

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

B E T W E E N :

BELL CANADA and BELL MEDIA INC.

Applicants (Appellants)

- and -

ATTORNEY GENERAL OF CANADA

Respondent (Respondent)

- and -

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Intervener

**MEMORANDUM OF ARGUMENT OF
THE ATTORNEY GENERAL OF CANADA
IN RESPONSE TO THE APPLICATION FOR LEAVE TO APPEAL**
(Pursuant to Section 40(1) of the *Supreme Court Act* and Rule 27 of the *Rules of the Supreme Court of Canada*)

Department of Justice Canada
130 King St. West,
Suite 3400, Box 36
Toronto, ON M5X 1K6

Attorney General of Canada
Department of Justice Canada
50 O'Connor Street
Ottawa, ON K1A 0H8

Per: Michael H. Morris
Email: michael.morris@justice.gc.ca

Per: Christopher Rupar
Email: crupar@justice.gc.ca

Per: Roger Flaim
Email: roger.flaim@justice.gc.ca

Tel: (613) 670-6290
Fax: (613) 954-1920

Per: Laura Tausky
Email: laura.tausky@justice.gc.ca

Tel: (416)973-9704
Fax: (416) 973-0809

COUNSEL for the Respondent, Attorney
General of Canada

AGENT for the Respondent, Attorney
General of Canada

TO: THE REGISTRAR
Supreme Court of Canada

AND TO: **MCCARTHY TETRAULT LLP**
Suite 5300, Toronto Dominion Bank
Tower
Toronto, ON M5K 1E6

GOWLING WLG (CANADA) LLP
Suite 2600, 160 Elgin Street
Ottawa, ON
K1P 1C3

Steven G. Mason
(smason@mccatthy.ca)

Brandon Kain
(bkain@mccarthy.ca)

Steven Tanner
(stanner@mccatthy.ca)

James S.S. Holtom
(jholtom@mccarthy.ca)

Richard Lizius
(rlizius@mccarthy.ca)

Tel: (416) 601-8200
Fax: (416) 868-0673

Counsel for the Applicants

Jeff Beedell
(jeff.beedell@gowlingwlg.com)

Tel: (613) 786-0171
Fax: (613) 563-9869

Ottawa Agent for Counsel for the
Applicants

AND TO: **CANADIAN RADIO-
TELEVISION AND
TELECOMMUNICATIONS
COMMISSION**
Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage
Gatineau, Quebec J8X 4B1

Crystal Holley-Craig
Email: crystal.hulley@crtc.gc.ca

Tel: (819) 956-2095
Fax: (819) 953-0589

Counsel for the Intervener

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PART I – STATEMENT OF FACTS

A. OVERVIEW

1. The proposed appeal does not give rise to any issue of public importance warranting consideration by this Court. At the conclusion of a three-year consultation process, the Canadian Radio-television and Telecommunications Commission (“Commission”) determined that Canadians should have the option of watching the American broadcast of the Super Bowl, complete with American commercials, which the Commission deemed to be an integral part of the programming event. The Commission therefore issued an order under paragraph 9(1)(h) of the *Broadcasting Act* prohibiting simultaneous substitution – the practice by which an American signal with American commercials is deleted and replaced by a Canadian signal with Canadian commercials – during broadcasts of the Super Bowl (the “Decision”).

2. The Federal Court of Appeal upheld the decision of the Commission, finding the Commission reasonably interpreted its broad authority under paragraph 9(1)(h) to impose terms and conditions on the carriage of programming services. In an attempt to impugn the decision of the Court below, the Applicants, Bell Canada and Bell Media Inc. (“Bell”), raise the specter that future decisions of the Commission under paragraph 9(1)(h) might infringe freedom of expression. Bell makes this argument for the first time. Neither Bell, nor any other party, raised it during the Commission’s extensive consultation process and the Commission never had the chance to consider it. In any event, future decisions of the Commission are not before the Court and the current decision does not affect the content of Bell’s broadcast.

3. Similarly, the threshold for leave to appeal has not been met on the question of the standard of review. The Federal Court of Appeal properly found that the Commission’s interpretation of its home statute is entitled to deference. The Court below declined to apply a strict or “narrow” standard of deference. This reasoning is consistent with the recent jurisprudence of this Court and it does not require further appellate review. This motion for leave should be dismissed and the Commission’s careful recalibration of the simultaneous substitution regime should be allowed to stand.

B. STATEMENT OF FACTS

1) Regulatory Context

4. The Commission is vested with the responsibility to regulate and supervise “all aspects of the Canadian broadcasting system” with a view to implementing the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*.¹ The policy objectives enumerated in the *Broadcasting Act* are diverse and “sometimes conflicting.”² In addition to the items cited by Bell, relating to Canadian content, the prescribed broadcasting policy includes provisions aimed at ensuring Canadians have access to a broadcasting system that is (i) “varied and comprehensive, providing a balance of information, enlightenment and entertainment” and (ii) “drawn from local, regional, national and international sources.”³

5. Simultaneous substitution is governed by regulations enacted by the Commission. The *Broadcasting Distribution Regulations*⁴ generally prohibit the alteration or deletion of a foreign signal being re-transmitted in Canada by a broadcast distribution undertaking (“BDU”) such as a cable or satellite company. The simultaneous substitution regime is now set out in the *Simultaneous Programming Service Deletion and Substitution Regulations* (the “*Sim Sub Regulations*”) which permit or require that a BDU delete a foreign signal and substitute a Canadian signal, at the request of a broadcaster, if certain conditions are met.⁵ There is no dispute that the Commission has jurisdiction to establish a simultaneous substitution regime.

2) Background Facts

6. In October 2013, the Commission announced the start of a public consultation initiative entitled “Let’s Talk TV: A conversation with Canadians about the future of television” (“Let’s Talk TV”).⁶ The initiative involved an extensive review of the entire framework for television regulation in Canada, including the practice of simultaneous substitution. During the course of the Let’s Talk TV proceedings, the Commission received and reviewed comments on

¹ *Broadcasting Act*, SC 1991, c 11, ss 3 & 5.

² *Société Radio-Canada c Metromedia CMR Montreal Inc* (1999), 254 NR 266 (FCA) at para 5.

³ *Broadcasting Act*, ss 3(1)(i)(i) & (ii).

⁴ SOR/97-555.

⁵ *Simultaneous Programming Service Deletion and Substitution Regulations*, SOR/2015-240, s 4.

⁶ Affidavit of Lisa Minarovich [Minarovich Affidavit], Exhibit “A”, Broadcasting Notice of Invitation CRTC 2013-563, **Response to Application for Leave to Appeal [RALA], Tab 2A.**

whether simultaneous substitution should be maintained, either in its then-current form or a modified one, or eliminated in its entirety.⁷

7. On January 29, 2015, the Commission released a policy statement in which it indicated that it would continue to allow simultaneous substitution for local over-the-air stations, recognizing its positive contributions to the Canadian broadcasting environment.⁸ However, the Commission identified certain discrete areas for reform, including the prohibition of simultaneous substitution during the Super Bowl beginning with the 2017 broadcast of the event.⁹ The Commission found that non-Canadian advertising produced for the Super Bowl is an “integral part” of the program.¹⁰

8. Following another consultation process, on August 19, 2016, the Commission issued the Decision¹¹, removing authorization for simultaneous substitution during the Super Bowl as of January 1, 2017. In its reasons, the Commission responded to a number of concerns raised by participants in the consultation process, including Bell and the National Football League (“NFL”). None of the participants, however, expressed any concern about the impact of the proposed order on freedom of expression. The Commission ultimately confirmed its view that simultaneous substitution for the Super Bowl is not in the public interest.¹²

3) Procedural History

9. The Federal Court of Appeal granted Bell and the NFL leave to appeal the Decision by order dated October 31, 2016. On December 18, 2017, the Federal Court of Appeal unanimously dismissed the appeals.

10. Writing for the Court, Near J.A. selected and applied a reasonableness standard of review to the question of whether the Decision fell within the scope of the Commission’s authority

⁷ Minarovich Affidavit, Exhibit “B”, Broadcasting Notice of Consultation 2014-190, paras 54-61, **RALA, Tab 2B, pp 60-2.**

⁸ Minarovich Affidavit, Exhibit “C”, Broadcasting Regulation Policy (BRP) 2015-25, pp 1-2, **RALA, Tab 2C, pp 88-9.**

⁹ Minarovich Affidavit, Exhibit “C”, BRP 2015-25, para 22, **RALA, Tab 2C, p 95.**

¹⁰ Minarovich Affidavit, Exhibit “C”, BRP 2015-25, para 22, **RALA, Tab 2C, p 95.**

¹¹ Broadcasting Regulatory Policy 2016-334 and Broadcasting Order CRTC 2016-335 (“Decision”), **Application for Leave to Appeal Record (ALAR), Tab 2A**

¹² Decision, para 40, **Application for Leave to Appeal Record (ALAR), Tab 2A, p 15.**

under paragraph 9(1)(h) of the *Broadcasting Act*. Near J.A. noted that an administrative decision-maker's interpretation of its home statute is entitled to deference.¹³ With respect to the argument that the Court should apply a limited margin of appreciation, Near J.A. stated that such an analysis would be of "limited assistance": "the determination to be made is whether the decision is reasonable under the circumstances; nothing more and nothing less."¹⁴

11. Applying a reasonableness standard of review, Near J.A. held that the Decision fell within the scope of the Commission's power under paragraph 9(1)(h) of the *Broadcasting Act* to impose terms and conditions on the carriage of "programming services." Near J.A. rejected the argument that paragraph 9(1)(h) cannot be used to target an individual program. Rather, Near J.A. found it was reasonable to conclude the term "programming service" – which remains undefined in the *Broadcasting Act* but is defined to mean a "program" in the *Broadcasting Distribution Regulations* – may include an individual program.¹⁵

12. Near J.A. also considered and rejected other arguments raised by Bell or the NFL, however none of those arguments are germane to Bell's motion for leave to this Court.

PART II – QUESTION IN ISSUE

13. The issue in this application is whether the following questions give rise to an issue of public importance that ought to be decided by this Court:

(a) Is the Decision within the Commission's jurisdiction under paragraph 9(1)(h) of the *Broadcasting Act*?

(b) What is the standard of review applicable to the Commission's interpretation of its jurisdiction under the *Broadcasting Act*?

¹³ Judgment and Reasons for Judgment of the Federal Court of Appeal, dated December 18, 2017 [FCA Decision], para 9, **ALAR, Tab 2B, pp 29-30.**

¹⁴ FCA Decision, para 9, **ALAR, Tab 2B, pp 29-30.**

¹⁵ FCA Decision, para 19, **ALAR, Tab 2B, p 35.**

PART III – ARGUMENT

14. In making its case for leave, Bell fails to identify any particular error in the Federal Court of Appeal’s decision. There is none. The Court’s unanimous decision is well reasoned, comprehensive and gives rise to no issue of public importance that requires this Court’s review.

A. The decision is within the commission’s jurisdiction and no issue of freedom of expression arises

15. With respect to paragraph 9(1)(h) of the *Broadcasting Act*, Near J.A. found nothing unreasonable in the interpretation of the term “programming service” as broad enough to include an individual program. Such an interpretation is consistent with a prior Commission decision and the definition of this term in the *Sim Sub Regulations*.¹⁶ Near J.A. noted there is nothing in the legislative history or in the Court’s own prior decisions sufficient to exclude individual programs from the meaning of “programming service”,¹⁷ and concluded there is no conflict with the objectives of the Act, which are well known to be “extensive and varied.”¹⁸ The extent of Bell’s direct challenge to these conclusions is to simply repeat the arguments it made before the Court below.¹⁹

16. Although Bell frames its first ground for leave as relating to the jurisdictional boundaries of paragraph 9(1)(h), the main focus of its argument is the alarmist proposition that, as a consequence of the Decision, the Commission could hereafter arbitrarily interfere with broadcasting choices made by television stations and BDUs, and the resulting impact such decisions would have on “freedom of expression”. The Federal Court of Appeal made no comment on this possibility, or the issue of “freedom of expression” and with good reason. Bell has never before raised this issue, nor is it raised in the political and editorial examples Bell cites in an attempt to establish this issue as one of public importance.

17. Bell has made various attempts to challenge the prohibition on simultaneous substitution for the Super Bowl since 2015.²⁰ Nowhere in the records of these proceedings has Bell

¹⁶ FCA Decision, para 15-17, **ALAR, Tab 2B, pp 33-4.**

¹⁷ FCA Decision, para 18-19, **ALAR, Tab 2B, pp 34-5.**

¹⁸ FCA Decision, para 21-23, **ALAR, Tab 2B, pp 36-7.**

¹⁹ Bell’s Memorandum of Argument, paras 26, 34-42, **ALAR, Tab 3, pp 97, 99-103.**

²⁰ Federal Court of Appeal File Nos, A-117-15 and A-231-15 and A-67-16.

previously raised freedom of expression. If freedom of expression was legitimately engaged by the Commission's decision or its interpretation of paragraph 9(1)(h), the issue would not have awaited a leave application to this Court.

18. More importantly, Bell has not raised freedom of expression before the Commission, a body that regulates the broadcasting policy for Canada in the public interest and in compliance with *Charter* values.²¹ The Commission is expressly mandated to interpret the *Broadcasting Act* in a manner consistent with the freedom of expression of broadcast undertakings.²² Bell cannot therefore raise freedom of expression for the first time on appeal to this Court.²³ This Court does not have the benefit of the Commission's balancing exercise, as called for by *Doré v. Barreau du Québec*,²⁴ over which the Court might exercise its appellate jurisdiction.

19. Bell cannot credibly contend that the issue of freedom of expression arose for the first time at the hearing of the underlying appeal, or as a consequence of the Federal Court of Appeal's decision. Even if Bell's interpretation of the limits of paragraph 9(1)(h) is correct – which it is not – that interpretation would give rise to the very same freedom of expression argument. The impact on freedom of expression from a 9(1)(h) order that prohibits the broadcast of *the entire output of a television station* (whatever that impact is) is no different than the impact from a 9(1)(h) order that prohibits simultaneous substitution *for a particular program*. In this respect, the issue of freedom of expression is, in relation to the Decision, simply not a material issue.

20. The effect of the Commission's order leaves the Canadian broadcast of the Super Bowl fully intact and fully within Bell's control. While BDUs are required to distribute the US feed of the Super Bowl without alteration (*i.e.*, without simultaneous substitution), this is the default rule under the *Broadcasting Distribution Regulations*.²⁵ This does not mean the Commission is “dictating the content of a single program”.²⁶ While the Decision impacts the

²¹ *Genex Communications Inc v Canada (Attorney General)*, 2005 FCA 283 at para 166.

²² *Broadcasting Act*, s 2.

²³ *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2014 FCA 245.

²⁴ 2012 SCC 12.

²⁵ *Broadcasting Distribution Regulations*, s 7.

²⁶ Bell's Memorandum of Argument, para 22(a), **ALAR, Tab 3, pp 95**.

audience for the Canadian broadcast, a reduction in the size of an audience is not an infringement of freedom of expression.

21. Bell's freedom of expression concerns instead appear solely connected to Bell's fear of how the Commission's interpretation of paragraph 9(1)(h) might be applied in future cases to, hypothetically, "dictate the content of a single program for distribution".²⁷ However, those cases, if they arise, will be subject to the right of appeal under the *Broadcasting Act* or judicial review under the *Federal Courts Act*.²⁸ They can be judged by a reviewing court on the basis of the facts arising in those cases and, in particular, the degree to which they were made "in furtherance of [the Commission's] objects", encompassing the diverse and polycentric considerations set out in section 5 of the *Broadcasting Act*. There is no reason for this Court to intervene to prevent the specter of "extraordinary, Orwellian-like"²⁹ outcomes that have not and may never materialize. The *Supreme Court Act* itself makes clear that the issues justifying leave must be "with respect to the particular case sought to be appealed."³⁰

22. The alleged economic consequences Bell references to establish the national importance of this issue are impossible to judge based on the "CMI Report" on which Bell exclusively relies.³¹ This report, commissioned by Bell, does not withstand scrutiny. There is no evidence of who CMI is, what its qualifications are, or what methodology it used to arrive at its estimate of lost revenue. CMI's conclusion that Bell lost \$11 million in "estimated advertising revenue" is simply asserted in a table without any supporting information establishing how the figure was calculated.³² This figure, and the CMI report, prove nothing about actual losses.

23. In casting this case as raising freedom of expression concerns, Bell is simply disagreeing with the Commission's balancing of the various interests at play. Tailoring the

²⁷ Bell's Memorandum of Argument, para 22(a), **ALAR, Tab 3, pp 95**.

²⁸ *Broadcasting Act*, s 31(2); and *Federal Courts Act*, RSC, 1985, c F-7, s 18.1.

²⁹ Bell's Memorandum of Argument, para 7, **ALAR, Tab 3, pp 90**.

³⁰ *Supreme Court Act*, RSC, 1985, c S-26, s 40.

³¹ Affidavit of Sonia Atwell, sworn February 15, 2018 (Atwell Affidavit), Exhibit "B", Report prepared by Communications Management Inc., entitled: *The unintended consequences of the CRTC's decision to remove simultaneous substitution from the Super Bowl* (CMI Report), **ALAR, Tab 4B**.

³² Atwell Affidavit, para 46 and Exhibit "B", CMI Report, pp 16 and 22 **ALAR, Tab 4, p 104 and Tab 4B, pp 161 & 167**.

simultaneous substitution regime to omit a unique broadcast enhances Canadians' freedom of choice and exposure to diverse programming while maintaining the benefits of the overall regime for the balance of stakeholders. The Commission arrived at the Decision after engaging in a careful balancing exercise that considered the importance of simultaneous substitution, how integral US commercials are to the broadcast of the Super Bowl, and the consequences of its recalibration of the simultaneous substitution regime upon local television stations, BDUs and the Canadian creative community.³³ Bell's disagreement with the outcome of this exercise does not raise an issue of public importance that ought to be reviewed by this Court.

B. The standard of review is settled

24. With respect to the standard of review, Near J.A. cited multiple precedents in concluding that it was reasonableness.³⁴ In rejecting the imposition of a limited margin of appreciation and a narrow view as to what would be reasonable, Near J.A. cited this Court's decision in *Wilson v. Atomic Energy of Canada's Ltd* ("*Wilson*")³⁵ for his conclusion that it was "an analysis of limited assistance."³⁶ Consistent with the jurisprudence from this Court and the Federal Court of Appeal, Near J.A. concluded deference was owed so long as the decision fell within a range of acceptable outcomes as set out in *Dunsmuir v New Brunswick*.³⁷ Bell does not impugn this conclusion beyond attempting to establish it contributes to uncertainty in the law. It does not.

25. The jurisprudence on the standard of review applicable to the Commission's interpretation of its home statutes is settled. It is reasonableness, as correctly and repeatedly found by the Federal Court of Appeal, including by the unanimous panel in this case.³⁸

³³ Decision, paras 35-39, **ALAR, Tab 2A, pp 14-5.**

³⁴ FCA Decision, para 9, **ALAR, Tab 2B, pp 29-30**; citing *Bell Canada v. Canada (Attorney General)*, 2016 FCA 217 at para 42.; *Bell Canada v. Amtelecom Limited Partnership*, 2015 FCA 126 at paras 37-39; *2251723 Ontario Inc. (VMedia) v. Rogers Media Inc.*, 2017 FCA 186 at para 29.

³⁵ *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29 at paras 18, 73.

³⁶ FCA Decision, para 9, **ALAR, Tab 2B, pp 29-30.**

³⁷ 2008 SCC 9; Decision, para 9, **ALAR, Tab 2B, pp 29-30.**

³⁸ FCA Decision, para 9, **ALAR, Tab 2B, pp 29-30.**

26. While there is dicta in certain Federal Court of Appeal decisions concerning the role that “margins of appreciation” play in the deferential review of administrative decisions, Near J.A.’s conclusion that such an approach would be of “limited assistance” accords with this Court’s statement in *Wilson* that “varying degrees of deference” unduly complicate the standard of review analysis.³⁹ The significance of this issue does not rise to the level that it should be addressed by this Court in this particular case.

27. The reference by various provincial appellate courts to the phrase “margins of appreciation” does not demonstrate that those Courts have accepted the “margins of appreciation” approach or that, as a consequence, the law is unsettled. In none of the three decisions from provincial appellate Courts cited by Bell do those Courts formally adopt the “margins of appreciation” approach as the correct approach and as a departure from *Dunsmuir*. They simply reference “margins of appreciation” in their analysis.

28. In any event, two of the three provincial appellate decisions cited by Bell were decided before *Wilson*. The third was decided only two weeks after. Importantly, in each jurisdiction, subsequent appellate decisions on judicial review make no reference to “margins of appreciation” when considering the reasonableness standard.⁴⁰ There is no merit to the suggestion that there is any real jurisprudential split on this issue that this Court should address by granting leave to appeal.

³⁹ FCA Decision, para 9, citing, *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29 (CanLII) at paras 18, 73, **ALAR, Tab 2B, p pp 29-30.**

⁴⁰ See for e.g.: *Brooks v. Ontario Racing Commission*, 2017 ONCA 833 (Ontario); *Ahmed v College of Registered Nurses*, 2017 MBCA 121 (Manitoba); *International Brotherhood of Electrical Workers, Local 1555 v. Dobbelsteyn et al.*, 2017 NBCA 2 (Newfoundland).

PART IV – NATURE OF ORDER SOUGHT

29. The Respondent requests that the application for leave to appeal be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this day of March, 2018

MICHAEL H. MORRIS

Of Counsel for the Respondent, the Attorney
General of Canada,

PART V – TABLE OF AUTHORITIES

Cases:	Cited at Paragraphs
<u><i>Genex Communications Inc v Canada (Attorney General)</i>, 2005 FCA 283</u>	18
<u><i>Forest Ethics Advocacy Association v. Canada (National Energy Board)</i>, 2014 FCA 245</u>	18
<u><i>Doré v. Barreau du Québec</i>, 2012 SCC 12</u>	18
<u><i>Bell Canada v. Canada (Attorney General)</i>, 2016 FCA 217</u>	24
<u><i>Bell Canada v. Amtelecom Limited Partnership</i>, 2015 FCA 126</u>	24
<u><i>2251723 Ontario Inc. (VMedia) v. Rogers Media Inc.</i>, 2017 FCA 186</u>	24
<u><i>Wilson v. Atomic Energy of Canada Ltd.</i>, 2016 SCC 29</u>	24, 26, 28
<u><i>Dunsmuir v. New Brunswick</i>, 2008 SCC 9</u>	24
<u><i>Brooks v. Ontario Racing Commission</i>, 2017 ONCA 833</u>	28
<u><i>Ahmed v College of Registered Nurses</i>, 2017 MBCA 121</u>	28
<u><i>International Brotherhood of Electrical Workers, Local 1555 v. Dobbelsteyn et al.</i>, 2017 NBCA 2</u>	28

PART VI – STATUTES RELIED ON

Statutory Authorities:	Cited at pages
<i>Broadcasting Act</i> , SC 1991, c 11, ss 2, 3, 3(1)(i)(i) & (ii), 5 9(1)(h) & 31(2)	15, 18, 21
<i>Broadcasting Distribution Regulations</i> , SOR/97.555, s 7	20
<i>Federal Courts Act</i> , RSC, 1985, c F-7, s 18.1	21
<i>Simultaneous Programming Service Deletion and Substitution Regulations</i> , SOR/2015-240, s 4.	
<i>Supreme Court Act</i> , RSC, 1985, c S-26, s 40	21

[Broadcasting Act, SC 1991, c 11, s 2](#)

<p>2 (1) In this Act,</p> <p><i>broadcasting</i> means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place; (<i>radiodiffusion</i>)</p> <p><i>broadcasting receiving apparatus</i> means a device, or combination of devices, intended for or capable of being used for the reception of broadcasting; (<i>récepteur</i>)</p> <p><i>broadcasting undertaking</i> includes a distribution undertaking, a programming undertaking and a</p>	<p>2 (1) Les définitions qui suivent s’appliquent à la présente loi.</p> <p><i>Conseil</i> Le Conseil institué par la Loi sur le Conseil de la radiodiffusion et des télécommunications canadiennes. (<i>Commission</i>)</p> <p><i>émission</i> Les sons ou les images — ou leur combinaison — destinés à informer ou divertir, à l’exception des images, muettes ou non, consistant essentiellement en des lettres ou des chiffres. (<i>program</i>)</p> <p><i>encodage</i> Traitement électronique ou autre visant à empêcher la réception en clair. (<i>encrypted</i>)</p> <p><i>entreprise de distribution</i> Entreprise de réception de radiodiffusion pour retransmission, à l’aide d’ondes</p>
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<p>network; (<i>entreprise de radiodiffusion</i>)</p> <p>Commission means the Canadian Radio-television and Telecommunications Commission established by the Canadian Radio-television and Telecommunications Commission Act; (<i>Conseil</i>)</p> <p>Corporation means the Canadian Broadcasting Corporation continued by section 36; (<i>Société</i>)</p> <p>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; (<i>entreprise de distribution</i>)</p> <p>encrypted means treated electronically or otherwise for the purpose of preventing intelligible reception; (<i>encodage</i>)</p> <p>licence means a licence to carry on a broadcasting undertaking issued by the Commission under this Act; (<i>licence</i>)</p> <p>Minister means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of this Act; (<i>ministre</i>)</p> <p>network includes any operation where control over all or any part of the programs or program schedules of one or more broadcasting undertakings is</p>	<p>radioélectriques ou d'un autre moyen de télécommunication, en vue de sa réception dans plusieurs résidences permanentes ou temporaires ou locaux d'habitation, ou en vue de sa réception par une autre entreprise semblable. (<i>distribution undertaking</i>)</p> <p>entreprise de programmation Entreprise de transmission d'émissions soit directement à l'aide d'ondes radioélectriques ou d'un autre moyen de télécommunication, soit par l'intermédiaire d'une entreprise de distribution, en vue de leur réception par le public à l'aide d'un récepteur. (<i>programming undertaking</i>)</p> <p>entreprise de radiodiffusion S'entend notamment d'une entreprise de distribution ou de programmation, ou d'un réseau. (<i>broadcasting undertaking</i>)</p> <p>exploitation temporaire d'un réseau Exploitation d'un réseau en vue d'une certaine émission ou série d'émissions couvrant une période maximale de soixante jours. (<i>temporary network operation</i>)</p> <p>licence Licence d'exploitation d'une entreprise de radiodiffusion, délivrée par le Conseil aux termes de la présente loi. (<i>licence</i>)</p> <p>ministre Le membre du Conseil privé de la Reine pour le Canada chargé par le gouverneur en conseil de l'application de la présente loi. (<i>Minister</i>)</p> <p>ondes radioélectriques Ondes électromagnétiques de fréquences inférieures à 3 000 GHz transmises</p>
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<p>delegated to another undertaking or person; (<i>réseau</i>)</p> <p>program means sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text; (<i>émission</i>)</p> <p>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; (<i>entreprise de programmation</i>)</p> <p>radio waves means electromagnetic waves of frequencies lower than 3 000 GHz that are propagated in space without artificial guide; (<i>ondes radioélectriques</i>)</p> <p>temporary network operation means a network operation with respect to a particular program or a series of programs that extends over a period not exceeding sixty days. (<i>exploitation temporaire d'un réseau</i>)</p> <p>Meaning of other means of telecommunication</p> <p>(2) For the purposes of this Act, other means of telecommunication means any wire, cable, radio, optical or other electromagnetic system, or any similar technical system.</p> <p>Interpretation</p> <p>(3) This Act shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic, creative and</p>	<p>dans l'espace sans guide artificiel. (<i>radio waves</i>)</p> <p>radiodiffusion Transmission, à l'aide d'ondes radioélectriques ou de tout autre moyen de télécommunication, d'émissions encodées ou non et destinées à être reçues par le public à l'aide d'un récepteur, à l'exception de celle qui est destinée à la présentation dans un lieu public seulement. (<i>broadcasting</i>)</p> <p>récepteur Appareil ou ensemble d'appareils conçu pour la réception de radiodiffusion ou pouvant servir à cette fin. (<i>broadcasting receiving apparatus</i>)</p> <p>réseau Est assimilée à un réseau toute exploitation où le contrôle de tout ou partie des émissions ou de la programmation d'une ou plusieurs entreprises de radiodiffusion est délégué à une autre entreprise ou personne. (<i>network</i>)</p> <p>Société La Société Radio-Canada, visée à l'article 36. (<i>Corporation</i>)</p> <p>Moyen de télécommunication</p> <p>(2) Pour l'application de la présente loi, sont inclus dans les moyens de télécommunication les systèmes électromagnétiques — notamment les fils, les câbles et les systèmes radio ou optiques — , ainsi que les autres procédés techniques semblables.</p> <p>Interprétation</p> <p>(3) L'interprétation et l'application de la présente loi doivent se faire de manière compatible avec la liberté d'expression et l'indépendance, en matière de journalisme, de création et de programmation, dont jouissent les entreprises de radiodiffusion.</p>
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<p>programming independence enjoyed by broadcasting undertakings.</p> <p>1991, c. 11, s. 2; 1993, c. 38, s. 81; 1995, c. 11, s. 43.</p>	<p>1991, ch. 11, art. 2; 1993, ch. 38, art. 81; 1995, ch. 11, art. 43.</p>
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[*Broadcasting Act, SC 1991, c 11, s 3\(1\)\(i\)\(i\) & \(ii\)*](#)

<p>Declaration</p> <p>3 (1) It is hereby declared as the broadcasting policy for Canada that</p> <p>(a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;</p> <p>(b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;</p> <p>(c) English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;</p> <p>(d) the Canadian broadcasting system should</p> <p>(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,</p> <p>(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions,</p>	<p>Politique canadienne de radiodiffusion</p> <p>3 (1) Il est déclaré que, dans le cadre de la politique canadienne de radiodiffusion :</p> <p>a) le système canadien de radiodiffusion doit être, effectivement, la propriété des Canadiens et sous leur contrôle;</p> <p>b) le système canadien de radiodiffusion, composé d'éléments publics, privés et communautaires, utilise des fréquences qui sont du domaine public et offre, par sa programmation essentiellement en français et en anglais, un service public essentiel pour le maintien et la valorisation de l'identité nationale et de la souveraineté culturelle;</p> <p>c) les radiodiffusions de langues française et anglaise, malgré certains points communs, diffèrent quant à leurs conditions d'exploitation et, éventuellement, quant à leurs besoins;</p> <p>d) le système canadien de radiodiffusion devrait :</p> <p>(i) servir à sauvegarder, enrichir et renforcer la structure culturelle, politique, sociale et économique du Canada,</p> <p>(ii) favoriser l'épanouissement de l'expression canadienne en proposant</p>
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<p>ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,</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>(iv) be readily adaptable to scientific and technological change;</p> <p>(e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;</p> <p>(f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;</p> <p>(g) the programming originated by broadcasting undertakings should be of high standard;</p> <p>(h) all persons who are licensed to carry on broadcasting undertakings have a</p>	<p>une très large programmation qui traduit des attitudes, des opinions, des idées, des valeurs et une créativité artistique canadiennes, qui mette en valeur des divertissements faisant appel à des artistes canadiens et qui fournisse de l'information et de l'analyse concernant le Canada et l'étranger considérés d'un point de vue canadien,</p> <p>(iii) par sa programmation et par les chances que son fonctionnement offre en matière d'emploi, répondre aux besoins et aux intérêts, et refléter la condition et les aspirations, des hommes, des femmes et des enfants canadiens, notamment l'égalité sur le plan des droits, la dualité linguistique et le caractère multiculturel et multiracial de la société canadienne ainsi que la place particulière qu'y occupent les peuples autochtones,</p> <p>(iv) demeurer aisément adaptable aux progrès scientifiques et techniques;</p> <p>e) tous les éléments du système doivent contribuer, de la manière qui convient, à la création et la présentation d'une programmation canadienne;</p> <p>f) toutes les entreprises de radiodiffusion sont tenues de faire appel au maximum, et dans tous les cas au moins de manière prédominante, aux ressources — créatrices et autres — canadiennes pour la création et la présentation de leur programmation à moins qu'une telle pratique ne s'avère difficilement réalisable en raison de la nature du service — notamment, son contenu ou format spécialisé ou l'utilisation qui y est faite de langues autres que le français ou l'anglais — qu'elles fournissent, auquel cas elles devront faire appel aux ressources en question dans toute la mesure du possible;</p>
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<p>responsibility for the programs they broadcast;</p> <p>(i) the programming provided by the Canadian broadcasting system should</p> <p>(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,</p> <p>(ii) be drawn from local, regional, national and international sources,</p> <p>(iii) include educational and community programs,</p> <p>(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and</p> <p>(v) include a significant contribution from the Canadian independent production sector;</p>	<p>g) la programmation offerte par les entreprises de radiodiffusion devrait être de haute qualité;</p> <p>h) les titulaires de licences d'exploitation d'entreprises de radiodiffusion assument la responsabilité de leurs émissions;</p> <p>i) la programmation offerte par le système canadien de radiodiffusion devrait à la fois :</p> <p>(i) être variée et aussi large que possible en offrant à l'intention des hommes, femmes et enfants de tous âges, intérêts et goûts une programmation équilibrée qui renseigne, éclaire et divertit,</p> <p>(ii) puiser aux sources locales, régionales, nationales et internationales,</p> <p>(iii) renfermer des émissions éducatives et communautaires,</p> <p>(iv) dans la mesure du possible, offrir au public l'occasion de prendre connaissance d'opinions divergentes sur des sujets qui l'intéressent,</p> <p>(v) faire appel de façon notable aux producteurs canadiens indépendants;</p>
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[Broadcasting Act, SC 1991, c 11, s 5](#)

<p>Objects</p> <p>5 (1) Subject to this Act and the <u>Radiocommunication Act</u> and to any directions to the Commission issued by the Governor in Council under this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so</p>	<p>Mission</p> <p>5 (1) Sous réserve des autres dispositions de la présente loi, ainsi que de la <u>Loi sur la radiocommunication</u> et des instructions qui lui sont données par le gouverneur en conseil sous le régime de la présente loi, le Conseil réglemente et surveille tous les aspects du système canadien de radiodiffusion en vue de</p>
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<p>doing, shall have regard to the regulatory policy set out in subsection (2).</p> <p>Regulatory policy</p> <p>(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that</p> <ul style="list-style-type: none"> (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; (b) takes into account regional needs and concerns; (c) is readily adaptable to scientific and technological change; (d) facilitates the provision of broadcasting to Canadians; (e) facilitates the provision of Canadian programs to Canadians; (f) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and (g) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings. <p>Conflict</p> <p>(3) The Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2).</p>	<p>mettre en oeuvre la politique canadienne de radiodiffusion.</p> <p>Réglementation et surveillance</p> <p>(2) La réglementation et la surveillance du système devraient être souples et à la fois :</p> <ul style="list-style-type: none"> a) tenir compte des caractéristiques de la radiodiffusion dans les langues française et anglaise et des conditions différentes d'exploitation auxquelles sont soumises les entreprises de radiodiffusion qui diffusent la programmation dans l'une ou l'autre langue; b) tenir compte des préoccupations et des besoins régionaux; c) pouvoir aisément s'adapter aux progrès scientifiques et techniques; d) favoriser la radiodiffusion à l'intention des Canadiens; e) favoriser la présentation d'émissions canadiennes aux Canadiens; f) permettre la mise au point de techniques d'information et leur application ainsi que la fourniture aux Canadiens des services qui en découlent; g) tenir compte du fardeau administratif qu'elles sont susceptibles d'imposer aux exploitants d'entreprises de radiodiffusion. <p>Conflit</p> <p>(3) Le Conseil privilégie, dans les affaires dont il connaît, les objectifs de la politique canadienne de radiodiffusion en cas de conflit avec ceux prévus au paragraphe (2).</p> <p>Équité en matière d'emploi</p>
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<p>Employment equity</p> <p>(4) Where a broadcasting undertaking is subject to the <i>Employment Equity Act</i>, the powers granted to the Commission under this Act do not extend to the regulation or supervision of matters concerning employment equity in relation to that broadcasting undertaking.</p> <p>1991, c. 11, s. 5; 1995, c. 44, s. 46.</p>	<p>(4) Les entreprises de radiodiffusion qui sont assujetties à la <i>Loi sur l'équité en matière d'emploi</i> ne relèvent pas des pouvoirs du Conseil pour ce qui est de la réglementation et de la surveillance du domaine de l'équité en matière d'emploi.</p> <p>1991, ch. 11, art. 5; 1995, ch. 44, art. 46.</p>
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[Broadcasting Act, SC 1991, c 11, s 9\(1\)\(h\)](#)

<p>9 (1) Subject to this Part, the Commission may, in furtherance of its objects,</p> <p style="padding-left: 40px;">(h) require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.</p>	<p>9 (1) Sous réserve des autres dispositions de la présente partie, le Conseil peut, dans l'exécution de sa mission :</p> <p style="padding-left: 40px;">h) obliger ces titulaires à offrir certains services de programmation selon les modalités qu'il précise.</p>
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[Broadcasting Act, SC 1991, c 11, s 31\(2\)](#)

<p>Decisions and Orders</p> <p>Decisions and orders final</p> <p>31 (1) Except as provided in this Part, every decision and order of the Commission is final and conclusive.</p> <p>Appeal to Federal Court of Appeal</p> <p>(2) An appeal lies from a decision or order of the Commission to the Federal Court of Appeal on a question of law or a question of jurisdiction if leave therefor is obtained from that Court on application made within one month after the making of the decision or order sought to be appealed from or within</p>	<p>Décisions et ordonnances</p> <p>Caractère définitif</p> <p>31 (1) Sauf exceptions prévues par la présente partie, les décisions et ordonnances du Conseil sont définitives et sans appel.</p> <p>Cas d'appel : Cour fédérale</p> <p>(2) Les décisions et ordonnances du Conseil sont susceptibles d'appel, sur une question de droit ou de compétence, devant la Cour d'appel fédérale. L'exercice de cet appel est toutefois subordonné à l'autorisation de la cour, la demande en ce sens devant être présentée dans le mois qui suit la prise de la</p>
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<p>such further time as that Court under special circumstances allows.</p>	<p>décision ou ordonnance attaquée ou dans le délai supplémentaire accordé par la cour dans des circonstances particulières.</p>
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[Broadcasting Distribution Regulations, SOR/97-555, s 7](#)

<p>ALTERATION OR DELETION OF PROGRAMMING SERVICE</p>	<p>MODIFICATION OU RETRAIT DE SERVICES DE PROGRAMMATION</p>
<p>7 Subject to section 7.2, a licensee shall not alter the content or format of a programming service or delete a programming service in a licensed area in the course of its distribution except</p> <p>(a) as required or authorized by a condition of its licence or under the <u>Simultaneous Programming Service Deletion and Substitution Regulations</u>.</p> <p>(b) for the purpose of complying with subsection 328(1) of the <u>Canada Elections Act</u>;</p> <p>(c) for the purpose of deleting a programming service to comply with an order of a court prohibiting the distribution of the service to any part of the licensed area;</p> <p>(d) for the purpose of altering a programming service to insert a warning to the public announcing</p> <p>(i) any danger to life or property if the insertion is provided for in an agreement entered into by the licensee with the operator of the service or the network responsible for the service, or</p> <p>(ii) an imminent or unfolding danger to life if there is no agreement with the</p>	<p>7 Sous réserve de l'article 7.2, le titulaire ne peut modifier le contenu ou le format d'un service de programmation ou retirer un tel service au cours de sa distribution dans une zone de desserte autorisée, sauf si, selon le cas :</p> <p>a) la modification ou le retrait est fait en conformité avec les conditions de sa licence ou le <i>Règlement sur le retrait et la substitution simultanés de services de programmation</i>;</p> <p>b) la modification ou le retrait a pour but le respect du paragraphe 328(1) de la <u>Loi électorale du Canada</u>;</p> <p>c) le retrait du service de programmation a pour but le respect d'une ordonnance de la cour interdisant la distribution du service de programmation dans toute partie de la zone de desserte autorisée;</p> <p>d) la modification du service de programmation a pour but d'insérer dans celui-ci un message avertissant le public :</p> <p>(i) d'un danger pour la vie ou les biens, dans le cas où l'insertion est prévue par une entente entre le titulaire et l'exploitant du service de programmation ou le réseau ayant la responsabilité du service,</p>

<p>operator of the service or the network responsible for the service;</p> <p>(e) for the purpose of preventing the breach of programming or underlying rights of a third party, in accordance with an agreement entered into with the operator of the service or the network responsible for the service;</p> <p>(f) for the purpose of deleting a subsidiary signal, unless the signal is, itself, a programming service or is related to the service being distributed; or</p> <p>(g) for the purpose of inserting a commercial message, if the insertion is in accordance with an agreement between the licensee and the operator of a Canadian programming service or the network responsible for that Canadian programming service and that agreement pertains to commercial messages directed at a target market of consumers.</p>	<p>(ii) d'un danger imminent ou actuel pour la vie, dans tout autre cas;</p> <p>e) la modification ou le retrait a pour but d'empêcher la violation des droits de programmation ou des droits sous-jacents d'un tiers, en vertu d'une entente entre le titulaire et l'exploitant du service de programmation ou le réseau ayant la responsabilité du service;</p> <p>f) la modification du service de programmation a pour but la suppression d'un signal secondaire qui n'est pas, en soi, un service de programmation ou qui n'a pas de lien avec le service distribué;</p> <p>g) la modification ou le retrait a pour but d'insérer un message publicitaire, pourvu que l'insertion soit faite conformément à une entente conclue entre le titulaire et l'exploitant d'un service de programmation canadien ou le réseau ayant la responsabilité d'un tel service et que l'entente porte sur des messages publicitaires orientés vers un marché cible de consommateurs.</p>
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[*Federal Courts Act, RSC, 1985, c F-7, s 18.1*](#)

<p>Application for judicial review</p> <p>18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.</p> <p>Time limitation</p> <p>(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney</p>	<p>Demande de contrôle judiciaire</p> <p>18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.</p> <p>Délai de présentation</p> <p>(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale</p>
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<p>General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.</p> <p>Powers of Federal Court</p> <p>(3) On an application for judicial review, the Federal Court may</p> <ul style="list-style-type: none"> (a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or (b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal. <p>Grounds of review</p> <p>(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal</p> <ul style="list-style-type: none"> (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction; (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe; (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record; (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it; 	<p>peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.</p> <p>Pouvoirs de la Cour fédérale</p> <p>(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :</p> <ul style="list-style-type: none"> a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable; b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral. <p>Motifs</p> <p>(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :</p> <ul style="list-style-type: none"> a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer; b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter; c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier; d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose; e) a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;
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<p>(e) acted, or failed to act, by reason of fraud or perjured evidence; or</p> <p>(f) acted in any other way that was contrary to law.</p> <p>Defect in form or technical irregularity</p> <p>(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may</p> <p>(a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and</p> <p>(b) in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.</p>	<p>f) a agi de toute autre façon contraire à la loi.</p> <p>Vice de forme</p> <p>(5) La Cour fédérale peut rejeter toute demande de contrôle judiciaire fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne aucun dommage important ni déni de justice et, le cas échéant, valider la décision ou l'ordonnance entachée du vice et donner effet à celle-ci selon les modalités de temps et autres qu'elle estime indiquées.</p>
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[Simultaneous Programming Service Deletion and Substitution Regulations, SOR/2015-240, s 4.](#)

<p>Obligation to carry out request</p> <p>4 (1) Except as otherwise provided under these Regulations or in a condition of its licence, a licensee that receives a request referred to in section 3 must carry out the requested deletion and substitution if the following conditions are met:</p> <p>(a) the request is in writing and is received by the licensee at least four days before the day on which the programming service to be substituted is to be broadcast;</p> <p>(b) the programming service to be deleted and the programming service to be substituted are comparable and are to be broadcast simultaneously;</p>	<p>Observation de la demande</p> <p>4 (1) Sous réserve du présent règlement ou des conditions de sa licence, le titulaire qui reçoit la demande visée à l'article 3 doit retirer le service de programmation en cause et effectuer la substitution demandée si les conditions suivantes sont réunies :</p> <p>a) la demande est présentée par écrit et doit être reçue par le titulaire au moins quatre jours avant la date prévue pour la diffusion du service de programmation à substituer;</p> <p>b) le service de programmation à retirer et le service de programmation à substituer sont comparables et doivent être diffusés simultanément;</p>
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<p>(c) the programming service to be substituted has the same format as, or a higher format than, the programming service to be deleted; and</p> <p>(d) if the licensee carries on a terrestrial distribution undertaking, the programming service to be substituted has a higher priority under section 17 of the Broadcasting Distribution Regulations than the programming service to be deleted.</p> <p>MaLate request</p> <p>(2) In the case of a request that is not received within the period referred to in paragraph (1)(a) but that meets the conditions set out in paragraphs (1)(b) to (d), the licensee may carry out the requested deletion and substitution, except as otherwise provided under these Regulations or in a condition of its licence.</p> <p>Decision by Commission</p> <p>(3) A licensee must not delete a programming service and substitute another programming service for it if the Commission decides under subsection 18(3) of the Broadcasting Act that the deletion and substitution are not in the public interest.</p> <p>Deletion and substitution by operator</p> <p>(4) The licensee and the operator of the local television station or the regional television station may agree to have the operator carry out the deletion and substitution.</p> <p>More than one request</p> <p>(5) If a licensee that carries on a terrestrial distribution undertaking receives a request for deletion and substitution from more than one operator of a Canadian television station, it must give preference to the programming service of the television station that has the</p>	<p>c) le service de programmation à substituer est d'un format égal ou supérieur au service de programmation à retirer;</p> <p>d) dans le cas où le titulaire exploite une entreprise de distribution terrestre, le service de programmation à substituer a priorité, en vertu de l'article 17 du Règlement sur la distribution de radiodiffusion, sur le service de programmation à retirer.</p> <p>Demande tardive</p> <p>(2) Dans le cas où la demande n'est pas reçue dans le délai prévu à l'alinéa (1)a) mais respecte les conditions prévues aux alinéas (1)b) à d), le titulaire peut, sous réserve du présent règlement ou des conditions de sa licence, y donner suite.</p> <p>Décision du Conseil</p> <p>(3) Le titulaire ne peut retirer un service de programmation et y substituer un autre service de programmation si le Conseil rend une décision, en vertu du paragraphe 18(3) de la Loi sur la radiodiffusion, portant que le retrait et la substitution ne sont pas dans l'intérêt public.</p> <p>Retrait et substitution par l'exploitant</p> <p>(4) Le titulaire et l'exploitant de la station de télévision locale ou de la station de télévision régionale peuvent s'entendre pour que ce soit l'exploitant qui procède au retrait et à la substitution.</p> <p>Plusieurs demandes</p> <p>(5) Le titulaire qui exploite une entreprise de distribution terrestre et reçoit une demande de retrait et de substitution de plusieurs exploitants de stations de télévision canadiennes doit accorder la préférence au service de programmation de la station de</p>
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<p>highest priority under section 17 of the Broadcasting Distribution Regulations.</p> <p>Discontinuation of substitution</p> <p>(6) A licensee may discontinue a deletion and substitution if the deleted and substituted programming services are not, or are no longer, comparable and broadcast simultaneously.</p>	<p>télévision qui a la priorité en vertu de l'article 17 du Règlement sur la distribution de radiodiffusion.</p> <p>Arrêt de la substitution</p> <p>(6) Le titulaire peut mettre fin au retrait et à la substitution si les services de programmation en cause ne sont pas ou ne sont plus comparables ni diffusés simultanément.</p>
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[Supreme Court Act, RSC, 1985, c S-26, s 40](#)

<p>Appeals with leave of Supreme Court</p> <p>40 (1) Subject to subsection (3), an appeal lies to the Supreme Court from any final or other judgment of the Federal Court of Appeal or of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, whether or not leave to appeal to the Supreme Court has been refused by any other court, where, with respect to the particular case sought to be appealed, the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it, and leave to appeal from that judgment is accordingly granted by the Supreme Court.</p> <p>Application for leave</p> <p>(2) An application for leave to appeal under this section shall be brought in accordance with paragraph 58(1)(a).</p>	<p>Appel avec l'autorisation de la Cour</p> <p>40 (1) Sous réserve du paragraphe (3), il peut être interjeté appel devant la Cour de tout jugement, définitif ou autre, rendu par la Cour d'appel fédérale ou par le plus haut tribunal de dernier ressort habilité, dans une province, à juger l'affaire en question, ou par l'un des juges de ces juridictions inférieures, que l'autorisation d'en appeler à la Cour ait ou non été refusée par une autre juridiction, lorsque la Cour estime, compte tenu de l'importance de l'affaire pour le public, ou de l'importance des questions de droit ou des questions mixtes de droit et de fait qu'elle comporte, ou de sa nature ou importance à tout égard, qu'elle devrait en être saisie et lorsqu'elle accorde en conséquence l'autorisation d'en appeler.</p> <p>Demandes d'autorisation d'appel</p> <p>(2) Les demandes d'autorisation d'appel présentées au titre du présent article sont régies par l'alinéa 58(1)a).</p> <p>Appels à l'égard d'infractions</p>
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<p>Appeals in respect of offences</p> <p>(3) No appeal to the Court lies under this section from the judgment of any court acquitting or convicting or setting aside or affirming a conviction or acquittal of an indictable offence or, except in respect of a question of law or jurisdiction, of an offence other than an indictable offence.</p> <p>Extending time for allowing appeal</p> <p>(4) Whenever the Court has granted leave to appeal, the Court or a judge may, notwithstanding anything in this Act, extend the time within which the appeal may be allowed.</p> <p>R.S., 1985, c. S-26, s. 40; R.S., 1985, c. 34 (3rd Suppl.), s. 3; 1990, c. 8, s. 37.</p>	<p>(3) Le présent article ne permet pas d'en appeler devant la Cour d'un jugement prononçant un acquittement ou une déclaration de culpabilité ou annulant ou confirmant l'une ou l'autre de ces décisions dans le cas d'un acte criminel ou, sauf s'il s'agit d'une question de droit ou de compétence, d'une infraction autre qu'un acte criminel.</p> <p>Prorogation du délai d'appel</p> <p>(4) Dans tous les cas où elle accorde une autorisation d'appel, la Cour ou l'un de ses juges peut, malgré les autres dispositions de la présente loi, proroger le délai d'appel.</p> <p>L.R. (1985), ch. S-26, art. 40; L.R. (1985), ch. 34 (3^e suppl.), art. 3; 1990, ch. 8, art. 37.</p>
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