

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

**IN THE MATTER OF AN APPLICATION BY WAY OF A
REFERENCE TO THE FEDERAL COURT OF APPEAL PURSUANT
TO SECTIONS 18.3(1) AND 28(2) OF THE *FEDERAL COURTS ACT*,
R.S.C. 1985, C.F-7**

B E T W E E N:

COGECO CABLE INC.

Appellant

- and -

BELL MEDIA INC. (FORMERLY CTV GLOBEMEDIA INC.), CANWEST TELEVISION
LIMITED PARTNERSHIP, NEWFOUNDLAND BROADCASTING CO. LTD., V
INTERACTIONS INC. AND ATTORNEY GENERAL OF CANADA

Respondents

A N D B E T W E E N:

ROGERS COMMUNICATIONS INC. and TELUS COMMUNICATIONS

Appellants

- and -

BELL MEDIA INC. (FORMERLY CTV GLOBEMEDIA INC.), CANWEST TELEVISION
LIMITED PARTNERSHIP, NEWFOUNDLAND BROADCASTING CO. LTD., V
INTERACTIONS INC. AND ATTORNEY GENERAL OF CANADA

Respondents

A N D B E T W E E N:

SHAW COMMUNICATIONS INC.

Appellant

- and -

BELL MEDIA INC. (FORMERLY CTV GLOBEMEDIA INC.), CANWEST TELEVISION
LIMITED PARTNERSHIP, NEWFOUNDLAND BROADCASTING CO. LTD., V
INTERACTIONS INC. AND ATTORNEY GENERAL OF CANADA

Respondents

THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION
(CRTC)

Intervener

**FACTUM OF THE RESPONDENTS,
BELL MEDIA INC. (formerly CTVglobemedia Inc.),
NEWFOUNDLAND BROADCASTING CO. LTD. and V INTERACTIONS INC.
(Rules 36 and 42 of the *Rules of the Supreme Court of Canada*)**

Goodmans LLP

Bay Adelaide Centre
333 Bay Street
Suite 3400
Toronto, ON M5H 2S7

Benjamin Zarnett
Robert Malcolmson
Peter Ruby
Julie Rosenthal
Tel: (416) 979-2211
Fax: (416) 979-1234

**Lawyers for the Respondents,
Bell Media Inc. (formerly CTVglobemedia Inc.),
Newfoundland Broadcasting Co. Ltd.
and V Interactions Inc.**

Nelligan O'Brien Payne LLP

55 O'Connor Street
Suite 1500
Ottawa, Ontario
K1P 6L2

Dougald Brown
Tel: (613) 231-8210
Fax: (613) 788-3661

Ottawa Agent for the Respondents,
Bell Media Inc. (formerly CTVglobemedia Inc.),
Newfoundland Broadcasting Co. Ltd.
and V Interactions Inc.

ORIGINAL TO:

THE REGISTRAR
Supreme Court of Canada
301 Wellington Street
Ottawa, ON K1A 0J1

COPIES TO:

| Parties | Counsel | Agent |
|--|---|--|
| Cogeco Cable Inc. | McCarthy Tétrault LLP Suite 5300, Toronto-Dominion Bank Tower Toronto, ON M5K 1E6 Neil Finkelstein Steven G. Mason Daniel G.C. Glover Tel: (416) 601-8200 Fax: (416) 868-0673 | Cavanagh Williams Conway Baxter LLP Suite 401 1111 Prince of Wales Drive Ottawa, ON K2C 3T2 Colin S. Baxter Tel: (613) 780-2011 Fax: (613) 569-8668 Ottawa Agent for the Appellant |
| Rogers Communications Inc. and TELUS Communications Company | Fasken Martineau Dumoulin LLP 55 Metcalfe Street Suite 1300 Ottawa, ON K1P 6L5 Gerald (Jay) Kerr-Wilson Julia Kennedy Tel: (613) 236-3882 Fax: (613) 230-6423 | |
| Shaw Communications Inc. | Davies Ward Philips & Vineberg LLP 1 First Canadian Place 44 th Floor Toronto, ON M5X 1B1 Kent E. Thomson James Doris Sarah Weingarten Tel: (416) 863-0900 Fax: (416) 863-0871 | Gowlings LLP 160 Elgin Street Suite 2600 Ottawa, ON K1P 1C3 Ed Van Bommel Tel: (613) 786-0212 Fax: (613) 788-3500 |

**Attorney General of
Canada**

**Department of Justice Canada
Civil Litigation Section**

Bank of Canada Building

East Tower – Room 1104

234 Wellington Street

Ottawa, ON

K1A 0H9

Attention: Alexander Gay / Noreen
Majeed

**Canadian Radio-Television
and Telecommunications
Commission**

**Canadian Radio-Television and
Telecommunications Commission**

Central Building

1 Promenade du Portage

Gatineau, QC

J8X 4B1

Attention: John Keogh / Valerie
Dionne /

Crystal Hulley

TABLE OF CONTENTS

| | |
|---|-------------------------------------|
| OVERVIEW | 1 |
| PART I – Statement of Facts | 5 |
| (a) The Regulatory Regime Established by the <i>Broadcasting Act</i> | 5 |
| (i) The CRTC’s General Mandate, the Canadian Broadcasting System and Canadian Broadcasting Policy | 5 |
| (ii) Licensing and Regulation Under the <i>Broadcasting Act</i> | 6 |
| (iii) Local Television Stations and BDUs..... | 7 |
| (iv) The Current Regulated Relationship Between Local Television Stations and BDUs..... | 9 |
| (b) The CRTC Determines that, in Order to Fulfill Canadian Broadcasting Policy, There Is a Need for Change, Namely, a Need for the Option to Negotiate Regime..... | 13 |
| (c) The Proposed Option to Negotiate Regime | 16 |
| (d) The Decision Under Appeal..... | 19 |
| PART II – Question in Issue..... | 23 |
| PART III – Statement of Argument..... | 23 |
| (a) The <i>Broadcasting Act</i> Grants Jurisdiction to the CRTC to Implement The Option to Negotiate Regime..... | 23 |
| (i) The Statutory Powers of the CRTC | 23 |
| (ii) The Test for Assessing the Jurisdictional Validity of a Regulatory or Licensing Measure Imposed by the CRTC | 29 |
| (iii) The Option to Negotiate Regime Is Designed to Implement the Broadcasting Policy Objectives Set Out in the <i>Broadcasting Act</i> | 30 |
| (iv) The Case Law Cited by the Appellants Makes It Clear that the CRTC Has Jurisdiction Under the <i>Broadcasting Act</i> to Implement the Option to Negotiate Regime | 35 |
| (v) The Option to Negotiate Regime Is Not Inconsistent With Government Policy | 39 |
| (b) The Conclusion that the <i>Broadcasting Act</i> Grants Jurisdiction to the CRTC Is Not Affected by the <i>Copyright Act</i> | 40 |
| (i) The Option to Negotiate Regime Does Not Conflict With the Copyright Act | 42 |
| (ii) The Copyright Act Was Not Intended to Provide an Exhaustive Declaration of the Law Applicable to BDUs’ Retransmission of Local Television Signals..... | 53 |
| (c) The Legislative History of the <i>Copyright Act</i> Does Not Limit the CRTC’s Jurisdiction and Powers Under the <i>Broadcasting Act</i> | 58 |
| (i) The Copyright Act Does Not Implement Broadcasting Policy | 61 |
| (ii) The CRTC’s Past Statements as to Its Jurisdiction Are of No Assistance | 62 |
| (d) Conclusion..... | 66 |
| PART IV – Submissions on Costs | 66 |
| PART V – Order Sought..... | 66 |
| PART VI – List Of Authorities..... | 67 |
| PART VII – Statutes And Regulations Relied Upon..... | Error! Bookmark not defined. |

OVERVIEW

1. This factum is filed on behalf of the Respondents, Bell Media Inc. (formerly CTVglobemedia Inc.), V Interactions Inc. and Newfoundland Broadcasting Company Limited, each of whom operates one or more private local television stations. The Respondents file this single factum in response to the three facta filed by the Appellants.

2. The question before this Court is whether the majority of the Federal Court of Appeal was correct in its answer to the question posed by the CRTC's Reference to that court.

The Reference Question was:

Is the CRTC empowered under the *Broadcasting Act* to establish a regime to enable private local stations to choose to negotiate with BDUs a fair value in exchange for the distribution of the programming services broadcast by those local stations?

3. The correct answer to the Reference Question is yes. As held by the majority below, the CRTC has the jurisdiction to establish such a regime. (This proposed regime is referred to herein as the “option to negotiate regime”.)

4. The CRTC has determined that such a regime, whereby broadcast television stations can negotiate for compensation for the fair value of their respective programming services “is necessary for the fulfillment of the policy objectives set out in section 3” of the *Broadcasting Act*. The CRTC made this factual determination after a public hearing process, which included the review of tens of thousands of written submissions, and an oral hearing that lasted for over two weeks. While the Appellants refer to concerns about blackouts, increased cost

to consumers and thus the wisdom of such a regime,¹ such considerations, which were raised before the CRTC, are here misplaced. The critical factual finding, which informs the analysis of the CRTC's jurisdiction, is the CRTC's finding that such a regime is necessary to fulfil Canadian broadcasting policy.

5. The option to negotiate regime would form part of the regulatory regime established by the *Broadcasting Act* whereby cable companies and satellite companies (formally referred to as "broadcasting distribution undertakings" or "BDUs") are licensed and regulated by the CRTC. Under that regulatory regime, whose *vires* is unchallenged, BDUs are prohibited from retransmitting television signals except to the extent that they do so in accordance with orders, conditions of licence (or an exemption), policies and the *Broadcasting Distribution Regulations*, which are made by the CRTC under the *Broadcasting Act*. Contrary to the contention of the Appellants, BDUs do not obtain a right to retransmit television stations signals because of any absence of copyright protection; they obtain it, pursuant to the *Broadcasting Act*, only to the extent to which, and subject to the conditions under which, the CRTC allows such retransmissions in order to ensure the fulfilment of Canadian broadcasting policy.

6. The *Broadcasting Distribution Regulations* and CRTC policies made under the *Broadcasting Act* already impose important terms and conditions on BDUs in respect of the retransmission of local stations. Some of those terms and conditions involve the transfer of value to local stations. If disobeyed, all can result in a BDU losing its licence to retransmit television signals, i.e., being "blacked out". The option to negotiate regime is simply an addition to those

¹ See, e.g., Factum of the Appellant, Shaw Communications Inc., at para. 1

terms and conditions, the *vires* of which are not challenged on any basis, including as intrusions into copyright law.

7. As is discussed more fully below, there can be no question but that the *Broadcasting Act* grants to the CRTC the jurisdiction to implement the option to negotiate regime. The *Broadcasting Act* grants broad power to the CRTC to “regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy” set out in the *Act*. The CRTC has determined (the correctness of which determination has not been challenged) that the option to negotiate regime is needed in order to address serious financial difficulties besetting local television stations, so as to ensure the fulfilment of Canadian broadcasting policy, most notably, the policy that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming. Thus, implementation of the option to negotiate regime falls squarely within the CRTC’s jurisdiction to regulate the Canadian broadcasting system with a view to implementing Canadian broadcasting policy.

8. This clear grant of jurisdiction by the *Broadcasting Act* is not ousted by the *Copyright Act* as the Appellants contend. The various arguments advanced by the Appellants that:

- (a) the option to negotiate regime will conflict with certain provisions of the *Copyright Act*; and
- (b) the *Copyright Act* is an exhaustive declaration of the law applicable to the retransmission of television signals and, accordingly, the CRTC has no jurisdiction to pass rules or regulations relating to such retransmission;

are not correct.

9. First, although the *Copyright Act* and the *Broadcasting Act* overlap, in that both apply to certain aspects of a BDU's retransmission of a local television signal, there is no conflict or inconsistency between the two regimes. A BDU can obey both regimes. And, contrary to the arguments advanced by the Appellants, the option to negotiate regime does not create a new copyright, nor does it expand upon existing copyrights, nor does it expand the circumstances in which copyright royalties are payable. In short, the option to negotiate regime does not speak to copyright at all. Rather, it is simply a further condition under the *Broadcasting Act* that the CRTC may impose in order for a BDU to obtain the right to retransmit a broadcast signal, in order to implement and fulfil broadcasting policy.

10. The Appellants' argument that the *Copyright Act* constitutes a "complete code" with respect to the retransmission of television signals by BDUs is similarly flawed. The language of both the *Broadcasting Act* and the *Copyright Act* makes it abundantly clear that Parliament did not intend the *Copyright Act* to provide an exhaustive declaration of the law applicable to the retransmission of television signals. A licence from the CRTC under the *Broadcasting Act* is the very source of any right to retransmit, and the *Act* makes plain the power of the CRTC to regulate the conditions under which BDUs may be licensed to retransmit television signals in order to implement broadcasting policy. Similarly, the *Copyright Act* (more specifically, section 31(2) of the *Act*) expressly contemplates that the retransmission of a television signal by a BDU is subject to regulation under the *Broadcasting Act*. Accordingly, it is clear that Parliament did not intend the *Copyright Act* to function as a "complete code" with respect to BDUs' retransmission of local television signals.

11. Therefore, given that the *Broadcasting Act* clearly grants jurisdiction to the CRTC to enact the option to negotiate regime, and that nothing in the *Copyright Act* derogates from that grant of jurisdiction, the necessary conclusion is that the CRTC has the jurisdiction to implement the regime, and the within appeals should accordingly be dismissed.

12. Finally, it should be noted that all of the Appellants spend significant time discussing such things as the legislative history of the *Copyright Act*, pronouncements made by government officials with respect to the wisdom of amending the *Copyright Act*, and pronouncements made in the past by the CRTC with respect to the scope of its jurisdiction. None of this evidence offers any assistance to this Court in determining the legal question before it, namely, whether the CRTC has the jurisdiction to implement the option to negotiate regime.

PART I – STATEMENT OF FACTS

(a) The Regulatory Regime Established by the *Broadcasting Act*

(i) *The CRTC’s General Mandate, the Canadian Broadcasting System and Canadian Broadcasting Policy*

13. By virtue of section 5 of the *Broadcasting Act*, the CRTC (referred to as “the Commission” in the *Broadcasting Act*) is granted the power to “regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing” broadcasting policy. Section 5(1) states:

Subject to this Act and the *Radiocommunication Act* 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 doing, shall have regard to the regulatory policy set out in subsection (2). [emphasis added]

Broadcasting Act, S.C. 1991, c. 11 (hereinafter “*Broadcasting Act*”), s. 5(1)

14. Section 3(2) of the *Broadcasting Act* declares that the Canadian broadcasting system which the CRTC regulates (made up of such components as local television stations, specialty channels and BDUs) is to be considered as a *single*, unified system.

15. The broadcasting policy that the CRTC is required to implement is set out in section 3(1) of the *Broadcasting Act*, which lists forty-two objectives of varying specificity that are of critical national and cultural importance. For example, section 3(1)(d)(i) states:

[T]he Canadian broadcasting system should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada. . .

Broadcasting Act, s. 3(1)(d)(i)

16. In carrying out its mandate, the CRTC must necessarily balance the competing interests of the various components that make up the single Canadian broadcasting system. The regulation of local stations and BDUs, two key elements of the system, forms part of this inter-related regulatory framework.

(ii) *Licensing and Regulation Under the Broadcasting Act*

17. The *Broadcasting Act* expressly prohibits anyone from carrying on a broadcasting undertaking (which includes the operation of a local television station or a BDU) without a licence from the CRTC. The *Act* further prohibits carrying on such an undertaking without complying with the terms of the applicable licence, any regulations passed under the *Act*, and the *Act* itself.

Broadcasting Act, s. 32(1) and (2), and s. 33

18. Thus, in order to operate, both television stations and BDUs must be licensed by the CRTC. The CRTC's licensing power is granted by section 9 of the *Broadcasting Act* and the exercise of that power is expressly tied to the fulfilment of the CRTC's objects and to the implementation of the broadcasting policy set out in section 3(1) of the *Act*. For example, section 9(1)(b) grants the power to issue licences subject to conditions:

Subject to this Part, the Commission may, in furtherance of its objects,

...

(b) issue licences for such terms not exceeding seven years and subject to conditions related to the circumstances of the licensee

(i) as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1).

Broadcasting Act, s. 9(1)(b)

19. Section 10 of the *Act* grants the CRTC the power to make regulations. As with the licensing power, the regulation-making power is to be exercised "in furtherance of [the CRTC's] objects", such objects being the implementation and fulfillment of the broadcasting policy set out in section 3(1) of the *Act*.

Broadcasting Act, s. 10(1)

(iii) *Local Television Stations and BDUs*

20. Local television stations are licensed by the CRTC to serve a geographic area defined by the reach of their respective signal transmitters. Local stations acquire, create and produce television programming. Sections 3(1)(g) and 3(1)(i) of the *Broadcasting Act* provide that it is the broadcasting policy of Canada that programming produced or created by such local stations "should be of high standard", and that, among other things, it should "be varied and

comprehensive”, “include educational and community programs”, and “provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern”.

Broadcasting Act, s. 3(1)(g) and 3(1)(i)

21. BDUs, such as cable and satellite providers, distribute local stations’ programming to subscribers for a monthly fee. Like television stations, BDUs must be licensed by the CRTC pursuant to section 9 of the *Broadcasting Act* and must comply with the terms of their respective licences, as well as with CRTC policies and the applicable regulations.

22. In regard to local stations, the CRTC has determined that “through their creation and distribution of local programming, as well as other Canadian programs, local television stations are key contributors to the attainment of the objectives for the Canadian broadcasting system set out in the *Broadcasting Act*”. In regard to BDUs, the CRTC has noted that approximately 90% of Canada’s 12.6 million households receive and pay BDUs for local stations and other programming services sourced from BDUs. (The remaining 10% of households receive local stations over-the-air, using antennas.)

Report prepared by the CRTC pursuant to section 15 of the *Broadcasting Act* (23 March 2010) entitled “*The implications and advisability of implementing a compensation regime for the value of local television signals*” (“OIC Report”) at s. 1.1, Exhibit “Q” to the Affidavit of Kevin Goldstein sworn May 10, 2010 (“Goldstein Affidavit”), Joint Record of the Appellants, Vol. XVIII, Tab 120, pages 79-82.

Report prepared by the CRTC entitled, “*Communications Monitoring Report*”, dated 2009 , at page iii, Exhibit “P” to the Goldstein Affidavit, Joint Record of the Appellants, Vol. XVII, Tab 119, page 7.

23. Local stations and BDUs are both key elements of the single Canadian broadcasting system. Canadian broadcasting policy requires that, as elements of that system,

each of these parties must contribute to the creation and presentation of Canadian programming.

Section 3(1)(e) of the *Broadcasting Act* states:

It is hereby declared as the broadcasting policy for Canada that

...

(e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming.

Broadcasting Act, s. 3(1)(e)

24. Thus, the core activity of local stations – i.e., the broadcasting of programs – and the core activity of BDUs – i.e., the retransmission of television signals – as well as the interaction between them are central to the proper functioning of the Canadian broadcasting system and are regulated by the CRTC to ensure the fulfilment of Canadian broadcasting policy.

(iv) *The Current Regulated Relationship Between Local Television Stations and BDUs*

25. One example of the regulated interaction between local television stations and BDUs which furthers the fulfilment of broadcasting policy is found in sections 17 and 41 of the *Broadcasting Distribution Regulations*, under which BDUs must include local stations as part of their basic or entry level package of television services that is provided to all customers. This ensures that the programming acquired, created and produced by Canadian local stations is made available to Canadian customers of the BDUs, and serves to implement the broadcasting policy that requires distribution undertakings to give priority to the carriage of Canadian programming services.

Broadcasting Distribution Regulations, S.O.R./97-555 (hereinafter “*Broadcasting Distribution Regulations*”), s. 17 and 41

Broadcasting Act, s. 3(1)(t)(i)

26. Under the current regulatory regime, BDUs pick up the signals of local stations (which are transmitted over-the-air) and then retransmit those signals to subscribers for a monthly fee. This fee has historically been, but is no longer, regulated by the CRTC. Therefore, BDUs are now free to determine the retail rate charged to their subscribers for the retransmission of local stations, subject only to market forces. BDUs also distribute the signals of specialty television stations such as TSN and Discovery Channel to their subscribers. Unlike local stations, these specialty stations are permitted to charge “wholesale fees” to BDUs for the right to re-distribute these stations to subscribers. The retail fees received by BDUs from their subscribers for the distribution of local stations are not directly shared with the local stations. Instead, local stations rely on advertising revenue to fund the cost of creating, acquiring and broadcasting programming that meets the high standards of quality and representation of Canadian culture required under section 3(1) of the *Broadcasting Act*. By contrast, specialty stations, like TSN and Discovery Channel, have access both to advertising revenue and to the wholesale fees paid by BDUs to fund the cost of programming and to discharge their obligations as licensees under the *Broadcasting Act*.

Broadcasting Public Notice 2008-100: *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, 30 October 2008 , at para. 58, Exhibit “J” to the Goldstein Affidavit, Joint Record of the Appellants, Vol. XVI, Tab 113, page 110.

OIC Report, at s. 1.1, Exhibit “Q” to the Goldstein Affidavit, Joint Record of the Appellants, Vol. XVIII, Tab 120, pages 79-82.

27. Over the years, however, a fundamental component of the CRTC’s regulation of BDUs has been the adoption, from time-to-time, of various measures requiring BDUs to provide local television stations with certain benefits as conditions under which BDUs obtain the right to retransmit these stations to subscribers for their (i.e., the BDUs’) profit. These benefits are both

monetary and non-monetary in nature. Thus, as part of the current regulatory framework, each BDU is or has been required:

- (a) to distribute the signals of a local television station to the BDU's subscribers in the television station's local market as part of the BDU's basic package of television services (known as "mandatory carriage");²
- (b) to place local television stations' respective signals on channels more likely to be selected by subscribers (known as "preferential channel placement");³
- (c) to delete programs that appear on any distant Canadian or non-Canadian signal being broadcast in a television station's local market for which the local television station holds exclusive distribution rights, upon the request of the local station, or to negotiate an alternate means of compensation with the local station or its industry association (known as "program deletion");⁴
- (d) where the BDU is retransmitting a program from a local station at the same time as it is retransmitting the same program from an American station on a different channel, to delete the signal of the American station and substitute the local station's program signal and advertisements in place of those appearing on the

² This requirement is set out in sections 17 and 41 of the *Broadcasting Distribution Regulations*.

³ This requirement was included in former section 17(2) of the *Broadcasting Distribution Regulations*, which was revoked effective September 1, 2011.

⁴ This requirement is set out in section 51(1)(b) of the *Broadcasting Distribution Regulations*.

American station, upon the request of the local television station (known as “simultaneous substitution”);⁵

- (e) to contribute 1.5% of the BDU’s gross revenues to a local programming improvement fund, accessible by local television stations in non-metropolitan markets (known as the “Local Programming Improvement Fund” or the “LPIF”);⁶
- (f) for direct-to-home satellite BDUs, to contribute 0.4% of their gross revenues to the Small Market Local Production Fund, an independent production fund established to assist small market, independently owned television stations in meeting their commitments to local programming;⁷
- (g) to contribute a portion of the BDU’s revenue to the Canada Media Fund (formerly known as the Canadian Television Fund and the Cable Production Fund), accessible by independent producers to aid in the funding of Canadian programming commissioned by local television stations;⁸ and
- (h) to obtain, through a free market negotiation that may involve the payment of compensation, the consent of a local television station in order for the BDU to distribute that local station’s signal to subscribers outside of the station’s local market (for example, a BDU would require the consent of a Toronto local station

⁵ This requirement is set out in sections 38 and 51(1)(a) of the *Broadcasting Distribution Regulations*.

⁶ This requirement is set out in sections 35 and 52(c) of the *Broadcasting Distribution Regulations*.

⁷ This requirement is set out in section 52(b) of the *Broadcasting Distribution Regulations*.

⁸ This requirement is set out in sections 34(1)(a) and 52(a) of the *Broadcasting Distribution Regulations*.

to retransmit that station's signal to BDU subscribers in Vancouver) (known as the "Distant Signal Regime").⁹

28. These regulations are designed to further the policy objectives of the *Broadcasting Act*, including, among other things, the objective of ensuring that each element of the single Canadian broadcasting system is contributing appropriately, and ensuring that local television stations have the means to contribute significantly, to the creation and presentation of Canadian programming of high standards.

(b) The CRTC Determines that, in Order to Fulfill Canadian Broadcasting Policy, There Is a Need for Change, Namely, a Need for the Option to Negotiate Regime

29. In 2009, the CRTC recognized that, notwithstanding the above-noted regulations, the financial state of local stations was rapidly deteriorating. Accordingly, it indicated that it would review ways in which "revenue support" could be provided for local stations, including by "exploring a mechanism for establishing, through negotiation, fair market value for the signals of the conventional television stations distributed by broadcasting distribution undertakings" in local markets.

Broadcasting Decision CRTC 2009-279 (15 May 2009) - *Renewal of the broadcasting licences for private conventional television stations considered at the 27 April 2009 Gatineau public hearing – Initial decisions and scope of subsequent policy proceeding*, at para. 3, Exhibit "M" to the Goldstein Affidavit, Joint Record of the Appellants, Vol. XVI, Tab 116, page 797.

30. Section 15(1) of the *Broadcasting Act* provides that, upon request of the Governor in Council, the CRTC shall "hold hearings or make reports on any matter within the jurisdiction of the [CRTC]". Pursuant to that section, on September 16, 2009, by Order in Council, the

⁹ This requirement is set out in sections 21 and 49 of the *Broadcasting Distribution Regulations*.

Governor in Council requested the CRTC to hold hearings and report on “the implications and the advisability of implementing a compensation for the value of the local television signal regime”.

Order in Council 2009-1569, 16 September 2009 (“OIC 2009-1569”), at page 2, Exhibit “F49” to the Affidavit of Sonia Atwell, sworn May 7, 2010 (“Atwell Affidavit”), Joint Record of the Appellants, Vol. IX, Tab 61 at page 130.

31. Further to the Order in Council, the CRTC conducted an exhaustive public hearing process, which included the review of 289 written submissions from industry participants and over 150,000 from the general public, and the hearing of oral submissions of 53 participants over 10 days.

32. On March 23, 2010, following the completion of the public hearing process, the CRTC released its decision. The CRTC found as a fact that “the system is not working well in ... ensuring that conventional television broadcasters have the means to continue to meet their obligations under the Act”. The CRTC stated:

[T]here has been a reduction in the ability of conventional television broadcasters to meet their obligations effectively, under the Act, to contribute to the creation and presentation of Canadian programming of a high standard.

Broadcasting Regulatory Policy CRTC 2010-167 (22 March 2010) Re: *A group-based approach to the licensing of private television services* (“Policy 2010-167), at paras. 159-162, Exhibit “E” to the Affidavit of Scott Hutton, sworn March 31, 2010 (“Hutton Affidavit”), Joint Record of the Appellants, Vol. II, Tab 10, pages 32-33.

33. The CRTC made that finding in light of the ongoing erosion of the revenues and profit of local stations, which contrasted with increasing revenues of BDUs. The CRTC described the change in the relative economic strength of television stations as compared to BDUs as “a significant shift in market positions”:

. . . BDU revenues have, since 1971, continued to grow at a far greater rate than those of television stations. In that year, private television revenues were \$115.8 million, which compared very favourably with cable revenues of \$66.6 million. In 2009, the positions had become reversed. Cable BDU basic and non-basic revenues were \$5.1 billion, and DTH [direct-to-home] and multipoint distribution system basic and non-basic revenues were a further \$2.2 billion, for a total of \$7.3 billion. Private television revenues trailed far behind at \$2.2 billion. Revenue figures do not tell the complete story, but the dramatic change in proportions indicates a significant shift in market positions.

Policy 2010-167, at para. 160, Exhibit "E" to the Hutton Affidavit, Joint Record of the Appellants, Vol. II, Tab 10, page 32.

34. The CRTC determined that a key reason for the economic decline of local television stations is that, unlike specialty channels, local television stations are not compensated by BDUs for the distribution of their signals:

A large piece of the puzzle is that private conventional television broadcasters, unlike specialties, are not paid for their signals by the BDUs that carry those signals.

Policy 2010-167, at para. 161, Exhibit "E" to the Hutton Affidavit, Joint Record of the Appellants, Vol. II, Tab 10, page 33.

35. In light of these findings, the CRTC determined that an option to negotiate regime, in which market forces can function effectively to determine the fair value of programming services, is necessary in order to fulfil the policy objectives set out in section 3(1) of the *Broadcasting Act*:

[T]he Commission finds that, in order to fulfil the policy objectives set out in section 3(1) of the Act, the system needs revision so as to permit privately-owned television broadcasters to negotiate with BDUs to establish the fair value of the product provided by those broadcasters to BDUs. The system should be such that privately-owned broadcasters that own programs or have paid for the exclusive right to disseminate programs can negotiate for payment with BDUs, which, in turn, further disseminate those programs.

Policy 2010-167, at para. 163, Exhibit "E" to the Hutton Affidavit, Joint Record of the Appellants, Vol. II, Tab 10, page 33.

36. None of the above findings has been challenged by the Appellants.

(c) The Proposed Option to Negotiate Regime

37. The CRTC's option to negotiate regime is designed to create an opportunity for the provision of revenue support for local stations, so that they can continue their role as a key element of the Canadian broadcasting system by providing high quality programming and making maximum use of Canadian creative and other resources. That revenue support is to be provided by BDUs, which, as an element of the Canadian broadcasting system, are required to contribute to Canadian broadcasting policy objectives, which objectives include ensuring that local television stations provide high quality programming. As such, the proposed regime is consistent with, and complementary to, the CRTC's existing broadcasting regulatory framework, which has always imposed certain requirements on BDUs (as noted above) with respect to the BDUs' retransmission of local stations. The proposed regime is also consistent with the practice of the CRTC to adjust and re-calibrate the relationship between local stations and BDUs, from time to time, as changing circumstances warrant, in order to fulfil the objectives under the *Broadcasting Act*.

38. The option to negotiate regime as proposed by the CRTC would operate as follows:

- (a) Every three years, private local television stations would have the option either to:
 - (i) negotiate with BDUs for the value (whether in a monetary or non-monetary

form) of the distribution of their local television signals; or (ii) continue to enjoy the benefit of the existing regulatory protections.

- (b) If a local television station chose option (ii), it would continue to enjoy all of the currently existing regulatory protections for private local television stations (described above at paragraph 27), including mandatory carriage, program deletion, simultaneous substitution, and any payments to individual stations or funds approved by the CRTC in lieu of these obligations, including payments for the carriage of distant signals under the Distant Signal Regime.
- (c) If a local television station chose option (i), it would forego all of the aforementioned existing regulatory protections, although it could reacquire some or all by negotiation. If the local station and BDU are unable to agree upon terms of carriage for the distribution of the station's signal, including the value of the local television signal (monetary or non-monetary), the BDU will not be required to carry the local station's signal, and the local station could require the BDU to delete any program owned by that local television station or for which it has acquired exclusive contractual exhibition rights.

Policy 2010-167, at para. 164, Exhibit "E" to the Hutton Affidavit, Joint Record of the Appellants, Vol. II, Tab 10, pages 33-35.

39. It should also be noted that, if the option to negotiate regime is selected by a local television station, the relationship between the station and the relevant BDUs will still be subject to the continuous oversight of the CRTC. For example, the proposed regime contemplates that the CRTC may intervene in negotiations in cases where the parties are not negotiating in good faith. The CRTC may also consider acting as arbitrator, where both parties make the request.

Moreover, every three years, local stations will have to elect whether to avail themselves of the option to negotiate regime.

Policy 2010-167, at paras. 164(2) and 164 (3)(f), Exhibit “E” to the Hutton Affidavit, Joint Record of the Appellants, Vol. II, Tab 10, page 34.

40. As noted by the CRTC, the proposed option to negotiate regime “is consistent with the market-based negotiations that increasingly prevail on all other platforms, including discretionary [i.e. pay and specialty] services, VOD [i.e. video-on-demand], and online and mobile platforms”. For example, as noted above, BDUs currently engage in market-based negotiation with certain specialty television broadcasters, such as the Food Network and TSN, for the carriage of their signals, and are required by the Distant Signal Regime to negotiate with television stations to retransmit distant signals.

Policy 2010-167, at para. 163, Exhibit “E” to the Hutton Affidavit, Joint Record of the Appellants, Vol. II, Tab 10, page 33.

41. As noted above, the option to negotiate regime is simply the latest addition to a long line of regulatory measures that the CRTC has implemented requiring BDUs to provide benefits to local stations (such as mandatory carriage, program deletion and simultaneous substitution) in exchange for the right to carry their respective signals. It is also consistent with the CRTC’s approach of using market-based solutions when appropriate.

Broadcasting Public Notice CRTC 2008-100 (30 October 2008) – *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, at paras. 302-303 and 355, Exhibit “J” to the Goldstein Affidavit, Record of the Respondents, Bell Media Inc. (formerly CTVglobemedia Inc.), Newfoundland Broadcasting Co. Ltd. and V Interactions Inc”), Tab 2, pages 62 and 70.

Broadcasting Distribution Regulations, SOR/97-555, ss. 29 and 44.

42. The option to negotiate regime is no different from the broadcasting regime in place for other types of television signals. Indeed, the distribution by a BDU of a local television signal in its local market is the *only* instance where a BDU can distribute a television signal without the prior consent of the broadcaster of that signal. In all other instances and for all other television signals, negotiated prior consent (which may entail compensation) is mandatory.¹⁰

43. The BDUs have never challenged the jurisdiction of the CRTC to impose any of the currently existing regulations which require them, as conditions of their operating and retransmitting signals, to directly or indirectly provide monetary and non-monetary support to local stations, including the obligation to contribute 1.5% of gross revenues to the Local Programming Improvement Fund, or any of the above-noted market-based value for signal negotiation regimes in place today.

(d) The Decision Under Appeal

44. The majority of the Federal Court of Appeal answered the Reference Question in the affirmative, holding that “the *Broadcasting Act* empowers the Canadian Radio-television and Telecommunications Commission to establish a regime to enable private local television stations to choose to negotiate with broadcasting distribution undertakings a fair value in exchange for the distribution of the programming services broadcast by those local television stations.”

Judgment and Reasons for Judgment of the Federal Court of Appeal, *Reference re Broadcasting Act (Can.)* 2011 FCA 64, dated February 28, 2011 (“FCA Decision”), at para. 48, Joint Record of the Appellants, Vol. I, Tab 3, page 49.

¹⁰ Thus, negotiated prior consent is needed in order for a BDU to distribute: local television signals in distant markets; specialty services; pay television services; pay-per-view services; and video-on-demand services.

45. Writing for the majority, Sharlow J.A. began by noting that the CRTC's mandate "to regulate and supervise all aspects of the Canadian broadcasting system" is "broad and comprehensive" and that it requires the Commission to act with a view to implementing the broadcasting policy as set out in section 3(1) of the *Act*.

FCA Decision, at paras. 15, 20-21, Joint Record of the Appellants, Vol. I, Tab 3, pages 29, 31-38.

46. She noted that the CRTC had determined, as a fact, that a value-for-signal regime was "necessary to fulfil the objectives of the broadcasting policy stated in subsection 3(1)" of the *Act*, in particular the policy set out in section 3(1)(e) and 3(1)(f) of the *Act*. Given that there was no question that the value for signal regime was designed to further the policy set out in those two sections of the *Act*, she concluded that its implementation was within the jurisdiction of the CRTC, subject only to certain arguments raised by the Appellants with respect to the *Copyright Act*.

FCA Decision, at paras. 26 and 28, Joint Record of the Appellants, Vol. I, Tab 3, pages 40-41.

47. In that regard, Sharlow J.A. noted that the question to be determined was whether the proposed option to negotiate regime "necessarily conflicts with the *Copyright Act*". In considering the *Copyright Act*, although Sharlow J.A. erroneously held that the copyright in a broadcast signal granted by section 21(1) of the *Act* included "the sole right to authorize a BDU to retransmit those signals to the public" (in fact, the rights credited under that section exclude BDUs), this error was not material to the correctness of the decision she reached.

FCA Decision, at paras. 32-33, Joint Record of the Appellants, Vol. I, Tab 3, pages 42-43.

48. Sharlow J.A. went on to consider section 31(2) of the *Copyright Act* and noted that section 31(2)(b) expressly provides that the retransmission of a broadcast signal must be lawful under the *Broadcasting Act*, in order to avoid infringing whatever copyrights might be implicated. She stated:

Parliament has permitted the Commission to limit the transmission rights under subsection 31(2) by imposing any regulatory or licensing condition consistent with the Commission's statutory mandate as stated in the *Broadcasting Act*.

FCA Decision, at para. 39, Joint Record of the Appellants, Vol. I, Tab 3, page 46.

49. She went on to note that “the proposed value for signal regime is different only in degree, not in kind, substance or function” from the existing CRTC policies that require BDUs to compensate private local television stations in respect of retransmission of their signals, in both monetary and non-monetary form (e.g., mandatory carriage, preferential channel placement, simultaneous distribution, the Local Programming Improvement Fund, and the Distant Signal Regime).

FCA Decision, at paras. 41-42, Joint Record of the Appellants, Vol. I, Tab 3, pages 46-47.

50. She rejected the argument that the legislative history of the *Copyright Act* revealed a legislative policy that would be defeated by the option to negotiate regime. She said:

[T]he record discloses no hint that Parliament or the Government of Canada would consider such a regime to be an improper or undesirable intrusion into copyright policy.

FCA Decision, at para. 44, Joint Record of the Appellants, Vol. I, Tab 3, pages 47-48.

51. Finally, she found that there was no merit to the BDUs' suggestion that the proposed regime would undermine Canada's stated position in relation to the negotiation of international treaties, given that the Government had not taken such a position either before the CRTC or before the Court.

FCA Decision, at para. 45, Joint Record of the Appellants, Vol. I, Tab 3, page 48.

52. Accordingly, the majority held that "nothing in the *Copyright Act* or its legislative history precludes the Commission from adopting the proposed value for signal regime".

FCA Decision, at para. 47, Joint Record of the Appellants, Vol. I, Tab 3, page 48.

53. Nadon, J.A. dissented, largely based on his view that the proposed option to negotiate regime conflicted with section 31(2)(d) of the *Copyright Act*, which provides that copyright royalties must be paid in the case of the retransmission of a distant signal. In reaching his conclusion, he characterized the option to negotiate regime as tantamount to the creation of a copyright (and a related right to royalties) in the local stations' broadcast signals.

FCA Decision, at paras. 71 and 78-79, Joint Record of the Appellants, Vol. I, Tab 3, pages 56 and 57-58.

54. Without referring to any of the law relating to the interpretation of one statute in light of another or relating to what is required to determine whether there is a conflict between two legislative regimes, Nadon J.A. found what he considered to be conflict between the provisions of the *Copyright Act* and the option to negotiate regime, and then, in light of that conflict, concluded that the option to negotiate regime was *ultra vires* the CRTC.

FCA Decision at paras. 65-73, Joint Record of the Appellants, Vol. I, Tab 3, pages 54-56.

PART II – QUESTION IN ISSUE

55. The sole issue in this appeal is whether the majority of the Federal Court of Appeal was correct in holding that “the *Broadcasting Act* empowers the Canadian Radio-television and Telecommunications Commission to establish a regime to enable private local television stations to choose the negotiate with broadcasting distribution undertakings a fair value in exchange for the distribution of the programming services broadcast by those local television stations”.

56. The Respondents respectfully submit that the answer to this question is “Yes”.

PART III – STATEMENT OF ARGUMENT

(a) The *Broadcasting Act* Grants Jurisdiction to the CRTC to Implement The Option to Negotiate Regime

(i) The Statutory Powers of the CRTC

57. The modern approach to statutory interpretation adopted by this Court was formulated by Driedger as follows:

[T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

As quoted with approval in *Barrie Public Utilities v. Canadian Cable Television Assn.*, [2003] 1 S.C.R. 476 at para. 20, Joint Book of Authorities of the Respondents, Bell Media Inc. (formerly CTVglobemedia Inc.), V Interactions Inc. and Newfoundland Broadcasting Company Limited (“Respondents’ Book of Authorities”), Tab 3.

58. This modern approach is confirmed by section 12 of the *Interpretation Act*, which provides that “[a]n enactment shall be construed as being remedial, and shall be given the fair,

large and liberal construction and interpretation that best ensures the attainment of its objects”.

This Court has articulated and applied this interpretive approach specifically in relation to the *Broadcasting Act*.

Bell ExpressVu Limited Partnership v. Rex, [2002] 2 S.C.R. 559 at para. 26, Respondents’ Book of Authorities, Tab 5.

Interpretation Act, R.S.C. 1985, c. I-21, s. 12, Respondents’ Book of Authorities, Tab 35.

59. The interpretation of the *Broadcasting Act* requires an examination of its structure. The *Act* does not contain limited conferrals of power which are then to be interpreted in light of a policy; rather, it sets a policy, and confers a broad and general mandate on the CRTC to implement it. Thus, the *Act* imposes very few restrictions on the CRTC’s authority to regulate to accomplish its objective. Indeed, courts have called the magnitude of the CRTC’s responsibility over broadcasting “formidable”, describing it as a specialized, expert, independent agency with extensive powers to regulate and supervise all aspects of the Canadian broadcasting system.

Shaw Cable Systems (SMB) Ltd. v. MTS Communications Inc., 2006 MBCA 29 at para. 12, Respondents’ Book of Authorities, Tab 25.

Canadian Broadcasting Corp. v. Metromédia CMR Montreal Inc., [1999] F.C.J. No. 1637 at para. 2 (F.C.A.), Respondents’ Book of Authorities, Tab 8.

60. Section 3(1) of the *Broadcasting Act* declares the “broadcasting policy for Canada”, setting out forty-two specific objectives of that policy. Section 3(2) of the *Broadcasting Act* provides that the broadcasting policy objectives are to be achieved by providing for the regulation and supervision by a single independent regulator – the CRTC:

It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

Broadcasting Act, s. 3(2)

61. Section 5(1) of the *Act* grants the CRTC broad powers to implement those objectives, stating:

. . . [T]he 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 doing, shall have regard to the regulatory policy set out in subsection (2).

Broadcasting Act, s. 5(1)

62. Section 5(2) of the *Broadcasting Act* requires the CRTC to regulate and supervise the Canadian broadcasting system in a flexible manner that, among other things, is readily adaptable to scientific and technological change, facilitates the provision of broadcasting and Canadian programs to Canadians, and is sensitive to the administrative burden that may be imposed on persons carrying on broadcasting undertakings. It provides as follows:

The Canadian broadcasting system should be regulated and supervised in a flexible manner that

- (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.

Broadcasting Act, s. 5(2)

63. The *Broadcasting Act* does not prescribe the specific manner in which the various aspects of broadcasting policy are to be implemented; rather this is left to be established by the CRTC through the exercise of: (i) the regulation-making powers conferred upon it pursuant to section 10, and (ii) the general licensing powers conferred upon it pursuant to section 9.¹¹

64. With respect to its regulation-making power, section 10(1)(g) of the *Broadcasting Act* empowers the CRTC, “in furtherance of its objects”, to make regulations “respecting the carriage of any . . . programming services by distribution undertakings”. In addition, section 10(1)(k) confers upon the CRTC the broad discretion to make regulations “respecting such other matters as it deems necessary for the furtherance of its objects”. The CRTC’s objects are the implementation of broadcasting policy.

65. Similarly, the CRTC’s licensing powers contained in section 9 of the *Broadcasting Act* relate directly to the implementation of broadcasting policy set out in section 3(1). Thus, section 9(1)(b)(i) provides that the CRTC may issue licences subject to such terms and conditions as it deems appropriate for the implementation of Canadian broadcasting policy. And section 9(1)(h) provides that the CRTC “may, in furtherance of its objects, 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

¹¹ In addition, the CRTC has the power, under section 6, to issue policy guidelines and statements with respect to any matter within its jurisdiction, but no such guidelines or statements are binding on it.

Commission”. Thus, sections 9(1)(b)(i) and 9(1)(h) empower the CRTC to dictate the terms of the carriage relationship between broadcasters and BDUs in furtherance of the objectives contained in section 3(1) of the *Broadcasting Act*.

66. It is important to note that the requirement to be licensed, and to comply with licence conditions imposed, and regulations enacted, by the CRTC is the precondition of the ability of a BDU to retransmit a broadcast signal at all. BDUs do not, as the Appellants suggest, obtain their “right” to retransmit from any absence of copyright protection for the signals of local television stations. They only obtain that “right” from, and subject to, the licence issued and regulations passed by the CRTC. Section 32(1) of the *Broadcasting Act* provides that it is unlawful to act as a BDU without a licence (or licence exemption) from the CRTC:

Every person who, not being exempt from the requirement to hold a licence, carries on a broadcasting undertaking without a licence therefor is guilty of an offence punishable on summary conviction . . .

Broadcasting Act, s. 32(1)

67. Section 32(2) provides that it is unlawful to fail to comply with any regulation made under the *Broadcasting Act*:

Every person who contravenes or fails to comply with any regulation or order made under this Part is guilty of an offence punishable on summary conviction . . .

Broadcasting Act, s. 32(2)

68. Section 33 provides that it is unlawful to fail to comply with a condition of licence issued by the CRTC under the *Broadcasting Act*:

Every person who contravenes or fails to comply with any condition of a licence issued to the person is guilty of an offence punishable on summary conviction . . .

Broadcasting Act, s. 33

69. Thus, the CRTC is empowered under the *Broadcasting Act* to act as the single independent regulatory authority for the distribution of all television signals by BDUs, including local and distant television signals. In order to lawfully retransmit a television signal (whether in local or distant markets), the following conditions must be met by the BDU:

- (a) The BDU must be licensed (or exempted from licensing) by the CRTC pursuant to its licensing powers set out in section 9 of the *Broadcasting Act*, and must adhere to the conditions of its licence.

Broadcasting Act, s. 9(1) and (4), 32(1) and 33.

- (b) The BDU must adhere to the *Broadcasting Distribution Regulations* enacted by the CRTC pursuant to its powers in section 10 of the *Broadcasting Act* to make regulations respecting the carriage of programming services by BDUs and respecting such other matters as it deems necessary for the furtherance of its objects.

Broadcasting Act, s. 10(1)(g) and (k).

- (c) The BDU must adhere to any CRTC requirement to carry, on such terms and conditions as the CRTC deems appropriate, the programming services specified by the CRTC.

Broadcasting Act, s. 9(1)(h).

- (d) The BDU must adhere to the general prohibition in the *Broadcasting Distribution Regulations* that a BDU shall not distribute programming services, except as required or authorized under its licence or those Regulations.

Broadcasting Distribution Regulations, s. 3.

- (ii) ***The Test for Assessing the Jurisdictional Validity of a Regulatory or Licensing Measure Imposed by the CRTC***

70. This Court has recognized that the CRTC has wide latitude and discretion to determine what may be necessary in a particular case for the furtherance of the objectives under the *Broadcasting Act*:

It is obvious from the broad language of the Act that Parliament intended to give to the Commission a wide latitude with respect to the making of regulations to implement the policies and objects for which the Commission was created.

CKOY Ltd. v. The Queen, [1979] 1 S.C.R. 2 at 12, quoting with approval from *Regina v. CKOY Ltd.* (1977), 13 O.R. (2d) 156 at 162 (C.A.), Respondents' Book of Authorities, Tab 12.

71. In the *CKOY* decision, this Court set out the test for assessing the validity of a regulatory measure imposed by the CRTC as follows:

. . . [T]he validity of any regulation enacted in reliance upon [section 10 of the *Broadcasting Act*] must be tested by determining whether the regulation deals with a class of subject referred to in section 3 of the statute and that in doing so the Court looks at the regulation objectively. . . . Thus, whether the regulation or other regulatory measure will be successful in achieving the policy objectives is not relevant to the court's analysis, so long as it falls within the objectives of the *Broadcasting Act*.

CKOY Ltd. v. The Queen, [1979] 1 S.C.R. 2 at 11, Respondents' Book of Authorities, Tab 12.

72. Furthermore, the CRTC's power to supervise and regulate the Canadian broadcasting system to allow it to implement the broadcasting policy set out in section 3 of the *Broadcasting Act* has been described as "extensive" by the Federal Court of Appeal.

Canadian Broadcasting Corporation v. Métromédia CMR Montréal Inc. et al. [1999] F.C.J. No. 1637 (F.C.A.) at para. 2, Respondents' Book of Authorities, Tab 8.

73. Thus, the regulatory and licensing powers of the CRTC are very broad. The extent of those powers is determined by whether they deal with a subject in section 3(1) of the *Act*. They have been held to be broad enough to cover the imposition of financial levies on broadcast system participants. For example, the CRTC has, pursuant to sections 3, 5, and 9 of the *Broadcasting Act*, imposed conditions of licence requiring a pay-per-view licensee to share with others the revenues earned by it from the distribution of any feature film. This Court held that the CRTC had jurisdiction to impose such a condition, because the levy would "provide strong support for Canada's film distribution industry, which is an important element of the broadcasting system". The Court stated:

The reference to the film distribution industry as "an important element of the broadcasting system" provides a clear link to the Commission's objects in subsection 5(1) of the Act and the broadcasting policy in subsection 3(1).

Canadian Motion Picture Distributors Association v. Partners of Viewer's Choice Canada, [1996] F.C.J. No. 894 (F.C.A.), at para. 6, Respondents' Book of Authorities, Tab 9.

(iii) *The Option to Negotiate Regime Is Designed to Implement the Broadcasting Policy Objectives Set Out in the Broadcasting Act*

74. Underlying the option to negotiate regime is the CRTC's finding, made following its lengthy public hearing process, that such a regime is needed in order to achieve the objectives of the *Broadcasting Act*. The CRTC expressly stated that it was guided by the following specific

objectives of the *Broadcasting Act* in reaching its conclusion that the option to negotiate regime was necessary to fulfill those objectives: section 3(1)(e), which provides that “each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming”, and section 3(1)(f) which provides that “each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian ... resources ...”.

Policy 2010-167, at para. 152, Exhibit “E” to the Hutton Affidavit, Joint Record of the Appellants, Vol. II, Tab 10, page 31.

75. The option to negotiate regime not only deals with the class of subjects in sections 3(1)(e) and (f), it also addresses the specific policy objectives governing the relationship between local stations and BDUs in other parts of section 3(1). For example, section 3(1)(t) provides that BDUs:

- (a) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations;
- (b) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost; and
- (c) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services.

Broadcasting Act, s. 3(1)(t)(i)-(iii)

76. Furthermore, section 3(1)(s) speaks to the goal of having private television stations create Canadian programming and makes specific reference to financial and other resources available to them. It provides:

[P]rivate networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,

- (i) contribute significantly to the creation and presentation of Canadian programming, and
- (ii) be responsive to the evolving demands of the public.

Broadcasting Act, s. 3(1)(s)

77. Thus, together, sections 3(1)(s) and 3(1)(t) create a link between content and carriage, recognizing that the creation and presentation of content by local stations is tied to the terms on which the stations are carried by BDUs and the financial resources that can be made available to them.

78. The option to negotiate regime thus has a strong nexus to the fulfillment of broadcasting policy set out by Parliament in section 3(1) of the *Act*. This conclusion is only strengthened when one considers that the option to negotiate regime, while giving local stations the opportunity for revenue support through obtaining value for their signals, is part of a broader regulatory framework proposed by the CRTC which will also require local stations to spend approximately 30% of their gross revenues on Canadian programming (including any revenue received by virtue of the option to negotiate regime), with 5% dedicated to “programs of national interest”. The CRTC’s jurisdiction to determine the manner in which these revenues are spent by local stations has not been challenged by the BDUs, further supporting the view that the CRTC has jurisdiction to determine the manner in which these revenues may be earned.

Policy 2010-167, at paras. 50, 75 and 155-164, Exhibit "E" to the Hutton Affidavit, Joint Record of the Appellants, Vol. II, Tab 10, pages 12, 16 and 31-35.

79. There is thus no doubt that the option to negotiate regime deals with a class of subjects addressed in section 3 of the *Broadcasting Act*. Among other things, the regime deals with:

- (a) the objective that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming; (section 3(1)(e))
- (b) the objective that each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian resources; (section 3(1)(f))
- (c) the objective that the programming originated by broadcasting undertakings should be of high standard; (section 3(1)(g))
- (d) the objective that private networks and programming undertakings should, to an extent consistent the financial and other resources available to them, contribute significantly to the creation and presentation of Canadian programming; (section 3(1)(s))
- (e) the objective that distribution undertakings should give priority to the carriage of Canadian programming undertakings and, in particular, to the carriage of local television stations; (section 3(1)(t)(i)) and
- (f) the objective that distribution undertakings should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual

arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services. (section 3(1)(t)(iii))

80. Dealing as it does with “a class of subject referred to in section 3” of the *Broadcasting Act*, the proposed option to negotiate regime satisfies the test laid out by this Court for assessing the validity of a CRTC regulation or licensing condition.

CKOY Ltd. v. The Queen, [1979] 1 S.C.R. 2 at 11-12, Respondents’ Book of Authorities, Tab 12.

81. Given that the *Broadcasting Act* grants jurisdiction to implement the option to negotiate regime, any question as to the wisdom of implementing the regime is a question that is solely for the CRTC; the courts will not second guess the regulator’s determination in that regard. This is made clear in *CKOY*, where the court specifically stated that whether a measure will be successful in achieving policy objectives is irrelevant to questions of validity or jurisdiction. Similarly, as was stated in *Mercier v. Canada (Correctional Service)*, where the Federal Court of Appeal quoted cited with approval the following passage from *Jafari v. Canada (Minister of Employment and Immigration)*:

It goes without saying that it is not for a court to determine the wisdom of delegated legislation or to assess its validity on the basis of the court’s policy preferences. The essential question for the court always is: does the statutory grant of authority permit this particular delegated legislation?

Mercier v. Canada (Correctional Service), [2010] F.C.J. No. 816, at para. 76, Respondents’ Book of Authorities, Tab 20.

(iv) ***The Case Law Cited by the Appellants Makes It Clear that the CRTC Has Jurisdiction Under the Broadcasting Act to Implement the Option to Negotiate Regime***

82. The Appellants argue that this Court's decisions in *Barrie Public Utilities*, *ATCO* and *Bell Canada (2009)* support their argument that it is not sufficient to show that the proposed option to negotiate regime falls within the class of subjects enumerated in section 3 of the *Broadcasting Act* for the regime to be valid. The Appellants' argument is misguided. *Barrie Public Utilities* and *ATCO* both dealt with very different statutory provisions, and the decision in *Bell Canada (2009)* supports the view that the CRTC *has* jurisdiction under the *Broadcasting Act*.

See in this regard, the Factum of the Appellant, Cogeco Cable Inc. ("Cogeco Factum"), at paras. 60-67; Factum of the Appellant, Shaw Communications Inc. ("Shaw Factum"), at paras. 36 and 114-116.

83. In *Barrie Public Utilities*, the question before the Court was whether section 43(5) of the *Telecommunications Act* granted jurisdiction to the CRTC over the power poles of provincially regulated electric power providers. The Court found that the plain meaning of the section (i.e. the words of the section, read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme and object of the *Act* and the intention of Parliament) granted the CRTC jurisdiction only over poles that were used to transmit telecommunications (as opposed to electricity). Therefore, on its plain meaning, section 43(5) did not grant to the CRTC jurisdiction over power poles.

Barrie Public Utilities v. Canadian Cable Television Assn., [2003] 1 S.C.R. 476 at paras. 32, 34, 36 and 43, Respondents' Book of Authorities, Tab 3.

84. The Court went on to explain that, given that the statutory provision in question did not, in fact, grant jurisdiction over power poles, it was not proper to use statements of policy to expand or modify the jurisdiction-granting provision; to do so would amount to using the statements of policy to set aside Parliament's clear statement of intent with respect to the CRTC's jurisdiction.

Barrie Public Utilities v. Canadian Cable Television Assn., [2003] 1 S.C.R. 476 at para. 42, Respondents' Book of Authorities, Tab 3.

85. Similarly, in the *ATCO* case, the question before the Court was whether the Alberta Energy Board had the jurisdiction to order a utility to share with its customers a portion of the proceeds from the sale of one of its assets. The Court first found that there was no provision that expressly granted the jurisdiction to the Board to order the utility to share the sale proceeds with its customers. It then went on to consider whether a statutory provision that granted the Board the power, when making an order, to "impose any additional condition that the Board considers necessary in the public interest", granted the jurisdiction in question.

ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140 at paras. 45-46 and 50, Respondents' Book of Authorities, Tab 1.

86. The Court held that no such jurisdiction was granted. In reaching this conclusion, the Court noted that there was no suggestion that such a jurisdiction was in any way necessary in order for the Board to accomplish the objects prescribed by the legislature.

ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140 at para. 77, Respondents' Book of Authorities, Tab 1.

87. By contrast, the present case does not involve an attempt to use policy objectives to expand upon a specific, although limited statutory grant of power. Sections 5(1), 9 and 10 of

the *Broadcasting Act* confer power on the CRTC. Section 5(1) expressly states that the CRTC's mandate is to "regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy" set out in section 3(1) of the *Act*. Sections 9 and 10 give licensing and regulation-making powers expressly to implement broadcasting policy. Accordingly, so long as the option to negotiate regime is being enacted "with a view to implementing" one or more aspects of the broadcasting policy (which, as discussed above, it clearly is), then the CRTC has the express jurisdiction to enact that regime. Thus, the discussions in *Barrie Public Utilities* and in *ATCO* with respect to whether it is permissible to use policy statements to expand upon or modify express jurisdictional grants simply have no application. In the present case, the power-conferring provisions (such as the provisions granting the power to grant licences and to impose conditions on those licences, and the power to make regulations) are expressly intended and stated to empower the CRTC to implement the policy objectives. As a result, there is no need to expand upon that power in order to ground the jurisdiction to implement the option to negotiate regime.

88. This case is thus akin to *Bell Canada (2009)*, which dealt with the rate-setting authority of the CRTC under the *Telecommunications Act*. The Appellants in that case argued that the CRTC did not have jurisdiction to order telephone carriers to pay rebates to their respective customers. This Court rejected that argument. In reaching its conclusion, the Court noted that the issues raised in the appeal "go to the very heart of the CRTC's specialized expertise", and further noted that the CRTC is "obliged to exercise all of its powers and duties with a view to implementing the Canadian telecommunications policy objectives" set out in the *Telecommunications Act*.

Bell Canada v. Bell Aliant Regional Communications, [2009] 2 S.C.R. 764 (“*Bell 2009*”), at paras. 24 and 36, Respondents’ Book of Authorities, Tab 4.

89. As in the present case, the Appellants in *Bell Canada (2009)* relied upon the decisions in *Barrie Public Utilities* and *ATCO* in support of their arguments that the CRTC lacked the requisite jurisdiction. The Court held that those two decisions were distinguishable. Among other things, the Court repeated and emphasized that, in ordering the payment of rebates, “the CRTC was exercising a broad authority, which . . . it was required to do with a view to implementing the Canadian telecommunications policy objectives” set out in the statute, a fact which placed the CRTC’s decision “at the very core of its competence”. This stood in distinction to the statutory provisions that were at issue in *ATCO*. The Court stated:

The CRTC is statutorily authorized to adopt *any* method of determining just and reasonable rates. Furthermore, it is required to consider the statutory objectives in the exercise of its authority, in contrast to the permissive, free-floating direction to consider the public interest that existed in *ATCO*.

Bell 2009 at paras. 50 and 53, Respondents’ Book of Authorities, Tab 4.

90. Similarly, in the case at bar, the relevant provisions of the *Broadcasting Act* state that the CRTC is required to “consider the statutory objectives in the exercise of its authority” and to balance the interests of local television stations, BDUs and viewers in the broader context of fulfilling broadcasting policy under its core competence – licensing and regulation. It has done so and has determined that the implementation of the option to negotiate regime is required in order to fulfil the objectives of the *Broadcasting Act*, namely the implementation of broadcasting policy.

(v) ***The Option to Negotiate Regime Is Not Inconsistent With Government Policy***

91. Notwithstanding that the Reference Question relates to the interpretation of the *Broadcasting Act*, the Appellants have filed copious evidence on the legislative history of the *Copyright Act* and the federal Government's stance on international treaty negotiations.¹² The issue of the effect of the *Copyright Act* is addressed below. The Appellants' argument about the "Government's" stance is simply misconceived.

92. First, the question of whether the CRTC has jurisdiction is a legal question, which cannot be affected by positions taken by the Government. But, if the Government's position is important, then that position is best revealed by the fact that it issued an Order in Council directing the CRTC to hold hearings and to report on a value-for-signal regime. That Order in Council was issued pursuant to section 15(1) of the *Broadcasting Act*, which provides as follows:

The Commission shall, on request of the Governor in Council, hold hearings or make reports on ***any matter within the jurisdiction of the Commission*** under this Act. [emphasis added]

Broadcasting Act, s. 15(1)

93. Clearly, the Government believed that the option to negotiate regime is within the jurisdiction of the CRTC or it would not have ordered the CRTC to review and report on this matter pursuant to section 15 of the *Broadcasting Act*.

¹² See Cogeco Factum at paras. 18-47.

And see the Factum of the Appellants, Rogers Communications Inc. and Telus Communications Company ("Telus Factum") at paras. 47-78.

And see Shaw Factum at paras. 40-57

94. Furthermore, contrary to the Appellants' claims:
- (a) the Government has chosen not to respond or take any action with respect to the OIC Report;
 - (b) the Governor in Council did not issue any direction to the CRTC with respect to the option to negotiate regime, as it could have pursuant to section 7 of the *Broadcasting Act*;
 - (c) the Attorney General has chosen not to participate in this proceeding or in that of the lower court; and
 - (d) the Government has not proposed to amend the *Broadcasting Act*, the *Copyright Act*, or any other legislative enactment so as to prevent the option to negotiate regime from being implemented. Bill C-11 and its predecessor, Bill C-32 both set out comprehensive proposed amendments to the *Copyright Act*. Bill C-32 received first reading on June 2, 2010, approximately three months after the CRTC referred this matter to the Federal Court of Appeal, and Bill C-11 was introduced in the House of Commons and received first reading on September 29, 2011, approximately one and a half years after the CRTC initiated this Reference. Both are silent on the issue.

(b) The Conclusion that the *Broadcasting Act* Grants Jurisdiction to the CRTC Is Not Affected by the *Copyright Act*

95. Given that the *Broadcasting Act* clearly grants jurisdiction to the CRTC to enact the option to negotiate regime, the question which arises is whether that jurisdiction is somehow

ousted by the *Copyright Act*. The various arguments advanced by the Appellants in this regard can be summarized as follows:

- (a) the option to negotiate regime will conflict with certain provisions of the *Copyright Act*; and
- (b) the *Copyright Act* is an exhaustive declaration of the law applicable to the retransmission of television signals, and accordingly the CRTC has no jurisdiction to pass rules or regulations relating to such retransmission.

96. Neither of these arguments withstands scrutiny.

97. Before addressing the specific arguments, it is necessary to note that a fundamental flaw is common to all of the arguments advanced by the Appellants. Those arguments all proceed on the basis that BDUs have a free-standing right to retransmit television signals which can only be limited by the *Copyright Act*. They further proceed on the basis that any interruption (or blackout) of a retransmission, or any obligation to pay to retransmit must be an incident of copyright.¹³ This is incorrect. The “right” of retransmission exists only as a result of a licence granted to the BDU in question by the CRTC under the *Broadcasting Act*. In other words, the starting point is that a BDU has no right to retransmit any television signal. It is only

¹³ See, e.g., Cogeco Factum at para. 88, where Cogeco argues that the option to negotiate regime is *ultra vires* the CRTC, because it creates a possibility of programs being blacked out, even though they “have fallen into the public domain”.

And see Cogeco Factum at para. 101, where Cogeco asserts that the *Copyright Act* “prevents anyone from blocking retransmission” of distant signals.

And see, e.g., Shaw Factum at para. 97ff., which speaks extensively of the “limited rights” granted to broadcasters by the *Copyright Act*, but fails entirely to consider the source of a BDU’s right to retransmit a television signal.

Similarly, see, e.g., Telus Factum at para. 117 which objects to the option to negotiate regime on the grounds that it “would take from retransmitters the right to retransmit without consent”.

pursuant to a licence granted by the CRTC, subject to whatever terms and conditions that are imposed by the CRTC, and subject to any regulations enacted by the CRTC, that the BDU acquires any right to retransmit television signals. It also follows that incidents of that “right” such as interruption or the requirement to make a payment are incidents of *Broadcasting Act* rights, not of copyright.

(i) *The Option to Negotiate Regime Does Not Conflict With the Copyright Act*

98. Contrary to what is argued by certain of the Appellants, there is nothing problematic, let alone anything that renders legislation inoperative, when two different statutory regimes apply to the same activity.¹⁴ Such a situation of legislative “overlap” is the inescapable (and very common) result of our federal system and of our modern regulatory state. This was explained by the Ontario Court of Appeal in *R. v. Dow Chemical Canada Inc.*:

It is not unusual for there to be a good deal of overlap between statutes. This is almost a *sine qua non* of a federal system of government. Federal and provincial laws often cover the same people, events and transactions. So, too, with laws enacted by a single provincial legislature. Many of those laws will overlap, and occasionally even duplicate each other.

R. v. Dow Chemical Canada Inc., [2000] O.J. No. 757 at para. 48 (C.A.), Respondents’ Book of Authorities, Tab 23.

99. The Appellants’ arguments equate overlap with conflict. Where two legislative regimes overlap, the interpretive exercise requires that the court first determine whether the two regimes conflict. If they do not, then it is presumed that Parliament intended both regimes to operate fully according to their respective terms. This presumption can only be rebutted if there

¹⁴ See, for example, paragraphs 90-93 and 99 of Cogeco Factum, where Cogeco argues that the option to negotiate regime is *ultra vires* the CRTC, because it “overlaps” with certain provisions of the *Copyright Act*.

is evidence that one of the regimes was intended to “provide an exhaustive declaration” of the law applicable to the activity or situation in question. This was explained by Professor Sullivan:

When two provisions are applicable without conflict to the same facts, it is presumed that each is meant to operate fully according to its terms. So long as overlapping provisions can apply, it is presumed that they are meant to apply. The only issue for the court is whether the presumption is rebutted by evidence that one of the provisions was intended to provide an exhaustive declaration of the applicable law.

Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Toronto: LexisNexis Canada Inc., 2008) at 326, Respondents’ Book of Authorities, Tab 29.

100. With respect to the first stage of the interpretive exercise – i.e. determining whether two statutory regimes conflict – the court will favour an interpretation that avoids such a conflict. Thus, this Court quoted with approval from *Driedger on the Construction of Statutes* in *R. v. Ulybel*:

[O]ther things being equal, interpretations that minimize the possibility of conflict or incoherence among different enactments are preferred.

R. v. Ulybel Enterprises Ltd., [2001] 2 S.C.R. 867 at para. 30, Respondents’ Book of Authorities, Tab 24.

Friends of Oldman River v. Canada, [1992] 1 S.C.R. 3 at 38-39, Respondents’ Book of Authorities, Tab 16.

101. Indeed, this Court has held that, even where two statutes appear on their face to conflict, the apparent conflict may be resolved by considering “Parliament’s true intent”.

See, for example, *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at paras. 44 and 50, Respondents’ Book of Authorities, Tab 11.

102. However, it must be remembered that a conflict is very different from an overlap. The interpretive exercise is focused on avoiding conflict between provisions – not avoiding overlap. As the Federal Court of Appeal stated in *Mercier v. Canada (Correctional Service)*:

The prevailing approach to resolving conflicts between legislation and subordinate legislation . . . in no way precludes overlap.

Mercier v. Canada (Correctional Service), [2010] F.C.J. No. 816, at para. 67, Respondents' Book of Authorities, Tab 20.

103. This point was also made by the Ontario Court of Appeal in *Dow Chemical*, where the court emphasized that overlap should not be mischaracterized as a conflict. In that case, the two overlapping statutes were the *Environmental Protection Act* and the *Occupational Health and Safety Act*. The Court said:

The EPA [*Environmental Protection Act*] and the OHSA [*Occupational Health and Safety Act*] are a clear example of laws which overlap in an entirely permissible fashion. The purpose of the EPA is to protect the natural environment and the people who live, work and play in it. The purpose of the OHSA is to protect work sites and workers. Incidents occur which implicate both statutes. . . .

... There is no conflict between the EPA and the OHSA. There is an overlap, perhaps even a duplication. But overlap and duplication are different from conflict.

R. v. Dow Chemical Canada Inc., [2000] O.J. No. 757 at paras. 49 and 51 (C.A.), Respondents' Book of Authorities, Tab 23.

104. As noted above, it is common for a business or activity to be affected or regulated, for different purposes, by more than one legislative regime. For example the sale of a BDU is subject to the prior approval of the CRTC; it may also be subject to merger review by the Commissioner of Competition if the transaction exceeds a prescribed value. Both regimes have

to be complied with in order for the transaction lawfully to proceed; there is no conflict between the two.

Broadcasting Distribution Regulations, s. 4(4)

Competition Act, R.S.C. 1985, c. C-34, s. 110, 114 and 123, as amended, Respondents' Book of Authorities, Tab 33

105. Thus, in the present case, the fact that BDUs' retransmission activities are subject to rights arising under the *Copyright Act* and are also subject to regulation under the *Broadcasting Act* in no way leads to the conclusion that the two regimes are in conflict. In order to determine whether a conflict really exists, it is necessary to consider each of the legislative provisions in its context and to review its legislative purpose in order to clarify its scope.

Quebec (Attorney General) v. Canada (Human Resources and Social Development), [2011] S.C.J. No. 60 at para. 26, Respondents' Book of Authorities, Tab 22.

106. Unavoidable or operational conflicts only "occur when two pieces of legislation are directly contradictory or where their concurrent application could lead to unreasonable or absurd results" and where the provisions accordingly "cannot stand together".

Lévis v. Fraternité des policiers de Lévis, [2007] 1 S.C.R. 591 at para. 47, Respondents' Book of Authorities, Tab 19.

Stoddard v. Watson, [1993] 2 S.C.R. 1069 at 1079, Respondents' Book of Authorities, Tab 26.

107. Such an operational conflict was considered by this Court in *British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd.* In that case, the CRTC and the Canada Labour Board had each made decisions within their respective jurisdictions with respect to which of two unions was authorized to do certain work. The two boards arrived at opposite conclusions. It

was thus impossible for the concerned parties to comply with both decisions and, as a result, the courts had to resolve the conflict by determining which statute was to prevail.

British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd., [1995] S.C.J. No. 54 at para. 80, Respondents' Book of Authorities, Tab 7.

108. A further example of a conflict is provided by the decision in *FCT Insurance Company v. Law Society of New Brunswick*, a case relied upon by Telus.¹⁵ In that case, a statute expressly provided that a particular form prescribed by the statute could be sworn by a commissioner of oaths. The Law Society of New Brunswick subsequently passed a rule mandating that the form in question only be sworn by a lawyer. Thus, the two legislative enactments were in direct conflict: one provided that the form in question could only be sworn by a lawyer, and the other provided that it could be sworn by a commissioner of oaths (who would not necessarily be a lawyer).

FCT Insurance Company v. Law Society of New Brunswick, 2009 NBCA 22 at paras. 42 and 46, Respondents' Book of Authorities, Tab 15.

109. By contrast, in the present case, there is no conflict. The option to negotiate regime and the *Copyright Act* can “stand together”. They do not contradict one another; compliance with both is possible. This is made apparent from an examination of the two sections of the *Copyright Act* upon which the Appellants rely. The two provisions in question are: (i) the broadcast signal copyright in section 21 of the *Copyright Act*; and (ii) the retransmission regime in section 31 of the *Copyright Act*. Each will be examined in turn.

¹⁵ See in this regard Telus Factum at paras. 135-140.

110. Section 21 of the *Copyright Act* provides broadcasters with a limited copyright in their communication signals. It states:

Subject to subsection (2), a broadcaster has a copyright in the communication signals that it broadcasts, consisting of the sole right to do the following in relation to the communication signal or any substantial part thereof:

- (a) to fix it,
- (b) to reproduce any fixation of it that was made without the broadcaster's consent,
- (c) to authorize another broadcaster¹⁶ to retransmit it to the public simultaneously with its broadcast, and
- (d) in the case of a television communication signal, to perform it in a place open to the public on payment of an entrance fee,

and to authorize any act described in paragraph (a), (b) or (d).

Copyright Act, s. 21

111. Section 21 deals only with the extent to which broadcasters have a copyright in their communication signals, which right is enforceable against other broadcasters in the limited circumstances where one broadcaster wishes to retransmit the originating broadcast on a simultaneous basis.¹⁷ Section 21 does not apply to BDUs, as they do not fall within the definition of “broadcaster” used in that section. There is nothing in that provision that purports to limit the right of another regulator (notably, the CRTC) to regulate the broadcast or the retransmission of

¹⁶ Section 2 of the *Copyright Act* defines a “broadcaster” as “a body that, in the course of operating a broadcasting undertaking, broadcasts a communication signal in accordance with the law of the country in which the broadcasting undertaking is carried on, but excludes a body whose primary activity in relation to communication signals is their retransmission”.

¹⁷ It should be emphasized that the Respondents are not advocating that the copyright granted by section 21 includes the right to restrict a BDU's retransmission of a local television signal. No reliance is placed on any statements to that effect made by the majority in the court below.

television signals by BDUs. Section 21 does not state that the terms for carriage of a television signal by the BDU cannot be regulated by the CRTC under the *Broadcasting Act*. It does not state that BDUs have an unrestricted right to retransmit broadcasters' over-the-air signals. It does not state that the BDUs have the right to retransmit broadcasters' over-the-air signal without providing any compensation to the broadcasters. Put simply, section 21 does not speak to any of these issues at all.

112. Accordingly, it is difficult to see how section 21 of the *Copyright Act* could conflict with the option to negotiate regime. The Appellants seek to get around this flaw in their argument by asserting that the option to negotiate regime is “in pith and substance” a copyright regime and that it, accordingly, amounts to an impermissible attempt by the CRTC to expand upon the broadcast signal copyright created by section 21 of the *Copyright Act*.¹⁸ For example, Cogeco argues that the regime seeks “to create a private right in the nature of copyright”.¹⁹ Similarly, Shaw states that “the CRTC is proposing to create a new copyright”.²⁰ These assertions are without foundation, and suffer from the same flaw referred to in paragraph 97 above.

113. The proposed option to negotiate regime is not a copyright regime. It does not purport to create or convey any intellectual property right in television signals. Indeed, it does not have any of the key attributes of a copyright regime:

¹⁸ Telus Factum at para. 99ff.

¹⁹ Cogeco Factum at para. 86.

²⁰ Shaw Factum at para. 110.

- (a) Copyrights created by the *Copyright Act* are enforceable by the owner of the rights “as against the world”, without the need for a relationship of any kind to exist. By contrast, the option to negotiate regime would create a limited set of rights and obligations between a defined set of parties (local television stations, on the one hand, and BDUs, on the other hand) that already have a relationship that is highly regulated by the CRTC.

- (b) A person can do anything with a copyrighted work unless the activity is specifically prohibited by the *Copyright Act*. By contrast, BDUs may only retransmit local television signals (indeed, any television signals) if they are licensed by the CRTC and if they abide by the terms and conditions of that licence, as well as any applicable regulations. The option to negotiate regime simply adds a further condition with which BDUs must comply in order to retransmit television signals.

- (c) Copyrights are proprietary rights created by statute for fixed periods of 50 years or more, with no ongoing regulatory oversight. A person holding copyright need not give up any other rights to claim the copyright entitlements. By contrast, the option to negotiate regime is fluid in nature, renewable every three years and subject to the ongoing regulatory oversight authority of the CRTC. Furthermore, a local station must give up its existing regulatory protections in order to invoke the option to negotiate regime.

- (d) A proceeding for infringement of copyright may be dealt with by way of a civil court proceeding, initiated and prosecuted by the copyright owner. By contrast, a

proceeding for the violation of the option to negotiate regime would be dealt with by the regulator (i.e. the CRTC) either pursuant to its licensing powers, or pursuant to its right to institute summary conviction proceedings under sections 32 or 33 of the *Broadcasting Act*.

- (e) A copyright owner who receives sums in respect of his copyright may spend those sums in any manner in which he chooses. By contrast, as part of the proposed regulatory framework of which the option to negotiate forms a part, the CRTC will require local stations to spend approximately 30% of their gross revenues (including any revenue received by operation of the option to negotiate regime) on Canadian programming, with 5% dedicated to “programs of national interest”.
- (f) Royalties under the *Copyright Act* are only financial. By contrast, the option to negotiate regime may result in non-financial and non-proprietary consideration flowing from a BDU to a television station.

Broadcasting Policy 2010-167, at para. 50, 75 and 155-164, Joint Record of the Appellants, Vol. II, Tab 10, pages 31-35.

Copyright Act, R.S.C. 1985, c. C-42, ss. 6 to 12, 14.2, 23, 27(1), 34, 35, 38.1, 39 and 42

114. Furthermore, contrary to the Appellants’ arguments, the consideration payable by a BDU to a television station in the event that the parties successfully negotiate a fair value for the distribution of the television station’s programming services does not amount to a copyright royalty.²¹ The simple fact that BDUs may be required to negotiate compensation for the use of a third party’s local broadcast signal does not, in and of itself, mean that such right of

²¹ For the Appellants’ arguments in this regard, see *Telus Factum* at para. 114, and see *Cogeco Factum* at paras. 93-97.

compensation is a copyright or that any resultant user fee is a royalty that must be authorized under the *Copyright Act*. Indeed, there are many inputs for which a BDU must pay in order to deliver its distribution services to subscribers, e.g. leases for utility poles and other support structures used to carry fibre to subscribers' homes, satellite transponder fees for down-linking signals to consumers' satellite dishes, etc. The fees paid by a BDU for such inputs are not copyright royalties, and the rights of the providers are not copyrights.

115. Moreover, it is telling that, as discussed above, local television stations already receive compensation from BDUs with respect to the retransmission of their respective signals. That compensation takes both monetary and non-monetary forms. Just as that existing compensation does not amount to a copyright royalty, neither would any compensation received by a television station pursuant to the option to negotiate regime.

116. Thus, the option to negotiate regime does not seek to create a new copyright in a transmission signal. It is not the "functional equivalent" of copyright. It is not an impermissible expansion upon the limited copyright granted by section 21 of the *Copyright Act*. It is simply a further condition with which a BDU must comply in order to obtain the right to retransmit local television signals. There is, accordingly, no conflict between the option to negotiate regime and section 21 of the *Copyright Act*; a BDU can comply with both.

117. The second section of the *Copyright Act* upon which the Appellants rely is section 31 of the *Copyright Act*. Section 31 deals with situations where a BDU is retransmitting a copyrighted creative work (i.e. a television program) contained within a local or distant television signal. In order to avoid a BDU having to negotiate with all of the copyright owners of the various programs contained within that signal for permission to retransmit the copyrighted works,

section 31 provides that a BDU does not infringe the copyright of the various works embedded within a television signal, so long as it fulfills certain specified conditions. Section 31(2) provides as follows:

It is not an infringement of copyright for a retransmitter to communicate to the public by telecommunication any literary, dramatic, musical or artistic work if

- (a) the communication is a retransmission of a local or distant signal;
- (b) ***the retransmission is lawful under the Broadcasting Act;***
- (c) the signal is retransmitted simultaneously and without alteration, except as otherwise required or permitted by or under the laws of Canada;
- (d) in the case of the retransmission of a distant signal, the retransmitter has paid any royalties, and complied with any terms and conditions, fixed under this Act; and
- (e) the retransmitter complies with the applicable conditions, if any, referred to in paragraph (3)(b). [emphasis added]

Copyright Act, s. 31(2)

118. The Appellants argue that the option to negotiate regime is in conflict with this provision. The Appellants note (correctly) that the above provision only contemplates the payment of copyright royalties by a BDU if the signal being retransmitted is a distant signal. The Appellants then go on to assert (incorrectly) that the option to negotiate regime amounts to an attempt to require the payment of copyright royalties by a BDU even if the signal being retransmitted is a local signal.²² In other words, the Appellants argue that the option to negotiate regime constitutes an improper attempt to expand upon the situations specified in section 31(2) of the *Copyright Act* in which copyright royalties are payable by BDUs.

²²For the Appellants' arguments in this regard, see *Telus Factum* at paras. 114-116, and see *Shaw Factum* at paras. 101 and 104(a), and see *Cogeco Factum* at paras. 93-97.

119. This argument fails for the same reasons that the Appellants' argument with respect to section 21 of the *Copyright Act* fails. The option to negotiate regime does not impose any obligation to pay copyright royalties. It does not create a new copyright; it does not expand upon an existing copyright; it does not create new remedies for breach of a copyright. It simply modifies the existing regulatory regime under the *Broadcasting Act* governing retransmission activities carried on by BDUs, by imposing a further regulatory condition that BDUs must satisfy in order to obtain the right under the *Broadcasting Act* to retransmit television signals. And, as discussed above, section 31(2)(b) expressly contemplates the imposition of such conditions. Thus, there is no conflict between the option to negotiate regime and section 31(2) of the *Copyright Act*.

120. For all of the foregoing reasons, there is no conflict between the option to negotiate regime and the *Copyright Act*. The two regimes can stand together. Given that there is no conflict, the next question to be answered is whether the *Copyright Act* was intended to provide an exhaustive declaration of the law applicable to BDUs' retransmission of local television signals. The answer to this question is no, as is discussed in the section which follows.

(ii) *The Copyright Act Was Not Intended to Provide an Exhaustive Declaration of the Law Applicable to BDUs' Retransmission of Local Television Signals*

121. In addition to their arguments with respect to legislative conflict, the Appellants also argue that the CRTC does not have jurisdiction to implement the option to negotiate regime, because the *Copyright Act* was intended to provide an exhaustive declaration of the applicable law. For example, Telus' factum states that "the *Copyright Act* is an exhaustive code".²³

²³ Telus Factum, at paras. 145-146

122. In making this argument, the Appellants rely upon decisions in which this Court ruled that “the rights and remedies provided by the *Copyright Act* are exhaustive”.²⁴ However, the decisions cited by the Appellants stand only for the principle that the rights and remedies provided by the *Copyright Act* are exhaustive when one is considering a claim for copyright infringement. In none of the cases relied upon by the Appellants did any issue arise with respect to potential overlap between the *Copyright Act* and another statute; in none of the cases did any issue arise with respect to whether the *Copyright Act* limited the regulatory jurisdiction granted by another Act. And, certainly, nothing in those decisions suggests that the *Copyright Act* imposes any limitation on the CRTC’s jurisdiction under the *Broadcasting Act*.

Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20 at para. 3, Respondents’ Book of Authorities, Tab 14.

CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339 at para. 9, Respondents’ Book of Authorities, Tab 10.

Théberge v. Galerie d’Art du Petit Champlain inc., 2002 SCC 34 at para. 5, Respondents’ Book of Authorities, Tab 27.

Compo Co. v. Blue Crest Music Inc., [1980] 1 S.C.R. 357 at 372-373, Respondents’ Book of Authorities, Tab 13.

Bishop v. Stevens, [1990] 2 S.C.R. 467 at 477, Respondents’ Book of Authorities, Tab 6.

123. In order to be “exhaustive”, or a “complete code”, a statutory scheme must deal “completely and exhaustively” with the subject matter in question.

Gladstone v. Canada (A.G.), [2005] 1 S.C.R. 325 at paras. 9-10, Respondents’ Book of Authorities, Tab 17.

Professional Institute of the Public Service of Canada v. Canada (Attorney General), [2010] O.J. No. 4248, at para. 74, Respondents’ Book of Authorities, Tab 21.

²⁴ See, e.g., *Telus Factum* at para. 146

124. For the reasons which follow, the *Copyright Act* does not meet this test; it does not deal completely and exhaustively with the retransmission of broadcast signals by BDUs.

125. The fact (indeed, the likelihood) that the use of works protected by copyright may also be affected by other statutory regimes is discussed in J.A.L. Sterling's *World Copyright*

Law:

Restrictions on the exercise or scope of an established right may, however, come about as a result of the application of legal or other principles which are separate from copyright law, or indeed from the law of intellectual property as a whole. Thus there may be constitutional provisions on freedom of speech, or international instruments concerning human rights, under which entitlement to use protected material without the permission of the rights owner may be claimed. The rules of competition may be applied to restrict the way in which rights are exercised. National laws may have general rules prohibiting misuse of rights. . . .

J.A.L. Sterling, *World Copyright Law* (London: Sweet & Maxwell, 2008) at 519, Respondents' Book of Authorities, Tab 28.

126. There is simply no merit to the argument that Parliament intended the *Copyright Act* to be the exhaustive source of all rights and remedies that might arise from a BDU's retransmission of a television signal. This is readily apparent both from the provisions of the *Broadcasting Act* and from the provisions of the *Copyright Act*.

127. With respect to the *Broadcasting Act*, as discussed above, a BDU's right to retransmit local television signals exists only as a function of a licence granted under the *Broadcasting Act*. Sections 32 and 33 of the *Broadcasting Act* expressly provide that, in exercising that right to retransmit, a BDU must comply with any terms of its licence as well as with any regulation enacted or order made by the CRTC.

128. Furthermore, section 5(1) of the *Broadcasting Act* expressly provides that the general objects and powers of the CRTC are subject only to the *Broadcasting Act*, the *Radiocommunication Act* and any directions to the CRTC issued by the Governor in Council under the *Broadcasting Act*. Section 5(1) states:

Subject to this Act and the *Radiocommunication Act* 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 . . .

Broadcasting Act, s. 5(1)

129. Had Parliament intended the *Copyright Act* to limit the jurisdiction granted to the CRTC, it undoubtedly would have added words to section 5(1) so as to make it clear that the CRTC's powers are subject to the *Copyright Act*. It did not do so.

130. Nor would it make sense to view copyright law as exhaustive of the rights and liabilities of BDUs when retransmitting the signals of local television stations, given that a core mandate of the CRTC is the regulation and supervision of the retransmission of local and distant signals by virtue of its regulation and supervision of BDUs. If the Appellants' argument were accepted, it would mean that the CRTC would not have the power to regulate with respect to any aspect of BDUs' retransmission activities, because those activities would only be governed by copyright law. Clearly, that was not Parliament's intent.

131. Thus, the *Broadcasting Act* makes it abundantly clear that Parliament did not intend the *Copyright Act* to be an exhaustive declaration of the law applicable to the retransmission of television signals.

132. That same Parliamentary intent is also revealed by the terms of the *Copyright Act*. Specifically, section 31(2) of the *Copyright Act* (which, as discussed above, prescribes the circumstances under which a BDU's retransmission of a television signal will not infringe the copyright owned by the creators of the various programs embedded within the signal) expressly contemplates that a BDU's retransmission is subject to regulation under the *Broadcasting Act*. Section 31(2)(b) provides:

It is not an infringement of copyright for a retransmitter to communicate to the public by telecommunication any literary, dramatic, musical or artistic work if

...

(b) the retransmission is lawful under the *Broadcasting Act*

Copyright Act, s. 31(2)(b)

133. Thus, Parliament clearly contemplated that the CRTC would continue to determine the terms and conditions under which a BDU could lawfully retransmit the signal of a local television station. This disproves any suggestion that Parliament intended the *Copyright Act* to be an exhaustive declaration of the law with respect to such retransmission.

134. Finally, it should be noted that, in *Bell ExpressVu v. Rex*, this Court considered the interaction between the *Broadcasting Act* and other federal statutes, including the *Copyright Act*. The case arose out of a dispute involving satellite broadcasting, Canadian copyright interests, and territorial restrictions on broadcasting signals. The Court concluded that there were three different statutes that addressed the subject matter in issue (which was "carriage in Canada"): the *Broadcasting Act*, the *Telecommunications Act* and the *Radiocommunication Act*. The Court also considered the interaction between those statutes and the *Copyright Act*. It should be noted that the Court did not hold that the *Copyright Act* was in any way exhaustive, or that it occupied the

field with respect to the regulation of activities that may affect copyright. On the contrary, the Court recognized that limitations on satellite broadcasting contained in the *Broadcasting Act* and the *Radiocommunication Act* played a role in preserving the value of copyright interests.

Bell ExpressVu Limited Partnership v. Rex, [2002] 2 S.C.R. 559 at paras. 44-46 and 50-52, Respondents' Book of Authorities, Tab 5.

135. Accordingly, there is simply no merit to the Appellants' arguments that the *Copyright Act* was intended to provide the exhaustive declaration of the law applicable to the retransmission of television signals by a BDU. As confirmed by the jurisprudence of this Court, the express words of both the *Broadcasting Act* and the *Copyright Act* make it clear that the *Copyright Act* is not a "complete code" with respect to a BDU's retransmission activities. Rather, Parliament intended that the CRTC's jurisdiction to regulate a BDU's retransmission of television signals – including its jurisdiction to enact a regime such as the option to negotiate regime – would operate in conjunction with the *Copyright Act*.

(c) The Legislative History of the *Copyright Act* Does Not Limit the CRTC's Jurisdiction and Powers Under the *Broadcasting Act*

136. Although the Reference Question requires the statutory interpretation of the *Broadcasting Act*, the Appellants place considerable emphasis on the legislative history of the *Copyright Act*. While the legislative history of the *Copyright Act* may lend assistance to the interpretation of the *Copyright Act*, it gives no assistance to the interpretation of the *Broadcasting Act*, as required by the Reference Question.

137. Moreover, this Court has held that "[w]hile legislative history may be useful in providing the background and assisting in determining the purpose of legislation, the interpretation of the statute must, in this as in other contexts, be ascertained from the words used

by the Legislature to convey its intent”. The words of the *Copyright Act* do not suggest any intent on the part of Parliament to restrict the jurisdiction of the CRTC. In fact, they suggest the opposite.

Hills v. Canada (Attorney General), [1988] 1 S.C.R. 513 at para. 549, Respondents’ Book of Authorities, Tab 18.

138. The legislative history of the *Copyright Act* cannot be used to limit the CRTC’s jurisdiction and powers under the *Broadcasting Act*. Simply because Parliament did not impose a royalty for the retransmission of programs within local television signals does not mean that the CRTC is precluded from allowing local television stations to opt into a regime whereby their consent is required in order for a BDU to distribute their signals.

139. As succinctly stated by the majority in the court below:

It may well be that Parliament has determined for any number of reasons relating to Canada’s copyright policy that the *Copyright Act* should not be amended to provide private local television stations with a right to a royalty for the retransmission of local signals. However, ***it does not follow that the same determination necessarily indicates any intention on the part of Parliament to preclude the Commission from adopting the proposed value for signal regime in the interests of Canada’s broadcasting policy.*** Indeed, the possibility that the Commission might adopt a value for signal regime has been under consideration for some time, but the record discloses no hint that Parliament or the Government of Canada would consider such a regime to be an improper or undesirable intrusion into copyright policy. [emphasis added]

FCA Decision, at para 44., Joint Record of the Appellants, Vol. I, Tab 3, pages 47-48 .

140. Furthermore, the legislative history adduced by the Appellants is of the least reliable type – reports, committee transcripts and submissions – all in the context of copyright reform and none in the context of broadcasting policy development. The responsible Ministers did not make any statement in introducing the *Copyright Act* amendments, or thereafter, that

demonstrate a Parliamentary intention to curtail the CRTC's authority with respect to retransmission. No concern was expressed in the legislative history about the existing broadcasting regulatory authority of the CRTC or the CRTC-ordered transfers of wealth from BDUs to broadcasters (in the form of, for example, the Local Programming Improvement Fund or the Canada Media Fund and its predecessor measures).

With respect to the caution that must be exercised when considering extrinsic evidence to aid in the interpretation of statutes, see e.g. *Authorson (Litigation Administrator of) v. Canada (Attorney General)*, [2007] O.J. No. 2603 at paras. 128-130 (C.A.), Respondents' Book of Authorities, Tab 2.

141. The Appellants rely on a report dating from 1984 which was not in favour of "an unnecessary layer of proprietary rights". However, there is nothing in the option to negotiate regime that purports to create any proprietary right, let alone one in the nature of a copyright.

From Gutenberg to Telidon: A White Paper on Copyright: Proposals for the Revision of the Canadian Copyright Act (Consumer and Corporate Affairs Canada and the Department of Communications, 1984), Exhibit "A6" to the Atwell Affidavit ("From Gutenberg to Telidon") at p.12, Joint Record of the Appellants, Vol. III, Tab 18, page 81.

142. While the 1985 *A Charter of Rights for Creators* report did recommend a "right of transmission" (which in modified form became s. 21 of the *Copyright Act*), despite the fact that the *Broadcasting Act* already prohibited at the time the simultaneous re-broadcast of a broadcast, the authors recognized that broadcasting and copyright law can overlap, remarking that "regulation adopted for reasons of broadcasting policy are not the proper place to determine intellectual property rights".

A Charter of Rights for Creators: Report of the Sub-Committee on the Revision of Copyright (Ottawa: Standing Committee on Communications and Culture, October 1985), Exhibit "A7" to the Atwell Affidavit, at p. 58, Joint Record of the Appellants, Vol. III, Tab 19, page 110.

143. As discussed above, statements made by government officials in the context of treaty negotiations such as those cited in Cogeco's factum at paragraphs 43 and 44, are not a reliable indicator of the Government's view as to the CRTC's jurisdiction. And certainly they can shed no light on what Parliament intended.

(i) *The Copyright Act Does Not Implement Broadcasting Policy*

144. The Appellant, Cogeco, argues that the CRTC is foreclosed from implementing the option to negotiate to regime because Parliament determined, "as a matter of broadcasting policy" to amend the *Copyright Act* to create "a compulsory licence for the programs carried in distant signals, an exception for the programs carried in local signals, and no rights whatsoever against BDUs for the signals themselves". However, as previously noted, the broadcasting policy for Canada is set out in section 3(1) of the *Broadcasting Act*, not the *Copyright Act*. Indeed, the *Copyright Act* does not speak to any aspect of broadcasting policy. Pursuant to section 3(2) of the *Broadcasting Act*, Parliament has appointed the CRTC as the "single independent public authority" to regulate and supervise the Canadian broadcasting system to achieve these broadcasting policy objectives.

For Cogeco's argument in this regard, see Cogeco Factum, at para. 15.

145. Moreover, the CRTC has the jurisdiction to amend its regulatory initiatives or to take new ones from time to time to recalibrate obligations among broadcasters and BDUs, and to be responsive to changing technologies and consumer demands, all for the better implementation of broadcasting policy. Thus, the circumstances under which a BDU can retransmit without being liable for copyright infringement can change as the CRTC takes new initiatives.

Broadcasting Act, ss. 3(1)(d)(iv) and 3(1)(s)(ii).

146. Regulation prior to 2008 permitted BDUs to distribute local television signals into distant markets (i.e., outside the local station's coverage area) without the relevant broadcasters' consent. Thus, even absent a broadcaster's consent, such a retransmission was lawful under the *Broadcasting Act* for the purposes of section 31(2)(b) of the *Copyright Act*. With the introduction of the Distant Signal Regime in 2008 and its implementation via amendments to the *Broadcasting Distribution Regulations* in 2011, BDUs must now obtain the consent of the broadcaster (for which it may have to pay) before distributing its local signal in distant markets. Thus, a BDU now has to comply with a prior approval requirement in order for the retransmission to be lawful under the *Broadcasting Act*, which, in turn, is necessary in order for that retransmission to avoid infringing copyright pursuant to section 31(2)(b) the *Copyright Act*.²⁵

147. The same is true in respect of the option to negotiate regime. Once it is enacted, a BDU will have to comply with its terms in order to lawfully retransmit a television signal, and thereby gain protection from copyright infringement under section 31(2) of the *Copyright Act*.

(ii) *The CRTC's Past Statements as to Its Jurisdiction Are of No Assistance*

148. The Appellant, Telus, argues that the CRTC has previously determined that it lacks jurisdiction to impose a retransmission consent regime. This is a mischaracterization of the CRTC's determinations and, in any event, such a determination is wholly irrelevant to this Court's determination.

See Telus Factum, at paras. 22-25.

²⁵ It is noteworthy that the BDUs have not objected to the implementation of this Distant Signal Regime by the CRTC, nor do they argue that it is *ultra vires*.

149. The one and only time that the CRTC stated that it lacked jurisdiction was in 1993 with respect to implementation of a mandated fee-for-carriage regime, whereby the CRTC was asked to establish a fixed fee that BDUs would be forced to pay local broadcasters in order to distribute their signals in local markets. The fee-for-carriage regime is different from the option to negotiate regime, which permits broadcasters to opt into the regime every three years and requires broadcasters and BDUs to enter into market-based negotiations to determine the terms of carriage, including any compensation. But in any event, this observation made by the CRTC in no way binds this Court.

Broadcasting Public Notice CRTC 1993-74 – Structural Public Hearing – Canadian Radio-television and Telecommunications Commission – Allan J. Darling, Secretary General, June 3, 1993, Exhibit “G52” to the Atwell Affidavit, Joint Record of the Appellants, Vol. IX, Tab 64.

150. Moreover, in 2007 and again in 2008, the CRTC determined that it did indeed have the jurisdiction to implement a fee-for-carriage regime, but elected not to exercise such jurisdiction since it had determined that such a regime was not required at that time in order to achieve the broadcasting policy objectives. The Commission’s 2007 finding was as follows:

To implement the wide-ranging policy objectives of the Act, the Commission has been entrusted with very broad regulation-making powers, as well as the power to subject licences to the conditions that it deems appropriate. The Commission considers that the introduction of a fee-for-carriage is within its mandate and authorized under the Act.

Broadcasting Public Notice CRTC 2007-53 (17 May 2007) - *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, at para. 23, Exhibit “H” to the Goldstein Affidavit, Joint Record of the Appellants, Vol. XIV, Tab 111, page 186.

151. In Broadcasting Policy 2010-167, the CRTC distinguished its 2008 decision on fee-for-carriage as “substantially different” from the current issue of “a negotiated fair value for signals”:

In Broadcasting Public Notice 2008-100, the Commission considered whether or not to grant a fee for carriage to conventional television broadcasters, and elected not to do so. However, the question considered in the current proceeding is a substantially different one. In exploring the issue of a negotiated fair value for signals, the Commission is considering whether market forces can be invoked to resolve what has now become a long standing area of tension between conventional television broadcasters and BDUs.

Broadcasting Policy 2010-167, at para. 15, Exhibit “E” to the Hutton Affidavit, Joint Record of the Appellants, Vol. II, Tab 10, page 4.

152. The CRTC referred the question of its jurisdiction in respect of the option to negotiate regime to the Federal Court of Appeal. Thus, the CRTC’s views as to its own jurisdiction, varying as they have over the years, are of no assistance to this Court.

153. The other CRTC decisions upon which Telus relies also offer no support to its arguments.²⁶ The first decision involved the CRTC’s implementation of regional licensing of cable undertakings and an exemption order for small cable systems. BDUs expressed concerns that, under such a regional approach, many small cable operators would no longer qualify for preferential “small system” copyright rates and would be required to pay substantially higher royalties. In response, the CRTC did not find that it lacked jurisdiction to act. Rather, it proceeded with its regulatory change and suggested that any concern with respect to increases in royalty rates should be dealt with by changes to the copyright regulations. Such changes were subsequently implemented.

Public Notice CRTC 2001-59: Changes to the Commission’s approach to cable undertakings - Proposed exemption for cable systems with fewer than 2,000 subscribers, and implementation of a regional licensing model, 29 May 2001, at para. 36, Exhibit “G56” to the Atwell Affidavit, Joint Record of the Appellants, Vol. IX, Tab 68, page 42.

²⁶ See in this regard Telus Factum at para. 24

Definition of Small Retransmission Systems Regulations (SOR/94-754), Exhibit “F48” to the Atwell Affidavit, Joint Record of the Appellants, Vol. IX, Tab 60.

Definition of “Small Cable Transmission System” Regulations, SOR/94-755, as amended by SOR/2005-148, Book of Authorities of the Appellant, Cogeco Cable Inc., Vol. I, Tab 7.

Local Signal and Distant Signal Regulations, SOR/89-254, Book of Authorities of the Appellant, Cogeco Cable Inc., Vol. I, Tab 8.

154. The second decision arose because a number of BDUs submitted that the CRTC’s proposed order under s. 9(1)(h) of the *Broadcasting Act* requiring the mandatory distribution of the French-language television network, TVA, as part of the basic service would trigger distant signal retransmission royalties under the *Copyright Act*. The BDUs requested that either the CRTC exempt them from the obligation to distribute TVA’s signal or require TVA to compensate BDUs for any resultant retransmission royalties. The CRTC rejected their request and instead suggested that the affected BDUs seek relief from the royalty payments from the Copyright Board. Again, even though its order would have a consequence for the amount of royalties certain BDUs would have to pay under the *Copyright Act*, the CRTC proceeded to exercise its jurisdiction under the *Broadcasting Act*.

Public Notice CRTC 1999-27: *Order respecting the distribution of the French-language television service of TVA Group Inc.*, 12 February 1999, at paras. 32-35, Exhibit “G55” to the Atwell Affidavit, Joint Record of the Appellants, Vol. X, Tab 67, pages 32-33.

155. Thus, it is evident that changes in the CRTC’s regulatory measures can result in consequences for those affected by the copyright regime. However, this does not in any way detract from the CRTC’s jurisdiction under the *Broadcasting Act* to implement changes to the regulatory regime in order to implement broadcasting policy. The two regimes operate in tandem; one does not oust the other.

(d) Conclusion

156. For all of these reasons, it is submitted that the CRTC has the jurisdiction to enact the option to negotiate regime and that, accordingly, the within appeals should be dismissed.

PART IV – SUBMISSIONS ON COSTS

157. The Respondents respectfully submit that costs should follow the event, as in the ordinary course and, accordingly, request their costs of the within appeal.

PART V – ORDER SOUGHT

158. The Respondents respectfully request that an Order be made dismissing the within appeals, affirming the judgement of the Federal Court of Appeal, and answering the Reference Question in the affirmative, with costs throughout.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

March 26, 2012

Goodmans LLP

Benjamin Zarnett
Robert Malcolmson
Peter Ruby
Julie Rosenthal

Lawyers for the Respondents,
Bell Media Inc. (formerly CTVglobemedia Inc.),
Newfoundland Broadcasting Co. Ltd. and
V Interactions Inc.

PART VI – LIST OF AUTHORITIES

| Tab No. | Authority | Referred to at paras. |
|----------------|--|------------------------------|
| 1. | <i>ATCO Gas & Pipeline Ltd. v. Alberta (Energy & Utilities Board)</i> , [2006] 1 S.C.R. 140 | 85, 86 |
| 2. | <i>Authorson (Litigation Administrator of) v. Canada (Attorney General)</i> , [2007] O.J. No. 2603 (C.A.) | 140 |
| 3. | <i>Barrie Public Utilities v. Canadian Cable Television Assn.</i> , [2003] 1 S.C.R. 476 | 57, 83, 84 |
| 4. | <i>Bell Canada v. Bell Aliant Regional Communications</i> , [2009] S.C.R. 764 | 88, 89 |
| 5. | <i>Bell ExpressVu v. Rex</i> , [2002] 2 S.C.R. 559 | 58, 134 |
| 6. | <i>Bishop v. Stevens</i> , [1990] 2 S.C.R. 467 | 122 |
| 7. | <i>British Columbia Telephone v. Shaw Cable Systems</i> , [1995] 2 S.C.R. 739 | 107 |
| 8. | <i>Canadian Broadcasting Corporation v. Métromédia CMR Montréal Inc.</i> , [1999] F.C.J. No. 1637 | 59, 72 |
| 9. | <i>Canadian Motion Picture Distributors Association v. Partners of Viewer’s Choice Canada</i> , [1996] F.C.J. No. 894 (F.C.A.) | 73 |
| 10. | <i>CCH Canadian Ltd. v. Law Society of Upper Canada</i> , [2004] 1 S.C.R. 339 | 122 |
| 11. | <i>Century Services Inc. v. Canada (Attorney General)</i> , 2010 SCC 60 | 101 |
| 12. | <i>CKOY Ltd. v. The Queen</i> , [1979] 1 S.C.R. 2 | 70, 71, 80 |
| 13. | <i>Compo Co. v. Blue Crest Music Inc.</i> , [1980] 1 S.C.R. 357 | 122 |
| 14. | <i>Euro-Excellence Inc. v. Kraft Canada Inc.</i> , [2007] 3 S.C.R. 20 | 122 |
| 15. | <i>FCT Insurance Company v. Law Society of New Brunswick</i> , 2009 NBCA 22 | 108 |
| 16. | <i>Friends of Oldman River v. Canada</i> , [1992] 1 S.C.R. 3 | 100 |
| 17. | <i>Gladstone v. Canada (A.G.)</i> , [2005] 1 S.C.R. 325 | 123 |
| 18. | <i>Hills v. Canada (Attorney General)</i> , [1988] 1 S.C.R. 513 | 137 |
| 19. | <i>Lévis v. Fraternité des policiers de Lévis</i> , [2007] 1 S.C.R. 591 | 106 |
| 20. | <i>Mercier v. Canada (Correctional Service)</i> , [2010] F.C.J. No. 816 | 81, 102 |
| 21. | <i>Professional Institute of the Public Service of Canada v. Canada (Attorney General)</i> , [2010] O.J. No. 4248 | 123 |

| Tab No. | Authority | Referred to at paras. |
|----------------|--|------------------------------|
| 22. | <i>Quebec (Attorney General) v. Canada (Human Resources and Social Development)</i> , [2011] S.C.J. No. 60 | 105 |
| 23. | <i>R. v. Dow Chemical Canada Inc.</i> , [2000] O.J. No. 757 | 98, 103 |
| 24. | <i>R. v. Ulybel Enterprises Ltd.</i> , [2001] 2 S.C.R. 867 | 100 |
| 25. | <i>Shaw Cable Systems (SMB) Ltd. v. MTS Communications Inc.</i> , 2006 MBCA 29 | 59 |
| 26. | J.A.L. Sterling, <i>World Copyright Law</i> (London: Sweet & Maxwell, 2008) | 125 |
| 27. | <i>Stoddard v. Watson</i> , [1993] 2 S.C.R. 1069 | 106 |
| 28. | Ruth Sullivan, <i>Sullivan on the Construction of Statutes</i> , 5th ed. (Toronto: LexisNexis Canada Inc., 2008) | 99 |
| 29. | <i>Théberge v. Galerie d'Art du Petit Champlain Inc.</i> , [2002] 2 S.C.R. 336 | 122 |

PART VII – STATUTES AND REGULATIONS RELIED UPON



CANADA

CONSOLIDATION

CODIFICATION

Broadcasting Act

Loi sur la radiodiffusion

S.C. 1991, c. 11

L.C. 1991, ch. 11

Current to March 6, 2012

À jour au 6 mars 2012

Last amended on December 15, 2009

Dernière modification le 15 décembre 2009

Published by the Minister of Justice at the following address:
<http://laws-lois.justice.gc.ca>

Publié par le ministre de la Justice à l'adresse suivante :
<http://lois-laws.justice.gc.ca>

OFFICIAL STATUS
OF CONSOLIDATIONS

CARACTÈRE OFFICIEL
DES CODIFICATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Published
consolidation is
evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Codifications
comme élément
de preuve

Inconsistencies
in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

Incompatibilité
— lois

NOTE

This consolidation is current to March 6, 2012. The last amendments came into force on December 15, 2009. Any amendments that were not in force as of March 6, 2012 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 6 mars 2012. Les dernières modifications sont entrées en vigueur le 15 décembre 2009. Toutes modifications qui n'étaient pas en vigueur au 6 mars 2012 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

Interpretation

(3) This Act shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings.

1991, c. 11, s. 2; 1993, c. 38, s. 81, 1995, c. 11, s. 43.

BROADCASTING POLICY FOR CANADA

Declaration

3. (1) It is hereby declared as the broadcasting policy for Canada that

(a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;

(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;

(c) English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;

(d) the Canadian broadcasting system should

(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,

(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, 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,

(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 chil-

tiques — , ainsi que les autres procédés techniques semblables.

(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.

1991, ch. 11, art. 2; 1993, ch. 38, art. 81, 1995, ch. 11, art. 43.

POLITIQUE CANADIENNE DE RADIODIFFUSION

3. (1) Il est déclaré que, dans le cadre de la politique canadienne de radiodiffusion :

a) le système canadien de radiodiffusion doit être, effectivement, la propriété des Canadiens et sous leur contrôle;

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;

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;

d) le système canadien de radiodiffusion devrait :

(i) servir à sauvegarder, enrichir et renforcer la structure culturelle, politique, sociale et économique du Canada,

(ii) favoriser l'épanouissement de l'expression canadienne en proposant une très large programmation qui traduise 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,

(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

Interprétation

Politique canadienne de radiodiffusion

- dren, 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
- (iv) be readily adaptable to scientific and technological change;
 - (e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;
 - (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;
 - (g) the programming originated by broadcasting undertakings should be of high standard;
 - (h) all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast;
 - (i) the programming provided by the Canadian broadcasting system should
 - (i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,
 - (ii) be drawn from local, regional, national and international sources,
 - (iii) include educational and community programs,
 - (iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and
 - (v) include a significant contribution from the Canadian independent production sector;
 - (j) educational programming, particularly where provided through the facilities of an
 - 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,
 - (iv) demeurer aisément adaptable aux progrès scientifiques et techniques;
 - e) tous les éléments du système doivent contribuer, de la manière qui convient, à la création et la présentation d'une programmation canadienne;
 - 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;
 - g) la programmation offerte par les entreprises de radiodiffusion devrait être de haute qualité;
 - h) les titulaires de licences d'exploitation d'entreprises de radiodiffusion assument la responsabilité de leurs émissions;
 - i) la programmation offerte par le système canadien de radiodiffusion devrait à la fois :
 - (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,
 - (ii) puiser aux sources locales, régionales, nationales et internationales,
 - (iii) renfermer des émissions éducatives et communautaires,
 - (iv) dans la mesure du possible, offrir au public l'occasion de prendre connaissance d'opinions divergentes sur des sujets qui l'intéressent,

independent educational authority, is an integral part of the Canadian broadcasting system;

(k) a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available;

(l) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;

(m) the programming provided by the Corporation should

(i) be predominantly and distinctively Canadian,

(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,

(iii) actively contribute to the flow and exchange of cultural expression,

(iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,

(v) strive to be of equivalent quality in English and in French,

(vi) contribute to shared national consciousness and identity,

(vii) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and

(viii) reflect the multicultural and multiracial nature of Canada;

(n) where any conflict arises between the objectives of the Corporation set out in paragraphs (l) and (m) and the interests of any other broadcasting undertaking of the Canadian broadcasting system, it shall be resolved in the public interest, and where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (l) and (m);

(v) faire appel de façon notable aux producteurs canadiens indépendants;

j) la programmation éducative, notamment celle qui est fournie au moyen d'installations d'un organisme éducatif indépendant, fait partie intégrante du système canadien de radiodiffusion;

k) une gamme de services de radiodiffusion en français et en anglais doit être progressivement offerte à tous les Canadiens, au fur et à mesure de la disponibilité des moyens;

l) la Société Radio-Canada, à titre de radiodiffuseur public national, devrait offrir des services de radio et de télévision qui comportent une très large programmation qui renseigne, éclaire et divertit;

m) la programmation de la Société devrait à la fois :

(i) être principalement et typiquement canadienne,

(ii) refléter la globalité canadienne et rendre compte de la diversité régionale du pays, tant au plan national qu'au niveau régional, tout en répondant aux besoins particuliers des régions,

(iii) contribuer activement à l'expression culturelle et à l'échange des diverses formes qu'elle peut prendre,

(iv) être offerte en français et en anglais, de manière à refléter la situation et les besoins particuliers des deux collectivités de langue officielle, y compris ceux des minorités de l'une ou l'autre langue,

(v) chercher à être de qualité équivalente en français et en anglais,

(vi) contribuer au partage d'une conscience et d'une identité nationales,

(vii) être offerte partout au Canada de la manière la plus adéquate et efficace, au fur et à mesure de la disponibilité des moyens,

(viii) refléter le caractère multiculturel et multiracial du Canada;

n) les conflits entre les objectifs de la Société énumérés aux alinéas l) et m) et les intérêts de toute autre entreprise de radiodiffusion du système canadien de radiodiffusion doivent être résolus dans le sens de l'intérêt public

(o) programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;

(p) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;

(q) without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (i), alternative television programming services in English and in French should be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;

(r) the programming provided by alternative television programming services should

(i) be innovative and be complementary to the programming provided for mass audiences,

(ii) cater to tastes and interests not adequately provided for by the programming provided for mass audiences, and include programming devoted to culture and the arts,

(iii) reflect Canada's regions and multicultural nature,

(iv) as far as possible, be acquired rather than produced by those services, and

(v) be made available throughout Canada by the most cost-efficient means;

(s) private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,

(i) contribute significantly to the creation and presentation of Canadian programming, and

(ii) be responsive to the evolving demands of the public; and

(t) distribution undertakings

(i) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,

ou, si l'intérêt public est également assuré, en faveur des objectifs énumérés aux alinéas l) et m);

o) le système canadien de radiodiffusion devrait offrir une programmation qui reflète les cultures autochtones du Canada, au fur et à mesure de la disponibilité des moyens;

p) le système devrait offrir une programmation adaptée aux besoins des personnes atteintes d'une déficience, au fur et à mesure de la disponibilité des moyens;

q) sans qu'il soit porté atteinte à l'obligation qu'ont les entreprises de radiodiffusion de fournir la programmation visée à l'alinéa i), des services de programmation télévisée complémentaires, en anglais et en français, devraient au besoin être offerts afin que le système canadien de radiodiffusion puisse se conformer à cet alinéa;

r) la programmation offerte par ces services devrait à la fois :

(i) être innovatrice et compléter celle qui est offerte au grand public,

(ii) répondre aux intérêts et goûts de ceux que la programmation offerte au grand public laisse insatisfaits et comprendre des émissions consacrées aux arts et à la culture,

(iii) refléter le caractère multiculturel du Canada et rendre compte de sa diversité régionale,

(iv) comporter, autant que possible, des acquisitions plutôt que des productions propres,

(v) être offerte partout au Canada de la manière la plus rentable, compte tenu de la qualité;

s) les réseaux et les entreprises de programmation privés devraient, dans la mesure où leurs ressources financières et autres le leur permettent, contribuer de façon notable à la création et à la présentation d'une programmation canadienne tout en demeurant réceptifs à l'évolution de la demande du public;

t) les entreprises de distribution :

(i) devraient donner priorité à la fourniture des services de programmation cana-

(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,

(iii) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and

(iv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.

dienne, et ce en particulier par les stations locales canadiennes,

(ii) devraient assurer efficacement, à l'aide des techniques les plus efficaces, la fourniture de la programmation à des tarifs abordables,

(iii) devraient offrir des conditions acceptables relativement à la fourniture, la combinaison et la vente des services de programmation qui leur sont fournis, aux termes d'un contrat, par les entreprises de radiodiffusion,

(iv) peuvent, si le Conseil le juge opportun, créer une programmation — locale ou autre — de nature à favoriser la réalisation des objectifs de la politique canadienne de radiodiffusion, et en particulier à permettre aux minorités linguistiques et culturelles mal desservies d'avoir accès aux services de radiodiffusion.

Further declaration

(2) It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

(2) Il est déclaré en outre que le système canadien de radiodiffusion constitue un système unique et que la meilleure façon d'atteindre les objectifs de la politique canadienne de radiodiffusion consiste à confier la réglementation et la surveillance du système canadien de radiodiffusion à un seul organisme public autonome.

Déclaration

APPLICATION

Binding on Her Majesty

4. (1) This Act is binding on Her Majesty in right of Canada or a province.

4. (1) La présente loi lie Sa Majesté du chef du Canada ou d'une province.

Obligation de Sa Majesté

Application generally

(2) This Act applies in respect of broadcasting undertakings carried on in whole or in part within Canada or on board

(2) La présente loi s'applique aux entreprises de radiodiffusion exploitées — même en partie — au Canada ou à bord :

Application

(a) any ship, vessel or aircraft that is

(i) registered or licensed under an Act of Parliament, or

(ii) owned by, or under the direction or control of, Her Majesty in right of Canada or a province;

(b) any spacecraft that is under the direction or control of

(i) Her Majesty in right of Canada or a province,

(ii) a citizen or resident of Canada, or

(iii) a corporation incorporated or resident in Canada; or

a) d'un navire, bâtiment ou aéronef soit immatriculé ou bénéficiant d'un permis délivré aux termes d'une loi fédérale, soit appartenant à Sa Majesté du chef du Canada ou d'une province, ou relevant de sa compétence ou de son autorité;

b) d'un véhicule spatial relevant de la compétence ou de l'autorité de Sa Majesté du chef du Canada ou d'une province, ou de celle d'un citoyen canadien, d'un résident du Canada ou d'une personne morale constituée ou résidant au Canada;

c) d'une plate-forme, installation, construction ou formation fixée au plateau continental du Canada.

(c) any platform, rig, structure or formation that is affixed or attached to land situated in the continental shelf of Canada.

For greater certainty

(3) For greater certainty, this Act applies in respect of broadcasting undertakings whether or not they are carried on for profit or as part of, or in connection with, any other undertaking or activity.

(3) La présente loi s'applique aux entreprises de radiodiffusion exploitées ou non dans un but lucratif ou dans le cours d'une autre activité.

Idem

Idem

(4) For greater certainty, this Act does not apply to any telecommunications common carrier, as defined in the *Telecommunications Act*, when acting solely in that capacity.

1991, c. 11, s. 4; 1993, c. 38, s. 82, 1996, c. 31, s. 57.

(4) Il demeure entendu que la présente loi ne s'applique pas aux entreprises de télécommunication — au sens de la *Loi sur les télécommunications* — n'agissant qu'à ce titre.

1991, ch. 11, art. 4; 1993, ch. 38, art. 82; 1996, ch. 31, art. 57.

Entreprises de télécommunication

PART II

OBJECTS AND POWERS OF THE COMMISSION IN RELATION TO BROADCASTING

OBJECTS

Objects

5. (1) Subject to this Act and the *Radiocommunication Act* 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 doing, shall have regard to the regulatory policy set out in subsection (2).

Regulatory policy

(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

(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

PARTIE II

MISSION ET POUVOIRS DU CONSEIL EN MATIÈRE DE RADIODIFFUSION

MISSION

Mission

5. (1) Sous réserve des autres dispositions de la présente loi, ainsi que de la *Loi sur la radiocommunication* 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 mettre en œuvre la politique canadienne de radiodiffusion.

(2) La réglementation et la surveillance du système devraient être souples et à la fois :

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

Réglementation et surveillance

| | | | |
|----------------------------------|---|--|---------------------------------------|
| | the delivery of resultant services to Canadians; and | fourniture aux Canadiens des services qui en découlent; | |
| | (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. | g) tenir compte du fardeau administratif qu'elles sont susceptibles d'imposer aux exploitants d'entreprises de radiodiffusion. | |
| Conflict | (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). | (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). | Conflit |
| Employment equity | (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. 1991, c. 11, s. 5; 1995, c. 44, s. 46. | (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. 1991, ch. 11, art. 5; 1995, ch. 44, art. 46. | Équité en matière d'emploi |
| Policy guidelines and statements | 6. The Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act, but no such guidelines or statements issued by the Commission are binding on the Commission. | 6. Le Conseil peut à tout moment formuler des directives — sans pour autant être lié par celles-ci — sur toute question relevant de sa compétence au titre de la présente loi. | Directives du Conseil |
| Policy directions | 7. (1) Subject to subsection (2) and section 8, the Governor in Council may, by order, issue to the Commission directions of general application on broad policy matters with respect to (a) any of the objectives of the broadcasting policy set out in subsection 3(1); or (b) any of the objectives of the regulatory policy set out in subsection 5(2). | 7. (1) Sous réserve du paragraphe (2) et de l'article 8, le gouverneur en conseil peut, par décret, donner au Conseil, au chapitre des grandes questions d'orientation en la matière, des instructions d'application générale relativement à l'un ou l'autre des objectifs de la politique canadienne de radiodiffusion ou de la réglementation et de la surveillance du système canadien de radiodiffusion. | Instructions du gouverneur en conseil |
| Exception | (2) No order may be made under subsection (1) in respect of the issuance of a licence to a particular person or in respect of the amendment, renewal, suspension or revocation of a particular licence. | (2) Le décret ne peut toutefois prévoir l'attribution nominative d'une licence ni la modification, le renouvellement, la suspension ou la révocation d'une licence en particulier. | Effet limité |
| Directions binding | (3) An order made under subsection (1) is binding on the Commission beginning on the day on which the order comes into force and, subject to subsection (4), shall, if it so provides, apply with respect to any matter pending before the Commission on that day. | (3) Le décret lie le Conseil à compter de son entrée en vigueur et, en cas de mention expresse à cet effet, s'applique, sous réserve du paragraphe (4), aux affaires alors en instance devant lui. | Effet obligatoire |
| Exception | (4) No order made under subsection (1) may apply with respect to a licensing matter pending before the Commission where the period for the | (4) Le décret ne s'applique, à la date de sa prise d'effet, aux affaires en instance devant le Conseil qui touchent aux licences et à l'égard | Idem |

filing of interventions in the matter has expired unless that period expired more than one year before the coming into force of the order.

desquelles le délai d'intervention est expiré que si l'expiration a eu lieu plus d'un an auparavant.

Publication and tabling

(5) A copy of each order made under subsection (1) shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the making of the order.

(5) Copie du décret est déposée devant chaque chambre du Parlement dans les quinze jours de séance de celle-ci suivant sa prise.

Dépôt

Consultation

(6) The Minister shall consult with the Commission before the Governor in Council makes an order under subsection (1).

(6) Le ministre consulte le Conseil avant la prise d'un décret par le gouverneur en conseil au titre du présent article.

Consultation

Procedure for issuance of policy directions

8. (1) Where the Governor in Council proposes to make an order under section 7, the Minister shall cause the proposed order to be

8. (1) Le ministre fait publier dans la *Gazette du Canada* et déposer devant chaque chambre du Parlement un projet du décret que le gouverneur en conseil se propose de prendre au titre de l'article 7. Le projet publié est assorti d'un avis invitant les intéressés à faire leurs observations à cet égard au ministre.

Projet de décret

(a) published by notice in the *Canada Gazette*, which notice shall invite interested persons to make representations to the Minister with respect to the proposed order; and

(b) laid before each House of Parliament.

Referral to committee

(2) Where a proposed order is laid before a House of Parliament pursuant to subsection (1), it shall stand referred to such committee thereof as the House considers appropriate to deal with the subject-matter of the order.

(2) Le projet de décret ainsi déposé est automatiquement renvoyé devant le comité de la chambre qu'elle juge indiqué.

Renvoi

Implementation of proposal

(3) The Governor in Council may, after the expiration of forty sitting days of Parliament after a proposed order is laid before both Houses of Parliament in accordance with subsection (1), implement the proposal by making an order under section 7, either in the form proposed or revised in such manner as the Governor in Council deems advisable.

(3) Le gouverneur en conseil peut, après le quarantième jour de séance du Parlement suivant le dépôt devant chaque chambre, prendre un décret au titre de l'article 7 qui reprend le projet, dans sa forme originale ou non, selon ce qu'il estime indiqué.

Prise d'un décret

Consultation

(4) The Minister shall consult with the Commission before a proposed order is published or is laid before a House of Parliament under subsection (1).

(4) Le ministre consulte le Conseil avant la publication et le dépôt du projet de décret.

Consultation

Definition of "sitting day of Parliament"

(5) In this section, "sitting day of Parliament" means a day on which either House of Parliament sits.

(5) Pour l'application du présent article, « jour de séance du Parlement » s'entend d'un jour où l'une ou l'autre chambre siège.

Jour de séance

GENERAL POWERS

POUVOIRS GÉNÉRAUX

Licences, etc.

9. (1) Subject to this Part, the Commission may, in furtherance of its objects,

9. (1) Sous réserve des autres dispositions de la présente partie, le Conseil peut, dans l'exécution de sa mission :

Catégories de licences

(a) establish classes of licences;

a) établir des catégories de licences;

(b) issue licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee

b) attribuer des licences pour les périodes maximales de sept ans et aux conditions liées à la situation du titulaire qu'il estime indi-

| | | | |
|----------------------------|---|--|-------------|
| | <p>(i) as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1), and</p> <p>(ii) in the case of licences issued to the Corporation, as the Commission deems consistent with the provision, through the Corporation, of the programming contemplated by paragraphs 3(1)(l) and (m);</p> <p>(c) amend any condition of a licence on application of the licensee or, where five years have expired since the issuance or renewal of the licence, on the Commission's own motion;</p> <p>(d) issue renewals of licences for such terms not exceeding seven years and subject to such conditions as comply with paragraph (b);</p> <p>(e) suspend or revoke any licence;</p> <p>(f) require any licensee to obtain the approval of the Commission before entering into any contract with a telecommunications common carrier for the distribution of programming directly to the public using the facilities of that common carrier;</p> <p>(g) require any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting; and</p> <p>(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>quées pour la mise en œuvre de la politique canadienne de radiodiffusion, et, dans le cas de licences attribuées à la Société, lui permettant, à son avis, d'offrir la programmation visée aux alinéas 3(1) l) et m);</p> <p>c) modifier les conditions d'une licence soit sur demande du titulaire, soit, plus de cinq ans après son attribution ou son renouvellement, de sa propre initiative;</p> <p>d) renouveler les licences pour les périodes maximales de sept ans et aux conditions visées à l'alinéa b);</p> <p>e) suspendre ou révoquer toute licence;</p> <p>f) obliger les titulaires de licences à obtenir l'approbation préalable par le Conseil des contrats passés avec les exploitants de télécommunications pour la distribution — directement au public — de programmation au moyen de l'équipement de ceux-ci;</p> <p>g) obliger les titulaires de licences d'exploitation d'entreprises de distribution à privilégier la fourniture de radiodiffusion;</p> <p>h) obliger ces titulaires à offrir certains services de programmation selon les modalités qu'il précise.</p> | |
| Restrictions re conditions | <p>(2) Notwithstanding subsections (1) and 28(3), no licence of a distribution undertaking may be made subject to a condition that requires the licensee to substitute replacement material for commercial messages carried in a broadcasting signal received by that licensee.</p> | <p>(2) Malgré les paragraphes (1) et 28(3), les licences des entreprises de distribution ne peuvent être assujetties à l'obligation de substituer tout matériel aux messages publicitaires portés par un signal de radiodiffusion qu'elles reçoivent.</p> | Restriction |
| Exception | <p>(3) Subsection (2) does not apply in respect of a condition of a licence renewed after October 4, 1987 where before that date the licensee was complying with such a condition.</p> | <p>(3) Le paragraphe (2) ne s'applique pas aux conditions des licences renouvelées après le 4 octobre 1987 dans la mesure où le titulaire s'y conformait avant cette date.</p> | Exception |
| Exemptions | <p>(4) The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where</p> | <p>(4) Le Conseil soustrait, par ordonnance et aux conditions qu'il juge indiquées, les exploitants d'entreprise de radiodiffusion de la catégorie qu'il précise à toute obligation découlant soit de la présente partie, soit de ses règlements d'application, dont il estime l'exécution sans</p> | Exemptions |

the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).

1991, c. 11, s. 9; 1994, c. 26, s. 10(F).

Regulations
generally

10. (1) The Commission may, in furtherance of its objects, make regulations

- (a) respecting the proportion of time that shall be devoted to the broadcasting of Canadian programs;
- (b) prescribing what constitutes a Canadian program for the purposes of this Act;
- (c) respecting standards of programs and the allocation of broadcasting time for the purpose of giving effect to the broadcasting policy set out in subsection 3(1);
- (d) respecting the character of advertising and the amount of broadcasting time that may be devoted to advertising;
- (e) respecting the proportion of time that may be devoted to the broadcasting of programs, including advertisements or announcements, of a partisan political character and the assignment of that time on an equitable basis to political parties and candidates;
- (f) prescribing the conditions for the operation of programming undertakings as part of a network and for the broadcasting of network programs, and respecting the broadcasting times to be reserved for network programs by any such undertakings;
- (g) respecting the carriage of any foreign or other programming services by distribution undertakings;
- (h) for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings;
- (i) requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify;
- (j) respecting the audit or examination of the records and books of account of licensees by

conséquence majeure sur la mise en œuvre de la politique canadienne de radiodiffusion.

1991, ch. 11, art. 9; 1994, ch. 26, art. 10(F).

Règlements

10. (1) Dans l'exécution de sa mission, le Conseil peut, par règlement :

- a) fixer la proportion du temps d'antenne à consacrer aux émissions canadiennes;
- b) définir « émission canadienne » pour l'application de la présente loi;
- c) fixer les normes des émissions et l'attribution du temps d'antenne pour mettre en œuvre la politique canadienne de radiodiffusion;
- d) régir la nature de la publicité et le temps qui peut y être consacré;
- e) fixer la proportion du temps d'antenne pouvant être consacrée à la radiodiffusion d'émissions — y compris les messages publicitaires et annonces — de nature partisane, ainsi que la répartition équitable de ce temps entre les partis politiques et les candidats;
- f) fixer les conditions d'exploitation des entreprises de programmation faisant partie d'un réseau ainsi que les conditions de radiodiffusion des émissions de réseau et déterminer le temps d'antenne à réserver à celles-ci par ces entreprises;
- g) régir la fourniture de services de programmation — même étrangers — par les entreprises de distribution;
- h) pourvoir au règlement — notamment par la médiation — de différends concernant la fourniture de programmation et survenant entre les entreprises de programmation qui la transmettent et les entreprises de distribution;
- i) préciser les renseignements que les titulaires de licences doivent lui fournir en ce qui concerne leurs émissions et leur situation financière ou, sous tout autre rapport, la conduite et la direction de leurs affaires;
- j) régir la vérification et l'examen des livres de comptes et registres des titulaires de licences par le Conseil ou ses représentants;
- k) prendre toute autre mesure qu'il estime nécessaire à l'exécution de sa mission.

| | | | |
|-------------------------------------|---|---|-----------------------------|
| | the Commission or persons acting on behalf of the Commission; and | | |
| | (k) respecting such other matters as it deems necessary for the furtherance of its objects. | | |
| Application | (2) A regulation made under this section may be made applicable to all persons holding licences or to all persons holding licences of one or more classes. | (2) Les règlements s'appliquent soit à tous les titulaires de licences, soit à certaines catégories d'entre eux. | Application |
| Publication of proposed regulation | (3) A copy of each regulation that the Commission proposes to make under this section shall be published in the <i>Canada Gazette</i> and a reasonable opportunity shall be given to licensees and other interested persons to make representations to the Commission with respect thereto. | (3) Les projets de règlement sont publiés dans la <i>Gazette du Canada</i> , les titulaires de licences et autres intéressés se voyant accorder la possibilité de présenter leurs observations à cet égard. | Publication et observations |
| Regulations respecting licence fees | 11. (1) The Commission may make regulations (a) with the approval of the Treasury Board, establishing schedules of fees to be paid by licensees of any class; (b) providing for the establishment of classes of licensees for the purposes of paragraph (a); (c) providing for the payment of any fees payable by a licensee, including the time and manner of payment; (d) respecting the interest payable by a licensee in respect of any overdue fee; and (e) respecting such other matters as it deems necessary for the purposes of this section. | 11. (1) Le Conseil peut, par règlement: a) avec l'approbation du Conseil du Trésor, fixer les tarifs des droits à acquitter par les titulaires de licences de toute catégorie; b) à cette fin, établir des catégories de titulaires de licences; c) prévoir le paiement des droits à acquitter par les titulaires de licences, y compris les modalités de celui-ci; d) régir le paiement d'intérêt en cas de paiement tardif des droits; e) prendre toute autre mesure d'application du présent article qu'il estime nécessaire. | Règlements droits |
| Criteria | (2) Regulations made under paragraph (1)(a) may provide for fees to be calculated by reference to any criteria that the Commission deems appropriate, including by reference to (a) the revenues of the licensees; (b) the performance of the licensees in relation to objectives established by the Commission, including objectives for the broadcasting of Canadian programs; and (c) the market served by the licensees. | (2) Les règlements d'application de l'alinéa (1) a) peuvent prévoir le calcul des droits en fonction de certains critères que le Conseil juge indiqués notamment: a) les revenus des titulaires de licences; b) la réalisation par ceux-ci des objectifs fixés par le Conseil, y compris ceux qui concernent la radiodiffusion d'émissions canadiennes; c) la clientèle desservie par ces titulaires. | Critères |
| Exceptions | (3) No regulations made under subsection (1) shall apply to the Corporation or to licensees carrying on programming undertakings on behalf of Her Majesty in right of a province. | (3) Les règlements pris en application du paragraphe (1) ne s'appliquent pas à la Société ou aux titulaires de licences d'exploitation — pour le compte de Sa Majesté du chef d'une province — d'entreprises de programmation. | Application : limite |

| | | | |
|-----------------------------------|---|---|--|
| Enforcement of mandatory orders | 13. (1) Any order made under subsection 12(2) may be made an order of the Federal Court or of any superior court of a province and is enforceable in the same manner as an order of the court. | 13. (1) Les ordonnances du Conseil visées au paragraphe 12(2) peuvent être assimilées à des ordonnances de la Cour fédérale ou d'une cour supérieure d'une province; le cas échéant, leur exécution s'effectue selon les mêmes modalités. | Assimilation à des ordonnances judiciaires |
| Procedure | (2) To make an order under subsection 12(2) an order of a court, the usual practice and procedure of the court in such matters may be followed or, in lieu thereof, the Commission may file with the registrar of the court a certified copy of the order, and thereupon the order becomes an order of the court. | (2) L'assimilation peut se faire soit conformément aux règles de pratique et de procédure de la cour applicables en l'occurrence, soit par dépôt, par le Conseil, d'une copie de l'ordonnance certifiée conforme auprès du greffier de la cour. Dans ce dernier cas, l'assimilation est effectuée au moment du dépôt. | Moyens de l'assimilation |
| Effect of variation or rescission | (3) Where an order that has been made an order of a court is rescinded or varied by a subsequent order of the Commission, the order of the court shall be deemed to have been cancelled and the subsequent order may, in the same manner, be made an order of the court. | (3) Les ordonnances du Conseil qui annulent ou modifient celles déjà assimilées à des ordonnances d'une cour sont réputées annuler celles-ci et peuvent, selon les mêmes modalités, faire l'objet d'une assimilation. | Annulation ou modification |
| Research | 14. (1) The Commission may undertake, sponsor, promote or assist in research relating to any matter within its jurisdiction under this Act and in so doing it shall, wherever appropriate, utilize technical, economic and statistical information and advice from the Corporation or departments or agencies of the Government of Canada. | 14. (1) Le Conseil peut entreprendre, parrainer, promouvoir ou aider toute recherche sur des questions relevant de sa compétence au titre de la présente loi; ce faisant, il doit, s'il y a lieu et si cela est possible, utiliser l'information et les conseils d'ordre technique, économique et statistique de la Société ou des ministères ou autres organismes fédéraux. | Recherche |
| Review of technical matters | (2) The Commission shall review and consider any technical matter relating to broadcasting referred to the Commission by the Minister and shall make recommendations to the Minister with respect thereto. | (2) Le Conseil étudie toute question d'ordre technique concernant la radiodiffusion dont le saisit le ministre et lui fait les recommandations indiquées. | Questions d'ordre technique |
| Hearings and reports | 15. (1) The Commission shall, on request of the Governor in Council, hold hearings or make reports on any matter within the jurisdiction of the Commission under this Act. | 15. (1) Sur demande du gouverneur en conseil, le Conseil tient des audiences ou fait rapport sur toute question relevant de sa compétence au titre de la présente loi. | Audiences et rapports |
| Consultation | (2) The Minister shall consult with the Commission with regard to any request proposed to be made by the Governor in Council under subsection (1). | (2) Le ministre consulte le Conseil avant la transmission d'une demande par le gouverneur en conseil. | Consultation |
| Powers respecting hearings | 16. The Commission has, in respect of any hearing under this Part, with regard to the attendance, swearing and examination of witnesses at the hearing, the production and inspection of documents, the enforcement of its orders, the entry and inspection of property and other matters necessary or proper in relation to the hearing, all such powers, rights and privileges as are vested in a superior court of record. | 16. Le Conseil a, pour la comparution, la prestation de serment et l'interrogatoire des témoins aux audiences tenues en application de la présente partie, ainsi que pour la production et l'examen des pièces, l'exécution de ses ordonnances, la visite des lieux ou l'examen des biens et toutes autres questions concernant ces audiences, les attributions d'une cour supérieure d'archives. | Attributions |

Appeal to Federal Court of Appeal

(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 such further time as that Court under special circumstances allows.

(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 décision ou ordonnance attaquée ou dans le délai supplémentaire accordé par la cour dans des circonstances particulières.

Cas d'appel : Cour fédérale

Entry of appeal

(3) No appeal lies after leave therefor has been obtained under subsection (2) unless it is entered in the Federal Court of Appeal within sixty days after the making of the order granting leave to appeal.

(3) L'appel doit être interjeté dans les soixante jours suivant l'autorisation.

Délai d'appel

Document deemed decision or order

(4) Any document issued by the Commission in the form of a decision or order shall, if it relates to the issue, amendment, renewal, revocation or suspension of a licence, be deemed for the purposes of this section to be a decision or order of the Commission.

(4) Les documents émanant du Conseil sous forme de décision ou d'ordonnance, s'ils concernent l'attribution, la modification, le renouvellement, l'annulation, ou la suspension d'une licence, sont censés être, pour l'application du présent article, des décisions ou ordonnances du Conseil.

Assimilation à des décisions ou ordonnances du Conseil

OFFENCES

Broadcasting without or contrary to licence

32. (1) Every person who, not being exempt from the requirement to hold a licence, carries on a broadcasting undertaking without a licence therefor is guilty of an offence punishable on summary conviction and is liable

32. (1) Quiconque exploite une entreprise de radiodiffusion sans licence et sans avoir été soustrait à l'obligation d'en détenir une commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, pour chacun des jours au cours desquels se continue l'infraction :

Exploitation illégale ou irrégulière

(a) in the case of an individual, to a fine not exceeding twenty thousand dollars for each day that the offence continues; or

a) dans le cas d'une personne physique, une amende maximale de vingt mille dollars;

(b) in the case of a corporation, to a fine not exceeding two hundred thousand dollars for each day that the offence continues.

b) dans le cas d'une personne morale, une amende maximale de deux cent mille dollars.

Contravention of regulation or order

(2) Every person who contravenes or fails to comply with any regulation or order made under this Part is guilty of an offence punishable on summary conviction and is liable

(2) Quiconque ne se conforme pas à un décret, un règlement ou une ordonnance pris en application de la présente partie commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire :

Contravention à un règlement

(a) in the case of an individual, to a fine not exceeding twenty-five thousand dollars for a first offence and not exceeding fifty thousand dollars for each subsequent offence; or

a) dans le cas d'une personne physique, une amende maximale de vingt-cinq mille dollars pour la première infraction et de cinquante mille dollars en cas de récidive;

(b) in the case of a corporation, to a fine not exceeding two hundred and fifty thousand dollars for a first offence and not exceeding five hundred thousand dollars for each subsequent offence.

b) dans le cas d'une personne morale, une amende maximale de deux cent cinquante mille dollars pour la première infraction et de cinq cent mille dollars en cas de récidive.

| | | | |
|--|--|--|--|
| Contravention of conditions of licence | 33. Every person who contravenes or fails to comply with any condition of a licence issued to the person is guilty of an offence punishable on summary conviction. | 33. Quiconque ne se conforme pas aux conditions attachées à sa licence commet une infraction punissable sur déclaration de culpabilité par procédure sommaire. | Inobservation des conditions d'une licence |
| Limitation | 34. Proceedings for an offence under subsection 32(2) or section 33, may be instituted within, but not after, two years after the time when the subject-matter of the proceedings arose. | 34. La poursuite d'une infraction visée au paragraphe 32(2) ou à l'article 33 se prescrit par deux ans à compter de la perpétration. | Prescription |

PART III
CANADIAN BROADCASTING
CORPORATION

INTERPRETATION

| | |
|---|---|
| Definitions | 35. (1) In this Part, |
| “auditor” « vérificateur » | “auditor” means the auditor of the Corporation; |
| “Board” « conseil d'administration » | “Board” means the Board of Directors of the Corporation; |
| “Chairperson” « président du conseil » | “Chairperson” means the Chairperson of the Board; |
| “director” « administrateur » | “director” means a director of the Corporation; |
| “President” « président-directeur général » | “President” means the President of the Corporation; |
| “wholly-owned subsidiary” « filiale à cent pour cent » | “wholly-owned subsidiary” has the same meaning as in Part X of the <i>Financial Administration Act</i> . |
| Interpretation | (2) This Part shall be interpreted and applied so as to protect and enhance the freedom of expression and the journalistic, creative and programming independence enjoyed by the Corporation in the pursuit of its objects and in the exercise of its powers. |

CONTINUATION OF CORPORATION

| | |
|-----------------------|---|
| Corporation continued | 36. (1) The corporation known as the Canadian Broadcasting Corporation is hereby continued and shall consist of those directors who from time to time compose the Board. |
| Board of Directors | (2) There shall be a Board of Directors of the Corporation consisting of twelve directors, including the Chairperson and the President, to be appointed by the Governor in Council. |

PARTIE III
SOCIÉTÉ RADIO-CANADA

DÉFINITIONS

| | | | | | | | |
|-------------------------|--|---|---|---|--|---|---|
| Definitions | 35. (1) Les définitions qui suivent s'appliquent à la présente partie. | « administrateur » Tout administrateur de la Société. | « conseil d'administration » Le conseil d'administration de la Société. | « filiale à cent pour cent » S'entend au sens de la partie X de la <i>Loi sur la gestion des finances publiques</i> . | « président du conseil » Le président du conseil d'administration de la Société. | « président-directeur général » Le président-directeur général de la Société. | « vérificateur » Le vérificateur de la Société. |
| Définitions | « administrateur » | « conseil d'administration » | « filiale à cent pour cent » | « président du conseil » | « président-directeur général » | « vérificateur » | |
| Déclaration de principe | (2) Toute interprétation ou application de la présente partie doit contribuer à promouvoir et à valoriser la liberté d'expression, ainsi que l'indépendance en matière de journalisme, de création et de programmation, dont jouit la Société dans la réalisation de sa mission et l'exercice de ses pouvoirs. | | | | | | |

MAINTIEN

| | |
|--------------------------|--|
| Maintien | 36. (1) Est maintenue et composée des personnes qui en forment le conseil d'administration la personne morale constituée sous la dénomination de « Société Radio-Canada ». |
| Conseil d'administration | (2) Est constitué un conseil d'administration composé de douze administrateurs, dont son président et le président-directeur général, nommés par le gouverneur en conseil. |



CANADA

CONSOLIDATION

CODIFICATION

Broadcasting Distribution Regulations

Règlement sur la distribution de radiodiffusion

SOR/97-555

DORS/97-555

Current to February 20, 2012

À jour au 20 février 2012

Last amended on January 23, 2012

Dernière modification le 23 janvier 2012

Published by the Minister of Justice at the following address:
<http://laws-lois.justice.gc.ca>

Publié par le ministre de la Justice à l'adresse suivante :
<http://lois-laws.justice.gc.ca>

OFFICIAL STATUS
OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published
consolidation is
evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

Inconsistencies
in regulations

(3) In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

NOTE

This consolidation is current to February 20, 2012. The last amendments came into force on January 23, 2012. Any amendments that were not in force as of February 20, 2012 are set out at the end of this document under the heading “Amendments Not in Force”.

CARACTÈRE OFFICIEL
DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

Codifications
comme élément
de preuve

(3) Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

Incompatibilité
— règlements

NOTE

Cette codification est à jour au 20 février 2012. Les dernières modifications sont entrées en vigueur le 23 janvier 2012. Toutes modifications qui n'étaient pas en vigueur au 20 février 2012 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

«zone de service» Zone autorisée d'une station de télévision communautaire de faible puissance ou d'une entreprise communautaire numérique. (*service area*)

DORS/2001-75, art. 3; DORS/2002-322, art. 1; DORS/2003-29, art. 1; DORS/2003-217, art. 1; DORS/2003-458, art. 1; DORS/2007-164, art. 1; DORS/2009-234, art. 1; DORS/2011-148, art. 1.

APPLICATION

2. These Regulations apply to persons licensed to carry on a distribution undertaking, other than a person licensed to carry on

- (a) a subscription television system;
- (b) a relay distribution undertaking; or
- (c) an undertaking that only rebroadcasts the radio-communications of one or more other licensed undertakings.

PART 1

GENERAL

PROHIBITION

3. A licensee shall not distribute programming services except as required or authorized under its licence or these Regulations.

TRANSFER OF OWNERSHIP

4. (1) The definitions in this subsection apply in this section.

“associate”, when used to indicate a relationship with a person, includes

- (a) a partner of the person;
- (b) a trust or an estate in which the person has a substantial beneficial interest or in respect of which the person serves as a trustee or in a similar capacity;
- (c) the spouse or common-law partner of the person;
- (c.1) a child of the person or of their spouse or common-law partner, including a child adopted in fact by the person or by the spouse or common-law partner;

APPLICATION

2. Le présent règlement s'applique aux personnes autorisées à exploiter une entreprise de distribution, à l'exception de celles qui sont autorisées à exploiter:

- a) soit un système de télévision par abonnement;
- b) soit une entreprise de distribution par relais;
- c) soit une entreprise qui se borne à réémettre les radiocommunications d'une ou de plusieurs autres entreprises autorisées.

PARTIE 1

GÉNÉRALITÉS

INTERDICTION

3. Le titulaire ne peut distribuer des services de programmation qu'en conformité avec ce qui est exigé ou permis par sa licence ou par le présent règlement.

TRANSFERT DE PROPRIÉTÉ

4. (1) Les définitions qui suivent s'appliquent au présent article.

«action avec droit de vote» Action du capital social d'une personne morale qui confère à son détenteur un ou plusieurs droits de vote pouvant être exercés aux assemblées des actionnaires de la personne morale, en tout état de cause ou en raison de la survenance d'un fait qui demeure. S'entend en outre de la valeur mobilière qui, au gré du détenteur, est immédiatement convertible en une action avec droit de vote. (*voting share*)

«actions ordinaires» Actions qui représentent la part résiduelle des bénéfices d'une personne morale. S'entend en outre des valeurs mobilières qui, au gré du détenteur, sont immédiatement convertibles en de telles actions et des actions privilégiées assorties du droit de participa-

(c.2) the spouse or common-law partner of a child referred to in paragraph (c.1);

(d) a relative of the person, or of the spouse or common-law partner referred to in paragraph (c), if that relative has the same residence as the person;

(e) a corporation of which the person alone, or the person together with one or more associates as described in this definition, has, directly or indirectly, control of 50% or more of the voting interests;

(f) a corporation of which an associate, as described in this definition, of the person has, directly or indirectly, control of 50% or more of the voting interests; and

(g) a person with whom the person has entered into an arrangement, a contract, an understanding or an agreement in respect of the voting of shares of a licensee corporation or of a corporation that has, directly or indirectly, effective control of a licensee corporation, except when the person controls less than 1% of all issued voting shares of a corporation whose shares are publicly traded on a stock exchange. (*liens*)

“common-law partner”, in respect of a person, means an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year. (*conjoint de fait*)

“common shares” means the shares that represent the residual equity in the earnings of a corporation, and includes securities that are convertible into such shares at all times at the option of the holder and the preferred shares to which are attached rights to participate in the earnings of the corporation with no upper limit; (*actions ordinaires*)

“person” includes an individual, a partnership, a joint venture, an association, a corporation, an estate, a trust, a trustee, an executor and an administrator or a legal representative of any of them. (*personne*)

“voting interest”, in respect of

(a) a corporation with share capital, means the vote attached to a voting share;

tion aux bénéficiaires de la personne morale sans limite supérieure. (*common shares*)

«conjoint de fait» La personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an. (*common-law partner*)

«intérêt — ou titre de participation — avec droit de vote»

a) Dans le cas d'une personne morale avec capital social, droit de vote rattaché à une action avec droit de vote;

b) dans le cas d'une personne morale sans capital social, participation qui accorde à son propriétaire des droits de vote semblables à ceux du propriétaire d'une action avec droit de vote;

c) dans le cas d'une société de personnes, d'une fiducie, d'une association ou d'une entreprise commune, droit de propriété des actifs de l'entité qui permet à son propriétaire de recevoir une partie des profits et, en cas de liquidation, une partie des actifs, et de participer directement à la gestion de l'entité ou de voter lors de l'élection des personnes à qui seront confiés le pouvoir et la responsabilité de gérer l'entité;

d) dans le cas d'une société de personnes, d'une fiducie, d'une association ou d'une entreprise commune qui sont des entités sans but lucratif, droit qui permet à son propriétaire de participer directement à la gestion de l'entité ou de voter lors de l'élection des personnes à qui seront confiés le pouvoir et la responsabilité de gérer l'entité. (*voting interest*)

«liens» Vise notamment les relations entre une personne et:

a) son associé;

b) la fiducie ou la succession sur lesquelles elle a un intérêt bénéficiaire important ou à l'égard desquelles elle agit à titre de fiduciaire ou à titre semblable;

c) son époux ou conjoint de fait;

(b) a corporation without share capital, means an interest that entitles the owner to voting rights similar to those enjoyed by the owner of a voting share;

(c) a partnership, a trust, an association or a joint venture, means an ownership interest in the assets of it that entitles the owner to receive a share of its profits, to receive a share of its assets on dissolution and to participate directly in its management or to vote on the election of the persons to be entrusted with the power and responsibility to manage it; and

(d) a not-for-profit partnership, trust, association or joint venture, means a right that entitles the owner to participate directly in its management or to vote on the election of the persons to be entrusted with the power and responsibility to manage it. (*intérêt avec droit de vote*)

“voting share” means a share in the capital of a corporation, to which is attached one or more votes that are exercisable at meetings of shareholders of the corporation, either under all circumstances or under a circumstance that has occurred and is continuing, and includes any security that is convertible into such a share at all times at the option of the holder. (*action avec droit de vote*)

(2) For the purposes of this section, control of a voting interest by a person includes situations in which

(a) the person is, directly or indirectly, the beneficial owner of the voting interest; or

(b) the person, by means of an arrangement, a contract, an understanding or an agreement, determines

c.1) son enfant, l'enfant de son époux ou conjoint de fait, y compris l'enfant adopté de fait par elle ou par son époux ou conjoint de fait;

c.2) l'époux ou conjoint de fait de l'enfant visé à l'alinéa c.1);

d) un autre de ses parents ou alliés — ou de ceux de son époux ou conjoint de fait — qui partage sa résidence;

e) la personne morale dont elle contrôle, directement ou indirectement, seule ou avec une ou plusieurs personnes avec lesquelles elle a des liens et qui sont visées à la présente définition, 50 % ou plus des intérêts — ou titres de participation — avec droit de vote;

f) la personne morale dont une personne avec laquelle la personne a un lien et qui est visée à la présente définition contrôle, directement ou indirectement, 50 % ou plus des intérêts — ou titres de participation — avec droit de vote;

g) la personne avec laquelle elle a conclu un arrangement, un contrat, un accord ou une entente relative à l'exercice des droits de vote rattachés aux actions d'une personne morale titulaire ou d'une personne morale qui détient, directement ou indirectement, le contrôle effectif d'une personne morale titulaire; le présent alinéa ne vise pas une personne qui contrôle moins de 1 % des actions avec droit de vote émises d'une personne morale dont les actions sont cotées en bourse. (*associate*)

«personne» Vise notamment un particulier, une société de personnes, une entreprise commune, une association, une personne morale, une succession, une fiducie, un fiduciaire, un exécuteur testamentaire ou un administrateur, ou le mandataire de l'un d'eux. (*person*)

(2) Pour l'application du présent article, une personne contrôle un intérêt — ou titre de participation — avec droit de vote notamment dans les cas suivants :

a) elle est, directement ou indirectement, le véritable propriétaire de l'intérêt — ou du titre de participation — avec droit de vote;

the manner in which the interest is voted, but the solicitation of proxies or the seeking of instructions regarding the completion of proxies in respect of the exercise of voting interests is not considered to be such an arrangement, contract, understanding or agreement.

(3) For the purposes of this section, effective control of a licensee or its undertaking includes situations in which

(a) a person controls, directly or indirectly, other than by way of security only, a majority of the voting interests of the licensee;

(b) a person has the ability to cause the licensee or its board of directors to undertake a course of action; or

(c) the Commission, following a public hearing of an application for a licence, or in respect of an existing licence, determines that a person has such effective control and sets out that determination in a decision or public notice.

(4) Except as otherwise provided under a condition of its licence, a licensee shall obtain the prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in

(a) a change of the effective control of its undertaking; or

(b) a person who, alone, or together with an associate,

(i) controls less than 30% of the voting interests of the licensee, having control of 30% or more of those interests,

(ii) controls less than 30% of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 30% or more of those interests,

(iii) owns less than 50% of the issued common shares of the licensee, owning 50% or more of

b) elle décide, aux termes d'un arrangement, d'un contrat, d'un accord ou d'une entente, de la manière dont sont exercés les droits de vote à l'égard de cet intérêt ou de ce titre de participation, s'il ne s'agit pas de sollicitation de procurations concernant l'exercice de tels droits de vote ou de demandes d'instructions sur la façon de remplir de telles procurations.

(3) Pour l'application du présent article, il y a contrôle effectif du titulaire ou de son entreprise notamment dans les cas suivants :

a) une personne contrôle, directement ou indirectement, autrement qu'au seul titre de sûreté, la majorité des intérêts — ou titres de participation — avec droit de vote du titulaire;

b) une personne est en mesure de faire adopter par le titulaire ou son conseil d'administration une ligne de conduite;

c) le Conseil, à la suite d'une audience publique à l'égard d'une demande de licence ou d'une licence existante, décide qu'il y a contrôle effectif, laquelle détermination est consignée dans un avis de décision ou un avis public.

(4) Sauf condition contraire de sa licence, le titulaire doit obtenir l'approbation préalable du Conseil à l'égard de toute mesure, entente ou opération qui aurait pour conséquence directe ou indirecte :

a) soit de modifier le contrôle effectif de son entreprise;

b) soit de faire en sorte qu'une personne qui, seule ou avec une personne avec laquelle elle a un lien :

(i) contrôle moins de 30 % des intérêts — ou titres de participation — avec droit de vote du titulaire contrôlerait ainsi 30 % ou plus de ces intérêts ou de ces titres de participation,

(ii) contrôle moins de 30 % des intérêts — ou titres de participation — avec droit de vote d'une personne qui détient, directement ou indirectement, le contrôle effectif du titulaire contrôlerait ainsi 30 %

those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) owns less than 50% of the issued common shares of a person who has, directly or indirectly, effective control of the licensee, owning 50% or more of those shares but not having, directly or indirectly, effective control of the licensee.

(5) A licensee shall notify the Commission within 30 days after the occurrence of any act, agreement or transaction that, directly or indirectly, results in a person who, alone, or together with an associate, controls less than

(a) 20% of the voting interests of the licensee, having control of 20% or more but less than 30% of those interests;

(b) 20% of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 20% or more but less than 30% of those interests;

(c) 40% of the voting interests of the licensee, having control of 40% or more but less than 50% of those interests but not having, directly or indirectly, effective control of the licensee; or

(d) 40% of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 40% or more but less than 50% of those interests but not having, directly or indirectly, effective control of the licensee.

ou plus de ces intérêts ou de ces titres de participation,

(iii) est propriétaire de moins de 50 % des actions ordinaires émises du titulaire serait ainsi propriétaire de 50 % ou plus de ces actions, mais ne détendrait pas, directement ou indirectement, le contrôle effectif du titulaire,

(iv) est propriétaire de moins de 50 % des actions ordinaires émises d'une personne qui détient, directement ou indirectement, le contrôle effectif du titulaire serait ainsi propriétaire de 50 % ou plus de ces actions, mais ne détendrait pas, directement ou indirectement, le contrôle effectif du titulaire.

(5) Le titulaire doit aviser le Conseil de la prise de toute mesure ou de la conclusion de toute entente ou opération, dans les 30 jours suivant celles-ci, lorsque la mesure, l'entente ou l'opération fait en sorte que, directement ou indirectement, une personne qui, seule ou avec une personne avec laquelle elle a un lien, contrôle moins de :

a) 20 % des intérêts — ou titres de participation — avec droit de vote du titulaire contrôlerait ainsi 20 % ou plus mais moins de 30 % de ces intérêts ou de ces titres de participation;

b) 20 % des intérêts — ou titres de participation — avec droit de vote d'une personne qui détient, directement ou indirectement, le contrôle effectif du titulaire contrôlerait ainsi 20 % ou plus mais moins de 30 % de ces intérêts ou de ces titres de participation;

c) 40 % des intérêts — ou titres de participation — avec droit de vote du titulaire contrôlerait ainsi 40 % ou plus mais moins de 50 % de ces intérêts ou de ces titres de participation, mais ne détendrait pas, directement ou indirectement, le contrôle effectif du titulaire;

d) 40 % des intérêts — ou titres de participation — avec droit de vote d'une personne qui détient, directement ou indirectement, le contrôle effectif du titulaire contrôlerait ainsi 40 % ou plus mais moins de 50 %, de ces intérêts ou de ces titres de participation, mais

(6) A notification referred to in subsection (5) shall set out the following information:

- (a) the name of the person or the names of the person and the associate;
- (b) the percentage of the voting interests controlled by the person or by the person and the associate; and
- (c) a copy or a complete description of the act, agreement or transaction.

SOR/2001-357, s. 5; SOR/2006-109, s. 1.

DISTRIBUTION OF BASIC SERVICE

5. Except as otherwise provided under a condition of its licence or these Regulations, no licensee shall provide a subscriber with any programming services, other than pay-per-view services, video-on-demand services or the programming services of exempt programming undertakings, without also providing the basic service of the licensee.

MAJORITY OF CANADIAN PROGRAMMING SERVICES

6. (1) Except as otherwise provided under a condition of its licence, a licensee shall ensure, in respect of each of analog and digital technology, that a majority of each of the video and audio programming services that are received by a subscriber are devoted to the distribution of Canadian programming services.

(2) For the purposes of subsection (1), each programming service of one of the following types counts as a single video programming service regardless of the number of channels on which that programming service is distributed by a licensee in a licensed area:

- (a) pay television service;
- (b) television pay-per-view service;
- (c) DTH pay-per-view service; and
- (d) video-on-demand service.

ne détiendrait pas, directement ou indirectement, le contrôle effectif du titulaire.

(6) L'avis visé au paragraphe (5) doit contenir les renseignements suivants :

- a) le nom de la personne et, le cas échéant, celui de la personne avec laquelle elle a un lien;
- b) le pourcentage des intérêts — ou titres de participation — avec droit de vote qui est contrôlé par la personne, seule ou avec une personne avec laquelle elle a un lien;
- c) une copie ou le détail de la mesure, de l'entente ou de l'opération en cause;

DORS/2001-357, art. 5; DORS/2006-109, art. 1.

DISTRIBUTION DU SERVICE DE BASE

5. Sauf condition de sa licence ou disposition du présent règlement à l'effet contraire et à l'exclusion des services à la carte, des services vidéo sur demande et des services de programmation des entreprises de programmation exemptées, le titulaire ne peut fournir des services de programmation à l'abonné sans lui fournir également le service de base.

MAJORITÉ DE SERVICES DE PROGRAMMATION CANADIENS

6. (1) Sous réserve des conditions de sa licence, le titulaire fait en sorte que la majorité de chacun des services de programmation vidéo et sonores reçus par les abonnés, tant par voie analogique que numérique, soient consacrés à la distribution de services de programmation canadiens.

(2) Pour l'application du paragraphe (1), chaque service de programmation de l'un des types ci-après compte pour un seul service de programmation vidéo, quel que soit le nombre de canaux sur lesquels il est distribué par un titulaire dans une zone de desserte autorisée :

- a) un service de télévision payante;
- b) un service de télévision à la carte;
- c) un service à la carte par SRD;
- d) un service de vidéo sur demande.

other premises that are owned or occupied by the same subscriber, the licensee shall remit the wholesale rate to the Canadian programming undertaking for each dwelling or other premises served.

SOR/2011-148, s. 7.

NOTICE OF CHANNEL REALIGNMENT

15.3 A licensee shall not realign the channel number on which a Canadian programming service is distributed unless, at least 60 days before the proposed effective date of the realignment, the licensee sends a written notice indicating the intended date of the realignment and the channel number on which the programming service will be distributed to each of the operators of the programming services whose channel placements will be affected by the channel realignment.

SOR/2011-148, s. 7.

PART 2

TERRESTRIAL DISTRIBUTION UNDERTAKINGS

APPLICATION

16. Except as otherwise provided in these Regulations or under a condition of licence, this Part applies to the digital distribution of programming services by licensees that hold a licence to operate a terrestrial distribution undertaking.

SOR/2011-148, s. 8.

16.1 [Repealed, SOR/2011-148, s. 8]

TELEVISION PROGRAMMING SERVICES TO BE DISTRIBUTED AS PART OF THE BASIC SERVICE

17. (1) Except as otherwise provided in subsections (3) to (5) or under a condition of its licence, a licensee shall distribute the following services in each licensed area as part of its basic service, in the following order of priority:

(a) the programming services of all local television stations that are owned and operated by the Corporation;

plus ou autres locaux qui appartiennent au même abonné ou sont occupés par lui est tenu de payer un tarif de gros à l'entreprise de programmation canadienne pour chaque logement ou autre local.

DORS/2011-148, art. 7.

AVIS DE RÉALIGNEMENT DE CANAUX

15.3 Le titulaire ne peut réaligner le canal sur lequel un service de programmation canadien est distribué que si, au moins soixante jours avant la date prévue pour le réalignement, il envoie, à chacun des exploitants des services de programmation qui seront touchés par le réalignement, un avis écrit précisant la date en question et le canal sur lequel le service de programmation sera distribué.

DORS/2011-148, art. 7.

PARTIE 2

ENTREPRISES DE DISTRIBUTION TERRESTRES

APPLICATION

16. Sous réserve du présent règlement et de toute condition de licence, la présente partie s'applique à la distribution numérique des services de programmation par les titulaires d'entreprises de distribution terrestres.

DORS/2011-148, art. 8.

16.1 [Abrogé, DORS/2011-148, art. 8]

SERVICES DE PROGRAMMATION DE TÉLÉVISION DEVANT ÊTRE DISTRIBUÉS DANS LE CADRE DU SERVICE DE BASE

17. (1) Sous réserve des paragraphes (3) à (5) et des conditions de sa licence, le titulaire, en respectant l'ordre de priorité ci-après, distribue, dans chaque zone de desserte autorisée dans le cadre du service de base, les services suivants :

a) les services de programmation de toute station de télévision locale dont la Société est le propriétaire et l'exploitant;

(b) the educational television programming services that are received by the licensee over the air or by some other method, the operation of which is the responsibility of an educational authority designated by the province in which the licensed area is located;

(c) the programming services of all other local television stations that are not being distributed under paragraph (a) or (b);

(d) the programming services of any regional television station that is owned and operated by the Corporation, unless the licensee is distributing, in accordance with paragraph (a), the programming services of a local television station that is owned and operated by the Corporation and that broadcasts in the same official language as the regional television station;

(e) the programming services of all regional television stations that are not being distributed in accordance with paragraph (b) or (d), except to the extent that the licensee is distributing, under paragraph (a), (c) or (d), the programming services of an affiliated television station or one that is a member of the same ownership group;

(f) if they are provided to the licensee by the programming undertaking and are not being distributed in accordance with paragraph (a) or (d), the programming services of at least one television station that broadcasts in English and at least one that broadcasts in French that are owned and operated by, or that are affiliates of, the Corporation; and

(g) the programming services of a programming undertaking that the Commission has required, under paragraph 9(1)(h) of the Act, to be distributed as part of the basic service.

(2) Except as otherwise provided under a condition of its licence, a licensee shall distribute the following services in each licensed area as part of its basic service:

(a) the programming services of the community channel if the licensee elects to distribute community programming under paragraph 20(1)(d), or the program-

b) les services de programmation de télévision éducative qui sont reçus par le titulaire en direct ou autrement et dont l'exploitation relève d'une autorité éducative désignée par la province où est située la zone de desserte autorisée;

c) les services de programmation de toute station de télévision locale autres que ceux visés aux alinéas a) ou b);

d) les services de programmation de toute station de télévision régionale dont la Société est le propriétaire et l'exploitant, sauf s'il distribue, en conformité avec l'alinéa a), les services de programmation d'une station de télévision locale dont la Société est le propriétaire et l'exploitant et dont la langue officielle de diffusion est la même que celle de la station de télévision régionale;

e) les services de programmation de toute station de télévision régionale qui ne sont pas distribués conformément aux alinéas b) ou d), sauf s'il distribue, en conformité avec les alinéas a), c) ou d), les services de programmation d'une station de télévision qui est affiliée ou membre du même groupe de propriété;

f) lorsque les services de programmation sont fournis au titulaire par l'entreprise de programmation et qu'ils ne sont pas distribués conformément aux alinéas a) ou d), les services de programmation d'au moins une station de télévision qui diffuse en anglais et d'au moins une station qui diffuse en français, dont la Société est le propriétaire et l'exploitant ou qui sont des affiliées de la Société;

g) les services de programmation d'une entreprise de programmation dont la distribution dans le cadre du service de base est rendue obligatoire par le Conseil en application de l'alinéa 9(1)h) de la Loi.

(2) Sous réserve des conditions de sa licence, le titulaire distribue les services ci-après dans chaque zone de desserte autorisée dans le cadre du service de base :

a) les services de programmation du canal communautaire, si le titulaire choisit de distribuer une programmation communautaire en vertu de

ming services of a community programming undertaking if one is licensed in the licensed area; and

(b) a programming service that consists of the proceedings of the legislature of the province in which the licensed area is located if the licensee elects to distribute that programming service, unless the programming undertaking that provides that programming service agrees in writing to its distribution as a discretionary service.

(3) If a licensee receives programming services that are identical, it is required to distribute only one of them under subsection (1).

(4) If the programming services of two or more television stations rank equally in the order of priority set out in subsection (1), a licensee shall, unless the operators of the stations agree otherwise in writing, give priority

(a) if all of the stations have studios that are located in the province in which the licensed area is located or in the National Capital Region as described in the schedule to the *National Capital Act*, to the programming services of those stations in the order of the proximity of their main studios to the local head end of the licensed area; and

(b) if one or more — but not all — of the stations have studios that are located in the same province as the licensed area, to the programming service of any station that has a studio located in the same province as the licensed area.

(5) The licensee's obligation to distribute the programming services of a local television station or a regional television station under subsection (1) also includes the obligation to distribute the digital programming service of that television station that is received by direct feed if the programming service of the local television station or regional television station is al-

l'alinéa 20(1)d), ou les services de programmation d'une entreprise de programmation communautaire, si une telle entreprise est autorisée dans la zone de desserte autorisée;

b) le service de programmation constitué des délibérations de la législature de la province dans laquelle se situe la zone de desserte autorisée de l'entreprise, si le titulaire choisit de distribuer un tel service, à moins que l'entreprise de programmation qui fournit ce service de programmation n'accepte par écrit qu'il soit distribué comme service facultatif.

(3) Si le titulaire reçoit des services de programmation qui sont identiques, il n'est tenu de distribuer qu'un seul de ces services en application du paragraphe (1).

(4) Si les services de programmation de plusieurs stations de télévision se classent au même rang dans l'ordre de priorité prévu au paragraphe (1), le titulaire, sauf entente écrite à l'effet contraire entre les exploitants de ces stations, accorde la priorité, selon le cas :

a) aux services de programmation des stations, en fonction de la proximité de leurs studios principaux par rapport à la tête de ligne locale de la zone de desserte autorisée, si toutes les stations ont des studios dans la province où est située la zone de desserte autorisée ou dans la région de la capitale nationale décrite dans l'annexe de la *Loi sur la capitale nationale*;

b) au service de programmation de la station, si une ou plusieurs stations — mais pas toutes — ont des studios dans la province où est située la zone de desserte autorisée.

(5) L'obligation de distribuer les services de programmation d'une station de télévision locale ou d'une station de télévision régionale prévue au paragraphe (1) s'applique aussi au service de programmation numérique de cette station de télévision reçu par alimentation directe, si le service de programmation de la station de télévision locale ou de la station de télévision régionale est

(2) A licensee that distributes a programming service under subsection (1) may also distribute the high definition version of that programming service.

SOR/2002-322, s. 5; SOR/2003-217, s. 9; SOR/2006-11, s. 3; SOR/2011-148, s. 8.

DISTRIBUTION OF DISTANT TELEVISION STATIONS

21. (1) Except as otherwise provided in a condition of its licence, which condition takes effect on or after September 1, 2011, a licensee shall obtain the consent of the operator of a distant television station to distribute its signal before the licensee makes the signal available to its subscribers.

(2) The licensee is not required to obtain the consent of the operator of the distant television station if the signal is required to be distributed as part of the licensee's basic service under section 17 or under a condition of its licence.

SOR/2003-217, s. 10, SOR/2011-148, s. 8

DISTRIBUTION OF NON-CANADIAN TELEVISION STATIONS

22. Except as otherwise provided in a condition of its licence, which condition takes effect on or after September 1, 2011, a licensee shall not distribute a 4 + 1 package of programming services that originate outside the time zone in which the licensee's local head end is located unless the licensee also distributes to its subscribers the programming services of at least one television station from each English major ownership group that originate in the same time zone.

SOR/2003-217, s. 11, SOR/2006-174, s. 1; SOR/2011-148, s. 8.

DISTRIBUTION AND LINKAGE

23. (1) Except as otherwise provided under a condition of its licence, a licensee that distributes a Category A service in a licensed area as part of a package of programming services may also distribute the service in the licensed area on a stand-alone basis.

(2) If the licensee is operating in a francophone market, it shall distribute, in that market in a single package of programming services, all the French-language Category A services that it does not otherwise distribute in

(2) Le titulaire qui distribue un service de programmation en vertu du paragraphe (1) peut aussi distribuer la version haute définition de ce service de programmation.

DORS/2002-322, art. 5; DORS/2003-217, art. 9; DORS/2006-11, art. 3; DORS/2011-148, art. 8.

DISTRIBUTION DE STATIONS DE TÉLÉVISION ÉLOIGNÉES

21. (1) Sous réserve de toute condition de sa licence prenant effet le 1^{er} septembre 2011 ou après cette date, le titulaire est tenu d'obtenir le consentement de l'exploitant d'une station de télévision éloignée pour distribuer son signal avant de le rendre disponible à ses abonnés.

(2) Si le signal doit être distribué dans le cadre du service de base du titulaire conformément à l'article 17 ou à une condition de sa licence, le titulaire n'est pas tenu d'obtenir ce consentement.

DORS/2003-217, art. 10, DORS/2011-148, art. 8.

DISTRIBUTION DES STATIONS DE TÉLÉVISION NON CANADIENNES

22. Il est interdit au titulaire, sous réserve de toute condition de sa licence prenant effet le 1^{er} septembre 2011 ou après cette date, de distribuer un bloc de services de programmation 4 + 1 provenant de l'extérieur du fuseau horaire de la tête de ligne locale du titulaire, à moins qu'il ne distribue aussi à ses abonnés les services de programmation d'au moins une station de télévision de chaque groupe de propriété principal de langue anglaise provenant du même fuseau horaire.

DORS/2003-217, art. 11, DORS/2006-174, art. 1; DORS/2011-148, art. 8.

DISTRIBUTION ET ASSEMBLAGE

23. (1) Sous réserve des conditions de sa licence, le titulaire qui distribue un service de catégorie A dans une zone de desserte autorisée dans le cadre d'un bloc de services de programmation peut aussi le distribuer dans cette zone de façon autonome.

(2) Si le titulaire exploite son entreprise dans un marché francophone, il doit distribuer dans ce marché, dans un bloc de services de programmation, tous les services de catégorie A de langue française qu'il ne distribue pas

(3) If, before the end of the relevant period referred to in paragraph (1)(a) or in subsection (2), the Commission requests from a licensee a program log, machine-readable record or clear and intelligible audiovisual recording of a program, the licensee shall immediately furnish the log, record or recording to the Commission.

SOR/2003-217, s. 19; SOR/2007-248, s. 2; SOR/2011-148, s. 8.

33.1 [Repealed, SOR/2011-148, s. 8]

33.2 [Repealed, SOR/2011-148, s. 8]

33.3 [Repealed, SOR/2011-148, s. 8]

CONTRIBUTION TO LOCAL EXPRESSION, CANADIAN
PROGRAMMING AND COMMUNITY TELEVISION

34. (1) If a licensee is required under this section to make a contribution to Canadian programming, it shall contribute

(a) to the Canadian production fund at least 80% of its total required contribution; and

(b) to one or more independent production funds, the remainder of its total required contribution.

(2) Except as otherwise provided under a condition of its licence, if a licensee does not distribute its own community programming on the community channel and if a community programming undertaking is licensed in the licensed area, the licensee shall make, for each broadcast year, a contribution of 3% of its gross revenues derived from broadcasting activities in the broadcast year to Canadian programming and a contribution of 2% of its gross revenues derived from broadcasting activities in the broadcast year to the community programming undertaking.

(3) Except as otherwise provided under a condition of its licence, if a licensee does not distribute its own community programming on the community channel and if no community programming undertaking is licensed in the licensed area, the licensee shall make, for each broadcast year, a contribution of 5% of its gross revenues derived from broadcasting activities in the broadcast year to Canadian programming.

(3) Si le Conseil lui en fait la demande avant l'expiration du délai applicable visé à l'alinéa (1)a) ou au paragraphe (2), le titulaire lui fournit immédiatement le registre des émissions, l'enregistrement informatisé ou l'enregistrement audiovisuel clair et intelligible des émissions.

DORS/2003-217, art. 19; DORS/2007-248, art. 2; DORS/2011-148, art. 8.

33.1 [Abrogé, DORS/2011-148, art. 8]

33.2 [Abrogé, DORS/2011-148, art. 8]

33.3 [Abrogé, DORS/2011-148, art. 8]

CONTRIBUTION À L'EXPRESSION LOCALE, À LA
PROGRAMMATION CANADIENNE ET À LA TÉLÉVISION
COMMUNAUTAIRE

34. (1) Le titulaire qui doit contribuer à la programmation canadienne en vertu du présent article verse :

a) d'une part, au fonds de production canadien, au moins 80 % de la contribution totale requise;

b) d'autre part, à un ou à plusieurs fonds de production indépendants, le reste de la contribution totale requise.

(2) Sous réserve des conditions de sa licence, si une entreprise de programmation communautaire est autorisée dans la zone de desserte autorisée, le titulaire qui ne distribue pas sa propre programmation communautaire sur le canal communautaire verse à la programmation canadienne, pour chaque année de radiodiffusion, une contribution égale à 3 % des recettes brutes provenant de ses activités de radiodiffusion au cours de l'année de radiodiffusion et, à l'entreprise de programmation communautaire, une contribution égale à 2 % de ces recettes brutes.

(3) Sous réserve des conditions de sa licence, si aucune entreprise de programmation communautaire n'est autorisée dans la zone de desserte autorisée, le titulaire qui ne distribue pas sa propre programmation communautaire sur le canal communautaire verse à la programmation canadienne, pour chaque année de radiodiffusion, une contribution égale à 5 % des recettes brutes prove-

(4) Except as otherwise provided under a condition of its licence, if a licensee distributes its own community programming on the community channel, the licensee shall make, for each broadcast year, a contribution to Canadian programming that is equal to the greater of

(a) 5% of its gross revenues derived from broadcasting activities in the broadcast year, less any contribution to local expression made by the licensee in that broadcast year, and

(b) 3% of its gross revenues derived from broadcasting activities in that broadcast year.

SOR/2003-29, s. 4; SOR/2003-217, s. 23; SOR/2011-148, s. 8.

35. Except as otherwise provided under a condition of its licence, a licensee shall make, for each broadcast year, a contribution of 1.5% of its gross revenues derived from broadcasting activities in the broadcast year to Canadian programming. The contribution shall be made to the Local Programming Improvement Fund.

SOR/2003-458, s. 9; SOR/2011-148, s. 8.

36. (1) The licensee shall separately calculate the contributions required under sections 34 and 35 on the basis of its gross revenues derived from broadcasting activities in the previous broadcast year.

(2) Each contribution shall be made separately by the licensee in 12 equal monthly instalments during the broadcast year, with an instalment being made on or before the last day of each month.

(3) Despite subsections (1) and (2), if the licensee's gross revenues derived from broadcasting activities in the previous broadcast year are not known when an instalment is to be made, that instalment shall be equal to an amount that is 1/12 of the contribution to be made, calculated on the basis of an estimate of those gross revenues.

SOR/2001-75, s. 11; SOR/2003-29, s. 5; SOR/2011-148, s. 8.

nant de ses activités de radiodiffusion au cours de l'année de radiodiffusion.

(4) Sous réserve des conditions de sa licence, le titulaire qui distribue sa propre programmation communautaire sur le canal communautaire verse à la programmation canadienne, pour chaque année de radiodiffusion, une somme égale au plus élevé des montants suivants :

a) 5 % des recettes brutes provenant de ses activités de radiodiffusion au cours de l'année de radiodiffusion, moins le montant de la contribution à l'expression locale faite au cours de l'année de radiodiffusion;

b) 3 % des recettes brutes provenant de ses activités de radiodiffusion au cours de l'année de radiodiffusion.

DORS/2003-29, art. 4; DORS/2003-217, art. 23; DORS/2011-148, art. 8.

35. Sous réserve des conditions de sa licence, le titulaire verse à la programmation canadienne, pour chaque année de radiodiffusion, une contribution égale à 1,5 % des recettes brutes provenant de ses activités de radiodiffusion au cours de l'année de radiodiffusion. La contribution est versée au Fonds pour l'amélioration de la programmation locale.

DORS/2003-458, art. 9; DORS/2011-148, art. 8.

36. (1) Le titulaire calcule séparément les contributions exigées par les articles 34 et 35 en se fondant sur les recettes brutes provenant de ses activités de radiodiffusion au cours de l'année de radiodiffusion précédente.

(2) Chacune de ces contributions est versée séparément par le titulaire au cours de l'année de radiodiffusion en 12 mensualités égales payables au plus tard le dernier jour de chaque mois.

(3) Malgré les paragraphes (1) et (2), si les recettes brutes du titulaire provenant de ses activités de radiodiffusion au cours de l'année de radiodiffusion précédente ne sont pas connues au moment du versement, le titulaire verse une mensualité égale à un douzième de la contribution établie sur le fondement d'une estimation de ces recettes.

DORS/2001-75, art. 11; DORS/2003-29, art. 5; DORS/2011-148, art. 8.

37. If, as a result of the calculations performed under subsection 36(1) the contribution made by a licensee for a broadcast year is greater than the amount required under section 34 or 35, the licensee may deduct the excess from the amount of that contribution that is required for the subsequent broadcast year; however, if it is less than the amount required, the licensee shall make the balance of the contribution by December 31 of the subsequent broadcast year.

SOR/2002-322, s. 8; SOR/2011-148, s. 8.

PROGRAMMING SERVICE DELETION AND SUBSTITUTION

38. (1) The following definitions apply in this section.

“broadcaster” includes an educational authority responsible for an educational television programming service. (*radiodiffuseur*)

“local television station”, in addition to the meaning assigned by section 1, includes the station “A” Atlantic and an educational authority responsible for an educational television programming service. (*station de télévision locale*)

(2) Except as otherwise provided in subsection (4) or under a condition of its licence, a licensee

(a) shall, in a licensed area, delete the programming service of a television station and substitute it with the programming service of a local television station or a regional television station or, with the agreement of the broadcaster operating the local television station or regional television station, have that broadcaster carry out the deletion and substitution, if

(i) the programming service to be deleted and the programming service to be substituted are comparable and simultaneously broadcast,

(ii) the local television station or regional television station has a higher priority under section 17, and

(iii) in the case where the broadcaster operating the local television station or regional television station is not required to carry out the deletion and substi-

37. Si la contribution versée pour l’année de radiodiffusion, calculée selon le paragraphe 36(1), est supérieure à la contribution exigible au titre des articles 34 ou 35, le titulaire peut déduire le montant excédentaire du montant de la contribution exigible pour l’année de radiodiffusion suivante; si, par contre, elle lui est inférieure, il acquitte le solde dû au plus tard le 31 décembre de l’année de radiodiffusion suivante.

DORS/2002-322, art. 8; DORS/2011-148, art. 8.

RETRAIT ET SUBSTITUTION DE SERVICES DE PROGRAMMATION

38. (1) Les définitions qui suivent s’appliquent au présent article.

«radiodiffuseur» Est assimilée à un radiodiffuseur une autorité éducative responsable d’un service de programmation de télévision éducative. (*broadcaster*)

«station de télévision locale» Outre le sens prévu à l’article 1, s’entend de la station «A» Atlantic et d’une autorité éducative responsable d’un service de programmation de télévision éducative. (*local television station*)

(2) Sous réserve du paragraphe (4) et des conditions de sa licence, le titulaire :

a) doit soit retirer le service de programmation d’une station de télévision dans une zone de desserte autorisée et y substituer celui d’une station de télévision locale ou d’une station de télévision régionale, soit veiller à ce que le radiodiffuseur exploitant la station de télévision locale ou la station de télévision régionale effectue le retrait et la substitution en vertu d’une entente avec celui-ci, si les conditions ci-après sont réunies :

(i) le service de programmation à retirer et celui qui y sera substitué sont comparables et diffusés simultanément,

(ii) la station de télévision locale ou la station de télévision régionale a la priorité en vertu de l’article 17,

tution under an agreement with the licensee, the licensee has, at least four days before the date on which the programming service is to be broadcast, received from the broadcaster operating the local television station or regional television station a written request for the deletion and substitution;

(b) may delete and substitute a programming service under paragraph (a) even if the licensee has received a written request from the broadcaster operating the local television station or regional television station less than four days before the date on which the programming service is to be broadcast; and

(c) may, in a licensed area, delete the programming service of a television station and substitute it with the programming service of a specialty service if

(i) the programming service to be deleted and the programming service to be substituted are comparable and simultaneously broadcast, and

(ii) the operator of the specialty service has submitted a written request to the licensee for the deletion and substitution.

(3) If a substitution is requested by more than one broadcaster under paragraph (2)(a), the licensee shall give preference to the programming service of the television station that has the highest priority under section 17.

(4) A licensee shall not delete the programming service of a television station under subsection (2) if the Commission notifies the licensee that the deletion is not in the public interest because

(a) undue financial hardship would result for the operator of the television station; or

(b) the programming service to be deleted contains subsidiary signals designed to inform or entertain and the programming service to be substituted for it does not contain similar signals.

(iii) dans le cas où le radiodiffuseur exploitant la station de télévision locale ou la station de télévision régionale n'est pas tenu de procéder au retrait et à la substitution en vertu d'une entente avec le titulaire, celui-ci a reçu une demande écrite de retrait et de substitution du radiodiffuseur exploitant la station de télévision locale ou la station de télévision régionale au moins quatre jours avant la date de la diffusion;

b) peut effectuer le retrait et la substitution d'un service de programmation prévus à l'alinéa a), même s'il a reçu la demande écrite de retrait et de substitution du radiodiffuseur exploitant la station de télévision locale ou la station de télévision régionale moins de quatre jours avant la date de la diffusion;

c) peut retirer le service de programmation d'une station de télévision dans une zone de desserte autorisée et y substituer celui d'un service spécialisé, si :

(i) d'une part, le service de programmation à retirer et celui qui y sera substitué sont comparables et sont diffusés simultanément,

(ii) d'autre part, l'exploitant du service spécialisé a soumis au titulaire une demande écrite de retrait et de substitution.

(3) Si plusieurs radiodiffuseurs demandent la substitution d'un service de programmation au titre de l'alinéa (2)a), le titulaire accorde la préférence au service de programmation de la station de télévision qui a la priorité en vertu de l'article 17.

(4) Le titulaire ne peut retirer le service de programmation d'une station de télévision tel que le prévoit le paragraphe (2) si le Conseil l'avise qu'un tel retrait n'est pas dans l'intérêt public pour l'un des motifs suivants :

a) le retrait mettrait l'exploitant de la station de télévision dans une situation financière extrêmement difficile;

b) le service de programmation devant être retiré contient des signaux secondaires visant à informer ou à divertir alors que le service de programmation qui

(5) For the purposes of this section, the programming service to be substituted shall be of the same format as, or of higher format than, the programming service to be deleted.

(6) If a programming service of a local television station — other than the station “A” Atlantic or an educational authority responsible for an educational television programming service — is provided by direct feed to a licensee in its licensed area, the licensee is required to substitute the programming service under paragraph (2)(a) only if it is also receivable over the air by the licensee in its licensed area.

(7) A licensee may discontinue a deletion and substitution made under subsection (2) if the programming services in question are not, or are no longer, comparable and broadcast simultaneously.

SOR/2001-75, s. 12; SOR/2011-148, s. 8

PART 3

DISTRIBUTION OF PROGRAMMING SERVICES ON AN ANALOG BASIS

APPLICATION

[SOR/2003-217, s. 24; SOR/2011-148, s. 8]

39. Except as otherwise provided under a condition of licence, this Part and sections 19, 23 to 26, 28 and 30 to 38 apply to terrestrial distribution undertakings that elect to distribute programming services on an analog basis.

SOR/2007-248, s. 3; SOR/2011-148, s. 8

ANALOG DISTRIBUTION

40. A licensee that distributes programming services on a digital basis to its subscribers in a licensed area shall not distribute a programming service on an analog basis in the licensed area if the distribution of the latter

doit y être substitué ne contient pas de signaux semblables.

(5) Pour l'application du présent article, le service de programmation de substitution doit être d'un format égal ou supérieur au service retiré.

(6) Si le service de programmation d'une station de télévision locale — à l'exception d'un service de programmation de la station «A» Atlantic et d'une autorité éducative responsable d'un service de programmation de télévision éducative — est fourni au titulaire par alimentation directe dans une zone de desserte autorisée, celui-ci n'est tenu de le substituer conformément à l'alinéa (2)a) que s'il peut aussi le recevoir en direct dans sa zone de desserte autorisée.

(7) Le titulaire peut mettre fin au retrait et à la substitution visés au paragraphe (2) si les services de programmation en cause ne sont pas, ou ne sont plus, comparables et diffusés simultanément.

DORS/2001-75, art. 12; DORS/2011-148, art. 8

PARTIE 3

DISTRIBUTION DES SERVICES DE PROGRAMMATION PAR VOIE ANALOGIQUE

APPLICATION

[DORS/2003-217, art. 24; DORS/2011-148, art. 8]

39. Sous réserve des conditions de licence des titulaires, la présente partie et les articles 19, 23 à 26, 28 et 30 à 38 s'appliquent aux entreprises de distribution terrestres qui choisissent de distribuer des services de programmation par voie analogique.

DORS/2007-248, art. 3; DORS/2011-148, art. 8

DISTRIBUTION PAR VOIE ANALOGIQUE

40. Le titulaire qui distribue des services de programmation par voie numérique à ses abonnés dans une zone de desserte autorisée ne peut distribuer un service de programmation par voie analogique dans celle-ci si la distribution de ce dernier l'empêche de respecter les

service prevents it from fulfilling its obligations under Part 2 in the licensed area.

SOR/2002-322, s. 9; SOR/2011-148, s. 8.

TELEVISION PROGRAMMING SERVICES TO BE DISTRIBUTED AS
PART OF THE BASIC SERVICE

41. (1) Except as otherwise provided in subsections 17(3) and (4) or under a condition of its licence, a licensee that distributes programming services on an analog basis in a licensed area shall distribute the following as part of the analog version of its basic service in the licensed area in the following order of priority:

(a) the programming services referred to in paragraphs 17(1)(a) to (f), in the order of priority in which those paragraphs are set out; and

(b) the programming services of a programming undertaking that the Commission has required, under paragraph 9(1)(h) of the Act, to be distributed as part of the basic service, but excluding any programming service of a programming undertaking that is required to be distributed solely on a digital basis.

(2) When the operator of a Canadian programming undertaking provides a programming service solely on a digital basis, the licensee shall obtain the operator's consent in writing before distributing the programming service on an analog basis.

(3) Despite subsection (1), if the consent referred to in subsection (2) cannot be obtained, the licensee is not required to distribute the programming service in question.

SOR/2011-148, s. 8.

TELEVISION PROGRAMMING SERVICES THAT MAY BE
DISTRIBUTED

42. Except as otherwise provided under a condition of its licence, a licensee may, once it is distributing all the programming services that it is required to distribute in a licensed area under section 41, distribute in that licensed

obligations qui lui incombent aux termes de la partie 2 dans cette zone.

DORS/2002-322, art. 9; DORS/2011-148, art. 8.

SERVICES DE PROGRAMMATION DE TÉLÉVISION DEVANT ÊTRE
DISTRIBUÉS DANS LE CADRE DU SERVICE DE BASE

41. (1) Sous réserve des paragraphes 17(3) et (4) et des conditions de sa licence, le titulaire qui distribue un service de programmation par voie analogique dans une zone de desserte autorisée distribue les services de programmation ci-après dans cette zone dans le cadre du service de base par voie analogique en respectant l'ordre de priorité suivant :

a) les services de programmation visés aux alinéas 17(1)a) à f), dans l'ordre de priorité visé à ces alinéas;

b) les services de programmation d'une entreprise de programmation dont la distribution dans le cadre du service de base est rendue obligatoire par le Conseil en application de l'alinéa 9(1)h) de la Loi, autre qu'un service de programmation d'une entreprise de programmation dont la distribution est uniquement exigée par voie numérique.

(2) Lorsque l'exploitant d'une entreprise de programmation canadienne fournit son service uniquement par voie numérique, le titulaire est tenu d'obtenir le consentement écrit de l'exploitant du service de programmation canadien avant de distribuer ce service par voie analogique.

(3) Malgré le paragraphe (1), si le consentement ne peut être obtenu, le titulaire n'est pas tenu de distribuer le service.

DORS/2011-148, art. 8.

SERVICES DE PROGRAMMATION DE TÉLÉVISION POUVANT ÊTRE
DISTRIBUÉS

42. Sous réserve des conditions de sa licence, le titulaire ne peut distribuer dans la zone de desserte autorisée tous les services de programmation qu'il distribuait par voie analogique avant le 10 décembre 2010 que s'il dis-

PROGRAMMING SERVICES THAT MAY BE DISTRIBUTED

48. (1) Except as otherwise provided in section 49 or under a condition of its licence, a licensee may distribute the following programming services:

- (a) the programming service of any licensed programming undertaking, excluding a television pay-per-view service;
- (b) any authorized non-Canadian programming service — including, subject to section 50, a 4 + 1 package of programming services;
- (c) subject to section 29, the programming service of any exempt programming undertaking;
- (d) any programming service that promotes a programming service distributed by the licensee and that meets the criteria set out in paragraph 27 of Broadcasting Public Notice CRTC 2007-74, dated July 5, 2007 and entitled *Previews and promotional channels*; and
- (e) any programming service — including, subject to section 50, a further 4 + 1 package of programming services — that is authorized under a condition of its licence.

(2) A licensee that distributes a programming service under subsection (1) may also distribute the high definition version of that programming service.

SOR/2004-71, s. 1; SOR/2011-148, s. 8.

49. (1) Except as otherwise provided in a condition of its licence, which condition takes effect on or after September 1, 2011, a licensee shall obtain the consent of the operator of a distant television station to distribute its signal before the licensee makes the signal available to its subscribers.

(2) The licensee is not obliged to obtain the consent of the operator of the distant television station if

- (a) the signal must be distributed as part of the licensee's basic service
 - (i) because the Commission has required it under paragraph 9(1)(h) of the Act, or

SERVICES DE PROGRAMMATION POUVANT ÊTRE DISTRIBUÉS

48. (1) Sous réserve de l'article 49 et des conditions de sa licence, le titulaire peut distribuer les services de programmation suivants :

- a) le service de programmation de toute entreprise de programmation autorisée, sauf un service de télévision à la carte;
- b) tout service de programmation non canadien approuvé, y compris, sous réserve de l'article 50, un bloc de services de programmation 4 + 1;
- c) sous réserve de l'article 29, le service de programmation de toute entreprise de programmation exemptée;
- d) tout service de programmation faisant la promotion d'un service de programmation distribué par le titulaire et qui respecte les critères prévus au paragraphe 27 de l'avis public de radiodiffusion CRTC 2007-74 du 5 juillet 2007 intitulé *Séquences-annonces et canaux d'autopublicité*;
- e) tout service de programmation approuvé aux termes d'une condition de la licence du titulaire, y compris, sous réserve de l'article 50, un bloc de services de programmation 4 + 1 additionnel.

(2) Le titulaire qui distribue un service de programmation en vertu du paragraphe (1) peut aussi distribuer la version haute définition de ce service de programmation.

DORS/2004-71, art. 1; DORS/2011-148, art. 8.

49. (1) Sous réserve de toute condition de sa licence prenant effet le 1^{er} septembre 2011 ou après cette date, le titulaire est tenu d'obtenir le consentement de l'exploitant d'une station de télévision éloignée pour distribuer son signal avant de rendre le service de programmation qui utilise ce signal disponible à ses abonnés.

(2) Le titulaire n'est pas tenu d'obtenir le consentement visé au paragraphe (1) dans les cas suivants :

- a) le signal doit être distribué dans le cadre du service de base du titulaire :
 - (i) soit parce que le Conseil l'a exigé en application de l'alinéa 9(1)h) de la Loi,

(ii) because it is required under section 46; or

(b) the signal originates in the Atlantic provinces and is distributed under section 46 by the licensee to a subscriber whose residence or other premises are located in the Atlantic provinces.

SOR/2011-148, s. 8.

50. Except as otherwise provided in a condition of its licence, which condition takes effect on or after September 1, 2011, a licensee shall not distribute a 4 + 1 package of programming services that originate outside the time zone in which the subscriber's residence or other premises are located unless the licensee also offers to the subscriber the programming services of at least one television station from each English major ownership group that originate in the same time zone.

SOR/2003-217, s. 27; SOR/2011-148, s. 8.

SIMULTANEOUS PROGRAM SUBSTITUTION AND DELETION

51. (1) Except as otherwise provided under a condition of its licence, if a licensee receives, at least four days before the date on which the programming service is to be broadcast, a written request for substitution or deletion from the operator of a licensed Canadian television programming undertaking, the licensee shall

(a) delete a non-Canadian programming service and substitute it with the comparable and simultaneously broadcast programming service of the Canadian television programming undertaking whose signal is distributed by the licensee; and

(b) delete, in respect of subscribers located within the Grade B official contour or noise-limited bounding official contour of the Canadian television programming undertaking, a programming service that is comparable to that of the Canadian television programming undertaking and that would otherwise be received simultaneously by those subscribers.

(2) A licensee may delete and substitute a programming service under subsection (1) even if the licensee receives the request from the operator less than four days

(ii) soit en application de l'article 46;

b) le signal provient des provinces de l'Atlantique et est distribué en application de l'article 46 par le titulaire à l'abonné dont la résidence ou les autres locaux sont situés dans l'une de ces provinces.

DORS/2011-148, art. 8.

50. Il est interdit au titulaire, sous réserve de toute condition de sa licence prenant effet le 1^{er} septembre 2011 ou après cette date, de distribuer un bloc de services de programmation 4 + 1 provenant de l'extérieur du fuseau horaire où la résidence ou les autres locaux de l'abonné sont situés, à moins qu'il ne lui offre aussi les services de programmation d'au moins une station de télévision de chaque groupe de propriété principal de langue anglaise provenant du même fuseau horaire.

DORS/2003-217, art. 27; DORS/2011-148, art. 8.

RETRAIT ET SUBSTITUTION DES SERVICES DE PROGRAMMATION SIMULTANÉS

51. (1) Sous réserve des conditions de sa licence, le titulaire qui, au moins quatre jours avant la date de diffusion du service de programmation, reçoit une demande écrite de retrait ou de substitution de l'exploitant d'une entreprise de programmation de télévision canadienne autorisée doit :

a) d'une part, retirer un service de programmation non canadien et y substituer le service de programmation de l'entreprise de programmation de télévision canadienne dont il distribue le signal, si ces services sont comparables et diffusés simultanément;

b) d'autre part, retirer, à l'égard des abonnés se trouvant dans le périmètre officiel de classe B ou le périmètre de rayonnement officiel limité par le bruit de l'entreprise de programmation de télévision canadienne, un service de programmation qui est comparable à celui de l'entreprise de programmation de télévision canadienne et que ces abonnés recevraient simultanément autrement.

(2) Le titulaire peut effectuer le retrait et la substitution d'un service de programmation conformément au

before the date on which the programming service is to be broadcast.

(3) A licensee shall not delete a programming service if the Commission notifies the licensee that the deletion is not in the public interest because the programming service to be deleted contains subsidiary signals that are designed to inform or entertain and the simultaneously broadcast programming service does not contain similar signals.

(4) A licensee may discontinue a deletion — and substitution, if any — if the programming services in question are not, or are no longer, comparable and broadcast simultaneously.

(5) For the purposes of this section, the programming service to be substituted shall be of the same format as, or a higher format than, the programming service to be deleted.

SOR/2011-148, s. 8.

CONTRIBUTION TO CANADIAN PROGRAMMING

52. Except as otherwise provided under a condition of its licence, a licensee shall make, for each broadcast year, the following contributions to Canadian programming based on its gross revenues derived from broadcasting activities in that year:

- (a) to the Canadian production fund, a contribution of 4% of gross revenues;
- (b) to one or more independent production funds, a contribution of 1% of gross revenues, of which 0.4% of gross revenues shall be made to the Small Market Local Production Fund; and
- (c) to the Local Programming Improvement Fund, a contribution of 1.5% of gross revenues.

SOR/2003-217, s. 28; SOR/2011-148, s. 8.

53. (1) The licensee shall separately calculate the contributions required under section 52 on the basis of its gross revenues derived from broadcasting activities in the previous broadcast year.

(2) Each contribution shall be made separately by the licensee in 12 equal monthly instalments during the

paragraphe (1), même s'il a reçu la demande écrite moins de quatre jours avant la date de la diffusion.

(3) Le titulaire ne peut retirer un service de programmation si le Conseil l'avise qu'un tel retrait n'est pas dans l'intérêt public parce que le service de programmation devant être retiré contient des signaux secondaires visant à informer ou à divertir et que le service de programmation diffusé simultanément ne contient pas de signaux semblables.

(4) Le titulaire peut mettre fin au retrait — et à toute substitution, le cas échéant — si les services de programmation en cause ne sont pas, ou ne sont plus, comparables et diffusés simultanément.

(5) Pour l'application du présent article, le service de programmation substitué doit être d'un format égal ou supérieur au service retiré.

DORS/2011-148, art. 8.

CONTRIBUTION À LA PROGRAMMATION CANADIENNE

52. Sous réserve des conditions de sa licence, le titulaire verse, pour chaque année de radiodiffusion, les contributions à la programmation canadienne ci-après fondées sur les recettes brutes provenant de ses activités de radiodiffusion au cours de l'année :

- a) 4,0 % des recettes au fonds de production canadien;
- b) 1,0 % des recettes à un ou à plusieurs fonds de production indépendants, dont 0,4 % au Fonds de production local pour les petits marchés;
- c) 1,5 % des recettes au Fonds pour l'amélioration de la programmation locale.

DORS/2003-217, art. 28, DORS/2011-148, art. 8.

53. (1) Le titulaire calcule séparément les contributions exigées par l'article 52 en se fondant sur les recettes brutes provenant de ses activités de radiodiffusion au cours de l'année de radiodiffusion précédente.

(2) Chacune de ces contributions est versée séparément par le titulaire au cours de l'année de radiodiffu-



CANADA

CONSOLIDATION

CODIFICATION

Copyright Act

Loi sur le droit d'auteur

R.S.C., 1985, c. C-42

L.R.C., 1985, ch. C-42

Current to March 6, 2012

À jour au 6 mars 2012

Last amended on December 12, 2005

Dernière modification le 12 décembre 2005

Published by the Minister of Justice at the following address:
<http://laws-lois.justice.gc.ca>

Publié par le ministre de la Justice à l'adresse suivante :
<http://lois-laws.justice.gc.ca>

OFFICIAL STATUS
OF CONSOLIDATIONS

CARACTÈRE OFFICIEL
DES CODIFICATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Published
consolidation is
evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Codifications
comme élément
de preuve

Inconsistencies
in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

Incompatibilité
— lois

NOTE

This consolidation is current to March 6, 2012. The last amendments came into force on December 12, 2005. Any amendments that were not in force as of March 6, 2012 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 6 mars 2012. Les dernières modifications sont entrées en vigueur le 12 décembre 2005. Toutes modifications qui n'étaient pas en vigueur au 6 mars 2012 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

| | | | |
|---|--|--|--|
| <p>“broadcaster” « radiodiffuseur »</p> | <p>(d) an instruction or repair manual that accompanies a product or that is supplied as an accessory to a service;</p> <p>“broadcaster” means a body that, in the course of operating a broadcasting undertaking, broadcasts a communication signal in accordance with the law of the country in which the broadcasting undertaking is carried on, but excludes a body whose primary activity in relation to communication signals is their retransmission;</p> | <p>partie d’un organisme constitué ou administré pour réaliser des profits, ni n’est administré ou contrôlé directement ou indirectement par un tel organisme,</p> <p>(ii) d’autre part, rassemble et gère des collections de documents ou d’objets qui sont accessibles au public ou aux chercheurs;</p> <p>b) de tout autre établissement à but non lucratif visé par règlement.</p> | |
| <p>“choreographic work” « œuvre chorégraphique »</p> | <p>“choreographic work” includes any work of choreography, whether or not it has any story line;</p> | <p>« Commission » La Commission du droit d’auteur constituée au titre du paragraphe 66(1).</p> <p>« compilation » Les œuvres résultant du choix ou de l’arrangement de tout ou partie d’œuvres littéraires, dramatiques, musicales ou artistiques ou de données.</p> | <p>« Commission » “Board”</p> <p>« compilation » “compilation”</p> |
| <p>“cinematographic work” « œuvre cinématographique »</p> | <p>“cinematograph” [Repealed, 1997, c. 24, s. 1]</p> <p>“cinematographic work” includes any work expressed by any process analogous to cinematography, whether or not accompanied by a soundtrack;</p> | <p>« conférence » Sont assimilés à une conférence les allocutions, discours et sermons.</p> | <p>« conférence » “lecture”</p> |
| <p>“collective society” « société de gestion »</p> | <p>“collective society” means a society, association or corporation that carries on the business of collective administration of copyright or of the remuneration right conferred by section 19 or 81 for the benefit of those who, by assignment, grant of licence, appointment of it as their agent or otherwise, authorize it to act on their behalf in relation to that collective administration, and</p> | <p>« contrefaçon »</p> <p>a) À l’égard d’une œuvre sur laquelle existe un droit d’auteur, toute reproduction, y compris l’imitation déguisée, qui a été faite contrairement à la présente loi ou qui a fait l’objet d’un acte contraire à la présente loi;</p> <p>b) à l’égard d’une prestation sur laquelle existe un droit d’auteur, toute fixation ou reproduction de celle-ci qui a été faite contrairement à la présente loi ou qui a fait l’objet d’un acte contraire à la présente loi;</p> | <p>« contrefaçon » “infringing”</p> |
| | <p>(a) operates a licensing scheme, applicable in relation to a repertoire of works, performer’s performances, sound recordings or communication signals of more than one author, performer, sound recording maker or broadcaster, pursuant to which the society, association or corporation sets out classes of uses that it agrees to authorize under this Act, and the royalties and terms and conditions on which it agrees to authorize those classes of uses, or</p> <p>(b) carries on the business of collecting and distributing royalties or levies payable pursuant to this Act;</p> | <p>c) à l’égard d’un enregistrement sonore sur lequel existe un droit d’auteur, toute reproduction de celle-ci qui a été faite contrairement à la présente loi ou qui a fait l’objet d’un acte contraire à la présente loi;</p> <p>d) à l’égard d’un signal de communication sur lequel existe un droit d’auteur, toute fixation ou reproduction de la fixation qui a été faite contrairement à la présente loi ou qui a fait l’objet d’un acte contraire à la présente loi.</p> | |
| <p>“collective work” « recueil »</p> | <p>“collective work” means</p> <p>(a) an encyclopaedia, dictionary, year book or similar work,</p> <p>(b) a newspaper, review, magazine or similar periodical, and</p> | <p>La présente définition exclut la reproduction — autre que celle visée par l’alinéa 27(2)e) et l’article 27.1 — faite avec le consentement du titulaire du droit d’auteur dans le pays de production.</p> <p>« débit » [Abrogée, 1997, ch. 24, art. 1]</p> | |

TERM OF COPYRIGHT

DURÉE DU DROIT D'AUTEUR

Term of
copyright

6. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author, the remainder of the calendar year in which the author dies, and a period of fifty years following the end of that calendar year.

R.S., 1985, c. C-42, s. 6; 1993, c. 44, s. 58.

6. Sauf disposition contraire expresse de la présente loi, le droit d'auteur subsiste pendant la vie de l'auteur, puis jusqu'à la fin de la cinquantième année suivant celle de son décès.

L.R. (1985), ch. C-42, art. 6; 1993, ch. 44, art. 58.

Durée du droit
d'auteur

Anonymous and
pseudonymous
works

6.1 Except as provided in section 6.2, where the identity of the author of a work is unknown, copyright in the work shall subsist for whichever of the following terms ends earlier:

(a) a term consisting of the remainder of the calendar year of the first publication of the work and a period of fifty years following the end of that calendar year, and

(b) a term consisting of the remainder of the calendar year of the making of the work and a period of seventy-five years following the end of that calendar year,

but where, during that term, the author's identity becomes commonly known, the term provided in section 6 applies.

1993, c. 44, s. 58.

6.1 Sous réserve de l'article 6.2, lorsque l'identité de l'auteur d'une œuvre n'est pas connue, le droit d'auteur subsiste jusqu'à celle de ces deux dates qui survient en premier:

a) soit la fin de la cinquantième année suivant celle de la première publication de l'œuvre;

b) soit la fin de la soixante-quinzième année suivant celle de la création de l'œuvre.

Toutefois, lorsque, durant cette période, l'identité de l'auteur devient généralement connue, c'est l'article 6 qui s'applique.

1993, ch. 44, art. 58.

(Œuvres
anonymes et
pseudonymes

Anonymous and
pseudonymous
works of joint
authorship

6.2 Where the identity of all the authors of a work of joint authorship is unknown, copyright in the work shall subsist for whichever of the following terms ends earlier:

(a) a term consisting of the remainder of the calendar year of the first publication of the work and a period of fifty years following the end of that calendar year, and

(b) a term consisting of the remainder of the calendar year of the making of the work and a period of seventy-five years following the end of that calendar year,

but where, during that term, the identity of one or more of the authors becomes commonly known, copyright shall subsist for the life of whichever of those authors dies last, the remainder of the calendar year in which that author dies, and a period of fifty years following the end of that calendar year.

1993, c. 44, s. 58.

6.2 Lorsque l'identité des coauteurs d'une œuvre créée en collaboration n'est pas connue, le droit d'auteur subsiste jusqu'à celle de ces deux dates qui survient en premier:

a) soit la fin de la cinquantième année suivant celle de la première publication de l'œuvre;

b) soit la fin de la soixante-quinzième année suivant celle de la création de l'œuvre.

Toutefois, lorsque, durant cette période, l'identité de un ou plusieurs des coauteurs devient généralement connue, le droit d'auteur subsiste pendant la vie du dernier survivant de ces auteurs, puis jusqu'à la fin de la cinquantième année suivant celle de son décès.

1993, ch. 44, art. 58.

(Œuvres
anonymes et
pseudonymes de
collaboration

Term of
copyright in
posthumous
works

7. (1) Subject to subsection (2), in the case of a literary, dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of

7. (1) Sous réserve du paragraphe (2), lorsqu'une œuvre littéraire, dramatique ou musicale, ou une gravure, qui est encore protégée à la date de la mort de l'auteur ou, dans le cas des

Durée du droit
d'auteur sur les
œuvres
posthumes

a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published or, in the case of a lecture or a dramatic or musical work, been performed in public or communicated to the public by telecommunication, before that date, copyright shall subsist until publication, or performance in public or communication to the public by telecommunication, whichever may first happen, for the remainder of the calendar year of the publication or of the performance in public or communication to the public by telecommunication, as the case may be, and for a period of fifty years following the end of that calendar year.

Application of subsection (1)

(2) Subsection (1) applies only where the work in question was published or performed in public or communicated to the public by telecommunication, as the case may be, before the coming into force of this section.

Transitional provision

(3) Where

(a) a work has not, at the coming into force of this section, been published or performed in public or communicated to the public by telecommunication,

(b) subsection (1) would apply to that work if it had been published or performed in public or communicated to the public by telecommunication before the coming into force of this section, and

(c) the relevant death referred to in subsection (1) occurred during the period of fifty years immediately before the coming into force of this section,

copyright shall subsist in the work for the remainder of the calendar year in which this section comes into force and for a period of fifty years following the end of that calendar year, whether or not the work is published or performed in public or communicated to the public by telecommunication after the coming into force of this section.

Transitional provision

(4) Where

(a) a work has not, at the coming into force of this section, been published or performed in public or communicated to the public by telecommunication,

(b) subsection (1) would apply to that work if it had been published or performed in pub-

œuvres créées en collaboration, à la date de la mort de l'auteur qui décède le dernier n'a pas été publiée ni, en ce qui concerne une conférence ou une œuvre dramatique ou musicale, exécutée ou représentée en public ou communiquée au public par télécommunication avant cette date, le droit d'auteur subsiste jusqu'à sa publication, ou jusqu'à son exécution ou sa représentation en public ou sa communication au public par télécommunication, selon l'événement qui se produit en premier lieu, puis jusqu'à la fin de la cinquantième année suivant celle de cette publication ou de cette exécution ou représentation en public ou communication au public par télécommunication.

(2) Le paragraphe (1) ne s'applique que dans les cas où l'œuvre a été publiée, ou exécutée ou représentée en public ou communiquée au public par télécommunication, selon le cas, avant l'entrée en vigueur du présent article.

(3) L'œuvre, qu'elle soit ou non publiée, ou exécutée ou représentée en public ou communiquée au public par télécommunication après la date d'entrée en vigueur du présent article, continue d'être protégée par le droit d'auteur jusqu'à la fin de l'année de l'entrée en vigueur de cet article et pour une période de cinquante ans par la suite, dans le cas où :

a) elle n'a pas été publiée, ou exécutée ou représentée en public ou communiquée au public par télécommunication à l'entrée en vigueur du présent article;

b) le paragraphe (1) s'y appliquerait si elle l'avait été;

c) le décès mentionné au paragraphe (1) est survenu au cours des cinquante années précédant l'entrée en vigueur du présent article.

(4) L'œuvre, qu'elle soit ou non publiée, ou exécutée ou représentée en public ou communiquée au public par télécommunication après la date d'entrée en vigueur du présent article, continue d'être protégée par le droit d'auteur jusqu'à la fin de l'année de l'entrée en vigueur de cet article et pour une période de cinq ans par la suite, dans le cas où :

Application du paragraphe (1)

Disposition transitoire

Disposition transitoire

lic or communicated to the public by telecommunication before the coming into force of this section, and

(c) the relevant death referred to in subsection (1) occurred more than fifty years before the coming into force of this section,

copyright shall subsist in the work for the remainder of the calendar year in which this section comes into force and for a period of five years following the end of that calendar year, whether or not the work is published or performed in public or communicated to the public by telecommunication after the coming into force of this section.

R.S., 1985, c. C-42, s. 7; 1993, c. 44, s. 58; 1997, c. 24, s. 6.

8. [Repealed, 1993, c. 44, s. 59]

9. (1) In the case of a work of joint authorship, except as provided in section 6.2, copyright shall subsist during the life of the author who dies last, for the remainder of the calendar year of that author's death, and for a period of fifty years following the end of that calendar year, and references in this Act to the period after the expiration of any specified number of years from the end of the calendar year of the death of the author shall be construed as references to the period after the expiration of the like number of years from the end of the calendar year of the death of the author who dies last.

(2) Authors who are nationals of any country, other than a country that is a party to the North American Free Trade Agreement, that grants a term of protection shorter than that mentioned in subsection (1) are not entitled to claim a longer term of protection in Canada.

R.S., 1985, c. C-42, s. 9; 1993, c. 44, s. 60.

10. (1) Where the owner referred to in subsection (2) is a corporation, the term for which copyright subsists in a photograph shall be the remainder of the year of the making of the initial negative or plate from which the photograph was derived or, if there is no negative or plate, of the initial photograph, plus a period of fifty years.

(1.1) Where the owner is a corporation, the majority of the voting shares of which are owned by a natural person who would have

a) elle n'a pas été publiée, ou exécutée ou représentée en public ou communiquée au public par télécommunication à l'entrée en vigueur du présent article;

b) le paragraphe (1) s'y appliquerait si elle l'avait été;

c) le décès mentionné au paragraphe (1) est survenu plus de cinquante ans avant l'entrée en vigueur du présent article.

L.R. (1985), ch. C-42, art. 7; 1993, ch. 44, art. 58; 1997, ch. 24, art. 6.

8. [Abrogé, 1993, ch. 44, art. 59]

9. (1) Sous réserve de l'article 6.2, lorsqu'il s'agit d'une œuvre créée en collaboration, le droit d'auteur subsiste pendant la vie du dernier survivant des coauteurs, puis jusqu'à la fin de la cinquantième année suivant celle de son décès. Toute mention dans la présente loi de la période qui suit l'expiration d'un nombre spécifique d'années après l'année de la mort de l'auteur doit s'interpréter comme une mention de la période qui suit l'expiration d'un nombre égal d'années après l'année du décès du dernier survivant des coauteurs.

(2) Les auteurs ressortissants d'un pays — autre qu'un pays partie à l'Accord de libre-échange nord-américain — qui accorde une durée de protection plus courte que celle qui est indiquée au paragraphe (1) ne sont pas admis à réclamer une plus longue durée de protection au Canada.

L.R. (1985), ch. C-42, art. 9; 1993, ch. 44, art. 60.

10. (1) Dans les cas où le propriétaire visé au paragraphe (2) est une personne morale, le droit d'auteur sur la photographie subsiste jusqu'à la fin de la cinquantième année suivant celle de la confection du cliché initial ou de la planche dont la photographie a été directement ou indirectement tirée, ou de l'original lorsqu'il n'y a pas de cliché ou de planche.

(1.1) Toutefois, l'article 6 s'applique dans les cas où le propriétaire est une personne morale dont la majorité des actions avec droit de

Cases of joint authorship

Nationals of other countries

Term of copyright in photographs

Where author majority shareholder

Œuvres créées en collaboration

Auteurs étrangers

Durée du droit d'auteur sur les photographies cas particuliers

Majorité des actions détenues par l'auteur

qualified as the author of the photograph except for subsection (2), the term of copyright is the term set out in section 6.

Author of photograph

- (2) The person who
- (a) was the owner of the initial negative or other plate at the time when that negative or other plate was made, or
 - (b) was the owner of the initial photograph at the time when that photograph was made, where there was no negative or other plate,

is deemed to be the author of the photograph and, where that owner is a body corporate, the body corporate is deemed for the purposes of this Act to be ordinarily resident in a treaty country if it has established a place of business therein.

R.S., 1985, c. C-42, s. 10; 1993, c. 44, s. 60; 1994, c. 47, s. 69(F); 1997, c. 24, s. 7.

11. [Repealed, 1997, c. 24, s. 8]

Cinematographic works

11.1 Except for cinematographic works in which the arrangement or acting form or the combination of incidents represented give the work a dramatic character, copyright in a cinematographic work or a compilation of cinematographic works shall subsist

- (a) for the remainder of the calendar year of the first publication of the cinematographic work or of the compilation, and for a period of fifty years following the end of that calendar year; or
- (b) if the cinematographic work or compilation is not published before the expiration of fifty years following the end of the calendar year of its making, for the remainder of that calendar year and for a period of fifty years following the end of that calendar year.

1993, c. 44, s. 60; 1997, c. 24, s. 9.

Where copyright belongs to Her Majesty

12. Without prejudice to any rights or privileges of the Crown, where any work is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty and in that case shall continue for the remainder of the calendar year of the first publication of the work and for a period of fifty years following the end of that calendar year.

R.S., 1985, c. C-42, s. 12; 1993, c. 44, s. 60.

vote sont détenues par une personne physique qui, sauf pour le paragraphe (2), aurait été considérée l'auteur de la photographie.

Auteur de la photographique

(2) Le propriétaire, au moment de la confection du cliché initial ou de la planche ou, lorsqu'il n'y a pas de cliché ou de planche, de l'original est considéré comme l'auteur de la photographie, et si ce propriétaire est une personne morale, celle-ci est réputée, pour l'application de la présente loi, être un résident habituel d'un pays signataire, si elle y a fondé un établissement commercial.

L.R. (1985), ch. C-42, art. 10; 1993, ch. 44, art. 60; 1994, ch. 47, art. 69(F); 1997, ch. 24, art. 7.

11. [Abrogé, 1997, ch. 24, art. 8]

Œuvre cinématographique

11.1 Sauf dans le cas d'œuvres cinématographiques auxquelles les dispositifs de la mise en scène ou les combinaisons des incidents représentés donnent un caractère dramatique, le droit d'auteur sur une œuvre cinématographique ou une compilation d'œuvres cinématographiques subsiste :

- a) soit jusqu'à la fin de la cinquantième année suivant celle de sa première publication;
- b) soit jusqu'à la fin de la cinquantième année suivant celle de sa création, dans le cas où elle n'a pas été publiée avant la fin de cette période.

1993, ch. 44, art. 60; 1997, ch. 24, art. 9.

12. Sous réserve de tous les droits ou privilèges de la Couronne, le droit d'auteur sur les œuvres préparées ou publiées par l'entremise, sous la direction ou la surveillance de Sa Majesté ou d'un ministère du gouvernement, appartient, sauf stipulation conclue avec l'auteur, à Sa Majesté et, dans ce cas, il subsiste jusqu'à la fin de la cinquantième année suivant celle de la première publication de l'œuvre.

Quand le droit d'auteur appartient à Sa Majesté

L.R. (1985), ch. C-42, art. 12; 1993, ch. 44, art. 60.

| | | | |
|-------------------------------|---|--|--------------------------|
| No assignment of moral rights | (2) Moral rights may not be assigned but may be waived in whole or in part. | (2) Les droits moraux sont incessibles; ils sont toutefois susceptibles de renonciation, en tout ou en partie. | Incessibilité |
| No waiver by assignment | (3) An assignment of copyright in a work does not by that act alone constitute a waiver of any moral rights. | (3) La cession du droit d'auteur n'emporte pas renonciation automatique aux droits moraux. | Portée de la cession |
| Effect of waiver | (4) Where a waiver of any moral right is made in favour of an owner or a licensee of copyright, it may be invoked by any person authorized by the owner or licensee to use the work, unless there is an indication to the contrary in the waiver. R.S., 1985, c. 10 (4th Supp.), s. 4. | (4) La renonciation au bénéfice du titulaire du droit d'auteur ou du détenteur d'une licence peut, à moins d'une stipulation contraire, être invoquée par quiconque est autorisé par l'un ou l'autre à utiliser l'œuvre. L.R. (1985), ch. 10 (4 ^e suppl.), art. 4. | Effet de la renonciation |
| Term | 14.2 (1) Moral rights in respect of a work subsist for the same term as the copyright in the work. | 14.2 (1) Les droits moraux sur une œuvre ont la même durée que le droit d'auteur sur celle-ci. | Durée |
| Succession | (2) The moral rights in respect of a work pass, on the death of its author, to (a) the person to whom those rights are specifically bequeathed; (b) where there is no specific bequest of those moral rights and the author dies testate in respect of the copyright in the work, the person to whom that copyright is bequeathed; or (c) where there is no person described in paragraph (a) or (b), the person entitled to any other property in respect of which the author dies intestate. | (2) Au décès de l'auteur, les droits moraux sont dévolus à son légataire ou, à défaut de disposition testamentaire expresse, soit au légataire du droit d'auteur, soit, en l'absence d'un tel légataire, aux héritiers de l'auteur. | Décès |
| Subsequent succession | (3) Subsection (2) applies, with such modifications as the circumstances require, on the death of any person who holds moral rights. R.S., 1985, c. 10 (4th Supp.), s. 4, 1997, c. 24, s. 13. | (3) Le paragraphe (2) s'applique, avec les adaptations nécessaires, à toute dévolution subséquente. L.R. (1985), ch. 10 (4 ^e suppl.), art. 4, 1997, ch. 24, art. 13. | Dévolutions subséquentes |

PART II

COPYRIGHT IN PERFORMER'S PERFORMANCES, SOUND RECORDINGS AND COMMUNICATION SIGNALS

PERFORMERS' RIGHTS

Copyright in performer's performance

15. (1) Subject to subsection (2), a performer has a copyright in the performer's performance, consisting of the sole right to do the following in relation to the performer's performance or any substantial part thereof:

- (a) if it is not fixed,

PARTIE II

DROIT D'AUTEUR SUR LES PRESTATIONS, ENREGISTREMENTS SONORES OU SIGNAUX DE COMMUNICATION

DROITS DE L'ARTISTE-INTERPRÈTE

15. (1) Sous réserve du paragraphe (2), l'artiste-interprète a un droit d'auteur qui comporte le droit exclusif, à l'égard de sa prestation ou de toute partie importante de celle-ci:

- a) si elle n'est pas déjà fixée:

- (i) de la communiquer au public par télécommunication,

Droit d'auteur sur la prestation

(b) as if the fixations made for the purpose of their sound recordings had been made in Canada.

R.S., 1985, c. C-42, s. 20; 1994, c. 47, s. 59; 1997, c. 24, s. 14; 2001, c. 27, s. 238.

RIGHTS OF BROADCASTERS

Copyright in communication signals

21. (1) Subject to subsection (2), a broadcaster has a copyright in the communication signals that it broadcasts, consisting of the sole right to do the following in relation to the communication signal or any substantial part thereof:

- (a) to fix it,
- (b) to reproduce any fixation of it that was made without the broadcaster's consent,
- (c) to authorize another broadcaster to retransmit it to the public simultaneously with its broadcast, and
- (d) in the case of a television communication signal, to perform it in a place open to the public on payment of an entrance fee,

and to authorize any act described in paragraph (a), (b) or (d).

Conditions for copyright

(2) Subsection (1) applies only if the broadcaster

- (a) at the time of the broadcast, had its headquarters in Canada, in a country that is a WTO Member or in a Rome Convention country; and
- (b) broadcasts the communication signal from that country.

Exception

(3) Notwithstanding subsection (2), if the Minister is of the opinion that a Rome Convention country or a country that is a WTO Member does not grant the right mentioned in paragraph (1)(d), the Minister may, by a statement published in the *Canada Gazette*, declare that broadcasters that have their headquarters in that country are not entitled to that right.

R.S., 1985, c. C-42, s. 21, 1994, c. 47, s. 59, 1997, c. 24, s. 14.

RECIPROCITY

Reciprocity

22. (1) Where the Minister is of the opinion that a country other than a Rome Convention country grants or has undertaken to grant

b) comme si les fixations réalisées en vue de la confection de leurs enregistrements sonores avaient été réalisées au Canada.

L.R. (1985), ch. C-42, art. 20; 1994, ch. 47, art. 59; 1997, ch. 24, art. 14; 2001, ch. 27, art. 238.

DROITS DES RADIODIFFUSEURS

Droit d'auteur sur le signal de communication

21. (1) Sous réserve du paragraphe (2), le radiodiffuseur a un droit d'auteur qui comporte le droit exclusif, à l'égard du signal de communication qu'il émet ou de toute partie importante de celui-ci :

- a) de le fixer;
- b) d'en reproduire toute fixation faite sans son autorisation;
- c) d'autoriser un autre radiodiffuseur à le retransmettre au public simultanément à son émission;
- d) d'exécuter en public un signal de communication télévisuel en un lieu accessible au public moyennant droit d'entrée.

Il a aussi le droit d'autoriser les actes visés aux alinéas a), b) et d).

Conditions

(2) Pour l'application du paragraphe (1), le radiodiffuseur doit, au moment de l'émission, avoir son siège social au Canada ou dans un pays partie à la Convention de Rome ou membre de l'OMC, et émettre le signal de communication à partir de ce pays.

Exception

(3) Toutefois, lorsqu'il est d'avis que le pays partie à la Convention de Rome ou membre de l'OMC où se situe le siège social du radiodiffuseur ne prévoit pas le droit prévu à l'alinéa (1)d), le ministre peut, en publiant une déclaration dans la *Gazette du Canada*, établir que ce radiodiffuseur ne peut bénéficier d'un tel droit.

L.R. (1985), ch. C-42, art. 21, 1994, ch. 47, art. 59; 1997, ch. 24, art. 14.

RÉCIPROCITÉ

Réciprocité

22. (1) Lorsqu'il est d'avis qu'un pays, autre qu'un pays partie à la Convention de Rome, accorde ou s'est engagé à accorder, par traité, convention, contrat ou loi, aux artistes-interprètes et aux producteurs d'enregistre-

| | | | | |
|--|---|------------------|--|--|
| | if corporations, have their headquarters in Canada, and | | <i>b)</i> énoncer que ce pays est traité, à l'égard de ces avantages, comme s'il était un pays visé par l'application de la présente partie. | |
| | <i>(d)</i> declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends. | | | |
| Application of Act | (3) Any provision of this Act that the Minister specifies in a statement referred to in subsection (1) or (2) | | (3) Les dispositions de la présente loi que le ministre précise dans la déclaration s'appliquent: | Application |
| | <i>(a)</i> applies in respect of performers, makers of sound recordings or broadcasters covered by that statement, as if they were citizens of or, if corporations, had their headquarters in Canada; and | | <i>a)</i> aux artistes-interprètes, producteurs d'enregistrements sonores ou radiodiffuseurs visés par cette déclaration comme s'ils étaient citoyens du Canada ou, s'il s'agit de personnes morales, avaient leur siège social au Canada; | |
| | <i>(b)</i> applies in respect of a country covered by that statement, as if that country were Canada. | | <i>b)</i> au pays visé par la déclaration, comme s'il s'agissait du Canada. | |
| Application of Act | (4) Subject to any exceptions that the Minister may specify in a statement referred to in subsection (1) or (2), the other provisions of this Act also apply in the way described in subsection (3). | | (4) Les autres dispositions de la présente loi s'appliquent de la manière prévue au paragraphe (3), sous réserve des exceptions que le ministre peut prévoir dans la déclaration. | Autres dispositions |
| | R.S., 1985, c. C-42, s. 22; 1994, c. 47, s. 59, 1997, c. 24, s. 14; 2001, c. 27, s. 239. | | L.R. (1985), ch. C-42, art. 22; 1994, ch. 47, art. 59; 1997, ch. 24, art. 14; 2001, ch. 27, art. 239. | |
| TERM OF RIGHTS | | DURÉE DES DROITS | | |
| Term of rights | 23. (1) Subject to this Act, the rights conferred by sections 15, 18 and 21 terminate fifty years after the end of the calendar year in which | | 23. (1) Sous réserve des autres dispositions de la présente loi, les droits visés aux articles 15, 18 et 21 expirent à la fin de la cinquantième année suivant celle : | Durée des droits |
| | <i>(a)</i> in the case of a performer's performance, | | <i>a)</i> dans le cas de la prestation, de sa première fixation au moyen d'un enregistrement sonore ou de son exécution si elle n'est pas ainsi fixée; | |
| | <i>(i)</i> its first fixation in a sound recording, or | | <i>b)</i> dans le cas de l'enregistrement sonore, de sa première fixation; | |
| | <i>(ii)</i> its performance, if it is not fixed in a sound recording, | | <i>c)</i> dans le cas du signal de communication, de son émission. | |
| | occurred; | | | |
| | <i>(b)</i> in the case of a sound recording, the first fixation occurred; or | | | |
| | <i>(c)</i> in the case of a communication signal, it was broadcast. | | | |
| Term of right to remuneration | (2) The rights to remuneration conferred on performers and makers by section 19 have the same terms, respectively, as those provided by paragraphs (1)(<i>a</i>) and (<i>b</i>). | | (2) Le droit à rémunération de l'artiste-interprète prévu à l'article 19 a une durée identique à celle prévue à l'alinéa (1) <i>a</i>) et celui du producteur, une durée identique à celle prévue à l'alinéa (1) <i>b</i>). | Durée du droit à rémunération |
| Application of subsections (1) and (2) | (3) Subsections (1) and (2) apply whether the fixation, performance or broadcast occurred | | (3) Les paragraphes (1) et (2) s'appliquent même quand la fixation, l'exécution ou l'émission | Application des paragraphes (1) et (2) |

before or after the coming into force of this Part.

Berne Convention countries, Rome Convention countries, WTO Members

(4) Where the performer's performance, sound recording or communication signal meets the requirements set out in section 15, 18 or 21, as the case may be, a country that becomes a Berne Convention country, a Rome Convention country or a WTO Member after the date of the fixation, performance or broadcast is, as of becoming a Berne Convention country, Rome Convention country or WTO Member, as the case may be, deemed to have been such at the date of the fixation, performance or broadcast.

Where term of protection expired

(5) Subsection (4) does not confer any protection in Canada where the term of protection in the country referred to in that subsection had expired before that country became a Berne Convention country, Rome Convention country or WTO Member, as the case may be.

R.S., 1985, c. C-42, s. 23; 1994, c. 47, s. 59; 1997, c. 24, s. 14.

sion a eu lieu avant la date d'entrée en vigueur de la présente partie.

(4) Lorsque la prestation, l'enregistrement sonore ou le signal de communication répondent respectivement aux conditions énoncées aux articles 15, 18 ou 21, selon le cas, le pays qui devient partie à la Convention de Berne ou à la Convention de Rome ou membre de l'OMC après la date de la fixation, de l'exécution ou de l'émission, selon le cas, est dès lors réputé l'avoir été à cette date.

Pays partie à la Convention de Berne ou à la Convention de Rome ou membre de l'OMC

(5) Le paragraphe (4) ne confère aucune protection au Canada lorsque la durée de protection accordée par le pays visé a expiré avant son adhésion à la Convention de Berne, à la Convention de Rome ou à l'OMC, selon le cas.

L.R. (1985), ch. C-42, art. 23; 1994, ch. 47, art. 59; 1997, ch. 24, art. 14.

Droit de protection expiré

OWNERSHIP OF COPYRIGHT

Ownership of copyright

24. The first owner of the copyright

(a) in a performer's performance, is the performer;

(b) in a sound recording, is the maker; or

(c) in a communication signal, is the broadcaster that broadcasts it.

R.S., 1985, c. C-42, s. 24; 1994, c. 47, s. 59; 1997, c. 24, s. 14.

TITULARITÉ

24. Sont respectivement les premiers titulaires du droit d'auteur :

- a) sur sa prestation, l'artiste-interprète;
- b) sur l'enregistrement sonore, le producteur;
- c) sur le signal de communication qu'il émet, le radiodiffuseur.

L.R. (1985), ch. C-42, art. 24; 1994, ch. 47, art. 59; 1997, ch. 24, art. 14.

Titularité

Assignment of rights

25. Subsections 13(4) to (7) apply, with such modifications as the circumstances require, in respect of the rights conferred by this Part on performers, makers of sound recordings and broadcasters.

R.S., 1985, c. C-42, s. 25; 1993, c. 44, s. 62; 1994, c. 47, s. 59; 1997, c. 24, s. 14.

25. Les paragraphes 13(4) à (7) s'appliquent, avec les adaptations nécessaires, aux droits conférés par la présente partie à l'artiste-interprète, au producteur d'enregistrement sonore et au radiodiffuseur.

L.R. (1985), ch. C-42, art. 25; 1993, ch. 44, art. 62; 1994, ch. 47, art. 59; 1997, ch. 24, art. 14.

Cession

PERFORMERS' RIGHTS — WTO COUNTRIES

Performer's performance in WTO country

26. (1) Where a performer's performance takes place on or after January 1, 1996 in a country that is a WTO Member, the performer has, as of the date of the performer's performance, a copyright in the performer's performance, consisting of the sole right to do the following in relation to the performer's performance or any substantial part thereof:

DROITS DES ARTISTES-INTERPRÈTES — PAYS OMC

26. (1) L'artiste-interprète dont la prestation a lieu après le 31 décembre 1995 dans un pays membre de l'OMC a, à compter de la date de la prestation, un droit d'auteur qui comporte le droit exclusif, à l'égard de sa prestation ou de toute partie importante de celle-ci :

Prestation dans un pays membre de l'OMC

porter knows or ought to have known was made without the performer's consent or the assignee's consent.

R.S., 1985, c. C-42, s. 26; R.S., 1985, c. 10 (4th Supp.), s. 17(F); 1993, c. 44, s. 63; 1994, c. 47, s. 59; 1997, c. 24, s. 14.

PART III

INFRINGEMENT OF COPYRIGHT AND MORAL RIGHTS AND EXCEPTIONS TO INFRINGEMENT

INFRINGEMENT OF COPYRIGHT

General

Infringement generally

27. (1) It is an infringement of copyright for any person to do, without the consent of the owner of the copyright, anything that by this Act only the owner of the copyright has the right to do.

Secondary infringement

(2) It is an infringement of copyright for any person to

- (a) sell or rent out,
- (b) distribute to such an extent as to affect prejudicially the owner of the copyright,
- (c) by way of trade distribute, expose or offer for sale or rental, or exhibit in public,
- (d) possess for the purpose of doing anything referred to in paragraphs (a) to (c), or
- (e) import into Canada for the purpose of doing anything referred to in paragraphs (a) to (c),

a copy of a work, sound recording or fixation of a performer's performance or of a communication signal that the person knows or should have known infringes copyright or would infringe copyright if it had been made in Canada by the person who made it.

Knowledge of importer

(3) In determining whether there is an infringement under subsection (2) in the case of an activity referred to in any of paragraphs (2)(a) to (d) in relation to a copy that was imported in the circumstances referred to in paragraph (2)(e), it is irrelevant whether the importer knew or should have known that the importation of the copy infringed copyright.

d'une telle fixation ou d'une reproduction de celle-ci.

L.R. (1985), ch. C-42, art. 26; L.R. (1985), ch. 10 (4^e suppl.), art. 17(F); 1993, ch. 44, art. 63; 1994, ch. 47, art. 59; 1997, ch. 24, art. 14.

PARTIE III

VIOLATION DU DROIT D'AUTEUR ET DES DROITS MORAUX, ET CAS D'EXCEPTION

VIOLATION DU DROIT D'AUTEUR

Règle générale

Règle générale

27. (1) Constitue une violation du droit d'auteur l'accomplissement, sans le consentement du titulaire de ce droit, d'un acte qu'en vertu de la présente loi seul ce titulaire a la faculté d'accomplir.

(2) Constitue une violation du droit d'auteur l'accomplissement de tout acte ci-après en ce qui a trait à l'exemplaire d'une œuvre, d'une fixation d'une prestation, d'un enregistrement sonore ou d'une fixation d'un signal de communication alors que la personne qui accomplit l'acte sait ou devrait savoir que la production de l'exemplaire constitue une violation de ce droit, ou en constituerait une si l'exemplaire avait été produit au Canada par la personne qui l'a produit :

Violation à une étape ultérieure

- a) la vente ou la location;
- b) la mise en circulation de façon à porter préjudice au titulaire du droit d'auteur;
- c) la mise en circulation, la mise ou l'offre en vente ou en location, ou l'exposition en public, dans un but commercial;
- d) la possession en vue de l'un ou l'autre des actes visés aux alinéas a) à c);
- e) l'importation au Canada en vue de l'un ou l'autre des actes visés aux alinéas a) à c).

Précision

(3) Lorsqu'il s'agit de décider si les actes visés aux alinéas (2)a) à d), dans les cas où ils se rapportent à un exemplaire importé dans les conditions visées à l'alinéa (2)e), constituent des violations du droit d'auteur, le fait que l'importateur savait ou aurait dû savoir que l'importation de l'exemplaire constituait une violation n'est pas pertinent.

the Canadian Radio-television and Telecommunications Commission under that Act.
1997, c. 24, s. 18.

cence de radiodiffusion délivrée par le Conseil de la radiodiffusion et des télécommunications canadiennes en vertu de cette loi.
1997, ch. 24, art. 18.

Retransmission

Retransmission

Interpretation

“new media retransmitter”
« retransmetteur de nouveaux médias »

“retransmitter”
« retransmetteur »

“signal”
« signal »

Retransmission of local and distant signals

Regulations

31. (1) In this section,
“new media retransmitter” means a person whose retransmission is lawful under the *Broadcasting Act* only by reason of the *Exemption Order for New Media Broadcasting Undertakings* issued by the Canadian Radio-television and Telecommunications Commission as Appendix A to Public Notice CRTC 1999-197, as amended from time to time;
“retransmitter” means a person who performs a function comparable to that of a cable retransmission system, but does not include a new media retransmitter;
“signal” means a signal that carries a literary, dramatic, musical or artistic work and is transmitted for free reception by the public by a terrestrial radio or terrestrial television station.

(2) It is not an infringement of copyright for a retransmitter to communicate to the public by telecommunication any literary, dramatic, musical or artistic work if
(a) the communication is a retransmission of a local or distant signal;
(b) the retransmission is lawful under the *Broadcasting Act*;
(c) the signal is retransmitted simultaneously and without alteration, except as otherwise required or permitted by or under the laws of Canada;
(d) in the case of the retransmission of a distant signal, the retransmitter has paid any royalties, and complied with any terms and conditions, fixed under this Act; and
(e) the retransmitter complies with the applicable conditions, if any, referred to in paragraph (3)(b).

(3) The Governor in Council may make regulations

Définitions

« œuvre »
French version only

« retransmetteur »
“retransmitter”

« retransmetteur de nouveaux médias »
“new media retransmitter”

« signal »
“signal”

Retransmission d'un signal local ou éloigné

Règlements

31. (1) Les définitions qui suivent s'appliquent au présent article.
« œuvre » Œuvre littéraire, dramatique, musicale ou artistique.
« retransmetteur » Personne, autre qu'un retransmetteur de nouveaux médias, dont l'activité est comparable à celle d'un système de retransmission par fil.
« retransmetteur de nouveaux médias » Personne dont la retransmission est légale selon les dispositions de la *Loi sur la radiodiffusion* uniquement en raison de l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de nouveaux médias* rendue par le Conseil de la radiodiffusion et des télécommunications canadiennes à l'Annexe A de son avis public 1999-197, tel que modifié de temps à autre.
« signal » Tout signal porteur d'une œuvre transmis à titre gratuit au public par une station terrestre de radio ou de télévision.

(2) Ne constitue pas une violation du droit d'auteur le fait, pour le retransmetteur, de communiquer une œuvre au public par télécommunication si, à la fois :
(a) la communication consiste en la retransmission d'un signal local ou éloigné, selon le cas;
(b) la retransmission est licite en vertu de la *Loi sur la radiodiffusion*;
(c) le signal est retransmis, sauf obligation ou permission légale ou réglementaire, simultanément et sans modification;
(d) dans le cas de la retransmission d'un signal éloigné, le retransmetteur a acquitté les redevances et respecté les modalités fixées sous le régime de la présente loi;
(e) le retransmetteur respecte les conditions applicables, le cas échéant, visées à l'alinéa (3) b).

(3) Le gouverneur en conseil peut, par règlement :

(a) defining “local signal” and “distant signal” for the purposes of subsection (2); and

(b) prescribing conditions for the purposes of paragraph (2)(e), and specifying whether any such condition applies to all retransmitters or only to a class of retransmitter.

R.S., 1985, c. C-42, s. 31; R.S., 1985, c. 10 (4th Supp.), s. 7; 1988, c. 65, s. 63; 1997, c. 24, ss. 16, 52(F); 2002, c. 26, s. 2.

Persons with Perceptual Disabilities

Reproduction in alternate format

32. (1) It is not an infringement of copyright for a person, at the request of a person with a perceptual disability, or for a non-profit organization acting for his or her benefit, to

(a) make a copy or sound recording of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;

(b) translate, adapt or reproduce in sign language a literary or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability; or

(c) perform in public a literary or dramatic work, other than a cinematographic work, in sign language, either live or in a format specially designed for persons with a perceptual disability.

Limitation

(2) Subsection (1) does not authorize the making of a large print book.

Limitation

(3) Subsection (1) does not apply where the work or sound recording is commercially available in a format specially designed to meet the needs of any person referred to in that subsection, within the meaning of paragraph (a) of the definition “commercially available”.

R.S., 1985, c. C-42, s. 32; R.S., 1985, c. 10 (4th Supp.), s. 7; 1997, c. 24, s. 19.

Statutory Obligations

No infringement

32.1 (1) It is not an infringement of copyright for any person

a) définir « signal local » et « signal éloigné » pour l’application du paragraphe (2);

b) fixer des conditions pour l’application de l’alinéa (2) e) et, le cas échéant, prévoir si elles s’appliquent à l’ensemble des retransmetteurs ou à une catégorie de ceux-ci.

L.R. (1985), ch. C-42, art. 31; L.R. (1985), ch. 10 (4^e suppl.), art. 7; 1988, ch. 65, art. 63; 1997, ch. 24, art. 16 et 52(F); 2002, ch. 26, art. 2.

Personnes ayant des déficiences perceptuelles

Production d’un exemplaire sur un autre support

32. (1) Ne constitue pas une violation du droit d’auteur le fait pour une personne agissant à la demande d’une personne ayant une déficience perceptuelle, ou pour un organisme sans but lucratif agissant dans l’intérêt de cette dernière, de se livrer à l’une des activités suivantes :

a) la production d’un exemplaire ou d’un enregistrement sonore d’une œuvre littéraire, dramatique — sauf cinématographique —, musicale ou artistique sur un support destiné aux personnes ayant une déficience perceptuelle;

b) la traduction, l’adaptation ou la reproduction en langage gestuel d’une œuvre littéraire ou dramatique — sauf cinématographique — fixée sur un support pouvant servir aux personnes ayant une déficience perceptuelle;

c) l’exécution en public en langage gestuel d’une œuvre littéraire, dramatique — sauf cinématographique — ou l’exécution en public d’une telle œuvre fixée sur un support pouvant servir aux personnes ayant une déficience perceptuelle.

Exception

(2) Le paragraphe (1) n’a pas pour effet de permettre la production d’un livre imprimé en gros caractères.

Existence d’exemplaires sur le marché

(3) Le paragraphe (1) ne s’applique pas si l’œuvre ou l’enregistrement sonore de l’œuvre est accessible sur le marché sur un tel support, selon l’alinéa a) de la définition « accessible sur le marché ».

L.R. (1985), ch. C-42, art. 32; L.R. (1985), ch. 10 (4^e suppl.), art. 7; 1997, ch. 24, art. 19.

Obligations découlant de la loi

Non-violation

32.1 (1) Ne constituent pas des violations du droit d’auteur :

COMPENSATION FOR ACTS DONE BEFORE
RECOGNITION OF COPYRIGHT OR MORAL RIGHTS

INDEMNISATION POUR ACTE ANTÉRIEUR À LA
RECONNAISSANCE DU DROIT D'AUTEUR OU DES
DROITS MORAUX

Certain rights
and interests
protected

33. (1) Notwithstanding subsections 27(1), (2) and (4) and sections 27.1, 28.1 and 28.2, where a person has, before the later of January 1, 1996 and the day on which a country becomes a treaty country, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed a copyright owner's copyright or an author's moral rights had that country been a treaty country, any right or interest of that person that

(a) arises from or in connection with the doing of that act, and

(b) is subsisting and valuable on the latest of those days

is not prejudiced or diminished by reason only that that country has become a treaty country, except as provided by an order of the Board made under subsection 78(3).

Compensation

(2) Notwithstanding subsection (1), a person's right or interest that is protected by that subsection terminates, as against the copyright owner or author, if and when that copyright owner or the author, as the case may be, pays that person such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with section 78.

R.S., 1985, c. C-42, s. 33; R.S., 1985, c. 10 (4th Supp.), s. 7; 1997, c. 24, s. 19.

PART IV
REMEDIES
CIVIL REMEDIES

Copyright

34. (1) Where copyright has been infringed, the owner of the copyright is, subject to this Act, entitled to all remedies by way of injunction, damages, accounts, delivery up and otherwise that are or may be conferred by law for the infringement of a right.

Moral rights

(2) In any proceedings for an infringement of a moral right of an author, the court may grant to the author or to the person who holds the moral rights by virtue of subsection 14.2(2)

Protection de
certains droits et
intérêts

33. (1) Par dérogation aux paragraphes 27(1), (2) et (4) et aux articles 27.1, 28.1 et 28.2, lorsque, avant le 1^{er} janvier 1996 ou, si elle est postérieure, la date où un pays devient un pays signataire, une personne a fait des dépenses ou contracté d'autres obligations relatives à l'exécution d'un acte qui, accompli après cette date, violerait le droit d'auteur du titulaire ou les droits moraux de l'auteur, le seul fait que ce pays soit devenu un pays signataire ne porte pas atteinte aux droits ou intérêts de cette personne, qui, d'une part, sont nés ou résultent de l'exécution de cet acte et, d'autre part, sont appréciables en argent à cette date, sauf dans la mesure prévue par une ordonnance de la Commission rendue en application du paragraphe 78(3).

Indemnisation

(2) Toutefois, les droits ou intérêts protégés en application du paragraphe (1) s'éteignent à l'égard du titulaire ou de l'auteur lorsque l'un ou l'autre, selon le cas, verse à cette personne une indemnité convenue par les deux parties, laquelle, à défaut d'entente, est déterminée par la Commission conformément à l'article 78.

L.R. (1985), ch. C-42, art. 33; L.R. (1985), ch. 10 (4^e suppl.), art. 7; 1997, ch. 24, art. 19.

PARTIE IV
RECOURS
RECOURS CIVILS

Droit d'auteur

34. (1) En cas de violation d'un droit d'auteur, le titulaire du droit est admis, sous réserve des autres dispositions de la présente loi, à exercer tous les recours — en vue notamment d'une injonction, de dommages-intérêts, d'une reddition de compte ou d'une remise — que la loi accorde ou peut accorder pour la violation d'un droit.

Droits moraux

(2) Le tribunal, saisi d'un recours en violation des droits moraux, peut accorder à l'auteur ou au titulaire des droits moraux visé au paragraphe 14.2(2) ou (3), selon le cas, les répara-

| | | | |
|---|--|---|---------------------------|
| | <p>or (3), as the case may be, all remedies by way of injunction, damages, accounts, delivery up and otherwise that are or may be conferred by law for the infringement of a right.</p> | <p>tions qu'il pourrait accorder, par voie d'injonction, de dommages-intérêts, de reddition de compte, de remise ou autrement, et que la loi prévoit ou peut prévoir pour la violation d'un droit.</p> | |
| Costs | <p>(3) The costs of all parties in any proceedings in respect of the infringement of a right conferred by this Act shall be in the discretion of the court.</p> | <p>(3) Les frais de toutes les parties à des procédures relatives à la violation d'un droit prévu par la présente loi sont à la discrétion du tribunal.</p> | Frais |
| Summary proceedings | <p>(4) The following proceedings may be commenced or proceeded with by way of application or action and shall, in the case of an application, be heard and determined without delay and in a summary way:</p> <p>(a) proceedings for infringement of copyright or moral rights;</p> <p>(b) proceedings taken under section 44.1, 44.2 or 44.4; and</p> <p>(c) proceedings taken in respect of</p> <p>(i) a tariff certified by the Board under Part VII or VIII, or</p> <p>(ii) agreements referred to in section 70.12.</p> | <p>(4) Les procédures suivantes peuvent être engagées ou continuées par une requête ou une action :</p> <p>a) les procédures pour violation du droit d'auteur ou des droits moraux;</p> <p>b) les procédures visées aux articles 44.1, 44.2 ou 44.4;</p> <p>c) les procédures relatives aux tarifs homologués par la Commission en vertu des parties VII et VIII ou aux ententes visées à l'article 70.12.</p> <p>Le tribunal statue sur les requêtes sans délai et suivant une procédure sommaire.</p> | Requête ou action |
| Practice and procedure | <p>(5) The rules of practice and procedure, in civil matters, of the court in which proceedings are commenced by way of application apply to those proceedings, but where those rules do not provide for the proceedings to be heard and determined without delay and in a summary way, the court may give such directions as it considers necessary in order to so provide.</p> | <p>(5) Les requêtes visées au paragraphe (4) sont, en matière civile, régies par les règles de procédure et de pratique du tribunal saisi des requêtes si ces règles ne prévoient pas que les requêtes doivent être jugées sans délai et suivant une procédure sommaire. Le tribunal peut, dans chaque cas, donner les instructions qu'il estime indiquées à cet effet.</p> | Règles applicables |
| Actions | <p>(6) The court in which proceedings are instituted by way of application may, where it considers it appropriate, direct that the proceeding be proceeded with as an action.</p> | <p>(6) Le tribunal devant lequel les procédures sont engagées par requête peut, s'il l'estime indiqué, ordonner que la requête soit instruite comme s'il s'agissait d'une action.</p> | Actions |
| Meaning of "application" | <p>(7) In this section, "application" means a proceeding that is commenced other than by way of a writ or statement of claim.</p> <p>R.S., 1985, c. C-42, s. 34; R.S., 1985, c. 10 (4th Supp.), s. 8; 1993, c. 15, s. 3(E), c. 44, s. 65; 1994, c. 47, s. 62; 1997, c. 24, s. 20.</p> | <p>(7) Au présent article, « requête » s'entend d'une procédure engagée autrement que par un bref ou une déclaration.</p> <p>L.R. (1985), ch. C-42, art. 34, L.R. (1985), ch. 10 (4^e suppl.), art. 8; 1993, ch. 15, art. 3(A), ch. 44, art. 65; 1994, ch. 47, art. 62; 1997, ch. 24, art. 20.</p> | Définition de « requête » |
| Presumptions respecting copyright and ownership | <p>34.1 (1) In any proceedings for infringement of copyright in which the defendant puts in issue either the existence of the copyright or the title of the plaintiff thereto,</p> <p>(a) copyright shall be presumed, unless the contrary is proved, to subsist in the work, performer's performance, sound recording or</p> | <p>34.1 (1) Dans toute procédure pour violation du droit d'auteur, si le défendeur conteste l'existence du droit d'auteur ou la qualité du demandeur :</p> <p>a) l'œuvre, la prestation, l'enregistrement sonore ou le signal de communication, selon</p> | Présomption de propriété |

| | | | |
|--|---|--|--|
| Liability for infringement | <p>35. (1) Where a person infringes copyright, the person is liable to pay such damages to the owner of the copyright as the owner has suffered due to the infringement and, in addition to those damages, such part of the profits that the infringer has made from the infringement and that were not taken into account in calculating the damages as the court considers just.</p> | <p>35. (1) Quiconque viole le droit d'auteur est passible de payer, au titulaire du droit qui a été violé, des dommages-intérêts et, en sus, la proportion, que le tribunal peut juger équitable, des profits qu'il a réalisés en commettant cette violation et qui n'ont pas été pris en compte pour la fixation des dommages-intérêts.</p> | Violation du droit d'auteur : responsabilité |
| Proof of profits | <p>(2) In proving profits,</p> <p>(a) the plaintiff shall be required to prove only receipts or revenues derived from the infringement; and</p> <p>(b) the defendant shall be required to prove every element of cost that the defendant claims.</p> <p>R.S., 1985, c. C-42, s. 35; 1997, c. 24, s. 20.</p> | <p>(2) Dans la détermination des profits, le demandeur n'est tenu d'établir que ceux provenant de la violation et le défendeur doit prouver chaque élément du coût qu'il allègue.</p> <p>L.R. (1985), ch. C-42, art. 35; 1997, ch. 24, art. 20.</p> | Détermination des profits |
| Protection of separate rights | <p>36. (1) Subject to this section, the owner of any copyright, or any person or persons deriving any right, title or interest by assignment or grant in writing from the owner, may individually for himself or herself, as a party to the proceedings in his or her own name, protect and enforce any right that he or she holds, and, to the extent of that right, title and interest, is entitled to the remedies provided by this Act.</p> | <p>36. (1) Sous réserve des autres dispositions du présent article, le titulaire d'un droit d'auteur, ou quiconque possède un droit, un titre ou un intérêt acquis par cession ou concession consentie par écrit par le titulaire peut, individuellement pour son propre compte, en son propre nom comme partie à une procédure, soutenir et faire valoir les droits qu'il détient, et il peut exercer les recours prévus par la présente loi dans toute l'étendue de son droit, de son titre et de son intérêt.</p> | Protection des droits distincts |
| Where copyright owner to be made party | <p>(2) Where proceedings referred to in subsection (1) are taken by a person other than the copyright owner, the copyright owner must be made a party to those proceedings, except</p> <p>(a) in respect of proceedings taken under section 44.1, 44.2 or 44.4;</p> <p>(b) in respect of interlocutory proceedings unless the court is of the opinion that the interests of justice require the copyright owner to be a party; and</p> <p>(c) in any other case, if the court is of the opinion that the interests of justice do not require the copyright owner to be a party.</p> | <p>(2) Lorsque des procédures sont engagées en vertu du paragraphe (1) par une personne autre que le titulaire du droit d'auteur, ce dernier doit être constitué partie à ces procédures sauf :</p> <p>a) dans le cas de procédures engagées en vertu des articles 44.1, 44.2 et 44.4;</p> <p>b) dans le cas de procédures interlocutoires, à moins que le tribunal estime qu'il est dans l'intérêt de la justice de constituer le titulaire du droit d'auteur partie aux procédures;</p> <p>c) dans tous les autres cas où le tribunal estime que l'intérêt de la justice ne l'exige pas.</p> | Partie à l'action |
| Owner's liability for costs | <p>(3) A copyright owner who is made a party to proceedings pursuant to subsection (2) is not liable for any costs unless the copyright owner takes part in the proceedings.</p> | <p>(3) Le titulaire du droit d'auteur visé au paragraphe (2) n'est pas tenu de payer les frais à moins d'avoir participé aux procédures.</p> | Frais |
| Apportionment of damages, profits | <p>(4) Where a copyright owner is made a party to proceedings pursuant to subsection (2), the court, in awarding damages or profits, shall, subject to any agreement between the person</p> | <p>(4) Le tribunal peut, sous réserve d'une entente entre le demandeur et le titulaire du droit d'auteur visé au paragraphe (2), répartir entre eux, de la manière qu'il estime indiquée, les</p> | Répartition des dommages-intérêts |

| | | | |
|---|---|--|------------------------------|
| Circumstances court to consider | <p>(4) In making an order under subsection (2), the court shall have regard to all the circumstances, including</p> <p>(a) the proportion, importance and value of the infringing copy or plate, as compared to the substrate or carrier embodying it; and</p> <p>(b) the extent to which the infringing copy or plate is severable from, or a distinct part of, the substrate or carrier embodying it.</p> | <p>(4) Le tribunal doit, lorsqu'il rend une ordonnance visée au paragraphe (2), tenir compte notamment des facteurs suivants :</p> <p>a) la proportion que représente l'exemplaire contrefait ou la planche par rapport au support dans lequel ils sont incorporés, de même que leur valeur et leur importance par rapport à ce support;</p> <p>b) la mesure dans laquelle cet exemplaire ou cette planche peut être extrait de ce support ou en constitue une partie distincte.</p> | Facteurs |
| Limitation | <p>(5) Nothing in this Act entitles the copyright owner to damages in respect of the possession or conversion of the infringing copies or plates. R.S., 1985, c. C-42, s. 38; 1997, c. 24, s. 20.</p> | <p>(5) La présente loi n'a pas pour effet de permettre au titulaire du droit d'auteur de recouvrer des dommages-intérêts en ce qui touche la possession des exemplaires ou des planches visés au paragraphe (1) ou l'usurpation du droit de propriété sur ceux-ci.</p> <p>L.R. (1985), ch C-42, art 38, 1997, ch. 24, art 20</p> | Limite |
| Statutory damages | <p>38.1 (1) Subject to this section, a copyright owner may elect, at any time before final judgment is rendered, to recover, instead of damages and profits referred to in subsection 35(1), an award of statutory damages for all infringements involved in the proceedings, with respect to any one work or other subject-matter, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$500 or more than \$20,000 as the court considers just.</p> | <p>38.1 (1) Sous réserve du présent article, le titulaire du droit d'auteur, en sa qualité de demandeur, peut, avant le jugement ou l'ordonnance qui met fin au litige, choisir de recouvrer, au lieu des dommages-intérêts et des profits visés au paragraphe 35(1), des dommages-intérêts préétablis dont le montant, d'au moins 500 \$ et d'au plus 20 000 \$, est déterminé selon ce que le tribunal estime équitable en l'occurrence, pour toutes les violations — relatives à une œuvre donnée ou à un autre objet donné du droit d'auteur — reprochées en l'instance à un même défendeur ou à plusieurs défendeurs solidairement responsables.</p> | Dommages-intérêts préétablis |
| Where defendant unaware of infringement | <p>(2) Where a copyright owner has made an election under subsection (1) and the defendant satisfies the court that the defendant was not aware and had no reasonable grounds to believe that the defendant had infringed copyright, the court may reduce the amount of the award to less than \$500, but not less than \$200.</p> | <p>(2) Dans les cas où le défendeur convainc le tribunal qu'il ne savait pas et n'avait aucun motif raisonnable de croire qu'il avait violé le droit d'auteur, le tribunal peut réduire le montant des dommages-intérêts préétablis jusqu'à 200 \$.</p> | Cas particuliers |
| Special case | <p>(3) Where</p> <p>(a) there is more than one work or other subject-matter in a single medium, and</p> <p>(b) the awarding of even the minimum amount referred to in subsection (1) or (2) would result in a total award that, in the court's opinion, is grossly out of proportion to the infringement,</p> <p>the court may award, with respect to each work or other subject-matter, such lower amount than</p> | <p>(3) Dans les cas où plus d'une œuvre ou d'un autre objet du droit d'auteur sont incorporés dans un même support matériel, le tribunal peut, selon ce qu'il estime équitable en l'occurrence, réduire, à l'égard de chaque œuvre ou autre objet du droit d'auteur, le montant minimal visé au paragraphe (1) ou (2), selon le cas, s'il est d'avis que même s'il accordait le montant minimal de dommages-intérêts préétablis le montant total de ces dommages-intérêts serait extrêmement disproportionné à la violation.</p> | Cas particuliers |

\$500 or \$200, as the case may be, as the court considers just.

Collective societies

(4) Where the defendant has not paid applicable royalties, a collective society referred to in section 67 may only make an election under this section to recover, in lieu of any other remedy of a monetary nature provided by this Act, an award of statutory damages in a sum of not less than three and not more than ten times the amount of the applicable royalties, as the court considers just.

(4) Si le défendeur n'a pas payé les redevances applicables en l'espèce, la société de gestion visée à l'article 67 — au lieu de se prévaloir de tout autre recours en vue d'obtenir un redressement pécuniaire prévu par la présente loi — ne peut, aux termes du présent article, que choisir de recouvrer des dommages-intérêts préétablis dont le montant, de trois à dix fois le montant de ces redevances, est déterminé selon ce que le tribunal estime équitable en l'occurrence.

Société de gestion

Factors to consider

(5) In exercising its discretion under subsections (1) to (4), the court shall consider all relevant factors, including

(5) Lorsqu'il rend une décision relativement aux paragraphes (1) à (4), le tribunal tient compte notamment des facteurs suivants :

Facteurs

- (a) the good faith or bad faith of the defendant;
- (b) the conduct of the parties before and during the proceedings; and
- (c) the need to deter other infringements of the copyright in question.

- a) la bonne ou mauvaise foi du défendeur;
- b) le comportement des parties avant l'instance et au cours de celle-ci;
- c) la nécessité de créer un effet dissuasif à l'égard de violations éventuelles du droit d'auteur en question.

No award

(6) No statutory damages may be awarded against

(6) Ne peuvent être condamnés aux dommages-intérêts préétablis :

Cas où les dommages-intérêts préétablis ne peuvent être accordés

- (a) an educational institution or a person acting under its authority that has committed an act referred to in section 29.6 or 29.7 and has not paid any royalties or complied with any terms and conditions fixed under this Act in relation to the commission of the act;
- (b) an educational institution, library, archive or museum that is sued in the circumstances referred to in section 38.2; or
- (c) a person who infringes copyright under paragraph 27(2)(e) or section 27.1, where the copy in question was made with the consent of the copyright owner in the country where the copy was made.

- a) l'établissement d'enseignement ou la personne agissant sous l'autorité de celui-ci qui a fait les actes visés aux articles 29.6 ou 29.7 sans acquitter les redevances ou sans observer les modalités afférentes fixées sous le régime de la présente loi;
- b) l'établissement d'enseignement, la bibliothèque, le musée ou le service d'archives, selon le cas, qui est poursuivi dans les circonstances prévues à l'article 38.2;
- c) la personne qui commet la violation visée à l'alinéa 27(2)e) ou à l'article 27.1 dans les cas où la reproduction en cause a été faite avec le consentement du titulaire du droit d'auteur dans le pays de production.

Exemplary or punitive damages not affected

(7) An election under subsection (1) does not affect any right that the copyright owner may have to exemplary or punitive damages. 1997, c. 24, s. 20.

(7) Le choix fait par le demandeur en vertu du paragraphe (1) n'a pas pour effet de supprimer le droit de celui-ci, le cas échéant, à des dommages-intérêts exemplaires ou punitifs. 1997, ch. 24, art. 20.

Dommmages-intérêts exemplaires

Maximum amount that may be recovered

38.2 (1) An owner of copyright in a work who has not authorized a collective society to authorize its reprographic reproduction may recover, in proceedings against an educational in-

38.2 (1) Le titulaire du droit d'auteur sur une œuvre qui n'a pas habilité une société de gestion à autoriser la reproduction par reprographie de cette œuvre, ne peut, dans le cas où il

Dommmages-intérêts maximaux

stitution, library, archive or museum that has reproduced the work, a maximum amount equal to the amount of royalties that would have been payable to the society in respect of the reprographic reproduction, if it were authorized, either

(a) under any agreement entered into with the collective society; or

(b) under a tariff certified by the Board pursuant to section 70.15.

Agreements with more than one collective society

(2) Where agreements respecting reprographic reproduction have been signed with more than one collective society or where more than one tariff applies or where both agreements and tariffs apply, the maximum amount that the copyright owner may recover is the largest amount of the royalties provided for in any of those agreements or tariffs.

Application

(3) Subsections (1) and (2) apply only where

(a) the collective society is entitled to authorize, or the tariff provides for the payment of royalties in respect of, the reprographic reproduction of that category of work; and

(b) copying of that general nature and extent is covered by the agreement or tariff.

1997, c. 24, s. 20.

Injunction only remedy when defendant not aware of copyright

39. (1) Subject to subsection (2), in any proceedings for infringement of copyright, the plaintiff is not entitled to any remedy other than an injunction in respect of the infringement if the defendant proves that, at the date of the infringement, the defendant was not aware and had no reasonable ground for suspecting that copyright subsisted in the work or other subject-matter in question.

Exception where copyright registered

(2) Subsection (1) does not apply if, at the date of the infringement, the copyright was duly registered under this Act.

R.S., 1985, c. C-42, s. 39; 1997, c. 24, s. 20.

Wide injunction

39.1 (1) When granting an injunction in respect of an infringement of copyright in a work or other subject-matter, the court may further enjoin the defendant from infringing the copyright in any other work or subject-matter if

poursuit un établissement d'enseignement, une bibliothèque, un musée ou un service d'archives, selon le cas, pour avoir fait une telle reproduction, recouvrer un montant supérieur à celui qui aurait été payable à la société de gestion si, d'une part, il l'avait ainsi habilitée, et si, d'autre part, la partie poursuivie :

a) soit avait conclu avec une société de gestion une entente concernant la reprographie;

b) soit était assujettie au paiement de redevances pour la reprographie prévu par le tarif homologué en vertu de l'article 70.15.

(2) Si l'entente est conclue séparément avec plusieurs sociétés de gestion ou que les redevances sont payables conformément à différents tarifs homologués relatifs à la reprographie, ou les deux à la fois, le montant que le titulaire du droit d'auteur peut recouvrer ne peut excéder le montant le plus élevé de tous ceux que prévoient les ententes ou les tarifs.

(3) Les paragraphes (1) et (2) ne s'appliquent que si, d'une part, les sociétés de gestion peuvent autoriser la reproduction par reprographie de ce genre d'œuvre ou qu'il existe un tarif homologué à cet égard et si, d'autre part, l'entente ou le tarif traite, dans une certaine mesure, de la nature et de l'étendue de la reproduction.

1997, ch. 24, art. 20.

39. (1) Sous réserve du paragraphe (2), dans le cas de procédures engagées pour violation du droit d'auteur, le demandeur ne peut obtenir qu'une injonction à l'égard de cette violation si le défendeur prouve que, au moment de la commettre, il ne savait pas et n'avait aucun motif raisonnable de soupçonner que l'œuvre ou tout autre objet du droit d'auteur était protégé par la présente loi.

(2) Le paragraphe (1) ne s'applique pas si, à la date de la violation, le droit d'auteur était dûment enregistré sous le régime de la présente loi.

L.R. (1985), ch. C-42, art. 39; 1997, ch. 24, art. 20.

39.1 (1) Dans les cas où il accorde une injonction pour violation du droit d'auteur sur une œuvre ou un autre objet, le tribunal peut en outre interdire au défendeur de violer le droit d'auteur sur d'autres œuvres ou d'autres objets dont le demandeur est le titulaire ou sur

Cas de plusieurs ententes ou tarifs

Application

Cas où le seul recours est l'injonction

Exception

Interdiction

Restriction

(2) The court shall apply the limitation period set out in paragraph (1)(a) or (b) only in respect of a party who pleads a limitation period.

R.S., 1985, c. C-42, s. 41; R.S., 1985, c. 10 (4th Supp.), s. 9; 1997, c. 24, s. 22.

(2) Le tribunal ne fait jouer la prescription visée aux alinéas (1)a) ou b) qu'à l'égard de la partie qui l'a invoquée.

L.R. (1985), ch. C-42, art. 41; L.R. (1985), ch. 10 (4^e suppl.), art. 9; 1997, ch. 24, art. 22.

Restriction

CRIMINAL REMEDIES

Offences and punishment

- 42.** (1) Every person who knowingly
- (a) makes for sale or rental an infringing copy of a work or other subject-matter in which copyright subsists,
 - (b) sells or rents out, or by way of trade exposes or offers for sale or rental, an infringing copy of a work or other subject-matter in which copyright subsists,
 - (c) distributes infringing copies of a work or other subject-matter in which copyright subsists, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright,
 - (d) by way of trade exhibits in public an infringing copy of a work or other subject-matter in which copyright subsists, or
 - (e) imports for sale or rental into Canada any infringing copy of a work or other subject-matter in which copyright subsists

is guilty of an offence and liable

- (f) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both, or
- (g) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

Possession and performance offences and punishment

- (2) Every person who knowingly
- (a) makes or possesses any plate that is specifically designed or adapted for the purpose of making infringing copies of any work or other subject-matter in which copyright subsists, or
 - (b) for private profit causes to be performed in public, without the consent of the owner of the copyright, any work or other subject-matter in which copyright subsists

is guilty of an offence and liable

RECOURS CRIMINELS

Infractions et peines

- 42.** (1) Commet une infraction quiconque, sciemment :
- a) se livre, en vue de la vente ou de la location, à la contrefaçon d'une œuvre ou d'un autre objet du droit d'auteur protégés;
 - b) en vend ou en loue, ou commercialement en met ou en offre en vente ou en location un exemplaire contrefait;
 - c) en met en circulation des exemplaires contrefaits, soit dans un but commercial, soit de façon à porter préjudice au titulaire du droit d'auteur;
 - d) en expose commercialement en public un exemplaire contrefait;
 - e) en importe pour la vente ou la location, au Canada, un exemplaire contrefait.

Le contrevenant encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de vingt-cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines, ou, sur déclaration de culpabilité par voie de mise en accusation, une amende maximale d'un million de dollars et un emprisonnement maximal de cinq ans, ou l'une de ces peines.

- (2) Commet une infraction quiconque, sciemment :

- a) confectionne ou possède une planche conçue ou adaptée précisément pour la contrefaçon d'une œuvre ou de tout autre objet du droit d'auteur protégés;
- b) fait, dans un but de profit, exécuter ou représenter publiquement une œuvre ou un autre objet du droit d'auteur protégés sans le consentement du titulaire du droit d'auteur.

Le contrevenant encourt, sur déclaration de culpabilité par procédure sommaire, une

Possession et infractions découlant d'une action, et peines

| | | | |
|--|---|--|---|
| | <p>(c) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both, or</p> <p>(d) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.</p> | <p>amende maximale de vingt-cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines, ou, sur déclaration de culpabilité par voie de mise en accusation, une amende maximale d'un million de dollars et un emprisonnement maximal de cinq ans, ou l'une de ces peines.</p> | |
| Power of court to deal with copies or plates | <p>(3) The court before which any proceedings under this section are taken may, on conviction, order that all copies of the work or other subject-matter that appear to it to be infringing copies, or all plates in the possession of the offender predominantly used for making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.</p> | <p>(3) Le tribunal devant lequel sont portées de telles poursuites peut, en cas de condamnation, ordonner que tous les exemplaires de l'œuvre ou d'un autre objet du droit d'auteur ou toutes les planches en la possession du contrefacteur, qu'il estime être des exemplaires contrefaits ou des planches ayant servi principalement à la fabrication d'exemplaires contrefaits, soient détruits ou remis entre les mains du titulaire du droit d'auteur, ou qu'il en soit autrement disposé au gré du tribunal.</p> | Le tribunal peut disposer des exemplaires ou planches |
| Limitation period | <p>(4) Proceedings by summary conviction in respect of an offence under this section may be instituted at any time within, but not later than, two years after the time when the offence was committed.</p> | <p>(4) Les procédures pour déclaration de culpabilité par procédure sommaire visant une infraction prévue au présent article se prescrivent par deux ans à compter de sa perpétration.</p> | Prescription |
| Parallel importation of books | <p>(5) No person may be prosecuted under this section for importing a book or dealing with an imported book in the manner described in section 27.1.</p> <p>R.S., 1985, c. C-42, s. 42; R.S., 1985, c. 10 (4th Supp.), s. 10; 1997, c. 24, s. 24</p> | <p>(5) Des poursuites criminelles ne peuvent être engagées en vertu du présent article relativement à l'importation de livres ou à l'accomplissement des actes relatifs à cette importation dans les conditions visées à l'article 27.1.</p> <p>L.R. (1985), ch. C-42, art. 42; L.R. (1985), ch. 10 (4^e suppl.), art. 10; 1997, ch. 24, art. 24.</p> | Livres visés à l'article 27.1 |
| Infringement in case of dramatic, operatic or musical work | <p>43. (1) Any person who, without the written consent of the owner of the copyright or of the legal representative of the owner, knowingly performs or causes to be performed in public and for private profit the whole or any part, constituting an infringement, of any dramatic or operatic work or musical composition in which copyright subsists in Canada is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred and fifty dollars and, in the case of a second or subsequent offence, either to that fine or to imprisonment for a term not exceeding two months or to both.</p> | <p>43. (1) Quiconque, sans le consentement écrit du titulaire du droit d'auteur ou de son représentant légal, sciemment, exécute ou représente, ou fait exécuter ou représenter, en public et dans un but de lucre personnel, et de manière à constituer une exécution ou représentation illicite, la totalité ou une partie d'une œuvre dramatique, d'un opéra ou d'une composition musicale sur laquelle un droit d'auteur existe au Canada, est coupable d'une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de deux cent cinquante dollars; la récidive est punie de la même amende et d'un emprisonnement maximal de deux mois, ou de l'une de ces peines.</p> | Atteinte au droit d'auteur sur une œuvre dramatique ou musicale |

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

**IN THE MATTER OF AN APPLICATION BY WAY OF A
REFERENCE TO THE FEDERAL COURT OF APPEAL PURSUANT
TO SECTIONS 18.3(1) AND 28(2) OF THE *FEDERAL COURTS ACT*,
R.S.C. 1985, C.F-7**

B E T W E E N:

COGECO CABLE INC.

Appellant

- and -

BELL MEDIA INC. (FORMERLY CTV GLOBEMEDIA INC.), CANWEST TELEVISION
LIMITED PARTNERSHIP, NEWFOUNDLAND BROADCASTING CO. LTD.,
V INTERACTIONS INC. AND ATTORNEY GENERAL OF CANADA

Respondents

A N D B E T W E E N:

ROGERS COMMUNICATIONS INC. and TELUS COMMUNICATIONS COMPANY

Appellants

- and -

BELL MEDIA INC. (FORMERLY CTV GLOBEMEDIA INC.), CANWEST TELEVISION
LIMITED PARTNERSHIP, NEWFOUNDLAND BROADCASTING CO. LTD.,
V INTERACTIONS INC. AND ATTORNEY GENERAL OF CANADA

Respondents

A N D B E T W E E N:

SHAW COMMUNICATIONS INC.

Appellant

- and -

BELL MEDIA INC. (FORMERLY CTV GLOBEMEDIA INC.), CANWEST TELEVISION
LIMITED PARTNERSHIP, NEWFOUNDLAND BROADCASTING CO. LTD.,
V INTERACTIONS INC. AND ATTORNEY GENERAL OF CANADA

Respondents

THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC)

Intervener

FACTUM OF THE RESPONDENTS

**BELL MEDIA INC. (formerly CTVglobemedia Inc.),
NEWFOUNDLAND BROADCASTING CO. LTD. and
V INTERACTIONS INC.**

(Rules 36 and 44 of the *Rules of the Supreme Court of Canada*)

Goodmans LLP
Bay Adelaide Centre
333 Bay Street
Suite 3400
Toronto, ON M5H 2S7

Nelligan O'Brien Payne LLP
55 O'Connor Street
Suite 1500
Ottawa, ON K1P 6L2

Benjamin Zarnett
Robert Malcolmson
Peter Ruby
Julie Rosenthal
Tel: (416) 979-2211
Fax: (416) 979-1234

Dougald Brown
Tel: (613) 231-8210
Fax: (613) 788-3661
Ottawa Agent for the Respondents,
Bell Media Inc. (formerly CTVglobemedia Inc.),
Newfoundland Broadcasting Co. Ltd. and
V Interactions Inc.

**Lawyers for the Respondents,
Bell Media Inc. (formerly CTVglobemedia Inc.),
Newfoundland Broadcasting Co. Ltd. and
V Interactions Inc.**
\\6046903