



August 19, 2022

Sent Electronically

Ms. Janice Charette
Clerk of the Privy Council and Secretary to the Cabinet
1000 - 85 Sparks Street
Ottawa, Ontario
K1A 0A3

Dear Ms. Charette:

Re: Letter in support of Petitions to the Governor in Council concerning Broadcasting Decision CRTC 2022-165: CBC Licence Renewals

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,500 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming.
2. The WGC has reviewed the numerous Petitions (the "Petitions") to the Governor in Council seeking an Order pursuant to Section 28 of the *Broadcasting Act* (the "Act") to set aside Broadcasting Decision CRTC 2022-165 (the "Majority Decision") or to refer it back to the CRTC for reconsideration and hearing. We share the concerns of many Petitioners that the Majority Decision derogates from the attainment of the objectives of the broadcasting policy for Canada set out in subsection 3(1) of the Act and sets a worrying precedent. Accordingly, we support requests of the Petitions that the Governor in Council set aside the Majority Decision or refer it back to the CRTC for reconsideration and hearing.
3. As the two CRTC Commissioners who dissented from the Majority Decision and many Petitioners have pointed out, the Majority Decision has made a fundamental change to the Commission's licensing approach for television broadcasting without first establishing a policy framework. As CRTC Commissioner for Ontario, Monique Lafontaine, noted in her dissenting opinion accompanying the Majority Decision:

...it should be noted that over the last twenty-five years, any fundamental changes to the Commission's licensing approach to television broadcasting took place within the context of a full-scale policy review where input was provided from Canadians, experts

and a broad range of industry stakeholders. At the conclusion of the policy proceedings, the Commission issued detailed public policies, and, where required, updated its regulations. The Commission then applied the new policy frameworks, as appropriate, at the ensuing television broadcasting licence renewal hearings.¹

This was not done in the case at hand. In my view, the majority decision has approved a licensing framework for CBC/Radio-Canada that is fundamentally different from the Commission's licensing approach for television broadcasting, without first conducting a detailed policy review to consider what, if any, measures would be appropriate for the digital age. We are therefore left with a majority-approved programming framework that allows hundreds of millions of dollars to leave the Corporation's regulated platforms each year and flow to its unregulated online audiovisual platforms.²

4. As many Petitioners have noted, the Majority Decision inappropriately and prematurely eliminates virtually all enforceable licence conditions related to Canadian programming, including for important genres such as Programs of National Interest (namely drama) and children's and youth programming.
5. As former CRTC Vice-Chair of Broadcasting, Dr. Caroline J. Simard, wrote in her dissenting opinion to the Majority Decision:

The list of conditions of licence that are abandoned in the majority decision is long and includes the pivotal protections responsible for the recognized success of the Canadian broadcasting system and of the national public broadcaster. I consider that the general laissez-faire approach proposed in the majority decision in regard to traditional and digital platforms carries real and unnecessary risks of undermining the mandate of the Canadian Broadcasting Corporation (CBC) and the Canadian broadcasting policy as set out in the *Broadcasting Act* (the Act).³

6. The WGC is particularly concerned that this approach to broadcast regulation could set a precedent for private entities other than the CBC, such as private traditional broadcasters and/or digital media

¹ The Commissioner's Footnote: See the Commission's 1999 TV Policy (Public Notice [1999-97](#)), and ensuing licence renewals (e.g., Decisions [2000-1](#) and [2000-2](#) – CBC/Radio-Canada licence renewals; Decision [2001-385](#) – TVA and CFTM-TV Montréal licence renewals; and Decision [2001-457](#) – CTV licence renewals); the Commission's 2010 Group-based licensing approach (Broadcasting Regulatory Policy [2010-167](#)) and ensuing licence renewals (e.g., Broadcasting Decision [2011-444](#) – Bell Media Inc. group of services, licence renewals; and Broadcasting Decision [2012-242](#) – Quebecor Media Inc. group of services, licence renewals); and the 2015 *Let's Talk TV* policy decisions – Broadcasting Regulatory Policies [2015-86](#), [2015-96](#) and [2015-104](#) and the subsequent licence renewals (e.g., Broadcasting Decision [2017-147](#) – Quebecor Media Inc. group of services, licence renewals; Broadcasting Decision [2017-151](#) – Rogers Media Inc. group of services, licence renewals; Broadcasting Decision [2017-149](#) – Bell Media Inc. group of services, licence renewals; and Broadcasting Decision [2017-150](#) – Corus Entertainment Inc. group of services, licence renewals).

² Dissenting Opinion by Commissioner Monique Lafontaine to Broadcasting Decision CRTC 2022-165, June 22, 2022.

³ Dissenting Opinion by Caroline J. Simard, Vice-Chairperson, Broadcasting to Broadcasting Decision CRTC 2022-165, June 22, 2022 (translation).

broadcasting/online undertakings, whether Canadian or non-Canadian. Applying such a laissez-faire approach to private entities would be disastrous for the Canadian broadcasting system and the Canadian creators, voices, stories, and audiences that it is meant to serve and support.

7. The WGC also supports the concerns of the dissenting opinion of Commissioner Lafontaine that the portion of the Majority Decision that relates to the licensing framework for television programming:

...is not supported by the public record, the legislative framework, Commission policies, past Commission decisions or the applicant's proposal. In addition, the majority decision does not sufficiently support the attainment of, and in many instances is inconsistent with, the public policy objectives of the *Broadcasting Act*.⁴

8. Moreover, the WGC is concerned that by granting the CBC significant regulatory or administrative flexibility in its licence renewal as a result of the removal of enforceable conditions of licence, the Majority Decision has given priority to regulatory policy objectives of the Act under subsection 5(2), contrary to subsection 5(3), which requires the CRTC to "give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1)" when faced with conflicting objectives.
9. In conclusion, the WGC believes that numerous Petitions have made compelling cases that the Majority Decision derogates from the attainment of the objectives of the broadcasting policy for Canada set out in subsection 3(1) of the Act. Moreover, we believe the licensing framework established in the Majority Decision does not include appropriate enforceable licensing requirements to ensure the CBC will fulfill its public service mandate under the *Broadcasting Act*. Setting such a precedent for others in the Canadian broadcasting system is particularly concerning. Accordingly, we support the requests of Petitioners seeking that the Governor in Council issue an Order pursuant to Section 28 of the *Broadcasting Act* setting aside Broadcasting Decision CRTC 2022-165 or referring it back to the CRTC for reconsideration and hearing.

10. We appreciate the opportunity to express our views on this matter.

Yours very truly,



Neal McDougall
Acting Co-Executive Director, Director of Policy

c.c.: The Honourable Pablo Rodriguez, Minister of Canadian Heritage
John Matheson, Chief of Staff
Ron Ahluwalia, Director of Policy
Matthew Gray, Policy Advisor (Broadcasting)
Council, WGC

⁴ Dissenting Opinion by Commissioner Monique Lafontaine to Broadcasting Decision CRTC 2022-165, June 22, 2022.

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