadcasting of francophone content and to improve access thereto, that objective must be included in the relevant legislation, the *Broadcasting Act*, so that it is set forth in express terms in the regulations implemented by the CRTC. Furthermore, it must be stated in the clearest possible terms so that it applies to the broadcasting system as a whole.

Experience has shown us that the *Official Languages Act* has thus far failed to compel the CRTC to introduce measures that have a concrete impact in responding to the needs of the OLMCs. The figures speak for themselves. Francophone minority production volume is at 4%, even though OLMCs represent 14% of Canada's francophone population.

The Yale panel agreed with the recommendation made by the APFC that “reflecting the different needs and circumstances of both official language communities, including the particular needs and circumstances of English and French linguistic minorities”<sup>1</sup> no longer apply solely to the Canadian Broadcasting Corporation, but to the Canadian broadcasting system as a whole.

The Yale panel recognized the relevance and necessity of implementing this recommendation in the wording of the new bill, specifically in section 3. According to the recommendation, the Canadian broadcasting system as a whole should:

- *ensure the creation of and access to content by and for Indigenous Peoples, including Indigenous languages content; and*
- *ensure the creation of and access to content by and for official language minority communities.*

However, while the wording of Bill C-10 largely reflects the first recommendation by amending or adding no less than four sections specific to Indigenous Peoples, in addition to the existing subparagraph 3(1)(d)(iii),<sup>2</sup> it completely ignores the second. This is both unacceptable and incomprehensible to us, given the priorities the government had set for itself in the Speech from the Throne.

Bill C-10 did keep the reference to “linguistic duality” in subparagraph 3(1)(d)(iii), but it now includes a substantial number of additional provisions. Furthermore, “linguistic duality” has been in the *Broadcasting Act* since 1991 but has resulted in virtually no real support from large private-sector broadcasting groups for the production or presentation of Francophone minority community-produced programs.

This is evidenced by the production reports submitted to the CRTC in 2018–2019 by the four French-language designated private-sector groups (Bell Media, Québecor Media, VMedia and Corus), which indicated that these four groups supported a grand total of only two projects by Francophone minority community producers. Conversely, the three

---

<sup>1</sup> Subparagraph 3(1)(m)(iv) of the current legislation.

<sup>2</sup> Sections 3(1)(d)(iii.1), 3(1)(i)(ii.1)), 3(1)(o) and 5(2)(a), which are in addition to subparagraph 3(1)(d)(iii). These provisions address Indigenous language broadcasting, broadcasting and production of programs (in English, French or Indigenous languages) by undertakings carried on by Indigenous persons, the provision of news and current affairs programs that reflect Indigenous perspectives, more general programming that reflects Indigenous cultures, and lastly, the consideration of the different characteristics and operating conditions of broadcasting in English, French and Indigenous languages.

major English-language designated groups (Bell, Corus and Rogers) collectively supported 163 English-language projects produced in Quebec that same year. These figures prove that it is essential for Bill C-10 to recognize with much greater clarity the unique status of French and the specific needs of French-language minority communities, including the independent producers who work in those communities.

According to the Bill C-10 backgrounder prepared by Canadian Heritage, the minister could eventually recommend that the Governor in Council issue policy directions to the CRTC on key priorities, such as “ensuring support for francophone and Indigenous creators and producers” and “supporting programs created and produced by OLMCs”.

However, the Draft Policy Direction uses very unrestrictive wording concerning programs created by and for OLMCs, such as “considers the particular needs” or the use of “incentive-based regulatory tools” to support all the groups that have been historically under-represented in the broadcasting system.

We fear that, without any specific recognition in the Act other than a vague reference to linguistic duality, OLMCs will have little guarantee of support and will depend on successive governments, which may or may not issue directions, whether vague or specific, to the CRTC in their regard.

Moreover, some may even consider that the objective of reflecting Canada’s linguistic duality would be achieved by ensuring that French-language programs are produced and presented in Quebec and that English-language programs are produced and presented outside Quebec.

### **Reinforce objectives regarding original French-language content**

During his appearance, the Minister of Canadian Heritage suggested that, under the present wording of the Act, the CRTC was able to provide adequate support to ensure the presence of Canadian original French-language content in the broadcasting system.

We must emphasize that this production originates primarily from Quebec and that the same level of growth has not necessarily been achieved elsewhere in Canada. The success of French-language programming with French-speaking Canadian television viewers is not solely attributable to the CRTC’s decisions. It actually stems largely from sociocultural factors such as Quebec’s cultural policy, which, for many years now, has encouraged the creation of French-language cultural products. Minority francophones do not enjoy equivalent support, which is why the Act must ensure that original French-language programs can be created, produced, presented and discovered all across the country.

In terms of strengthening original French-language production and access to French-language broadcasting, the only notable change in Bill C-10 is the removal of “as resources

become available” in paragraph 3(1)(k) (i.e. a range of broadcasting services in English and French shall be [progressively] extended to all Canadians as resources become available) with the word “progressively”<sup>3</sup> being maintained. This raises the question of how “progressively” will be measured, if not by the availability of resources. Note that, in the case of programming that is accessible without barriers to persons with disabilities, there is no “progressively” (see paragraphs 3(1)(p) and 9.1(1)(g)). Their programming is to be made accessible immediately.

It should also be noted that, based on its interpretation of the Act, in 2017 the CRTC did not consider it necessary to require large French-language private ownership groups to dedicate a specific proportion of their Canadian programming expenditures to *original* French-language programs. The Governor in Council had to issue an order (PC 2017-1060)<sup>4</sup> to demand a review of the CRTC’s decisions regarding original French-language programming, before the CRTC imposed a regulatory requirement to this effect. This proves that, without clear provisions in the wording of the Act, as we have proposed for sections 3 and 11, the latitude the CRTC is given could enable it to completely ignore this objective. Everyone remembers the agreement with Netflix, which enabled it to devote almost all its share of Canadian program commitments to original English-language programs. This kind of situation must not repeat itself. It is crucial that the Act contain provisions that prevent the perpetuation of such indifference concerning original French-language Canadian programming.

### **Avoid a race to the bottom**

In your discussions with Canadian broadcasters, many have sought significant relief from their present obligations. If such relief is granted, we fear that the millions of *additional* dollars provided by online undertakings will in effect merely constitute *substitution* dollars.

In other words, we fear the entire exercise may be only a zero-sum game in which traditional licence-holding broadcasters’ contributions to the financing of Canadian content are reduced by an amount equivalent to contributions from digital platforms.

To illustrate this point, let us recall the CRTC’s decision to set up a production fund in the 1990s (also known as the “cable fund”), the avowed aim of which was to increase the resources available for funding Canadian productions. Yet, when the CRTC put in place the regulation to create the fund, it adopted a provision that allowed broadcasters to include contributions from the “cable fund” in their Canadian programming expenditures.

---

<sup>3</sup> The word “progressively” only appears in the French version of the Act.

<sup>4</sup> <https://orders-in-council.canada.ca/attachment.php?lang=en&attach=34971>

Thus, a broadcaster that dedicated \$100 million of its revenue to Canadian programming and that, once the fund was in place, was able to obtain \$10 million from it, had to spend only \$90 million of its revenue to maintain its level of Canadian programming expenditures unchanged at \$100 million. The “additional” funds received from the cable operators actually reduced the Canadian programming expenditures that Canadian programming services had to make by the same amount.

The Canadian Heritage minister and representatives clearly stated that this was not the intent of the Bill, but in fact nothing in the wording of the Act indicates or guarantees this outcome. This concerns and troubles us, particularly in light of the emphasis placed on the notion of flexibility in the Draft Policy Directions to the CRTC recently made public.

This is why we believe it must be stated in the preamble to the Act that the objective is to *increase* the total resources available to finance the creation and production of high-quality Canadian content and to ensure it is made available and promoted.

## **Conclusion**

Other aspects of Bill C-10 certainly raise questions and concerns within the community of Canadian cultural content creators and producers, but we have chosen to focus on the issues we feel are most significant, given what we are and who we represent.

That said, the APFC is a member of the Coalition for the Diversity of Cultural Expressions and supports the principles and objectives endorsed by the coalition.

We are proposing a small number of amendments to Bill C-10, but for us and for the communities where we live and which we serve, they are essential.

**PROJET DE LOI C-10 / BILL C-10**  
**PRINCIPAUX AMENDEMENTS PROPOSÉS PAR / KEY AMENDMENTS PROPOSED BY**  
**L'ALLIANCE DES PRODUCTEURS FRANCOPHONES DU CANADA (APFC) / THE ALLIANCE DES PRODUCTEURS**  
**FRANCOPHONES DU CANADA (APFC)**

- Les modifications apportées aux propositions envoyées au Comité permanent du patrimoine canadien le 30 novembre par l'APFC sont indiquées en **relief jaune**. / Changes to APFC's proposed amendments sent to the Standing Committee on Canadian Heritage on November 30 are indicated in **yellow highlight**.
- Les articles appuyés mutuellement par l'APFC, le QEPC, ELAN et le QCGN sont présentés en **caractères bleus**. / Sections also supported by APFC, QEPC, ELAN and QCGN are shown in **blue**.

<p><b>Ajout après l'article 3(1)d)(iii.1) de l'article suivant :</b>  3(1)d)(iii.2) <u>assurer la création de contenu par et pour les communautés de langue officielle en situation minoritaire, et en garantir l'accès,</u></p>	<p><b>Add the following after subparagraph 3(1)(d)(iii.1):</b>  3(1)(d)(iii.2) <u>ensure the creation of and access to content by and for official language minority communities,</u></p>
<p><b>Ajout après l'article 3(1)i)(i) de l'alinéa suivant:</b>  3(1)i)(i.1) <u>reconnaître et appuyer la dualité linguistique canadienne ainsi que la situation particulière du français en faisant une place importante à la production et à la diffusion</u></p>	<p><b>Add the following after subparagraph 3(1)(i)(i):</b>  3(1)(i)(i.1) <u>recognize and support Canada's linguistic duality and the unique status of French by giving prominence to the</u></p>



<i>d'émissions originales de langue française, y compris celles des minorités francophones;</i>	<i>production and broadcasting of original French-language programs, including those of francophone minorities;</i>
<b>Suppression de « progressivement » à l'article 3(1)k)</b> <i>3(1)k) une gamme de services de radiodiffusion en français et en anglais doit être offerte à tous les Canadiens.</i>	<b>Remove “progressively” from paragraph 3(1)(k):</b> <i>3(1)(k) a range of broadcasting services in English and in French shall be extended to all Canadians;</i>
<b>Modification de l'article 5(2)e) comme suit :</b> <i>5(2)e) favoriser la présentation d'émissions canadiennes aux Canadiens <u>créées et produites dans les deux langues officielles, y compris au sein des communautés de langue officielle en situation minoritaire</u>, de même qu'en langues autochtones ;</i>	<b>Amend paragraph 5(2)(e) as follows:</b> <i>5(2)(e) facilitates the provision of Canadian programs <u>created and produced in both official languages, including within official language minority communities, as well as in Indigenous languages</u>, to Canadians;</i>
<b>Ajout après l'alinéa (4) de l'article 11.1 :</b> <b>Protection du français</b> <i>11.1(4.1) <u>Dans le cas des entreprises</u> qui offrent des émissions dans les deux langues officielles, la proportion des dépenses énumérées à 11.1(1)a) qui doit être minimalement allouée à des <u>émissions canadiennes de langue originale française</u></i>	<b>Add the following after subsection (4) of section 11.1:</b> <b>Protection of French</b> <i>11.1(4.1) <u>In the case of undertakings that offer programs in both official languages, the share of expenditures listed in 11.1(1)(a) that must be minimally allocated to Canadian original French-language programs</u></i>
<b>Ajouter les alinéas suivants à l'article 9(1) après l'alinéa f) et à l'article 10(1) après l'alinéa f)</b> <i>9(1)g) <u>encadrer les pratiques contractuelles entre les producteurs indépendants et les entreprises de radiodiffusion titulaires de licence.</u></i>	<b>Add the following to subsection 9(1) after paragraph (f) and to subsection 10(1) after paragraph (f)</b> <i>9(1)(g) <u>provide a framework for contractual practices between independent producers and licensed broadcasting undertakings.</u></i> <i>10(1)(f.1) <u>establishing a framework for contractual practices between independent producers and broadcasting undertakings;</u></i>

<p>10(1)f.1) <u>établissant l'encadrement des pratiques contractuelles entre les producteurs indépendants et les entreprises de radiodiffusion;</u></p>	
<p><b>À la section Interprétation, scinder l'article 3 en deux parties pour ajouter l'alinéa b) comme suit :</b></p> <p><b><u>Interprétation</u></b></p> <p><b><u>(3) L'interprétation et l'application de la présente loi doivent se faire de manière :</u></b></p> <p><b><u>a) compatible avec la liberté d'expression et l'indépendance, en matière de journalisme, de création et de programmation, dont jouissent les entreprises de radiodiffusion ;</u></b></p> <p><b><u>b) qui favorise l'engagement du gouvernement fédéral de favoriser l'épanouissement des communautés de langue officielle en situation minoritaire.</u></b></p>	<p><b>In the Interpretation section, split section 3 in two parts, adding paragraph (b), as follows:</b></p> <p><b><u>Interpretation</u></b></p> <p><b><u>(3) This Act shall be construed and applied in a manner that</u></b></p> <p><b><u>(a) is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings; and</u></b></p> <p><b><u>(b) supports the commitment of the Government of Canada to enhance the vitality of official language minority communities in Canada.</u></b></p>