



June 12, 2023

Filed Electronically

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

Dear Mr. Doucet:

**Re: Application No. 2022-0946-0: Part 1 application to amend conditions of licences applicable to Corus Entertainment Inc. English- and French-language television groups**

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,500 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming.
2. In this Part 1 application, Corus Entertainment Inc. (Corus) seeks to amend conditions of licences applicable to its English- and French-language television groups. In particular, Corus seeks to “restor[e] Programs of National Interest (‘PNI’) expenditure requirements on [its] English-language licences to the 5 percent level established in Broadcasting Decision CRTC 2017-150,” and to, “reduc[e] Canadian Programming Expenditure (‘CPE’) requirements on [its] English-language licences to 25 percent of prior year’s revenues,” among other things.<sup>1</sup>
3. The WGC **opposes this application.**
4. Corus’s application is completely inappropriate given its scope and timing. The application goes directly to the key Commission policies supporting Canadian programming, most notably Canadian programming expenditure (CPE) and Programs of national interest (PNI) spending requirements. CPE and PNI were made the foundational supports for Canadian programming in the “Let’s Talk TV” decisions<sup>2</sup> of 2015 and this was upheld through the group-based licence renewal proceedings of 2017

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<sup>1</sup> Corus application, Appendix 1, Supplementary Brief, para.6.

<sup>2</sup> Broadcasting Regulatory Policy CRTC 2015-86.

and 2018. The support of Canadian programming is a—if not *the*<sup>3</sup>—primary objective of the *Broadcasting Act*, and CPE and PNI levels are a fundamental pillar of furthering that objective.

5. As Corus is well aware, the *Broadcasting Act* has recently been amended by Bill C-11, the *Online Streaming Act*, and the modernization of the Canadian broadcasting system following passage of Bill C-11 is now underway, pursuant to Broadcasting Notices CRTC 2023-138, -139 and -140. Corus filed this Part 1 application last fall, prior to the passage of Bill C-11 and the launching of the Commission’s current consultations to modernize the broadcasting system. Nevertheless, Corus was well aware of Bill C-11 at the time and the likelihood that it would become law.<sup>4</sup> Regardless, the *Online Streaming Act* has since passed, the Commission is now working towards implementing it, Broadcasting Notices CRTC 2023-138, -139 and -140 form part of a structural review of the regulatory framework for Canadian broadcasting, including CPE and PNI, and such a structural review is by far the most appropriate place for the Commission to consider the best way(s) for traditional broadcasters like Corus to contribute to Canadian programming, including the level(s) at which they must contribute.
6. We submit that this alone is reason enough for the Commission to dismiss Corus’s application in favour of addressing these issues at a structural level as it modernizes the Canadian broadcasting system. Corus makes several arguments in its application, however, that we will also address.
7. Corus calls the administrative renewal of its licences on July 4, 2022 “harmful and unfair”,<sup>5</sup> but provides no meaningful evidence of harm or unfairness. Corus is simply being asked to maintain its existing obligations under the conditions of licence that were imposed at the prior licence renewal proceeding, including the reconsideration of group PNI levels. Is Corus really arguing that making Canadian programming is “harmful” to it? Is that truly how it sees the commissioning of programming from Canadians for Canadians in the market they serve? If so, Corus has not actually made that case, and there are no grounds to reach that conclusion from this application. On its amendment application form, Corus is asked, “Will the proposed amendment result in a change to existing financial projections?”, and Corus answers, “No”; Corus is asked, “Do you consider that your proposed amendment is necessary for the financial viability of your station?”, and Corus answers, “No.”<sup>6</sup> By its own admission, Corus’s financial health or viability is not at stake in this application.
8. In terms of “unfairness”, Corus cites the fact that traditional Canadian broadcasters have been regulated to support Canadian programming while online undertakings are not. While Corus suggests that this is something “new” that has emerged over the past few years, requiring something akin to an emergency response under this application, this has in fact been the situation for well over a decade, and Corus has joined other Canadian broadcasters in making this point repeatedly for just as long. It may indeed be regrettable that the *Online Streaming Act* has taken so long to become law, but now it is and the solution to the issue of “two-tiered regulation” is at hand, as the Commission

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<sup>3</sup> The concept of Canadian programming is expressed at least a dozen times in section 3(1) of the Act, as very arguably the primary manner in which its various social and cultural objectives are given effect. Indeed, it’s virtually impossible to imagine a distinct, meaningful “Canadian broadcasting system” without Canadian programming.

<sup>4</sup> Corus application, Appendix 1, Supplementary Brief, para.14.

<sup>5</sup> Corus application, Appendix 1, Supplementary Brief, para.2.

<sup>6</sup> Application, Form 301 – Amendment Requests – Television, pg. 5.

addresses it through the structural process begun by Broadcasting Notices CRTC 2023-138, -139 and -140. Again, this structural approach is by far the more appropriate forum to consider these matters.

9. Corus also seeks to relitigate several issues that have already been decided by the Commission. For example, Corus cites the impact of temporary production interruptions due to the onset of the COVID-19 pandemic.<sup>7</sup> But Corus and other broadcasters already made these arguments in their application for pandemic-related regulatory relief, and the Commission has already addressed them in its resulting decision.<sup>8</sup> Notably, due to the self-adjusting nature of percentage-based expenditure requirements, which would automatically reflect revenue drops with lower expenditure obligations the following year, the broadcasters were effectively seeking two years' worth of "regulatory relief" for one bad year. As stated by the Commission:

Investment in Canadian programming is essential to help the broadcasting system achieve the policy objectives relating to the creation of Canadian content, as described in subsection 3(1) of the Act. As noted by interveners, such investment fluctuates from year to year depending on broadcasters' revenues.

As for the television sector, the Commission considers that it would be unfair and unreasonable for the creative sector not to be able to benefit from the revenue increases that broadcasters generally experienced during the 2018-2019 broadcast year. In this regard, the large English-language ownership groups should have contributed \$819 million in CPE and \$209 million in PNI expenditures for the 2019-2020 broadcast year, and the shortfalls incurred for these expenditures represent, respectively, 16.8% and 6.2% of those amounts. Further, the March to June 2020 production shutdown along with the various funds that were established to support the creative sector during these unprecedented times do not in themselves justify depriving that sector of the amounts that it was slated to receive. As such, the Commission does not share broadcasters' view that requiring broadcasters to pay the shortfalls incurred during the 2019-2020 broadcast year that were caused by production stoppages would mean that the creative sector would be compensated twice for the same production stoppages. Rather, the Commission considers, as did the WGC, that these are two different revenue streams.

The Commission therefore finds that approval of the CAB's proposal would not ensure that parties currently benefiting from the expenditure requirements are not unreasonably affected by the proposed regulatory relief, and would therefore not meet the second expected outcome set out in the Notice.<sup>9</sup>

10. The WGC agrees, and nothing material has changed in this regard between the issuing of this decision and now.
11. For another example, Corus brings up the elimination of the genre exclusivity policy to support its request to lower its PNI obligations.<sup>10</sup> Again, however, the Commission has already heard and rejected

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<sup>7</sup> Corus application, Appendix 1, Supplementary Brief, paras. 18, 47-48.

<sup>8</sup> Broadcasting Decision CRTC 2021-274.

<sup>9</sup> Broadcasting Decision CRTC 2021-274, paras. 71-73.

<sup>10</sup> Corus application, Appendix 1, Supplementary Brief, paras. 33-41.

these arguments, most notably in the PNI reconsideration decision.<sup>11</sup> Corus made these same arguments there and the Commission nevertheless set its PNI requirement at its historical group spending level. Corus's arguments have been previously made<sup>12</sup> and rejected.

12. Corus additionally cites its impending loss of access to local expression funding due to the Rogers-Shaw merger as a reason for the Commission to reduce its CPE and PNI obligations.<sup>13</sup> This has sadly become a trend by Canadian broadcasters, seeking to pit one type of important Canadian programming against another.<sup>14</sup> Simply put, the importance of local news programming cannot be a reason to attack other important programming such as drama, which the Commission has called, "expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values."<sup>15</sup>
13. Moreover, the decisions of Corus's corporate ownership, freely made in what was presumably their corporate best interests, should not be the basis to reduce support for Canadian programming. The Shaw Family Trust owned Shaw broadcasting distribution undertaking (BDU) services and Corus. The Shaw Family Trust chose to sell its BDU services to Rogers. This was a decision that the Shaw Family Trust must be presumed to have understood the impact of, including its effect on Corus's access to funding for local news. The Shaw Family Trust made the decision anyway. It is fundamentally unjust for Corus, still owned by the Shaw Family Trust, to now tell the Commission that Canadian creators, Canadian programming, and the Canadian audiences that they serve must pay the price for this decision through reduced CPE and PNI spending, while the Shaw Family Trust presumably takes the benefits that they sought. We respectfully submit that Corus would be better placed to make a call to its corporate ownership in addressing the outcomes of its decisions.
14. If the Commission were to grant Corus's application, it would be inviting a raft of similar applications from other broadcasters, right in the middle of its review of the Canadian broadcasting system where these very issues are being considered from a structural point of view. We submit that this would not be an effective or efficient use of the Commission's time and resources, nor would be an efficient use of the resources of organizations like the WGC, which would be compelled to respond to each of these applications as well as to the structural reviews initiated by Broadcasting Notices CRTC 2023-138, -139 and -140.

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<sup>11</sup> Broadcasting Decision CRTC 2018-335.

<sup>12</sup> Reconsideration and hearing for all English-language discretionary services under the control of Corus Entertainment Inc. (the Corus Group of Services), Broadcasting Decision CRTC 2017-150, October 31st, 2017, Supplementary Brief, pgs. 5, 13-14, 20-22.

<sup>13</sup> Corus application, Appendix 1, Supplementary Brief, paras. 54-60.

<sup>14</sup> For example, Rogers Media Inc. made this same argument in the context of Broadcasting Notice of Consultation CRTC 2020-336, Call for comments on an application by the Canadian Association of Broadcasters requesting regulatory relief for Canadian broadcasters in regard to the COVID-19 pandemic, which the Commission noted in its decision in the matter, Broadcasting Decision CRTC 2021-274, at para. 86.

<sup>15</sup> Broadcasting Regulatory Policy CRTC 2010-167, para. 71. "The Commission considers that there is a continuing need for regulatory support for key genres of Canadian programming. The Commission notes that over 40% of all viewing to English-language television in Canada is to drama programs; drama is thus the genre of programming that Canadians choose to watch more than all others. Drama programs and documentary programs are expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values."

15. For all of these reasons, the WGC submits that the Commission should deny this application by Corus.

Yours very truly,

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

Neal McDougall  
Assistant Executive Director, WGC

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