



July 31, 2023

Filed Electronically

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Doucet:

Re: Application by CBC/Radio-Canada No. 2023-0391-5: Part 1 Application to amend the conditions of licence relating to the calculation of Canadian programming expenditures and programs of national interest (Broadcasting Decision CRTC 2022-165)

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. In this application, CBC/Radio-Canada (CBC) is requesting to amend the conditions of licence (COLs) relating to the calculation of expenditures for Canadian programming expenditures (CPE) and programs of national interest (PNI) for its English- and French-language audio-visual services, so as to exclude programming expenditures from the coverage of Olympic and Paralympic Games in the calculation of these requirements, beginning in the second year of the licence term (the 2023-2024 broadcast year) for the affected services.¹
3. The WGC **opposes** this application.
4. The CBC characterizes the inclusion of programming expenditures from the coverage of Olympic and Paralympic Games in the calculation of PNI requirements as “unintended” or creating “unintended consequences,”² but there is no evidence that we can see that this is indeed the case. CBC says that the Commission’s methodology, “hinders the Corporation’s ability to have a balanced programming offer to Canadians,”³ but offers no detailed analysis on why that might be. On the contrary, offering

¹ CBC Application, Supplementary Brief, para. 1.

² CBC Application, Supplementary Brief, paras. 29, 31.

³ CBC Application, Supplementary Brief, paras 29.

PNI to Canadians—a category of programming that the Commission has called, “expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values,” and in, “continuing need for regulatory support,”⁴ and which the Commission has repeatedly reaffirmed the need for regulatory support in multiple proceedings, including the most recent licence renewal of the CBC—is just such an example of “balanced programming” that the *Broadcasting Act* contemplates and that the Commission envisioned when it imposed the current COLs.

5. Moreover, the “Commission’s methodology” was actually the CBC’s own position. The CBC itself stated, in its 2021 final reply in the most recent licence renewal:

CBC/Radio-Canada does not have a profit-seeking incentive in fulfilling its mandate. At the same time, the Corporation’s revenues can fluctuate significantly across years because of events like the Olympics. Given that the goal of any expenditure requirement is to ensure that the relevant activity is receiving adequate operational focus and support, we strongly believe that in the case of CBC/Radio-Canada the most appropriate way of defining any new expenditure requirement would be as a percentage of programming expenditures, as opposed to topline revenues.⁵

6. Not only did CBC itself argue that any expenditure requirements should be based on a percentage of programming expenditures, but it did so in the same breath as recognizing the impact of the Olympics on its finances.
7. At the same time, the CBC recognized a factor in 2021 that it does not mention in the present application: Revenues. Just as programming costs for the CBC go up in Olympics years so too do revenues. Over the past five broadcast years, CBC English network television averaged revenues of \$484.1 million per year (2019 and 2020) compared to \$569.4 million (2018, 2021, and 2022), or 17.6% higher in Olympic years.⁶ And the CBC has also spent more on PNI in those years, according to its own cited data.⁷
8. The CBC was aware of these factors in 2021, and we see no evidence that the Commission was not. The CBC did not raise “programming balance” as a problem in 2021, and, strangely, the CBC seems to be arguing now that the Commission has applied a methodology that would place the CBC in violation of a COL that the Commission itself has also imposed,⁸ something which is not rationally consistent.
9. The CBC states that it, “is faced with the prospect of being unable to ‘catch up’ on PNI under-expenditures during the current licence term,”⁹ and, “anticipate[s] that [it] will be unable to meet [its] PNI expenditure COLs over the course of the licence term.”¹⁰ But the only quantitative evidence of this that we can see are a series of tables in which the CBC seemingly inserts, for PNI, what it intends to spend in each of those years and then shows that this intention does not meet the minimum PNI

⁴ Broadcasting Regulatory Policy CRTC 2010-167, para. 71.

⁵ Final Reply of CBC/Radio-Canada Broadcasting Notice of Consultation CRTC 2019-379, March 17, 2021, para. 21.

⁶ CBC Aggregated Annual Returns.

⁷ CBC Application, Supplementary Brief, Tables 7 and 8.

⁸ Namely, COL 1, which the CBC notes in its Supplementary Brief, para. 30.

⁹ CBC Application, Supplementary Brief, para. 24.

¹⁰ CBC Application, Supplementary Brief, para. 33.

requirement as a percentage of CPE.¹¹ This would only appear to demonstrate, however, that if CBC spends the dollar amounts on PNI in those tables, that it *won't* meet its PNI obligations. But it does *not* demonstrate that CBC *can't* or *shouldn't* have to meet those PNI obligations. The CBC is making a descriptive statement and then acting as if it's a normative statement. As such, there is an absence of an actual argument here, other than saying, "These COLs don't reflect what we plan to do."

10. Similarly, CBC's concern about "limiting [its] ability to greenlight or renew non-PNI programming"¹² does not convey a meaningful argument that we can see, absent an analysis of what this means specifically in relation to the CBC's mandate or COLs. CBC says that "the methodology also impacts how the Corporation will meet its new expenditure requirements for independent productions by Indigenous Peoples and equity seeking communities,"¹³ but does not explain why such requirements cannot be met by this very PNI programming. The CBC needs to demonstrate that PNI *itself* does not contribute to a "balanced programming offer," or the other elements of its mandate, or why such "balanced programming" would benefit from less PNI. Once again, the CBC makes a descriptive statement about an outcome without a normative claim about why that's bad or what would be better.
11. The only outline of an argument that we can discern in this application is that, in setting the benchmark of the CBC's PNI requirements, the Commission used three years of data, only one of which was an Olympics year, which does not well represent a 5-year licence term in which two years are Olympics years.
12. If that is the crux of CBC's concern—and, crucially, if the Commission agrees that this did not reflect its intentions to support PNI on CBC—then this would be much better addressed by reconsidering the benchmark years upon which the Commission calculates CBC's PNI obligations.
13. It is *not* best addressed by simply removing Olympics and Paralympics costs from these requirements entirely. Such a solution would go far beyond the question of benchmark years, and instead remove a major component of what the CBC does, what the CBC spends money on and, by extension, significantly skew the overall picture of CBC's activities, which is precisely the backdrop against which we must consider what "balanced programming" means. Again, there is no reason to believe that the Commission was unaware of the existence of the Olympics on the CBC during the proceeding leading up to the CBC's most recent licence renewal, no reason to believe that Olympics costs were included in error, and no reason to exclude the Olympics and Paralympics from how PNI requirements are calculated under the current methodology.
14. Finally, as the Commission and the CBC are aware, the CBC's most recent licence renewal has been sent back to the Commission by the Governor in Council for reconsideration.¹⁴ While we are aware that the CBC's current COLs apply unless and until amended, it seems unusual to be seeking their amendment when the larger reconsideration of the CBC's licence is still pending.

¹¹ CBC Application, Supplementary Brief, Tables 9 and 10.

¹² CBC Application, Supplementary Brief, para. 29.

¹³ CBC Application, Supplementary Brief, para. 32.

¹⁴ Order Referring Back to the CRTC Broadcasting Decision CRTC 2022-165, P.C. 2022-995 September 16, 2022.

15. We thank the Commission for the opportunity to participate in this process.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Neal McDougall', written in a cursive style.

Neal McDougall
Assistant Executive Director, WGC

Cc: Bev Kirshenblatt, Executive Director, Corporate and Regulatory Affairs, CBC/Radio-Canada
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Victoria Shen, Executive Director, WGC
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