

Court File No.: 37896

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

BELL CANADA and BELL MEDIA INC.

APPELLANTS (Appellants)

- and -

ATTORNEY GENERAL OF CANADA

RESPONDENT (Respondent)

- and -

**CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION
et al**

INTERVENERS

-and-

DANIEL JUTRAS AND AUDREY BOCTOR

AMICUS CURIAE

FACTUM OF THE WHOLESALE CODE APPLICANTS
(Rule 42 – Rules of the Supreme Court of Canada)

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PART I – OVERVIEW AND POSITION

1. The Wholesale Code Applicants are a representative cross-section of Canadian television broadcasters, ranging from Canada’s national public broadcaster to several of Canada’s leading privately-owned broadcasters. They intervene to brief the court on the legislative history, purpose, and interpretation of section 9(1)(h) and the values relevant to revisiting *Dunsmuir*.

A. Legislative History and Purpose of Section 9(1)(h)

2. Section 9(1)(h) was added to the *Broadcasting Act* in 1991, and allows the CRTC to issue orders regulating the terms of carriage for programming services by distribution undertakings. A “distribution undertaking” is an organization which redistributes television programming produced by other broadcasting enterprises known as “programming undertakings.” Section 9 and 9(1)(h) in particular was intended to provide the CRTC with broad powers to order licensed distribution undertakings to carry specified programming on the terms and conditions determined by the CRTC.¹

3. The CRTC’s television policy framework includes a number of orders issued under section 9(1)(h). Many of these are orders requiring that specific television channels be carried by certain distribution undertakings.² For example, the CRTC has ordered that all distribution undertakings carry the Aboriginal Peoples Television Network (APTN) on their basic service.³ The CRTC has also used section 9(1)(h) in other contexts, such as the SimSub order impugned here and the 2015 *Wholesale Code* implementation order.

B. The FCA’s Wholesale Code Decision

4. In 2016, Bell challenged the CRTC’s authority use section 9(1)(h) to require compliance with the provisions the *Wholesale Code*.⁴ The *Wholesale Code* is the CRTC’s framework to regulate and revitalize the wholesale market for television programming, thereby promoting commercial competition and consumer choice.⁵ The CRTC employed section 9(1)(h) to implement the *Wholesale Code* to “bridge the gap” until the CRTC could use its licensing

¹ Pierre Trudel & France Abran, *Droit de la radio et de la télévision* (Thémis, 1991) at 211-217; *Report of the Task Force on Broadcasting Policy* (MSSC, 1986) at 192-193.

² Grant & Buchanan, *Canadian Broadcasting Regulatory Handbook, 2017* (McCarthy Tétrault LLP, 2016) at 234-236.

³ Broadcasting Order CRTC 2013-373.

⁴ Broadcasting Regulatory Policy CRTC 2015-438, Broadcasting Order CRTC 2015-439, Broadcasting Information Bulletin CRTC 2015-440.

⁵ Broadcasting Regulatory Policy CRTC 2015-96 ¶¶65-89; Broadcasting Regulatory Policy CRTC 2015-438 ¶¶1-8, 17-20.

powers to implement the *Wholesale Code*.⁶

5. Bell's fundamental submission was that while section 9(1)(h) of the *Broadcasting Act* grants the CRTC jurisdiction to regulate distribution undertakings (which it mentions expressly), it does not grant jurisdiction to regulate programming undertakings (about which it is silent).⁷ The Wholesale Code Applicants, together with Telus and Cogeco, all opposed this submission, arguing that the CRTC had jurisdiction to regulate both parties to the carriage relationship.⁸

6. The Federal Court of Appeal split 2-1 on the 9(1)(h) issue. Justice Rennie, dissenting, would have dismissed Bell's argument, since he found that the CRTC had jurisdiction by necessary implication.⁹ Justice Woods for the majority did not address Bell's submissions, but instead found a novel basis to invalidate the *Code*, namely that 9(1)(h) only applies to programming services which are subject to mandatory carriage orders.¹⁰ This novel argument was not raised by Bell during the *Wholesale Code* appeal.

7. By the time that the *Wholesale Code* appeal decision was issued, the CRTC had used its licence amendment powers to make the *Wholesale Code* binding on all or substantially all of Bell's broadcasting undertakings via their conditions of licence.¹¹ This made any appeal of the *Wholesale Code* decision effectively moot.

PART II – QUESTIONS AT ISSUE

8. The primary question addressed in this factum is the proper framework for interpreting the scope of section 9(1)(h). Answering that question requires consideration of two related issues: the relevance of Bell's contradictory positions in different forums (Part A, below), and whether a narrow reading of 9(1)(h) should be adopted on the following issues: (a) whether 9(1)(h) allows regulation of individual programs? (b) whether it allows incidental regulation of

⁶ *Bell Canada v 7265921 Canada Ltd*, 2018 FCA 174 ¶¶10-11 [*Wholesale Code Appeal*]. Rennie JA dissenting on another issue, but with the agreement of Woods JA on all other issues, including this one (see *ibid* ¶164).

⁷ Bell Wholesale Code Factum ¶¶84-85, Applicants' Intervention Record Tab 2B.

⁸ Wholesale Code Applicants' Factum ¶¶72-82, Applicants' Intervention Record Tab 2C.

⁹ *Wholesale Code Appeal*, *supra* note 6 ¶¶103-132.

¹⁰ *Ibid* at ¶¶168-169.

¹¹ English stations: CRTC Broadcasting Decision 2017-148 ¶¶104-117; CRTC Broadcasting Decision 2017-148 App 3-6. French stations: Broadcasting Decision CRTC 2017-143 ¶¶139-149; CRTC Broadcasting Decision 2017-144 App 2-3. Both decisions were varied by the Governor in Council in ways not relevant to this appeal: Broadcasting Decision 2018-334 and 2018-335.

programming undertakings? (c) whether it applies only to mandatory-carriage programming? (Part B). Finally, values are proposed to guide the *Dunsmuir* re-examination (Part C).

PART III – STATEMENT OF ARGUMENT

A. The Relevance of Bell’s Conflicting Positions

9. Bell has adopted inconsistent positions on the scope of 9(1)(h) in this appeal and in the *Wholesale Code* appeal. These contradictory positions are relevant to reviewing the CRTC’s interpretation of section 9(1)(h), since Bell’s factum repeatedly cites this Court’s definition of an ambiguous statute as one whose “words are ambiguous enough to induce two people to spend good money in backing two opposing views as to their meaning.”¹² Here, it is the *same person* – Bell itself – who has spent good money backing two opposing views of section 9(1)(h).

10. In the present appeal, Bell argues that section 9(1)(h) “only permits the CRTC to make orders about [...] the *entire output of a programming undertaking* [...]”¹³ and that it “allows the CRTC to issue distribution orders about programming services and gives it discretion to attach the terms and conditions to such orders that it deems appropriate.”¹⁴ Bell concurs in the coordinated submissions of the NFL (represented by the same counsel as Bell), which argues that “Section 9(1)(h) only permits the CRTC to make orders about carriage of “*programming services*” [which means] the *entire output of a programming undertaking*, i.e., a channel.”¹⁵ This is because 9(1)(h) allows the CRTC to “make distribution orders applicable to entire television channels.”¹⁶ In turn, “programming service” means “the *entire output* of a programming undertaking.”¹⁷ Thus, the “programming service” regulated by 9(1)(h) means the content “that BDUs carry under *contracts* with programming undertakings for entire channels.”¹⁸

11. In other words, in the present appeal, Bell’s position is that 9(1)(h) allows the CRTC to regulate the entire output of a “programming undertaking” and to make distribution orders applicable to entire television channels and related contracts. Yet in the *Wholesale Code* appeal, Bell argued the opposite interpretation, namely that 9(1)(h) does not allow the CRTC to regulate the output of “programming undertakings” or television channels in any respect whatsoever:

¹² Bell Factum ¶9, 12, 98-99, 101, citing *Bell ExpressVu LLP v R*, 2002 SCC 42 at para 30.

¹³ Bell Factum ¶29 (Bell’s CRTC submissions) [emphasis in the original].

¹⁴ Bell Factum ¶74 (Bell’s SCC submissions).

¹⁵ Bell Factum ¶4 (Bell’s SCC submissions) [emphasis in the original].

¹⁶ NFL Factum ¶60 [emphasis in the original].

¹⁷ NFL Factum ¶40.

¹⁸ NFL Factum ¶39.

- Section 9(1)(h) “only grant[s] the CRTC powers in relation to ‘*Distribution Undertakings*’ rather than ‘*Programming Undertakings*’.”¹⁹
- Section 9(1)(h) is limited to regulating “Distribution Undertakings rather than Programming Undertakings.”²⁰
- Section 9(1)(h) “does *not* permit the CRTC to regulate the direct commercial carriage arrangements [i.e. contracts] between Programming and Distribution Undertakings.”²¹

12. Bell’s submissions in the two forums are contradictory and cannot be reconciled. In this Court, Bell argues that 9(1)(h) can only be used to regulate “the entire output of a programming undertaking” (i.e. a television channel) that “BDUs carry under contracts with programming undertakings.” Yet in the *Wholesale Code* appeal, Bell argued that 9(1)(h) can never be used to regulate the output of programming undertakings or their contracts with distribution undertakings.

13. This is not an appeal of the *Wholesale Code* decision. However, if two conflicting interpretations can be credibly advanced by a single party represented by the same counsel in two different proceedings, then surely this is a sign that the statutory provision in question is ambiguous and that multiple reasonable interpretations exist. Under Bell’s own theory of the case, the CRTC is entitled to deference on judicial review.

B. The Proper Scope of Section 9(1)(h)

14. This Court has consistently interpreted the CRTC’s powers in a liberal manner, one that favours accomplishment of legitimate broadcasting policy objectives.²² These objectives notably include ensuring “reasonable terms for the carriage, packaging and retailing of [...] programming services” where programming services are supplied under contracts between programming and distribution undertakings.²³ Despite this, various attempts have been made to narrow the scope of 9(1)(h). For the reasons given below, this Court should decline to adopt a narrow or restricted reading of 9(1)(h).

¹⁹ Bell Wholesale Code Factum ¶83, Applicants’ Intervention Record Tab 2B [emphasis original].

²⁰ Bell Wholesale Code Factum ¶84, Applicants’ Intervention Record Tab 2B.

²¹ Bell Wholesale Code Factum ¶12, Applicants’ Intervention Record Tab 2B [emphasis original].

²² *CKOY Ltd v The Queen*, [1979] 1 SCR 2 at 11-12; *CRTC v. CTV Television Network Ltd*, [1982] 1 SCR 530 at 544-545.

²³ *Broadcasting Act*, SC 1991, c 11, s 3(1)(t)(iii).

(a) ***Does 9(1)(h) Allow Regulation of Individual Programs?***

15. The Wholesale Code Applicants agree with Telus that this issue is a red herring, since the SimSub order does not actually apply to a single program. Rather, by its own terms it applies to programming services as a whole.²⁴

16. Seen in the best light for Bell's case, at most the SimSub Order might arguably apply to a collection of programs, including the Super Bowl match plus accompanying advertisements. The *Broadcasting Act* makes clear that individual advertisements are considered "programs."²⁵ Thus, the SimSub order necessarily applies to a compilation of programming. Surely the CRTC has the jurisdiction to regulate compilations of programs; after all, in the final analysis a programming service is merely a compilation of programs originating from a common source. The *Broadcasting Act* does not try to draw a distinction between jurisdiction over programs, compilations of programs, and programming services, nor did the CRTC. This is because Bell's distinction is not relevant to section 9(1)(h), and the CRTC reasonably avoided relying on it.

(b) ***Does 9(1)(h) Allow Incidental Impacts on Programming Undertakings?***

17. Bell concedes that 9(1)(h) allows the CRTC to regulate the carriage of programming by distribution undertakings.²⁶ Yet if the CRTC has jurisdiction to regulate the terms of carriage of programs by distribution undertakings, this jurisdiction necessarily extends to both participants in the carriage relationship.

18. Carriage of programming is a bilateral relationship. This follows logically from the foundational definitions adopted by Parliament in the *Broadcasting Act*:

"programming undertaking" means an undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus.

"distribution undertaking" means an undertaking for the reception of broadcasting and the retransmission thereof by radio waves or other means of telecommunication to more than one permanent or temporary residence or dwelling unit or to another such undertaking.²⁷

Together, these definitions establish that programming undertakings are the source from which programming services originate. By contrast, a distribution undertaking merely retransmits and

²⁴ Broadcasting Order CRTC 2016-335 ¶3(a).

²⁵ *Broadcasting Act*, supra note 23, s 10(1)(e).

²⁶ Bell Wholesale Code Factum ¶83, Applicants' Intervention Record Tab 2B.

²⁷ *Broadcasting Act*, SC 1991, c 11, s 2 [emphasis added].

distributes programming it receives from a programming undertaking, and does not originate programming of its own.

19. Consequently, a programming undertaking *always* stands between a distribution undertaking and the programming which it distributes (if this were not the case, the distribution undertaking would become by definition a programming undertaking). The carriage relationship is thus bilateral, always involving a programming undertaking and a distribution undertaking.

20. The CRTC cannot regulate a bilateral relationship without thereby regulating both parties to that relationship to some extent. For example, when the CRTC ordered distribution undertakings to carry the APTN and set a monthly price of 31 cents per subscriber, this order necessarily affected both parties.²⁸ Distribution undertakings are required to pay 31 cents, while APTN (a programming undertaking) is required to accept the same price of 31 cents in exchange for carriage. It is not possible to set a price for the buyer (distribution undertaking) without simultaneously setting a price for the seller (programming undertaking). Similarly, in the case of the CRTC's 9(1)(h) order relating to the Cable Public Affairs Channel (CPAC), the CRTC requires distribution undertakings to distribute CPAC, but only if CPAC provides certain Parliamentary programming (such as proceedings of the House of Commons).²⁹

21. Accordingly, the CRTC's jurisdiction to regulate conditions of carriage under 9(1)(h) unavoidably extends to both parties in the carriage relationship. Otherwise the CRTC could not regulate the carriage of programming by distribution undertakings at all, because distribution undertakings are never the first link in the programming chain, and thus their carriage of programming always depends on a programming undertaking. Parliament must be taken to have known this fact, since it follows from the definitions which Parliament itself enacted. As a result, Parliament must have intended the CRTC to have the power to regulate both parties to the carriage relationship under 9(1)(h), and courts must "avoid sterilizing these powers through overly technical interpretations of enabling statutes."³⁰

22. Here, the impossibility of applying section 9(1)(h) to distribution undertakings alone demonstrates that the CRTC has jurisdiction over programming undertakings to the extent

²⁸ Broadcasting Order CRTC 2013-373 at para (c).

²⁹ Broadcasting Order CRTC 2018-330 at para (d).

³⁰ *Bell Canada v CRTC*, [1989] 1 SCR 1722 at 1756 [*Bell Canada*]. See also *Bell Canada v Bell Aliant Regional Communications*, 2009 SCC 40 ¶37; *Bell Canada v Amtelcom*, 2015 FCA 126 ¶49-57; *Canadian Broadcasting League v CRTC*, 1982 CarswellNat 71 ¶14, 24 (FCA), aff'd [1985] 1 SCR 174.

required to implement its express powers over distribution undertakings.

(c) Does 9(1)(h) Apply Only to Mandatory-Carriage Programming?

23. In the *Wholesale Code* Appeal, the majority decided that section 9(1)(h) “does not encompass a general power to regulate the terms and conditions of carriage.”³¹ Instead, its scope is restricted to CRTC orders dealing with specific programming: “Such regulation must relate to terms and conditions of programming services that the CRTC specifies and requires to be provided by a [distribution undertaking] licensee.”³² Effectively, the majority ruling might appear to confine 9(1)(h) to mandatory carriage orders.

24. Such a restriction on 9(1)(h) was not pleaded by Bell in the *Wholesale Code* appeal or in this appeal. Nor was this argument raised by the panel of the Federal Court of Appeal which heard Bell’s SimSub appeal. Regardless of whether 9(1)(h) provides a “general power to regulate terms and conditions of carriage”, the language used by Woods JA in the *Wholesale Code* appeal should not be interpreted as allowing only narrowly framed 9(1)(h) orders for mandatory carriage programming. There are two principal reasons for this.

25. First, such an approach would create significant practical difficulties, since the concept of mandatory carriage does not create workable boundaries for the scope of section 9(1)(h). In practice, many of the CRTC’s 9(1)(h) orders are only partially “mandatory.” For example, the typical “mandatory” carriage order will only require distribution undertakings to carry programming services if the programming undertaking sets up the necessary infrastructure at its own expense.³³ In other cases, mandatory carriage only applies in part of the country.³⁴ In some cases, “mandatory” carriage is contingent on the content of the programming provided by the programming undertaking, as in the CPAC order.³⁵ Most tellingly of all, some 9(1)(h) orders allow the distribution undertaking to choose which version of a programming service it will carry or even to negotiate carriage of a different programming service entirely.³⁶ Given that most “mandatory” carriage orders issued under 9(1)(h) are actually contingent and conditional, attempting to restrict 9(1)(h) to “mandatory” programming is simply not workable in practice.

³¹ *Wholesale Code* Appeal, *supra* note 6 ¶169.

³² *Ibid* ¶169 [emphasis added].

³³ See e.g. Broadcasting Order CRTC 2013-373 at para (b), which is typical in this respect.

³⁴ See e.g. Broadcasting Order CRTC 2013-375 (“Anglophone markets” only); Broadcasting Order CRTC 2013-380 (Québec only).

³⁵ Broadcasting Order CRTC 2018-330 at para (d).

³⁶ Broadcasting Order CRTC 2009-340-2 at paras (b) and (c).

26. Indeed, restricting 9(1)(h) to mandatory carriage orders gives rise to conceptual difficulties for even simple fact patterns. Suppose the CRTC issued an order requiring distribution undertakings in Anglophone markets to carry one of three French-language programming services. Would this qualify as a sufficiently “mandatory” carriage order to trigger 9(1)(h) jurisdiction, or does the choice among three services invalidate it, because the CRTC failed to require carriage of specific services? Parliament wisely avoided fettering the CRTC’s jurisdiction under 9(1)(h) using such slippery distinctions. There is no reason to do so now.

27. Second, an overly-narrow interpretation of 9(1)(h) could create important practical limitations on the CRTC’s ability to regulate the carriage relationship in the midst of a period of unprecedented technological and economic change. Specifically, if the CRTC can only use 9(1)(h) in the context of mandatory carriage, then to implement industry-wide changes it must rely on either its licence amendment power or its regulation-making powers.³⁷ Yet each of these powers can have important practical limitations which will could limit the CRTC’s ability to react to rapidly changing conditions:

- The CRTC can only amend a licence if 5 years have passed since the licence was issued or renewed.³⁸ As a result, different licensees will come up for amendment at different times. This makes it difficult or impossible for the CRTC to implement industry-wide changes to broadcasting policy in a uniform manner via licence renewals.
- Relying on regulations allows the CRTC to solve the uniformity problem, but creates a lack of flexibility or responsiveness, since issuing or amending regulations is often a cumbersome process, especially when compared to the CRTC’s order-issuing powers under section 9(1)(h).

28. These practical considerations led the CRTC to use a 9(1)(h) order to enact the *Wholesale Code* as a bridging mechanism prior to licence amendments that are in place today.³⁹ A broad interpretation of 9(1)(h) preserves that flexibility and allows the CRTC to fulfill the role conferred upon it by Parliament.

C. The Values Which Should Inform Any Revision of *Dunsmuir*

29. As frequent participants in administrative proceedings and judicial reviews of those

³⁷ This possibility was recognized by the majority: *Wholesale Code Appeal*, *supra* note 6 ¶173.

³⁸ *Broadcasting Act*, *supra* note 25, s 9(1)(c).

³⁹ *Wholesale Code Appeal*, *supra* note 6 ¶10-11; Broadcasting Regulatory Policy CRTC 2015-438 ¶136-140.

proceedings, the Applicants are sensitive to a number of practical, concrete concerns which should be weighed in any decision to revisit or revise *Dunsmuir*. These practical concerns are distinct from the admittedly-important concerns about division of powers, rule of law, judicial restraint, doctrinal consistency, adherence to precedent, etc., that are raised by other interveners.

30. The administrative justice system, like the court system, is a public service offered by governments to Canadian citizens and Canadian organizations. As such, administrative law benefits from being simple, clear, and predictable. Indeed, *Dunsmuir* itself represented an attempt to achieve these goals through simplifying and streamlining the law of judicial review.⁴⁰ As Justice Binnie put it, the goal was to “get the parties away from arguing about the tests and back to arguing about the substantive merits of their case.”⁴¹ Unfortunately, that has not happened. Instead, the standard of review analysis has become progressively more elaborate, more contentious, and more difficult to predict in advance.

31. Indeed, the *Wholesale Code* appeal is a good illustration. Despite feeling bound by decisions from this Court and/or the FCA itself Justices Rennie and Nadon nonetheless felt compelled to write dozens of pages on the standard of review analysis.⁴²

32. In sum, *Dunsmuir*’s attempt to focus the parties on the merits has not been achieved. In all likelihood, this objective will never be achieved as long as the following axioms are true: (1) lawyers prefer winning to losing; (2) the applicable standard of review affects the probability of winning; (3) clever advocacy can affect the applicable standard of review.

33. Our adversarial system (if not human nature itself) probably puts axiom 1 beyond this Court’s control. Axiom 2 is also difficult to alter, since as long as there are multiple standards of review, the choice of standard will affect outcomes; if it did not, then there would not truly be distinct standards. Indeed, even if this Court adopted a single reasonableness standard, the possibility of varying degrees of reasonableness scrutiny would inevitably attract argument about the degree of scrutiny which should be applied in a particular case.⁴³

34. The most promising way to focus the parties on the merits would thus seem to be changing axiom 3. If the standard of review analysis is simple and clear, then there will be

⁴⁰ *Dunsmuir v New Brunswick*, 2008 SCC 9, Bastarache and LeBel JJ ¶32, Binnie J ¶132, 145, Deschamps J ¶172.

⁴¹ *Ibid* ¶145 (Binnie J concurring).

⁴² *Wholesale Code* appeal, *supra* note 6, Rennie JA ¶49, 100-101 (precedents), pages 16-39 (SOR analysis); Nadon JA ¶176-179 (precedents), pages 64-72 (SOR analysis).

⁴³ See e.g. *ibid* at paras 50, 53, 61-68 (Rennie JA, Woods JA concurring on this point).

limited opportunities for the parties to bolster their chance of winning by arguing about the applicable standard of review. They will instead be incentivized to focus on the merits as the most practical way to maximize their chances of winning. A renewed focus on the merits will improve administrative and judicial decision-making and favor access to justice.

35. In this respect, the appellate standard of review provides a model of what clear rules can accomplish. Following *Housen v Nikolaisen*, there has been very little debate over appellate review.⁴⁴ Of course, there are a few areas of modest complexity, such as the standard of review applicable to the interpretation of boilerplate clauses or standard-form contracts.⁴⁵ But overall, the appellate standard of review has simplified to the point that very few cases can be flipped from “loss” to “win” or vice-versa using complex standard of review arguments. In appellate courts across the country, lawyers spend most of their time arguing the merits of appeals, rather than the applicable standard of review.

36. To be clear, the Wholesale Code Applicants are not advocating that the *Housen* framework be applied to judicial review. Rather, it is the simplicity and clarity of the appellate review framework which should serve as a model for any new judicial review framework. The appellate standard of review is simple, clear, and predictable; surely this can be achieved again. The administrative standard of review should accordingly strive for the same level of simplicity, clarity, and predictability. Otherwise, parties and their counsel will be continually tempted to debate the standard of review, rather than the merits of their case.

PART IV – SUBMISSIONS CONCERNING COSTS

37. The Applicants do not seek costs and request that none be awarded against them.

PART V – ORDER SOUGHT

38. The Wholesale Code Applicants request permission to make oral argument of not more than ten minutes at the hearing of the appeal.

⁴⁴ *Housen v Nikolaisen*, 2002 SCC 33.

⁴⁵ *Ledcor Construction v Northbridge Indemnity Insurance*, 2016 SCC 37.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Montréal, Québec this 29th day of October, 2018

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Grant & Buchanan, <i>Canadian Broadcasting Regulatory Handbook, 2017</i> , (McCarthy Tétrault LLP, 2016), pages 234-236	3
Pierre Trudel & France Abran, <i>Droit de la radio et de la television</i> , (Thémis, 1991) at 211-217	2
Report of the Task Force on Broadcasting Policy (Ministry of Supply and Services Canada, 1986) at 192-193	2