Something is rotten at Canada's broadcasting regulator

Two bad decisions by the CRTC around Canada's public broadcaster have been appealed, exposing an overzealous regulator riven by contradictions

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These are not good times for Canada's broadcasting regulator.

The Canadian Radio-television and Telecommunications Commission has not only managed to contradict itself in two recent decisions affecting the CBC, but it stands accused of both shirking its mandate and sticking its nose where it does not belong.

The accusations are well-founded - and they speak to deeper problems at the regulator.

The first instance came earlier this month, when the federal cabinet ordered the CRTC to review its June decision to renew the CBC's broadcasting licence for another five years, stating the ruling "derogates from the attainment of the objectives" set out in the Broadcasting Act, notably by failing to impose stricter requirements on the public broadcaster with respect to local news, original French-language and children's programming, and making room for independent producers.

In the second instance, the Federal Court of Canada recently agreed to hear an appeal of the CRTC's June decision to reprimand Radio-Canada for the use of the N-word during a 2020 radio news program that discussed a well-known 1968 book, the title of which contains the offensive term. The decision caused an uproar at the French-language arm of the CBC, where journalists accused the regulator of overstepping its mandate and dictating content.

The move by Prime Minister Justin Trudeau's government to order the CRTC to revisit the CBC's licence renewal came amid an outcry from the broadcasting community concerning a regulatory ruling that appeared to give the CBC free rein to define its mandate as it sees fit. The CRTC loosened requirements for local news programming and paved the way for the CBC to pursue more controversial revenue-raising efforts such as its paid-content Tandem initiative.

Ottawa needs to make sure there's a distance between the CRTC and industry.

That initial licence renewal decision was not unanimous. CRTC vice-chairperson Caroline Simard and commissioner Monique Lafontaine filed dissenting opinions that questioned the hands-off approach to the CBC taken by CRTC chair Ian Scott and other commissioners.

"I consider that the general laissez-faire approach proposed in the majority decision in regard to traditional and digital platforms carries real and unnecessary risks of undermining the mandate of the CBC," wrote Ms. Simard, who has since stepped down from the CRTC position. "I cannot take this risk for the public broadcasting service financed through public funds in the billions of dollars."
The CBC has seen its government funding rise steadily since the Liberals took power in 2015, increasing 35 per cent to almost $1.4-billion in 2020-21. It raised another $500-million in 2020-21 from other sources, including about $250-million in TV and digital advertising revenues. Unfortunately, management under CBC President Catherine Tait has chosen to invest much of this into programming that is at best tangential to the CBC mandate, while chipping away at the very foundations of what makes the CBC distinct from private broadcasters.

Friends of Canadian Broadcasting, one of 16 groups that formally petitioned Ottawa to force the CRTC to review its licence renewal decision, called on the regulator to impose "a specific 'predominantly and distinctively Canadian' cultural criteria test, to ensure that CBC English television does not continue to stray from its mandate by exhibiting non-distinctive popular fare like Family Feud Canada and Battle of the Blades." We can only hope.

The CRTC itself noted that "from the 2013-2014 through 2019-2020 broadcast years, the CBC’s annual spending on English-language news on licensed conventional television stations decreased by $67.5-million, and annual expenditures on French-language news decreased by $20.2-million." Yet the regulator did not require the CBC to spend more on local news.

The regulator did see fit, however, to order CBC/Radio-Canada to apologize to a listener who complained about the on-air use of the N-word in 2020. According to a report last week in La Presse, the decision led to an "extremely tense" back-and-forth between anglophone executives in Toronto and Ottawa and francophone managers in Montreal.

Executive vice-president of French Services, Michel Bissonnette, told La Presse that the "pressure [to appeal] indeed came from French Services." Veteran Radio-Canada journalist Alain Gravel called the decision by CBC management to appeal the CRTC decision, while at the same time apologizing to the listener who complained about the use of N-word, "totally incoherent."

Meanwhile, University of Ottawa law professor Michael Geist, who obtained CRTC documents on the proceeding under an Access to Information request, said that the CRTC "sat on the decision" for eight months until after Bill C-11, which would give the regulator new powers regarding online content and streaming services, passed the House of Commons in June. "It is hard to ignore that the commission and Mr. Scott remained silent on the matter for months while the very issue raised in the case - CRTC regulation of content and freedom of expression - was front and centre in Bill C-11," Prof. Geist wrote in a blog post earlier this month.

All in all, none of this makes the CRTC look good. Perhaps it is time to clean house.

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