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Ineligibility of Non-Canadians

A Review of the Governor in Council's Foreign Ownership Directions under the Broadcasting Act

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CANADIAN OWNERSHIP AND CONTROL OF BROADCASTING UNDERTAKINGS

A Legislative and Regulatory History of the Direction to the CRTC (Ineligibility of Non-Canadians)

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This paper is written in the author's personal capacity. The views expressed are those of the author alone and should not be attributed to McCarthy Tétrault or to any of its clients.

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EXECUTIVE SUMMARY

This paper traces the development of the federal rules governing Canadian ownership and control of broadcasting undertakings, with particular attention to the Direction to the CRTC (Ineligibility of Non-Canadians). The history begins before the modern Direction power existed. Canadian broadcasting policy moved gradually from licensing discretion and concern about foreign influence to an express statutory mechanism under which the Governor in Council could identify classes of applicants that were ineligible to hold broadcasting licences.[1]

The 1968 *Broadcasting Act* supplied that mechanism. The first Directions translated the longstanding policy of Canadian control into detailed eligibility rules and, unlike the 1958 regime, required existing foreign interests to be Canadianized rather than indefinitely grandfathered. The result was a substantial national divestiture process: the CRTC later estimated that broadcasting holdings worth approximately $150 million (roughly $940 million in 2025 dollars) were affected across Canada. The rules were adjusted repeatedly between 1968 and 1975 as government and the CRTC dealt with transitional cases, corporate structures, financing and the practical consequences of the new ownership limits. By the mid-1970s, the essential elements of the regime were already visible: prescribed Canadian voting ownership, Canadian boards and management, and a residual inquiry into effective ownership or control.

The next major reconsideration came in the 1990s. Convergence between broadcasting and telecommunications prompted the Government to seek greater consistency between the two sectors and to reconsider the amount of foreign capital that could be invested at the holding-company level. Contemporary "Information Highway" work treated access to capital as part of that debate and considered common ownership rules across broadcasting, telecommunications and cable. The 1996 Direction retained the 80 per cent Canadian voting requirement at the licensee level but adopted the telecommunications model of 66⅔ per cent Canadian voting ownership at the parent-company level. The published record explains the objective of greater access to capital and harmonization. It does not establish why two-thirds was selected instead of another majority threshold. The 1997 Direction then addressed a particular consequence of convergence by creating the "qualified successor" mechanism for corporations associated with BC TEL and Québec-Téléphone, two foreign-controlled telecommunications carriers that had been grandfathered under the *Telecommunications Act*. The history also shows that these percentages were policy choices rather than universal federal definitions of Canadian control: other federal regimes, including the *Investment Canada Act*, audiovisual tax-credit rules, periodicals legislation and air-transport rules, have used different combinations of ownership thresholds, control-in-fact tests and other safeguards.

The 1997 Direction was challenged by Rogers Communications Inc. in the Federal Court. The Court rejected the argument that the exception was inconsistent with the *Broadcasting Act*'s declaration that the Canadian broadcasting system should be effectively owned and controlled by Canadians. The statutory policy, the Court held, concerned the system as a whole rather than requiring every undertaking within it to be Canadian. Contemporary CRTC proceedings involving Pacific Place Cable and Câble-Axion illustrate the practical governance and

[1] *Direction to the CRTC (Ineligibility of Non-Canadians)*, P.C. 1997-486, 8 April 1997, SOR/97-192, *Canada Gazette*, Part II, Vol. 131, No. 9, 30 April 1997, pp. 1222–1228. https://laws.justice.gc.ca/eng/regulations/SOR-97-192/page-1.html.

programming-control issues that accompanied the entry of the grandfathered telephone companies into broadcasting distribution.

The 1998 amendments clarified the boundary between protected Canadian control over programming and ordinary parent-company involvement in financing, budgets and business planning. The resulting framework has proved durable. Subsequent CRTC decisions, including those relating to Alliance Atlantis/CanWest/GS Capital Partners and to Sirius XM, show how the Commission has applied the Direction's numerical requirements together with the broader control-in-fact inquiry. Those cases demonstrate that shareholdings that meet the required percentages under the Direction are important but are not conclusive: governance rights, financing, contractual relationships, economic interests and practical dependence may all bear on where effective control resides.

The *Online Streaming Act* of 2023 marks a more fundamental change in the surrounding statutory architecture. Parliament retained the declaration that the Canadian broadcasting system shall be effectively owned and controlled by Canadians, while expressly recognizing in the same provision that the system includes foreign broadcasting undertakings providing programming to Canadians. Foreign online undertakings can now operate within the regulated system without first qualifying to hold Canadian broadcasting licences.

The central historical theme is therefore continuity of policy alongside change in regulatory technique. Canadian ownership and control remained the governing objective, but the means used to protect it evolved from simple ownership limits to a more sophisticated combination of voting thresholds, governance requirements, control-in-fact analysis and programming safeguards. The modern legislation adds a further distinction: foreign online undertakings may participate in the Canadian broadcasting system without becoming Canadian licensees. The Direction remains in force, but it now operates within a regulatory system substantially different from the one for which its predecessors were designed.

CHAPTER 1
THE ORIGINS

The Historical Origins

The early versions of the current *Broadcasting Act* contained no provisions allowing for the Governor in Council to issue Directions to the regulator. The *Canadian Radio Broadcasting Act, 1932*, created a "Canadian Radio Broadcasting Commission" but its power was subject to the power of the Minister [of Marine] to license stations. Section 8(c) of that Act provided that[2]

> …the Commission may make recommendations to the Minister with regard to the issue, suspension or cancellation of private broadcasting licences, and notwithstanding anything contained in the *Radiotelegraph Act* or regulations, the Minister may issue, suspend or cancel such licences.

Four years later, Parliament passed the *Canadian Broadcasting Act, 1936* which gave the Canadian Broadcasting Corporation (the "Corporation") a series of powers. However, the power to issue licences was still reserved for the Minister of Transport. Section 22(1) of that Act provided the following,[3]

> The Minister of Transport shall before dealing with any application for licence to establish a new private station or for an increase in power, change of channel, or change of location of any existing private station, or making any regulations or changes in regulations governing the activities of private stations, refer such applications or regulation to the Corporation and the Corporation shall give public notice thereof in the *Canada Gazette* and shall make such recommendation to the Minister of Transport as it may deem fit; the approval of the Governor in Council shall be obtained before any licence for a new private station is issued.[4]

That state of affairs continued until the 1950s when a Royal Commission on Broadcasting submitted a report to Parliament with a number of recommendations. The so-called "Fowler Report" (named after the Chair of the Royal Commission, Robert Fowler) contained the following comments and recommendations relating to foreign ownership:[5]

> It is also worth noting that neither in the legislation nor in the regulations made thereunder is there any outright prohibition or even a precise limitation of multiple ownership or foreign ownership of radio and television stations. It is true, however, that following certain recommendations of the 1942 Parliamentary Committee on radio broadcasting, the General Radio Regulations, Part II, were amended to vest in the Minister of Transport some discretion as to the degree of multiple ownership or foreign ownership that might be allowed in individual cases. Before the 1942 Parliamentary Committee formulated its

[2] 22-23 George V., Chapter 51, assented to 26 May 1932.

[3] *Canadian Broadcasting Act*, 1936, c. 24; R.S.C. 1952, c. 32.

[4] A private station was defined in the Act to be "…any broadcasting station licensed to a person other than the Corporation."

[5] Royal Commission on Broadcasting, Report (Ottawa: Queen's Printer, 1957) (Fowler Report).

> recommendations, a number of private radio chains were already in existence. The Board of Governors [of the Corporation] has made no recommendation nor has the Minister of Transport taken any action to alter the existing situation.[6]
>
> …With regard to foreign ownership, the Board, during the course of our inquiry, considered and recommended the transfer of approximately one-third of the common shares of a radio and television station to the Canadian subsidiary of an American company. However, at the time the Board forwarded this recommendation to the Minister of Transport, it suggested "that the Licensing Authority give consideration to this matter and to the desirability of a provision relating to the degree of non-Canadian control, direct or indirect, in the use of a Canadian air channel, possibly along the lines of the U.S. provision limiting the amount of alien interest in a licensed station in that country to 20 per cent".[7]
>
> …We recommend that there should be a statutory provision prohibiting any future acquisition of more than 20% of the ownership of any Canadian radio or television station, directly or indirectly, by non-Canadians. We think that any existing cases of a higher percentage of foreign ownership are rare and arose from special circumstances; they are not serious and it would be unfair, having granted licences with knowledge of the foreign ownership, to require these interests to be sold. The drafting of an effective statutory provision is difficult as it must cover off not only direct ownership by non-Canadians but also ownership by Canadian subsidiaries of foreign companies. Some assistance in meeting this difficulty may be derived from a study of the *Australian Broadcasting and Television Act*.
>
> In making this recommendation for a limit on foreign ownership of broadcasting stations, we recognize the many substantial advantages that Canada has gained from foreign investment in other fields. In broadcasting, dealing as it does with media of public information and wielding so great an influence on opinion, we feel that facilities should be kept substantially in Canadian hands. If radio and television are to serve the Canadian purposes which alone justify the difficulty and expense of maintaining a Canadian broadcasting system, those purposes should not be endangered by allowing individual stations to pass out of the control of Canadians.[8]

The 20 per cent figure therefore did not appear from nowhere. During the Fowler inquiry, the CBC Board of Governors had itself suggested consideration of a rule along the lines of the United States' limitation on alien interests, and Fowler adopted 20 per cent as its recommended maximum for future non-Canadian ownership. The genealogy is significant because Parliament did not simply enact that recommendation the following year. The 1958 legislation instead permitted foreign ownership of up to 25 per cent of the fully voting shares. The published record

[6] Fowler Report, at p. 23.

[7] *Ibid.*

[8] *Ibid.*, at pp. 106–107.

reviewed for this paper has not yet disclosed why the Government chose 25 per cent rather than Fowler's recommended 20 per cent.

It is worth briefly examining the U.S. limitation of 20 per cent referred to above. It flows from the U.S. *Communications Act of 1934*, and the operative provision reads as follows:

> **SEC. 310. [47 U.S.C. 310] LIMITATION ON HOLDING AND TRANSFER OF LICENSES.**
>
> (a) The station license required under this Act shall not be granted to or held by any foreign government or the representative thereof.
>
> (b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by—
>
> (1) any alien or the representative of any alien;
>
> (2) any corporation organized under the laws of any foreign government;
>
> (3) any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;
>
> (4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license…[9]

The recommendations of the Fowler Report led to the enactment in 1958 of a new *Broadcasting Act* which repealed the *Canadian Broadcasting Act, 1936*. This new Act created a Board of Broadcast Governors ("BBG") and for the first time addressed the question of foreign ownership, although not in the form of a Direction. Nor did it include a provision that the Canadian broadcasting system should be effectively owned and controlled by Canadians. Instead, it provided that applications for new licences, increases in power, changes in channel, changes in location or before making changes to regulations under the *Radio Act* which govern the activities of broadcasting stations, had to be referred to the new Board which would give public notice of the proposal and then make a recommendation to the Minister of Transport. However, Section 12(2) retained the requirement that,[10]

> A licence for a new broadcasting station shall not be issued under the *Radio Act* without the approval of the Governor in Council.

[9] Section 310, U.S. *Communications Act of 1934*, 47 USC 310.

[10] *Broadcasting Act*, 7 Elizabeth II, Assented to 6 September 1958.

Although Government control over the issuance of new licences did not constitute a change, there was a new requirement relating to "Non-Canadian Interests" as follows:

> *Non-Canadian Interests*
>
> 14. (1) The Board shall not recommend the issue of a licence or grant permission to operate a network of broadcasting stations unless the applicant therefor is
>
> a) a Canadian citizen, or
>
> b) a corporation incorporated under the laws of Canada or any province, the chairman or other presiding officer and at least two-thirds of the directors of which are Canadians and at least three-fourths of the shares of which (having full voting rights under all circumstances) belong to
>
> (i) Canadian citizens, or
>
> (ii) a corporation other than a corporation controlled directly or indirectly by citizens or subjects of a country other than Canada.
>
> (2) The Governor in Council may exempt from the operation of this section, upon such terms and conditions as the Governor in Council may prescribe, any person who, at the time of the coming into force of this Act, was the holder of a licence and was not a person described in paragraph (a) or (b) of subsection (1).[11]

It is noteworthy that Parliament, then controlled by Prime Minister John Diefenbaker's Conservatives, did not adopt all of the Fowler Report's recommendations relating to non-Canadian ownership and control in the new Act. However, it represented the initial effort at quantifying the percentage of directors and the percentage of the voting shares that had to be held by Canadians in order for the company to be considered sufficiently "Canadian". It pales by comparison to the detail found in the Direction currently in place. For example, there is no requirement for the directors to be resident in Canada as long as they are Canadian citizens. It also contained a power of exemption for licensees who were non-Canadians at the time of the coming into force of the new Act.

The numerical sequence is worth noting. The CBC Board and Fowler had pointed to a 20 per cent ceiling on non-Canadian ownership; the *Broadcasting Act* of 1958 permitted 25 per cent; and, as discussed below, the first Direction issued in 1968 returned to a 20 per cent ceiling. The available public material establishes the changes. It has not yet yielded an explanation for either the 1958 departure from 20 per cent or the 1968 return to it. Those questions are therefore best treated as matters for the underlying departmental and Cabinet record rather than answered by inference.

The first reading of the Act occurred on Tuesday, 19 August 1958, in the waning days of that Parliament. All three readings of the bill in the House of Commons, as well as the three readings in the Senate, a review by the Standing Committee on Transport and Communications, a Report

[11] *Ibid.*, s. 14.

by that Committee with amendments and the granting of Royal Assent, occurred by Saturday, 6 September 1958…a total of 19 days from beginning to end. It is little wonder that there were complaints from the Opposition that they did not have time to properly consider the Bill.[12]

That said, in the time that they did have, not once was the issue of limiting ownership of Canadian broadcasting licensees to Canadians raised other than in one context. A UK company had purchased 50.6% of Canadian Marconi Company in 1953 which meant that it would be "offside" the new cap on foreign ownership for its existing radio station, CFCF Montreal, as well as for a future television station that it wished to apply for in Montreal. A Mr. Finlayson, the President of the Company appeared at the Committee hearings with two of his colleagues on 2 September 1958. The Chair of the Committee, Senator A. K. Hugesson, noted for the record that he knew the Marconi representatives very well as he happened to be a director of the Marconi company. He did not recuse himself from the proceedings. In any event, the Marconi representatives were able to convince the legislators to add an amendment allowing the Government to exempt certain companies from the foreign ownership provisions. This exemption power was found in the new section 14(2) cited above. Canadian Marconi Company was not the only non-Canadian owning Canadian broadcasting licensees at the time the new bill obtained Royal Assent. The actual number seems to be somewhat vague, a rather surprising circumstance given the effect that the new provision would have had on them, absent the last-minute amendment.[13],[14]

When reporting back out of Committee, Senator Hugessen said the following:[15]

> Honourable Senators, I move that the amendments be concurred in now…Under section 14, as it read when it came to us, there were severe restrictions upon the issue of licences by the board to persons or corporations having a non-Canadian interest. The section provides that no licence shall be issued by the board to anyone other than a Canadian citizen, or a corporation having two-thirds of its directors Canadian citizens and at least three-fourths of its shares owned by Canadian citizens or other Canadian companies. When we came to consider the bill in Committee we found that there are at present several broadcasting stations, and I think one television station, which cannot comply with those requirements as to ownership. In other words, they are owned by outside interests to an extent greater than would be permitted by this section 14. The minister in charge of the bill appeared before the committee and gave evidence, which was very helpful indeed. He said that there was no intention in this bill of depriving people of their acquired rights or of interfering with the rights of existing companies owning broadcasting or television stations. Therefore, we have included this first amendment to the effect that section 14 need not apply, if the Governor in

[12] See, for example, the comments of the Leader of the Opposition, Lester Pearson, that "it is unfortunate…that a resolution dealing with such a fundamental matter should be introduced in what we hope are the dying days of this session." See p. 3749 of the House of Commons Debates, 24th Parliament, 1st ... - Image 251 - Canadian Parliamentary Historical Resources (canadiana.ca).

[13] Senate of Canada, Standing Committee on Transport and Communications, Proceedings, 24th Parliament, 1st Session, 2 September 1958.

[14] *Ibid.*

[15] Senate Debates, 24th Parliament, 1st Session: Vol. 1, at p. 772.

> Council so permits, in the case of any person who at the time of the coming into force of this act could not comply with the requirements of section 14. That, I think, is an obviously good provision, and it preserves the rights of holders of existing broadcasting and television licences who otherwise would be deprived of the right of obtaining renewals of their licences if this bill had gone through in its original form.

In addition to the new ownership restrictions, that 1958 *Broadcasting Act* allowed for two broadcast regulators…the pre-existing CBC Board and the new BBG. Predictably, this led to confusion and even friction. Only 6 years later, in 1964, the new Liberal Government led by Prime Minister Lester Pearson, asked a new Committee, the "Fowler Broadcasting Committee", to look into the broadcasting situation in Canada and to make recommendations for improvement. The Fowler Broadcasting Committee Report recommended consolidation of the regulation of broadcasting in a new "Authority". It did not, however, suggest changing the ownership rules that were already in place.[16]

The Committee's report was submitted to the Secretary of State and Registrar of Canada, the Honourable Maurice Lamontagne on 1 September 1965, and led to the creation of a White Paper in 1966 which was in turn submitted to the Standing Committee on Broadcasting, Film and Assistance to the Arts. The White Paper was finalized in 1966 and again, made no recommendations as regards ownership.

Before examining the events of 1968, including the first appearance of a Direction relating to non-Canadian ownership, it is worth noting that the statutory source of the Direction power also changed over time. The 1968 Direction was issued pursuant to subparagraph 22(1)(a)(iii) of the *Broadcasting Act*, 1968, which empowered the Governor in Council to direct the Commission concerning classes of applicants to whom broadcasting licences could not be issued, amended or renewed. The replacement Directions beginning in March 1969 were issued under section 27, which authorized the Governor in Council to issue directions respecting the matters referred to in paragraph 22(1)(a). The *Broadcasting Act*, 1991 replaced that framework with section 26: subsection 26(1) authorizes the Governor in Council to issue directions respecting classes of applicants to whom licences may not be issued or to whom amendments or renewals may not be granted. The 1996 and 1997 Directions, and the 1998 amending Order, were made under subsection 26(1).[17]

[16] See, for example, the Report of the Committee on Broadcasting, 1965, at p. 97. "The Royal Commission warned of the danger that two boards involved in the regulation of broadcasting…would lead to duplication of expense and effort, undesirable friction, and a loss of efficiency. These predictions have been borne out to some extent in the experience of the last six years…there have been instances of serious conflict between the BBG and the directors of the CBC…"

[17] *Broadcasting Act*, S.C. 1991, c. 11, s. 26(1), (3) and (4).

CHAPTER 2
THE FIRST DIRECTIONS, 1968-1975

All this activity led to the enactment of a new *Broadcasting Act* in 1968.[18]

This new version of the Act created the Canadian Radio-television Commission which was authorized, among many other things, to issue, amend and renew licences. The Act stated that

> 3(b) The Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada…[19]

Although the Minister was no longer entitled to issue, amend or renew licences, the Governor in Council was given a new power to issue Directions to the CRTC. Specifically, the Act provided that:

> 22 (1) No broadcasting licence shall be issued, amended or renewed pursuant to this Part,
>
> In contravention of any direction to the Commission issued by the Governor in Council under the authority of this Act respecting
>
> (i)…
>
> (ii)…
>
> (iii) the classes of applicants to whom broadcasting licences may not be issued or to whom amendments or renewals thereof may not be granted and any such class may, notwithstanding section 2, be limited so as not to preclude the amendment or renewal of a broadcasting licence that is outstanding at the time this Act comes into force…[20]

Section 27 created the power to issue directions for the first time as follows:

> 27. (1) The Governor in Council may by order from time to time issue directions to the Commission as provided for in paragraph (a) of subsection (1) of section 22.
>
> (2) An order made under this section shall be published forthwith in the Canada Gazette and shall be laid before Parliament within 15 days after the making thereof, or, if Parliament is not then sitting, on any of the first fifteen days thereafter that Parliament is sitting.[21]

[18] 16-17 Elizabeth II, Chap. 25, assented to 7 March 1968.

[19] *Ibid.*, s. 3(b).

[20] *Ibid.*, s. 22.

[21] *Ibid.*, s. 27.

The first Direction was issued soon thereafter. By Order in Council P.C. 1968-1809 dated 20 September 1968, the following Direction was given to the CRTC:[22],[23]

His Excellency the Governor General in Council, on the recommendation of the Secretary of State, pursuant to subparagraph (iii) of paragraph (a) of subsection (1) of section 22 of the *Broadcasting Act*, is pleased to issue to the Canadian Radio-Television Commission the direction annexed as a Schedule hereto:

SCHEDULE

1. The Canadian Radio-Television Commission is hereby directed that, on or after the 20th day of September 1968, broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of the class described in paragraph 2.

2. The class referred to in paragraph 1 is as follows:

   Persons who are not Canadian citizens or eligible Canadian corporations and are not persons who, on the 1st day of April 1968, were carrying on broadcasting undertakings within the meaning of the *Broadcasting Act* but did not have licences to establish broadcasting stations issued under the *Radio Act* and did not require such licences immediately before the 1st day of April, 1968.

3. For the purposes of this Direction, an "eligible Canadian corporation" is a corporation

   (a) incorporated under the laws of Canada or a province, the chairman or other presiding officer and each of the directors of which are Canadian citizens,

   (b) of which at least four-fifths of the issued shares, to which are attached at least four-fifths of the votes exercisable under any circumstances at a meeting of shareholders, are owned by

      (i) one or more Canadian citizens, or

      (ii) one or more corporations to which subparagraph (a) applies, of which at least four-fifths of the issued shares, to which are attached at least four-fifths of the votes exercisable under any circumstances at a meeting of shareholders, are owned by Canadian citizens, and

   (c) of which at least two-fifths of the combined paid-up capital, earned surplus and outstanding debt is represented by shares owned by, or obligations to, one or more persons described in clause (i) or (ii) of subparagraph (b).

   except that in any case where it is made to appear to the Commission that, notwithstanding that the corporation is one to which sub-paragraphs (a), (b) and (c) apply, the corporation is controlled, either directly or indirectly, and either

[22] Pierre Elliott Trudeau was elected leader of the Liberal Party of Canada on 6 April 1968 and became Prime Minister on 20 April 1968. He immediately called an election (which was held on 25 June 1968) and Parliament did not resume until 12 September 1968. Thus, the first Direction under the new *Broadcasting Act* was not issued until 20 September 1968.

[23] *Direction to the Canadian Radio-Television Commission*, P.C. 1968-1809, 20 September 1968, *Canada Gazette*, Part I, 5 October 1968, pp. 2398–2399.

through the holding of shares of the corporation or any other corporation or in any other manner whatever, by or on behalf of any person of the class described in paragraph 2, the corporation shall be deemed not to be an eligible Canadian corporation.

4. Notwithstanding paragraph 3, in applying that paragraph in the case of an amendment or renewal of a broadcasting licence at any time before the 1st day of September 1969, there shall be substituted for the expression "each of the directors" where it appears in sub-paragraph (a) of paragraph 3, the expression "at least two-thirds of the directors"; and there shall be substituted for the expression "four-fifths" in each case where it appears in subparagraph (b) of paragraph 3, the expression "three-quarters".

5. An applicant for the amendment or renewal of a broadcasting licence that was outstanding on the 1st day of April, 1968, to whom, but for this paragraph, such amendment or renewal may not be granted by virtue of this Direction shall be deemed, for the purposes of that application only, not to be an applicant of the class described in paragraph 2 if

(a) the Commission is satisfied that it would not be contrary to the public interest to grant the amendment or renewal applied for by the applicant; and

(b) the Governor in Council, by order, approves of the grant of the amendment or renewal after submission to him by the Commission of the application, together with a statement of the Commission's reasons why it is satisfied that it would not be contrary to the public interest to grant the amendment or renewal.

6. Nothing in this Direction shall be construed as limiting the power of the Governor in Council to direct that broadcasting licences may not be issued or amendments or renewals of broadcasting licences may not be granted to applicants of classes other than the class referred to in paragraph 1 or limiting the power of the Canadian Radio-Television Commission, in carrying out its objects, to refuse to issue a broadcasting licence to or to grant an amendment or renewal of a broadcasting licence to an applicant of a class other than the class referred to in paragraph 1.

Paragraph 4 of that Direction, which referred to two-thirds of the directors and three-quarters of the shares aligned with the provisions of paragraph 14(b) of the 1958 *Broadcasting Act* which governed licences prior to the creation of the new 1968 requirements of 100% of the directors being Canadian and four-fifths of the shares being held by Canadians.

The significance of the new ownership requirements can easily be obscured by the technical language of the successive Directions. They did not merely establish eligibility rules for future entrants to Canadian broadcasting. They required existing licensees that did not satisfy the new requirements to alter their ownership structures or dispose of their broadcasting interests. In its 1974 account of the process,[24] the CRTC described the November 1969 Direction as producing "extensive divestiture transactions across Canada" and estimated that broadcasting holdings worth approximately $150 million (roughly $940 million in 2025 dollars) were affected in every province except Prince Edward Island. Its schedule of completed divestitures recorded transactions with an aggregate consideration of $149,442,748 between 1970 and 1973. The

[24] Canadian Radio-Television Commission, Canadian Ownership in Broadcasting: A Report on the Foreign Divestiture Process (Ottawa: Information Canada, 1974), Cat. No. BC92-472.

process involved radio and television stations as well as the rapidly expanding cable television industry.

The successive Directions are best understood against that background. The 1968 Direction established the new rule; the Directions that followed increasingly addressed the practical problem of implementing it. Foreign interests had entered Canadian broadcasting in several ways. Some had expanded existing corporate operations into Canada; some had supplied capital to Canadian entrepreneurs, particularly in cable television; and some had acquired companies that had originally been Canadian-owned. Canadianization therefore required more than applying a percentage to a share register. It required workable corporate structures and, in many cases, substantial amounts of Canadian capital.

The March 1969 Direction

The March 1969 Direction repealed and replaced the 1968 Direction. It retained the 80 per cent Canadian voting-ownership standard while revising the corporate structure and transitional provisions.[25]

The changes were substantial. Cable television, omitted from the September 1968 Direction, was brought within the ownership regime. The new Direction permitted an additional corporate level, broadened the concept of a Canadian citizen to include a personal corporation wholly owned by Canadian citizens, abandoned the 1968 mathematical formula governing indebtedness, and applied the 80/20 rule to paid-up capital. It also gave the Commission greater discretion in dealing with classes of shares having limited voting rights and expressly excluded ownership or control by foreign governments.

Most importantly for existing operators, the March 1969 Direction put a date on Canadianization. Undertakings not operating on or before 1 April 1968, had to comply immediately; existing stations and cable systems were to comply by 1 September 1970. The ownership rules had therefore moved beyond a restriction on future foreign investment. Existing non-compliant broadcasting interests now faced a deadline to restructure or divest.

Table 1 — Changes from the 1968 Direction to the March 1969 Direction

Direction	Key change from previous Direction	Significance
March 1969 Direction	Repealed and replaced the 1968 Direction. Extended the ownership regime to cable television; revised eligible-corporation and corporate-tier rules; broadened eligible Canadian investors; removed the original debt formula; adjusted capital and voting-share treatment; and established 1 September 1970 as the compliance deadline for existing undertakings.	Changed an initial licensing restriction into an enforceable Canadianization programme, while making restructuring and financing more practicable.

[25] *Direction to the Canadian Radio-Television Commission*, P.C. 1969-630, 27 March 1969, SOR/69-140, *Canada Gazette*, Part II, 9 April 1969, pp. 503–506.

The November 1969 Direction

The November 1969 Direction again replaced its predecessor. It simplified the eligible-corporation structure and further rationalized the continuing 80 per cent Canadian ownership requirement.[26]

Here the contemporary record explains not only what changed, but why. The CRTC later reported that the Direction followed extensive analysis of the views of broadcasters, prospective investors and other groups. Corporations without share capital became eligible; the earlier restriction on the number of corporate tiers between the licensee and Canadian citizens was abandoned; and the test focused instead on beneficial Canadian ownership and control. The Government expressly sought to make voting shares more widely available to Canadians and to broaden the Canadian investment base available to broadcasting undertakings.

That objective had practical consequences. Pension funds, trust funds, mutual life companies, investment clubs, credit unions, certain mutual funds and other non-share corporate entities could participate as Canadian investors. Proof of Canadian ownership was also simplified for holdings of one per cent or less of a class of shares. These changes were not merely drafting refinements. They made it easier to assemble the Canadian capital required to finance the divestitures that the Direction itself was compelling.

Famous Players Canadian Corporation Limited provides the clearest illustration of the scale of the exercise. Controlled first by Paramount Pictures and later by Gulf and Western Industries of the United States, Famous Players held interests in five radio and television undertakings and 18 cable television undertakings in five provinces. Its initial TELTRON restructuring proposal was rejected in 1969 because the Commission concluded that Famous Players would continue to hold approximately 55 per cent of the total equity. The Commission required the individual licensees to rearrange their holdings to comply with the Direction. Between April 1970 and March 1971 alone, the CRTC approved 15 transfer proposals involving Famous Players interests. A broader 1971 reorganization ultimately transferred its communications interests into a structure the Commission regarded as a major step toward compliance.

The Famous Players experience also shows why the widening of the Canadian investment base mattered. Canadianization of a national group of valuable broadcasting and cable assets could not be accomplished simply by replacing a few directors. It required purchasers and investors capable of financing substantial acquisitions. The same issue appeared in the reorganization of the cable interests associated with Columbia Broadcasting System, where Canadian institutional and public capital formed part of the solution.

Table 2 — Changes from the March 1969 Direction to the November 1969 Direction

Direction	Key change from previous Direction	Significance
November 1969 Direction	Repealed and replaced the March 1969 Direction. Allowed non-share corporations; removed the limit on intervening corporate tiers; emphasized beneficial Canadian ownership and control; broadened	Facilitated raising Canadian capital and completing divestitures without abandoning the 80 per cent Canadian-ownership objective.

[26] *Direction to the Canadian Radio-Television Commission*, P.C. 1969-2229, 20 November 1969, SOR/69-590, *Canada Gazette*, Part II, 10 December 1969, pp. 1695–1698.

Direction	Key change from previous Direction	Significance
	permissible institutional investment; and simplified evidence for small shareholdings.	

The 1971 Direction

The 1971 instrument amended, rather than replaced, the November 1969 Direction. It substituted new paragraphs 1–3, changed the concluding effective-control proviso in paragraph 4, and replaced paragraphs 6–8 with new paragraphs 6 and 7. The revised prohibition, effective 12 January 1971, expressly addressed the issue and renewal of broadcasting licences; it did not use the former paragraph 1 formulation concerning amendments of licences.[27]

The new paragraph 6 provided a limited route for renewal of a licence outstanding on 1 April 1968, where the Commission was satisfied that renewal would not be contrary to the public interest and the Governor in Council approved the renewal by order after considering the Commission's reasons. The text speaks of renewals, not amendments. The separate saving clause in paragraph 7 preserved specified Governor in Council and Commission powers respecting amendments, issues and renewals. These distinctions matter when considering the subsequent Canadian Marconi proceedings.

Canadian Marconi, whose parentage made it ineligible under the Direction, owned CFCF and related Montreal radio and television stations. A proposed sale for more than $20 million was approved in 1970, but the purchaser announced in February 1971 that it could not raise the necessary financing. A second transaction involving CHUM was approved later that year and was then abandoned. Rather than allow the licences to expire while another Canadian purchaser was sought, the Commission used the amended Direction to recommend temporary renewals to the Governor in Council. In July 1972, the CRTC finally approved the purchase of the Marconi stations by Multiple Access Limited for $18 million. The Commission's 1974 report recorded that the transaction had been completed and that the stations were Canadian-owned and controlled.

A very different case demonstrates that the transition was administered pragmatically without abandoning its objective. Iron Ore Company of Canada Aviation Limited operated small television stations at Schefferville, Quebec and Labrador City, Newfoundland, but was ineligible because its parent was approximately 60 per cent U.S.-owned. In 1970 the Commission found that the two stations cost approximately $115,000 a year to operate, earned no advertising revenue, and provided remote communities with CBC programming in both official languages. It concluded that requiring an immediate sale would effectively close the stations because no private broadcaster was likely to buy them and therefore granted a temporary renewal. The accommodation was temporary: the CBC agreed to purchase the stations in 1972, and the Commission approved the acquisition in 1973.

Taken together, the cases show what Canadianization meant in practice. The Commission rejected restructurings that left effective foreign ownership substantially intact; supervised transfers of individual stations and cable systems; permitted time for large transactions to be financed and completed; and, where immediate enforcement threatened the continuation of service, used the transitional machinery to bridge the period until a Canadian solution could be

[27] *Direction to the Canadian Radio-Television Commission, amended*, P.C. 1971-37, 12 January 1971, SOR/71-33, *Canada Gazette*, Part II, Vol. 105, No. 2, 27 January 1971, pp. 86–87.

found. The process was therefore both more consequential and more administratively complex than the succession of Directions alone suggests.

Table 3 — Changes from the November 1969 Direction to the 1971 Direction

Direction	Key change from previous Direction	Significance
1971 Amendment	Amended, rather than replaced, SOR/69-590. Substituted paragraphs 1–3 (including a 12 January 1971 prohibition addressing issue and renewal); revised paragraph 4's effective-control proviso; replaced paragraphs 6–8 with a narrow grandfathered-renewal provision and a revised reservation of powers.	For licences outstanding 1 April 1968, the paragraph 6 renewal exception required both a favourable CRTC public-interest determination and approval by Governor in Council order. The new paragraph 6 did not independently authorize licence amendments.

The 1975 Direction

By the time the CRTC published its divestiture report in 1974, the main Canadianization exercise generated by the 1969 Direction had largely run its course. The 1975 amendment should therefore be understood as the next refinement of the corporate eligibility rules, rather than as part of the initial divestiture deadline. The 1974 report is valuable evidence of the problems encountered under the earlier Directions, but it predates the 1975 amendment and does not by itself establish why that amendment was made.

The 1975 instrument amended the Direction as previously amended by inserting paragraph 4.1. The exception concerned a licensee corporation effectively owned or controlled by a corporation that met paragraph 4(a) (Canadian incorporation) and 4(c) (ownership of voting shares and paid-up capital), but not paragraph 4(b) (Canadian composition of its board). It required at least four-fifths of the directors or equivalent officers of the controlling corporation, including its chair or presiding officer, to be Canadian citizens, and a Commission determination that issue or renewal would not be contrary to the public interest. It did not dispense with the share-ownership requirements of paragraph 4(c).[28]

Table 4 — Changes from the 1971 Direction to the 1975 Direction

Direction	Key change from previous Direction	Significance
1975 Amendment	Added paragraph 4.1: a conditional exception for an upstream controlling corporation meeting paragraphs 4(a) and 4(c) but not the paragraph 4(b) director-composition requirement, subject to a four-fifths Canadian board including the chair and a CRTC public-interest finding.	Adjusted the upstream director-composition test without waiving the ownership thresholds; the specific policy or transaction motivating the change has not been independently established.

[28] *Direction to the Canadian Radio-Television Commission, amendment*, P.C. 1975-342, 20 February 1975, SOR/75-102, *Canada Gazette*, Part II, Vol. 109, No. 5, 12 March 1975, p. 356.

CHAPTER 3
CONTINUITY AND CONSOLIDATION, 1975-1994 – DIRECTION TO THE CRTC (ELIGIBLE CANADIAN CORPORATIONS), C.R.C., C. 376

The Consolidated Regulations of Canada, 1978, which came into force on 15 August 1979 pursuant to SI/79-131, incorporated the Direction as amended in 1971 and 1975. The consolidated text, designated C.R.C., c. 376, included editorial and organizational revisions, including renumbering, revised cross-references and minor drafting changes, but made no substantive changes to the foreign-ownership requirements. Appendix E reproduces the consolidated Direction.[29]

The consolidated Direction was subsequently amended by SOR/93-236 (P.C. 1993-933), registered on 11 May 1993. That instrument amended the French version of C.R.C., c. 376: section 2, paragraph 3(a), the introductory portion of section 4, and the introductory portion and paragraph (c) of section 5.

Table 5 — Changes from the 1975 Direction to the 1978 Consolidated Direction

Direction	Key change from previous Direction	Significance
1978 Consolidation	Consolidated the Direction as amended in 1971 and 1975, incorporating editorial and organizational revisions.	Consolidation of the existing Direction, without substantive changes to the foreign-ownership requirements.

[29] Consolidated Regulations of Canada, 1978, C.R.C., c. 376; SI/79-131 (*Canada Gazette*, Part II, vol. 113, no. 15).

CHAPTER 4
CONVERGENCE AND THE MODERN DIRECTION, 1994-1998

On 8 October 1994, the Department of Canadian Heritage initiated a consultation (the "Invitation to Provide Comments") regarding a proposal to change the then-existing Direction in four ways as follows:[30]

> Update language and concepts regarding the 80 percent Canadian ownership requirement for broadcasting undertakings;
>
> Modify the criteria of eligibility for holding corporations which own or control broadcasting undertakings, by reducing the Canadian ownership from 80 percent to 66⅔ percent, so as to have uniform Canadian ownership requirement for holding corporations having interests in telecommunications and in broadcasting activities;
>
> Include Canadian residents as eligible applicants;
>
> Eliminate discrepancies between the French and English texts.

The Invitation to Provide Comments cited the fundamental requirement of Canada's broadcasting policy that "the broadcasting system be effectively owned and controlled by Canadians". However, given what it called "the development of a full-fledged information highway, and as international boundaries are disappearing", it was critical to examine whether the existing Direction met the needs of the Canadian broadcasting industry and the Canadian consumer.

More to the point, Heritage Minister Michel Dupuy acknowledged that while Canadian broadcasting must remain in the hands of Canadians, if broadcasting and telecommunications companies are to compete on an equal footing, they must have equal access to investment capital. An important step toward this goal was the harmonization of ownership rules in both the broadcasting and telecommunications sectors.[31]

The broader Information Highway record shows that the choice was made against a wider discussion of foreign-investment limits. The Government's 1994 consultation material referred to jurisdictions using 51 per cent domestic ownership and asked whether Canadian restrictions should be relaxed. The Information Highway Advisory Council subsequently observed that foreign-ownership restrictions could limit access to needed capital and considered whether telecommunications, broadcasting and cable should be subject to common Canadian-ownership rules. The published record thus explains why liberalization and harmonization were under consideration. It does not, however, establish that 51 per cent, 60 per cent, 75 per cent or any other alternative threshold was formally proposed for a broadcasting holding company, or why the existing telecommunications figure of two-thirds was ultimately preferred over 51 per cent, 60 per cent, 75 per cent or another majority threshold.

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[30] Department of Canadian Heritage, *Invitation to Provide Comments on a proposal to amend the Direction to the Canadian Radio-television and Telecommunications Commission (CRTC) (Eligible Canadian Corporations)*, *Canada Gazette*, Part I, 8 October 1994, p. 4158.

[31] Speech by Minister of Canadian Heritage, the Honourable Michel Dupuy, delivered on 18 May 1994, to the Canadian Cable Television Association, cited in the Invitation to Provide Comments.

Alternative Measures of Canadian Ownership and Control

The 80 per cent and 66⅔ per cent figures used in the broadcasting Directions are not the only measures by which federal law has defined Canadian ownership or control. Other federal statutes and cultural programs have used majority ownership, different numerical thresholds, control-in-fact tests, restrictions on particular foreign shareholders, or combinations of these approaches. The comparison is useful not because the regimes are interchangeable, but because it demonstrates that no particular percentage is inherent in the concept of Canadian ownership or control.

The *Investment Canada Act* provides the most obvious comparison. Rather than imposing an 80 per cent Canadian-ownership requirement, section 26 establishes a series of rules and presumptions for determining whether an entity is Canadian-controlled. Majority ownership of the voting interests by a Canadian or Canadian voting group ordinarily establishes Canadian control; the Act also addresses cases in which voting interests are more widely divided and control in fact. Sections 27 and 28 contain additional rules concerning ownership and the acquisition of control. The statutory technique is therefore materially different from that of the broadcasting Direction: it relies upon rules and presumptions directed to control rather than upon a fixed 80 per cent Canadian voting-ownership threshold.[32]

The comparison is particularly relevant because the *Investment Canada Act* test has itself been incorporated into federal audiovisual cultural policy. The Canadian Audio-Visual Certification Office (CAVCO) was established in 1974 to administer the capital cost allowance incentive for investment in Canadian film production. A points system for determining the Canadian content of a production was introduced at the same time. The points system was modified over time as federal policy placed greater emphasis on Canadian participation in key creative positions.[33]

In 1995 the capital cost allowance regime was replaced by the Canadian Film or Video Production Tax Credit (CPTC). The new program was intended to encourage the creation of Canadian film and television programming and the development of an active domestic independent production sector. Corporate ownership and control remained important, but were not treated as synonymous with the Canadian character of the production itself. An applicant company must be Canadian-controlled by reference to sections 26 to 28 of the *Investment Canada Act*. The production is then subjected to separate Canadian-content requirements: among other things, the producer must be Canadian, a live-action production must ordinarily obtain at least six of ten points allocated to specified Canadian creative personnel, and prescribed Canadian expenditure requirements must be met.[34]

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[32] *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), ss. 26-28. Section 26 sets out rules and presumptions for determining whether an entity is Canadian-controlled; s. 28 contains rules and presumptions respecting acquisition of control, including control in fact through ownership of one-third or more of the voting shares in specified circumstances.

[33] Department of Canadian Heritage, Our Cultural Sovereignty: The Second Century of Canadian Broadcasting (2003), historical chronology, noting that the Canadian-content points system was first introduced in 1974 for purposes of the capital cost allowance program administered by CAVCO and was modified over time.

[34] Department of Canadian Heritage, Canadian Film or Video Production Tax Credit - Backgrounder; Department of Finance Canada, Report on Federal Tax Expenditures 2026, Canadian Film or Video Production Tax Credit; *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 125.4; Income Tax Regulations, C.R.C., c. 945, s. 1106(4)-(5); Canadian Audio-Visual Certification Office, Canadian Film or Video Production Tax Credit - Application Guidelines, ss. 2.01 and 6-7. The CPTC was introduced in 1995; the Guidelines require the applicant to be Canadian-controlled based on ss. 26-28 of the *Investment Canada Act*, while the Regulations separately require a Canadian producer, ordinarily at least six Canadian-content points, and specified 75 per cent Canadian production and post-production expenditure tests.

The evolution of the CAVCO regime is instructive. Federal cultural policy progressively separated questions that can easily be conflated: who owns or controls the corporate producer, who performs the important creative functions, and where the economic activity generated by the production occurs. Each can be measured separately.

That became still clearer with the introduction in 1997 of the Film or Video Production Services Tax Credit (PSTC). Unlike the CPTC, which supports Canadian-controlled production companies making qualifying Canadian productions, the PSTC was introduced to make Canada a more attractive location for film production and to permit a broader range of productions, usually foreign-owned, to qualify for assistance. An eligible applicant may be either a Canadian- or foreign-owned production corporation. Thus, within the same audiovisual sector, federal policy applies materially different ownership requirements according to the objective of the particular program.[35]

The federal treatment of periodicals provides another useful comparison because Parliament expressly reconsidered the appropriate ownership percentage. Bill C-55, introduced in 1998 to regulate access to Canadian advertising by foreign periodicals, initially required 75 per cent Canadian ownership or membership. Following the 1999 Canada-United States settlement of the periodicals dispute, the proposed legislation was amended to require majority Canadian ownership or membership. In explaining the amendments in the Senate, Government Leader Senator B. Alasdair Graham said that the revised definition made the legislation consistent with the *Investment Canada Act* and that lowering the threshold should attract foreign investment by reducing the ownership constraint on foreign investors in Canadian magazines. Parliament therefore consciously selected a different measure of Canadian ownership for another cultural industry.[36]

A still different model appears in air transportation. The *Canada Transportation Act* currently defines a qualifying Canadian corporation or entity by combining three elements: at least 51 per cent of its voting interests must be owned and controlled by Canadians; it must be controlled in fact by Canadians; and separate 25 per cent ceilings apply to voting interests held by any single non-Canadian and by non-Canadian air carriers. That model preserves majority Canadian ownership and actual Canadian control while permitting substantially greater aggregate foreign investment than the broadcasting Direction.[37]

These regimes serve different statutory purposes, and their thresholds cannot simply be transplanted into broadcasting. They nevertheless provide useful context for the history of the Direction. Federal law has at different times and for different purposes used 51 per cent, 66⅔ per

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[35] Department of Finance Canada, Report on Federal Tax Expenditures 2022, Film or Video Production Services Tax Credit, noting that the credit was introduced in 1997 and was intended to make Canada a more attractive place for film production by allowing a broader range of productions, usually foreign-owned, to qualify; Canadian Audio-Visual Certification Office, Film or Video Production Services Tax Credit, "Who can apply," confirming that an eligible production corporation may be Canadian- or foreign-owned.

[36] Senate Debates, 36th Parl., 1st Sess., 8 June 1999, remarks of Hon. B. Alasdair Graham, Government Leader in the Senate, under "Foreign Publishers Advertising Services Bill - Second Reading - Debate Continued." Senator Graham explained that the amendments reduced the proposed 75 per cent Canadian ownership or membership requirement to a majority requirement, made the definition consistent with the *Investment Canada Act*, and reduced the ownership constraint on foreign investment in Canadian magazines.

[37] *Canada Transportation Act*, S.C. 1996, c. 10, s. 55(1), definition of "Canadian." The current definition requires at least 51 per cent Canadian ownership and control of voting interests, control in fact by Canadians, and specified 25 per cent limits applicable to a single non-Canadian and to non-Canadian air carriers.

cent, 75 per cent and 80 per cent ownership thresholds, and in some regimes has placed greater weight on control in fact or additional safeguards than on a single ownership percentage. The broadcasting figures are therefore better understood as policy choices made at particular points in the history of the industry than as self-defining measures of Canadian control.

That context makes the unresolved question surrounding the 1996 Direction more significant. The Government had already invited discussion of liberalizing Canadian ownership restrictions, and the Information Highway Advisory Council had considered common ownership rules for telecommunications, broadcasting and cable. The published record establishes why harmonization and greater access to capital were under consideration. It does not establish why the Government ultimately selected the telecommunications figure of 66⅔ per cent for a broadcasting holding company while retaining the 80 per cent requirement at the licensee level, or whether other thresholds were specifically considered and rejected.[38]

The Government's stated goal of harmonization of the ownership rules in broadcasting and telecommunications disappeared at some point along the way because the foreign ownership rules for telecommunications entities in Canada have been substantially liberalized since the mid-1990s but the Direction has not changed during that period. In 1998, the *Telecommunications Act* was amended to exempt international submarine cables and satellite earth stations from the Canadian ownership and control regime. Later, in 2010, the *Telecommunications Act* was amended again to remove foreign investment restrictions on satellite carriers. Finally, in 2012, foreign ownership restrictions were lifted for all Canadian telecommunications service providers other than those with more than 10% of total annual revenues from the provision of telecommunications services in Canada (as determined by the CRTC). This effectively meant that the only Canadian telecommunications carriers still governed by the foreign ownership restrictions were Bell, Telus and Rogers as well as those which also held broadcasting licences as those remained governed by the Direction to the CRTC.[39],[40],[41]

The Invitation to Provide Comments drew interventions from a wide variety of parties and resulted in a November 1995 policy announcement which proposed amendments similar to those outlined in the consultation.[42]

The 1996 Direction[43] repealed and replaced the previous Direction rather than simply amending it. The result was the basic corporate structure that remains in place today. A licensee corporation was required to be incorporated or continued under Canadian law, its chief executive officer had to be Canadian, at least 80 per cent of its directors had to be Canadians, and

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[38] Department of Canadian Heritage, *Invitation to Provide Comments on a proposal to amend the Direction to the Canadian Radio-television and Telecommunications Commission (CRTC) (Eligible Canadian Corporations)*, *Canada Gazette*, Part I, 8 October 1994, p. 4158; Information Highway Advisory Council, Connection, Community, Content: The Challenge of the Information Highway, Final Report (1995), discussion of foreign investment and common ownership rules for telecommunications, broadcasting and cable.

[39] Bill C-17, *An Act to Amend the Telecommunications Act and the Teleglobe Canada Reorganization and Divestiture Act*, SC 1998, c.8.

[40] *Budget Implementation Act, 2010*, SC 2010, c.12, amending section 16(5) of the *Telecommunications Act.*

[41] Omnibus Budget Bill, Bill C-38, *An Act to implement certain provisions of the budget tabled in Parliament on 29 March 2012, and other measures*. The bill received Royal Assent on 29 June 2012, and upon enactment, became the *Jobs, Growth and Long-term Prosperity Act*, SC 2012, c.19.

[42] Canadian Heritage, News Release P-11/95-158, 23 November 1995.

[43] *Direction to the CRTC (Ineligibility of Non-Canadians)*, P.C. 1996-479, 11 April 1996, SOR/96-192, *Canada Gazette*, Part II, Vol. 130, No. 9, 1 May 1996, pp. 1296–1300.

Canadians had to beneficially own and control at least 80 per cent of its voting shares. Where the licensee was a subsidiary, the parent corporation was required to be incorporated or continued in Canada and Canadians were required to beneficially own and control at least 66⅔ per cent of its voting shares. The 1996 Direction also prohibited the parent corporation and its directors or officers from exercising control or influence over the programming decisions of the subsidiary. The original 1996 provision did not make that prohibition conditional upon the Canadian ownership or management of the parent; subsequent changes to the rule are addressed below.

The 1996 Direction accomplished much of the harmonization contemplated in 1994. It did not, however, resolve another problem created by convergence. Two telephone companies, BC TEL and Québec-Téléphone, were permitted to operate as Canadian telecommunications common carriers notwithstanding their foreign ownership because they had been specifically grandfathered by regulations made pursuant to the *Telecommunications Act*. As telephone and cable companies increasingly contemplated entry into each other's traditional businesses, that grandfathering did not by itself make corporations associated with those telephone companies eligible to hold broadcasting licences.

Table 6 — Changes from the 1978 Consolidated Direction to the 1996 Direction

Instrument	Principal change	Significance
1996 — SOR/96-192	Repealed and replaced the previous Direction, as amended in 1993. Introduced the modern Canadian-eligibility categories, including the 80% Canadian voting ownership and board/CEO requirements for qualified corporations, a 66⅔% Canadian voting threshold for qualifying parents, and programming-independence safeguards.	The 1993 amendment to the preceding instrument must be taken into account in the comparison; the new regime aligned broadcasting eligibility more closely with telecommunications ownership rules.

The problem was no longer theoretical. In 1996, the Commission considered an application by Terence Hui on behalf of Pacific Place Cable Inc. for a broadcasting distribution undertaking serving part of Vancouver. BC TEL, which was controlled by the U.S.-based GTE Corporation, was involved in the proposed undertaking. The proceeding required the Commission to examine both the formal ownership arrangements and the practical influence that might be exercised through the relationship with BC TEL. The decision illustrated the difficulty of applying a broadcasting ownership regime designed around Canadian ownership to a converging communications market in which particular telecommunications carriers had been expressly permitted to remain foreign controlled.[44]

On 22 April 1996, Suzanne Tremblay, the Bloc Québécois member for Rimouski-Témiscouata, moved Motion M-102 in the House of Commons. The motion called expressly for amendment of the 1996 Direction to permit Québec-Téléphone to obtain a broadcasting licence in its operating territory. Tremblay explained that both the CRTC and the Information Highway Advisory Council had recommended maintaining Canadian ownership requirements without extending Québec-Téléphone's telecommunications grandfathering to broadcasting, and described the company's lobbying, public campaign and 94,253-signature petition seeking a solution.[45]

[44] Decision CRTC 96-224, Terence Hui, on behalf of a company to be incorporated (Pacific Place Cable Inc.), 30 May 1996.

[45] House of Commons Debates, 35th Parl., 2nd Sess., 22 April 1996, debate on Private Member's Motion M-102 (Suzanne Tremblay; Guy H. Arseneault; Werner Schmidt).

The government's response was equally revealing. Guy Arseneault, Parliamentary Secretary to the Minister of Canadian Heritage, said that the Minister was prepared to find a solution for the regions served by Québec-Téléphone and BC TEL. He noted that numerous meetings had already taken place with both companies and that discussions were continuing to find a solution that would preserve the integrity of the Canadian broadcasting system while giving the two carriers sufficient latitude to use their networks effectively. He added that the government would shortly announce its convergence policy. Tremblay, in reply, observed that the recently amended ownership Direction still did not solve Québec-Téléphone's problem and that any solution for it should also apply to BC TEL.

The record does not identify the drafter or contain a single document attributing the qualified-successor provisions adopted in 1997 to Motion M-102, the companies' representations or the convergence policy. The evidence nevertheless establishes the problem, the two affected carriers, active representations to government, and an express ministerial commitment to seek a solution before the 1997 Direction was issued. The remaining gap is therefore narrower than a simple absence of evidence.

The Government addressed the issue directly the following year, again repealing and replacing its predecessor.[46] The 1997 Direction retained the basic ownership structure introduced in 1996 but added a carefully defined category of "qualified successor" to accommodate corporations associated with the grandfathered telephone companies.

The exception was narrow. Among other requirements, a qualified successor could operate only within the operating territory of the relevant telecommunications carrier and could not indirectly use the exception to own a broadcasting distribution undertaking operating outside that territory. Its directors and officers were required to have complete and exclusive control over programming decisions; at least one-third of the directors had to be independent; and neither a parent nor an affiliate could exercise control or influence over programming decisions. The Direction also expressly preserved the Commission's ability to find that an applicant was controlled by a non-Canadian on the basis of personal, financial, contractual or business relationships or any other considerations relevant to determining control.

The validity of the new exception was promptly challenged. Rogers Communications Inc., which operated cable systems in BC TEL's territory, sought a declaration in the Federal Court's Trial Division that the 1997 Direction was ultra vires the *Broadcasting Act*. Rogers argued, among other things, that permitting subsidiaries of the foreign-controlled grandfathered telephone companies to qualify for broadcasting licences was inconsistent with paragraph 3(1)(a) of the Act, which declared that the Canadian broadcasting system should be effectively owned and controlled by Canadians.[47]

The Court rejected the challenge. In Mr. Justice Nadon's view, the statutory policy spoke of Canadian ownership and control of the broadcasting system, not necessarily of every individual undertaking comprising it. The Act itself repeatedly distinguished between the system as a whole and its constituent undertakings. Permitting the limited exception contemplated by the Direction therefore did not alter the Canadian character and control of the system as a whole. The

[46] SOR/97-192, *supra* note 1.

[47] *Rogers Communications Inc. v. Canada (Attorney General) et al.*, (1998), 145 F.T.R. 79 (F.C.T.D.).

Direction was within the authority conferred on the Governor in Council by subsection 26(1) of the Act.

At approximately the same time, the Commission was dealing with the second grandfathered telephone company in a series of applications involving Câble-Axion Digitel Inc. and Câble-Axion Québec inc. Groupe QuébecTel, which was ultimately controlled by GTE, held substantial interests in the companies' parent and was also to provide financial and technical support. The Commission examined board composition, special voting requirements, the role of a management committee, financing and technical relationships, and the role of the Canadian majority shareholder. It concluded that the existing arrangements gave Groupe QuébecTel negative control and potentially even greater effective control.[48]

The Commission was prepared to approve the applications only after the arrangements were changed. The Canadian majority shareholder was to have a majority of the board; Groupe QuébecTel's special approval rights were to be removed; the management committee could not supplant the board; and programming decisions were to be insulated from control or influence by the parent corporation. Independent programming committees were subsequently established to deal with community programming, the selection of signals and the terms of their distribution.

The Hui and Axion proceedings should not be read as establishing why the Government adopted the 1997 amendments; the available record does not establish that causal connection. They do, however, illustrate the practical problem to which the qualified-successor provisions were directed: how to permit the two grandfathered foreign-controlled telecommunications groups to participate in broadcasting distribution without abandoning the Canadian ownership and programming-control principles underlying the Direction.

Table 7 — Changes from the 1996 Direction to the 1997 Direction

Instrument	Principal change	Significance
1997 — SOR/97-192	Repealed and replaced SOR/96-192. Added the "qualified successor" category tied to specified grandfathered Canadian telecommunications carriers and acquiring corporations. Conditions included unchanged control, a Canadian CEO and all-Canadian board, restrictions to the carrier's operating territory, independent directors (at least one-third and represented in the quorum), and exclusive local control of programming; permitted limited indirect interests in distribution licensees.	Created a geographically and functionally limited exception for grandfathered telecom groups, while retaining a control-in-fact safeguard and insulating programming decisions from affiliates.

A final adjustment followed in 1998. P.C. 1998-1268 (SOR/98-378) amended subparagraph (c)(iii) of the definition of "qualified corporation." The 1997 wording had the unintended effect of preventing all Canadian broadcasting holding companies from controlling or influencing their licensees' programming decisions, even where non-Canadian involvement in the holding company was minimal or non-existent. The 1998 amendment made the restriction explicit only

[48] Decisions CRTC 97-635, 97-636 and 97-637, 14 November 1997; Letter Decision A97-0146. For a detailed discussion of the Axion proceedings and the principal Canadian ownership and control cases through 2012, see Grant Buchanan and Lorne Salzman, "Canadian Ownership and Control of Canadian Communications Companies 4.0," New Developments in Communications Law and Policy, Sixteenth Biennial National Conference, Law Society of Upper Canada and Canadian Bar Association, 26–27 April 2012.

where Canadians held less than 80 per cent of the parent's voting shares or votes, the parent's chief executive officer was a non-Canadian, or less than 80 per cent of the parent's directors were Canadian. The Regulatory Impact Analysis Statement described the change as a clarification rather than a significant policy change.[49]

Table 8 — Changes from the 1997 Direction to the 1998 Amendment

Instrument	Principal change	Significance
1998 — P.C. 1998-1268 (SOR/98-378)	Amended, but did not replace, the 1997 Direction. Recast paragraph (c)(iii) of "qualified corporation" so the parent-company programming firewall applies when the parent has under 80% Canadian voting ownership and votes, or a non-Canadian CEO, or fewer than 80% Canadian directors.	Confined the parent programming-independence requirement to the specified ownership or governance circumstances. The precise conjunction within the ownership limb is legally significant.

The importance of the 1996-1998 period is therefore not simply that the numerical limits changed. The Direction had evolved from the comparatively simple ownership rules of its predecessors into a more elaborate regime separating voting ownership, corporate governance, control in fact and, where necessary, programming control. Subject to later technical amendments, that remains the structure of the Direction today.

Table 9 — Consolidated chronology of the Directions

Direction	Instrument	Principal change
1968 Direction	P.C. 1968-1809	First Direction under the 1968 Act; 80% Canadian voting ownership and related capital/control rules.
March 1969 Direction	P.C. 1969-630; SOR/69-140	Replaced 1968 Direction; revised corporate tiers and transitional provisions.
November 1969 Direction	P.C. 1969-2229; SOR/69-590	Replaced March Direction; simplified and rationalized the ownership structure.
1971 Direction	P.C. 1971-37; SOR/71-33	Amended SOR/69-590: replaced paras. 1–3, the control proviso to para. 4, and paras. 6–8; grandfathered renewal subject to CRTC finding and GIC approval.
1975 Direction	P.C. 1975-342; SOR/75-102	Inserted para. 4.1: limited exception to upstream director composition, not to Canadian share-ownership requirements.
1978 Consolidated Direction	C.R.C., c. 376	1978 consolidation of the previously amended Direction; subsequently amended by SOR/93-236 (1993), amending the French version of s. 2 and specified portions of ss. 3–5.
1993 Amendment	SOR/93-236	Amended only the French version of C.R.C., c. 376: substituted s. 2, para. 3(a), the opening of s. 4, and the opening of s. 5 and its para. (c).
1996 Direction	P.C. 1996-479; SOR/96-192	Introduced modern 80% licensee / 66⅔% parent structure and programming safeguards.
1997 Direction	P.C. 1997-486; SOR/97-192	Added qualified-successor mechanism for grandfathered telecom carriers.
1998 Amendment	P.C. 1998-1268; SOR/98-378	Clarified when parent programming-control restrictions apply.

[49] *Order Amending the Direction to the CRTC (Ineligibility of Non-Canadians)*, P.C. 1998-1268, 15 July 1998, SOR/98-378, *Canada Gazette*, Part II, Vol. 132, No. 16, 5 August 1998, pp. 2186–2187, including the accompanying Regulatory Impact Analysis Statement.

CHAPTER 5
CONTROL IN FACT AFTER 1998

Selected Decisions

The Direction established numerical tests. Compliance with those tests did not end the inquiry. Section 3 of the 1997 Direction expressly provides that an applicant controlled by a non-Canadian may be deemed non-Canadian on the basis of personal, financial, contractual or business relations or other considerations relevant to determining control. The Commission therefore continued to consider the practical location of control in subsequent ownership proceedings. The following decisions are particularly useful illustrations; what follows is not intended to be a comprehensive review of the Commission's post-1998 ownership decisions.

Alliance Atlantis/CanWest/GS Capital Partners

In 2007, CanWest Global Communications Corp. and GS Capital Partners ("GSCP"), the private equity arm of Goldman Sachs, participated in the approximately $2.3 billion acquisition of Alliance Atlantis Communications Inc. The broadcasting assets were ultimately to be held through a company in which CanWest held two-thirds of the voting shares but only 35 per cent of the equity, while investment funds controlled by GSCP held one-third of the votes and 65 per cent of the equity. The transaction therefore presented in unusually stark form the distinction between economic ownership and voting control.[50]

In Broadcasting Decision CRTC 2007-429, the Commission examined considerably more than the voting percentages. It considered the composition and mandate of the board, the shareholders' agreement, management arrangements, financing, GSCP's substantial economic interest and the rights attached to that investment. It required amendments to several of the arrangements before approving the transaction, including changes to quorum provisions, veto rights and financial thresholds.

More importantly for present purposes, the Commission expressly applied the formulation of control in fact developed by the National Transportation Agency in the 1993 Canadian Airlines decision: the ongoing power or ability, whether exercised or not, to determine or decide the strategic decision-making activities of an enterprise, including, where appropriate, the ability to manage and run its day-to-day operations. The inquiry was therefore not confined to voting control or to any single contractual right.

The case is useful precisely because GSCP's economic interest was substantially greater than its voting interest. That fact plainly warranted scrutiny without itself being determinative. The question remained whether the totality of the financial, governance, contractual and business relationships gave the non-Canadian investor the practical ability to determine the strategic direction of the undertaking. Subject to the changes required by the Commission, it concluded that they did not.

[50] Broadcasting Decision CRTC 2007-429, Transfer of effective control of Alliance Atlantis Broadcasting Inc.'s broadcasting companies to CanWest MediaWorks Inc., 20 December 2007. See also Buchanan and Salzman (2012), *supra* note 48.

Sirius XM

The same distinction arose in a different form in 2011 following the merger of Sirius and XM in the United States. The corresponding Canadian transaction brought Sirius Canada and XM Canada together under Canadian Satellite Radio Holdings Inc. Sirius XM Radio Inc., the U.S. company, would hold 25 per cent of the voting shares of the Canadian parent. The remaining significant voting interests were held by Canadian shareholders.[51]

Once again, the Commission looked beyond the share register. Sirius XM, the U.S. company, was entitled to nominate directors and had consent rights over specified corporate decisions. The Canadian businesses also depended upon the U.S. company for important technology and access to the satellite infrastructure on which the services operated. The issue was whether the combination of those relationships gave Sirius XM control in fact notwithstanding the Canadian voting majority.

Particular attention was paid to the investor-protection rights contained in the shareholders' agreement. In previous cases the Commission had used a threshold of approximately five per cent of enterprise value in assessing certain veto rights over major transactions. Some of the negotiated Sirius XM thresholds were lower. The Commission did not treat the earlier figure as an inflexible rule, however. It examined the rights in the context of the transaction as a whole and required changes, including to consent rights relating to indebtedness and the annual operating plan. It ultimately concluded that the remaining provisions protected Sirius XM's investment without transferring effective control of the Canadian undertaking.

The Direction itself produced a separate consequence. Because the Canadian parent did not satisfy the Direction's 80 per cent Canadian ownership threshold, the parent and its directors could not exercise control or influence over programming decisions of the licensed subsidiary. The Commission therefore required an independent programming committee. Directors, officers and current or former employees of Sirius XM were excluded from that committee, thereby separating the protection of Canadian programming control from the broader corporate arrangements.

The Alliance Atlantis and Sirius XM decisions illustrate related but distinct elements of the regime that had emerged by 1998. The numerical requirements in the Direction determine whether the prescribed Canadian ownership structure exists. The control-in-fact inquiry asks the broader question whether, notwithstanding that structure, a non-Canadian has the practical ability to control the undertaking. Programming committees provide a further means of insulating programming decisions where the Direction requires that separation. Broadcasting Decision CRTC 2011-240 brought all three elements into the same transaction.

The Commission revisited the Sirius XM arrangements in 2017 when the non-Canadian voting interest was increased.[52] It again considered control in fact, including the continuing commercial and technical relationships with Sirius XM in the United States. The independent programming committee established in 2011 remained in place. The later decision therefore continued, rather than materially altered, the approach established in 2011.

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[51] Broadcasting Decision CRTC 2011-240, Change in effective control of Canadian Satellite Radio Holdings Inc., 11 April 2011, Buchanan and Salzman (2012), *supra* note 48.

[52] Broadcasting Decision CRTC 2017-114, Sirius Canada and XM Canada - Transfer of Shares, 26 April 2017.

A Recent Application: Corus

The continuing significance of the Direction was demonstrated recently in Broadcasting Decision CRTC 2026-247, issued 17 September 2026.[53] The transaction was a debt-for-equity recapitalization under which lenders would exchange approximately $500 million of debt for 99 per cent of a new parent company. Canso Investment Counsel Ltd. was expected to become the largest shareholder with approximately 44 per cent of the voting interests, but no shareholder would hold a majority.

The Commission expressly examined compliance with the Direction. It found that the proposed share structure, Canadian incorporation, chief executive officer and board arrangements satisfied the prescribed Canadian ownership requirements, and then separately considered control in fact. Given the dispersed ownership, absence of a controlling shareholder and absence of agreements or other mechanisms permitting Canso or another shareholder to direct strategic decision-making on an ongoing basis, the Commission concluded that effective control would rest with the board of directors.

The decision also shows that the Direction's formal governance requirements continue to have practical force. NewCo's proposed bylaws required only a majority of directors to be Canadian. The Commission considered that insufficient and made approval conditional on amended bylaws expressly reflecting the Direction's requirements, including those governing board composition. Nearly six decades after the first Direction, the Commission was therefore still applying the same combination of numerical ownership rules, Canadian governance requirements and an inquiry into control in fact, albeit to a corporate structure very different from those encountered during the divestiture era.

[53] Broadcasting Decision CRTC 2026-247, Licensed programming services operated by Corus and its subsidiaries – Change in ownership and effective control, 17 September 2026.

CHAPTER 6
THE ONLINE ERA

The *Online Streaming Act*

More recently Parliament dealt with the presence of foreign broadcasting undertakings in Canada much more directly. The *Online Streaming Act*,[54] which received Royal Assent on 27 April 2023, added "online undertakings" as a distinct class of broadcasting undertaking and substantially revised the regulatory architecture of the *Broadcasting Act*.

Of particular importance to the history of foreign ownership, Parliament amended paragraph 3(1)(a). Since 1991, that provision had declared that "the Canadian broadcasting system shall be effectively owned and controlled by Canadians." The amended paragraph retains those words but immediately adds that "it is recognized that it includes foreign broadcasting undertakings that provide programming to Canadians." For the first time, the *Broadcasting Act* thus expressly recognizes foreign broadcasting undertakings as participants in a system which the same provision continues to declare must be effectively owned and controlled by Canadians.

The Act also changed the practical importance of licensing to foreign online undertakings. Section 31.1 now provides that, while a person generally may not carry on a broadcasting undertaking without a licence or an exemption, an online undertaking may operate without either. Foreign online undertakings can accordingly fall within the Canadian broadcasting system and be subject to Commission regulation without first satisfying the ownership requirements necessary to qualify for a Canadian broadcasting licence.

Parliament reinforced the distinction in the broadcasting policy itself. Canadian broadcasting undertakings are required to make maximum, and generally predominant, use of Canadian creative and other human resources. Foreign online undertakings are separately required to make the greatest practicable use of those resources and to contribute equitably to the creation, production and presentation of Canadian programming. The Act therefore does not pretend that the foreign undertaking has become Canadian. It expressly identifies it as foreign and specifies the obligations that follow from its participation in the Canadian system.

The 1997 Direction nevertheless remains in force. It continues to direct the Commission not to issue, amend or renew a broadcasting licence for a non-Canadian. What changed in 2023 was not the Direction but the regulatory environment surrounding it. A foreign online undertaking no longer requires a broadcasting licence – or an exemption from the requirement to obtain one – in order to operate within the system.

[54] *Online Streaming Act*, S.C. 2023, c. 8, assented to 27 April 2023, amending the *Broadcasting Act*, S.C. 1991, c. 11.

CONCLUSION

That development provides an interesting endpoint to the history. For decades, the foreign ownership rules had been concerned principally with determining who was sufficiently Canadian to be permitted to hold a broadcasting licence. The successive Directions adjusted ownership percentages, dealt with holding companies, developed safeguards against control in fact, accommodated the peculiar position of two grandfathered telephone companies and insulated programming decisions where necessary.

The *Online Streaming Act* takes a different approach. It retains the statutory commitment to a Canadian-owned and controlled broadcasting system and leaves the Direction in place for licensed undertakings. At the same time, it expressly acknowledges that foreign broadcasting undertakings are part of that system and establishes a means by which foreign online undertakings can be regulated without first becoming eligible to hold Canadian broadcasting licences.

The underlying policy has therefore proved considerably more durable than the regulatory architecture through which it has been implemented. From the first efforts to restrict foreign ownership of Canadian broadcasting stations, through the successive Directions beginning in 1968, to the much more elaborate ownership and control regime established in the 1990s, the objective remained the preservation of Canadian control of the broadcasting system. What changed over time was the means by which that objective was pursued. The 2023 amendments make that distinction unusually explicit: the Canadian broadcasting system is still to be effectively owned and controlled by Canadians, but Parliament now expressly recognizes that the system itself includes foreign broadcasting undertakings.

Seen over the full period, the Direction has performed two related but distinct functions. Its numerical rules have set the formal threshold for Canadian eligibility, while its control-in-fact provisions have enabled the Commission to look beyond share ownership to the practical location of control. The numerical rules themselves have not been immutable: the statutory regime moved from 75 per cent Canadian voting ownership in 1958 to 80 per cent under the first 1968 Direction, and the 1996 Direction introduced the 66⅔ per cent parent-company threshold while retaining 80 per cent at the licensee level. Other federal regimes have used still other approaches, including majority ownership, control-in-fact tests, creative-participation and expenditure requirements, and targeted limits on particular foreign investors. The history therefore cautions against treating any one percentage as a self-explanatory measure of "Canadianness"; the relevant question has always included what interest is being measured, at what corporate level, and for what regulatory purpose. The recurring use of governance safeguards and independent programming committees reflects the same distinction between formal ownership and practical control.

The result is a regime that has changed less than the communications industries around it. The modern Direction still rests on the structure established in 1997 and clarified in 1998. The 2026 Corus decision demonstrates that its numerical ownership, governance and control-in-fact requirements remain active features of the licensing regime. What has changed most dramatically is the statutory framework surrounding it: Parliament now expressly contemplates foreign online undertakings operating within the Canadian broadcasting system without

becoming Canadian licensees. The history of the Direction is therefore not one of abandonment of Canadian ownership policy, but of an increasingly differentiated regulatory response to the ways in which foreign capital, control and services participate in that system.

APPENDICES

Documentary note. The complete text of the first Direction, P.C. 1968-1809 of 20 September 1968, is reproduced in Chapter 2 and is therefore not repeated in these appendices. The appendices begin with the March 1969 replacement Direction and continue chronologically.

Appendix A – March 1969 Direction

P.C. 1969-630 — 27 March 1969 — SOR/69-140
Canada Gazette, Part II, 9 April 1969, pp. 503–506.

His Excellency the Governor General in Council, on the recommendation of the Secretary of State, pursuant to section 27 of the *Broadcasting Act*, is pleased hereby to revoke the direction issued to the Canadian Radio-Television Commission by Order in Council P.C. 1968-1809 of 20th September 1968, and, in substitution therefor, to issue the annexed direction to the Canadian Radio-Television Commission respecting ineligibility to hold broadcasting licences.

DIRECTION TO THE CANADIAN RADIO-TELEVISION COMMISSION PURSUANT TO SECTION 27 OF THE BROADCASTING ACT

1. The Canadian Radio-Television Commission is hereby directed that,

   (a) on or after the 27th day of March, 1969, broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of the class described in paragraph 2.

   (b) on or after the 1st day of September, 1970, broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of the class described in paragraph 3.

2. The classes referred to in subparagraph (a) of paragraph 1 are as follows:

   (a) persons who are not Canadian citizens or eligible Canadian corporations, except any such person who, on the 1st day of April, 1968, was carrying on a broadcasting undertaking within the meaning of the *Broadcasting Act* but did not have a licence to establish a broadcasting station issued under the *Radio Act* and did not require such a licence immediately before the 1st day of April, 1968; and

   (b) governments of countries other than Canada or of political sub-divisions of countries other than Canada and agents of such governments.

3. The classes referred to in subparagraph (b) of paragraph 1 are as follows:

   (a) persons who are not Canadian citizens or eligible Canadian corporations; and

   (b) governments of countries other than Canada or of political sub-divisions of countries other than Canada and agents of such governments.

4. For purposes of this direction, an “eligible Canadian corporation” is a corporation

   (a) incorporated under the laws of Canada or a province, the chairman or other presiding officer and each of the directors of which are Canadian citizens and

(b) of which at least four-fifths of the issued shares, to which are attached at least four-fifths of the votes exercisable under any circumstances at a meeting of shareholders, are owned by one or more

(i) Canadian citizens, or

(ii) corporations incorporated under the laws of Canada or a province, the chairman or other presiding officer and four-fifths of the directors of which are Canadian citizens and of which at least four-fifths of the issued shares, to which are attached at least four-fifths of the votes exercisable under any circumstances at a meeting of shareholders, are owned by one or more Canadian citizens or corporations incorporated under the laws of Canada or a province, the chairman or other presiding officer and four-fifths of the directors of which are Canadian citizens and of which at least four-fifths of the issued shares, to which are attached at least four-fifths of the votes exercisable under any circumstances at a meeting of shareholders, are owned by one or more Canadian citizens,

except that, in any case where in the opinion of the Commission, notwithstanding that the corporation is one to which subparagraphs (a) and (b) apply, the corporation is effectively owned or controlled either directly or indirectly and either through the holding of shares of the corporation or any other corporation or through the holding of a significant portion of the outstanding debt of the corporation or in any other manner whatever, by or on behalf of any person, body or authority of a class described in paragraph 2 or, on or after September 1, 1970, of a class described in paragraph 3, the corporation shall be deemed not to be an eligible Canadian corporation.

5. For the purposes of clause (ii) of subparagraph (b) of paragraph 4, a corporation

(a) that is a personal corporation within the meaning of section 68 of the *Income Tax Act*, and

(b) of which each of the shareholders is a Canadian citizen,

shall be deemed to be a Canadian citizen.

6. For the purpose of paragraph 4, where the Commission is satisfied that voting rights attached to any particular class or classes of shares of a corporation are exercisable only in circumstances such that those voting rights are not likely, during the term of the licence in question, to affect the control of the corporation by persons owning shares of another class or classes, the Commission may deem all or any of the shares of the particular class or classes not to have attached thereto voting rights exercisable under any circumstances at a meeting of shareholders.

7. Notwithstanding paragraph 4, in applying that paragraph in the case of the amendment or renewal of a broadcasting licence at any time before the 1st day of September 1970, "eligible Canadian corporation" shall be deemed to include any corporation except a corporation in respect of which the Board of Broadcast Governors would have been precluded by section 14 of

the *Broadcasting Act*, chapter 22 of the Statutes of Canada, 1958, from recommending the issue of a licence to establish a broadcasting station, if that Act had been in force at the time of the application for the amendment or renewal.

8. An applicant for the amendment or renewal of a broadcasting licence that was outstanding on the 1st day of April, 1968, to whom, but for this paragraph, such amendment or renewal may not be granted by virtue of this direction shall be deemed, for the purposes of that application only, not to be an applicant of a class described in paragraph 2 or paragraph 3, as the case may be, if

(a) the Commission is satisfied that it would not be contrary to the public interest to grant the amendment or renewal applied for by the applicant; and

(b) the Governor in Council, by order, approves of the grant of the amendment or renewal after submission to him by the Commission of the application, together with a statement of the Commission's reasons why it is satisfied that it would not be contrary to the public interest to grant the amendment or renewal.

9. Nothing in this direction shall be construed as limiting the power of the Governor in Council to direct that broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of classes other than a class described in paragraph 2 or paragraph 3, as the case may be, or as limiting the power of the Canadian Radio-Television Commission, in carrying out its objects, to refuse to issue a broadcasting licence to or to grant an amendment or renewal of a broadcasting licence to an applicant of a class other than a class described in paragraph 2 or paragraph 3, as the case may be.

Appendix B – November 1969 Direction

P.C. 1969-2229 — 20 November 1969 — SOR/69-590
Canada Gazette, Part II, 10 December 1969, pp. 1695–1698.

His Excellency the Governor General in Council, on the recommendation of the Secretary of State, pursuant to section 27 of the *Broadcasting Act*, is pleased hereby to revoke the direction issued to the Canadian Radio-Television Commission by Order in Council P.C. 1969-630 of 27th March 1969, and, in substitution therefor, to issue the annexed direction to the Canadian Radio-Television Commission respecting ineligibility to hold broadcasting licences, effective November 1, 1969.

DIRECTION TO THE CANADIAN RADIO-TELEVISION COMMISSION PURSUANT TO SECTION 27 OF THE BROADCASTING ACT

1. The Canadian Radio-Television Commission is hereby directed that,

   (a) on or after the 24th day of November, 1969, broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of the class described in paragraph 2; and

   (b) on or after the 1st day of September, 1970, broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of the class described in paragraph 3.

2. The classes referred to in subparagraph (a) of paragraph 1 are as follows:

   (a) persons who are not Canadian citizens or eligible Canadian corporations, except any such person who, on the 1st day of April, 1968, was carrying on a broadcasting undertaking within the meaning of the *Broadcasting Act* but did not have a licence to establish a broadcasting station issued under the *Radio Act* and did not require such a licence immediately before the 1st day of April, 1968; and

   (b) governments of countries other than Canada or of political sub-divisions of countries other than Canada and agents of such governments.

3. The classes referred to in subparagraph (b) of paragraph 1 are as follows:

   persons who are not Canadian citizens or eligible Canadian corporations; and

   governments of countries other than Canada or of political sub-divisions of countries other than Canada and agents of such governments.

4. For the purposes of this direction, an “eligible Canadian corporation” is a corporation

   (a) that is incorporated under the laws of Canada or a province;

(b) of which the chairman or other presiding officer and each of the directors or other similar officers are Canadian citizens; and

(c) of which, if it is a corporation having share capital, at least four-fifths of the shares having full voting rights under all circumstances, and shares representing in the aggregate at least four-fifths of the paid-up capital, are beneficially owned by Canadian citizens or by corporations other than corporations that are controlled directly or indirectly by citizens or subjects of a country other than Canada;

except that, in any case where, in the opinion of the Commission, notwithstanding that the corporation is one to which subparagraphs (a), (b) and (c) apply, the corporation is effectively owned or controlled either directly or indirectly and either through the holding of shares of the corporation or any other corporation or through the holding of a significant portion of the outstanding debt of the corporation or in any other manner whatever, by or on behalf of any person, body or authority of a class described in paragraph 2 or, on or after September 1, 1970, of a class described in paragraph 3, the corporation shall be deemed to be not an eligible Canadian corporation.

5. With respect to any shares of a corporation of a particular class that, according to the relevant records that the corporation is required to keep under the law of the place of its incorporation, are held by individuals each of whom holds one per cent or less of the total number of issued shares of the corporation of that class, the Commission may, in the absence of any evidence to the contrary, accept as evidence that such shares are beneficially owned by Canadian citizens, a statement signed by the president, secretary or treasurer of the corporation, or by any other officer or person thereunto duly authorized by the board of directors or other governing body of the corporation, indicating:

(a) that according to those records the individuals who hold the shares are individuals having addresses in Canada; and

(b) that the person by whom the statement is signed has no knowledge or reason to believe that the shares are not beneficially owned by Canadian citizens.

6. Notwithstanding paragraph 4, in applying that paragraph in the case of the amendment or renewal of a broadcasting licence at any time before the 1st day of September, 1970, "eligible Canadian corporation" shall be deemed to include any corporation except a corporation in respect of which the Board of Broadcast Governors would have been precluded by section 14 of the *Broadcasting Act*, chapter 22 of the Statutes of Canada, 1958, from recommending the issue of a licence to establish a broadcasting station, if that Act had been in force at the time of the application for the amendment or renewal.

7. An applicant for the amendment or renewal of a broadcasting licence that was outstanding on the 1st day of April, 1968, to whom, but for this paragraph, such amendment or renewal may not be granted by virtue of this direction, shall be deemed, for the purposes of that application only, not to be an applicant of a class described in paragraph 2 or paragraph 3, as the case may be, if

(a) the Commission is satisfied that it would not be contrary to the public interest to grant the amendment or renewal applied for by the applicant; and

(b) the Governor in Council, by order, approves of the grant of the amendment or renewal after submission to him by the Commission of the application, together with a statement of the Commission's reasons why it is satisfied that it would not be contrary to the public interest to grant the amendment or renewal.

8. Nothing in this direction shall be construed as limiting the power of the Governor in Council to direct that broadcasting licences may not be issued or amendments or renewals of broadcasting licences may not be granted to applicants of classes other than a class described in paragraph 2 or paragraph 3, as the case may be, or as limiting the power of the Canadian Radio-Television Commission, in carrying out its objects, to refuse to issue a broadcasting licence to or to grant an amendment or renewal of a broadcasting licence to an applicant of a class other than a class described in paragraph 2 or paragraph 3, as the case may be.

Appendix C – 1971 Amending Direction

P.C. 1971-37 — 12 January 1971 — SOR/71-33
Canada Gazette, Part II, Vol. 105, No. 2, 27 January 1971, pp. 86–87.

BROADCASTING ACT

Direction to the Canadian Radio-Television Commission, amended

P.C. 1971-37
12 January, 1971

His Excellency the Governor General in Council, on the recommendation of the Secretary of State, pursuant to section 27 of the *Broadcasting Act*, is pleased hereby to amend the direction to the Canadian Radio-Television Commission made by Order in Council P.C. 1969-2229 of the 20th November, 1969[1] in accordance with the Schedule hereto.

SCHEDULE

1. Paragraphs 1, 2 and 3 of the Direction to the Canadian Radio-Television Commission made by Order in Council P.C. 1969-2229 of the 20th November, 1969 are revoked and the following substituted therefor:

> "1. The Canadian Radio-Television Commission is hereby directed that on and after the twelfth day of January, 1971 broadcasting licences may not be issued and renewals of broadcasting licences may not be granted to applicants of the classes described in paragraph 2.
>
> 2. The classes referred to in paragraph 1 are as follows:
>
> (a) persons who are not Canadian citizens or eligible Canadian corporations; and
>
> (b) governments of countries other than Canada or of political subdivisions of countries other than Canada and agents of such governments."

2. All that portion of paragraph 4 of the said Direction following subparagraph (c) thereof is revoked and the following substituted therefor:

> "except that, in any case where in the opinion of the Commission, notwithstanding that the corporation is one to which subparagraphs (a), (b) and (c) apply, the corporation is effectively owned or controlled either directly or indirectly and either through the holding of shares of the corporation or any other corporation or through the holding of a significant portion of the outstanding debt of the corporation or in any other manner whatever, by or on behalf of any person, body or authority of a class described in paragraph 2, the corporation shall be deemed not to be an eligible Canadian corporation."

[1] SOR/69-590, *Canada Gazette* Part II, Vol. 103, No. 23, Dec. 10, 1969.

3. Paragraphs 6 to 8 of the said Direction are revoked and the following substituted therefor:

"6. An applicant for the renewal of a broadcasting licence that was outstanding on the 1st day of April, 1968, to whom, but for this paragraph, such renewal may not be granted by virtue of this direction shall be deemed, for the purposes of that application only, not to be an applicant of a class described in paragraph 2 if

(a) the Commission is satisfied that it would not be contrary to the public interest to grant the renewal applied for by the applicant; and

(b) the Governor in Council, by order, approves of the grant of the renewal after submission to him by the Commission of the application, together with a statement of the Commission's reasons why it is satisfied that it would not be contrary to the public interest to grant the renewal.

7. Nothing in this direction shall be construed as limiting

(a) the powers of the Governor in Council to direct that amendments of broadcasting licences may not be granted to applicants of a class described in paragraph 2 or that broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of classes other than a class described in paragraph 2, or

(b) the power of the Canadian Radio-Television Commission, in carrying out its objects, to refuse to grant an amendment of a broadcasting licence to an applicant of a class described in paragraph 2, or to refuse to issue a broadcasting licence to or to grant an amendment or renewal of a broadcasting licence to an applicant of a class other than a class described in paragraph 2."

Appendix D – 1975 Amending Direction

P.C. 1975-342 — 20 February 1975 — SOR/75-102
Canada Gazette, Part II, Vol. 109, No. 5, 12 March 1975, p. 356.

BROADCASTING ACT

Direction to the Canadian Radio-Television Commission, amendment

P.C. 1975-342
20 February, 1975

His Excellency the Governor General in Council, on the recommendation of the Secretary of State, pursuant to section 27 of the *Broadcasting Act*, is pleased hereby to amend the direction to the Canadian Radio-Television Commission made by Order in Council P.C. 1969-2229 of 20th November, 1969[1], as amended[2], in accordance with the schedule hereto.

SCHEDULE

1. The Direction to the Canadian Radio-Television Commission made by Order in Council P.C. 1969-2229 of 20th November, 1969, as amended, is amended by adding thereto, immediately after section 4 thereof, the following section:

"4.1. Notwithstanding section 4, a corporation that is

(a) one to which paragraphs 4(a) to (c) apply, and

(b) in the opinion of the Commission effectively owned or controlled by a corporation to which paragraphs 4(a) and (c) apply but paragraph 4(b) does not,

shall for the purposes of this Direction be deemed to be an eligible corporation if

(c) at least four-fifths of the directors or other similar officers of the owning or controlling corporation including the chairman or other presiding officer are Canadian citizens, and

(d) the Commission is satisfied that it would not be contrary to the public interest to grant a broadcasting licence or the renewal of a broadcasting licence to that corporation."

[1] SOR/69-590, *Canada Gazette*, Part II, Vol. 103, No. 23, December 10, 1969.

[2] SOR/71-33, *Canada Gazette*, Part II, Vol. 105, No. 2, January 27, 1971.

Appendix E – 1978 Consolidated Direction

Direction to the CRTC (Eligible Canadian Corporations), C.R.C., c. 376
Consolidated Regulations of Canada, 1978. In force 15 August 1979 pursuant to SI/79-131.

CHAPTER 376

BROADCASTING ACT

Direction to the CRTC (Eligible Canadian Corporations)

DIRECTION ISSUED TO THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION RESPECTING THE ELIGIBILITY OF CERTAIN CANADIAN CORPORATIONS TO HOLD A BROADCASTING LICENCE

Short title

1. This Order may be cited as Direction to the CRTC (Eligible Canadian Corporations).

Directions

2. The Canadian Radio-television and Telecommunications Commission is hereby directed that, on and after January 12, 1971, broadcasting licences may not be issued and renewals of broadcasting licences may not be granted to applicants of the classes described in section 3.

3. The classes referred to in section 2 are as follows:

(a) persons who are not Canadian citizens or eligible Canadian corporations; and

(b) governments of countries other than Canada or of political subdivisions of countries other than Canada and agents of such governments.

4. For the purposes of this Direction, an "eligible Canadian corporation" is a corporation

(a) that is incorporated under the laws of Canada or a province,

(b) of which the chairman or other presiding officer and each of the directors or other similar officers are Canadian citizens, and

(c) of which, if it is a corporation having share capital, at least four-fifths of the shares having full voting rights under all circumstances, and shares representing in the aggregate at least four-fifths of the paid-up capital, are beneficially owned by Canadian citizens or by corporations other than corporations that are controlled directly or indirectly by citizens or subjects of a country other than Canada,

except that, in any case where, in the opinion of the Commission, notwithstanding that the corporation is one to which subparagraphs (a) to (c) apply, the corporation is effectively owned or controlled either directly or indirectly and either through the holding of shares of the corporation or any other corporation or through the holding of a

significant portion of the outstanding debt of the corporation or in any other manner whatever, by or on behalf of any person, body or authority of a class described in section 3, the corporation shall be deemed to be not an eligible Canadian corporation.

5. Notwithstanding section 4, a corporation that is

(a) one to which paragraphs 4(a) to (c) apply, and

(b) in the opinion of the Commission, effectively owned or controlled by a corporation to which paragraphs 4(a) and (c) apply but paragraph 4(b) does not,

shall, for the purposes of this Direction, be deemed to be an eligible Canadian corporation if

(c) at least four-fifths of the directors or other similar officers of the owning or controlling corporation, including the chairman or other presiding officer, are Canadian citizens; and

(d) the Commission is satisfied that it would not be contrary to the public interest to grant a broadcasting licence or the renewal of a broadcasting licence to that corporation.

6. With respect to any shares of a corporation of a particular class that, according to the relevant records that the corporation is required to keep under the law of the place of its incorporation, are held by individuals each of whom holds one per cent or less of the total number of issued shares of the corporation of that class, the Commission may, in the absence of any evidence to the contrary, accept as evidence that such shares are beneficially owned by Canadian citizens, a statement signed by the president, secretary or treasurer of the corporation, or by any other officer or person thereunto duly authorized by the board of directors or other governing body of the corporation, indicating

(a) that according to those records the individuals who hold the shares are individuals having addresses in Canada; and

(b) that the person by whom the statement is signed has no knowledge or reason to believe that the shares are not beneficially owned by Canadian citizens.

7. An applicant for the renewal of a broadcasting licence that was outstanding on April 1, 1968, to whom, but for this paragraph, such renewal may not be granted by virtue of this Direction, shall be deemed, for the purposes of that application only, not to be an applicant of a class described in section 3 if

(a) the Commission is satisfied that it would not be contrary to the public interest to grant the renewal applied for by the applicant; and

(b) the Governor in Council, by order, approves of the grant of the renewal after submission to him by the Commission of the application, together with a

statement of the Commission's reasons why it is satisfied that it would not be contrary to the public interest to grant the renewal.

8. Nothing in this Direction shall be construed as limiting

(a) the power of the Governor in Council to direct that amendments of broadcasting licences may not be granted to applicants of a class described in section 3 or that broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of classes other than a class described in section 3, or

(b) the power of the Canadian Radio-television and Telecommunications Commission, in carrying out its objects, to refuse to grant an amendment of a broadcasting licence to an applicant of a class described in section 3 or to refuse to issue a broadcasting licence to or to grant an amendment or renewal of a broadcasting licence to an applicant of a class other than a class described in section 3.

Appendix F – 1993 Amendment

P.C. 1993-933 — 11 May 1993 — SOR/93-236
Canada Gazette, Part II, Vol. 127, No. 11, Supplement, 2 June 1993, p. 2466.

Registration

SOR/93-236
11 May, 1993

BROADCASTING ACT

Direction to the CRTC (Eligible Canadian Corporations), amendment

P.C. 1993-933
11 May, 1993

His Excellency the Governor General in Council, on the recommendation of the Minister of Communications, pursuant to subsection 26(1) of the *Broadcasting Act**, is pleased hereby to amend the Direction to the CRTC (Eligible Canadian Corporations), C.R.C., c. 376, in accordance with the schedule hereto.

SCHEDULE

1. Section 2 of the French version of the Direction to the CRTC (Eligible Canadian Corporations) is revoked and the following substituted therefor:

> "2. Le Conseil de la radiodiffusion et des télécommunications canadiennes est prié de se conformer aux présentes instructions, à savoir que, à compter du 12 janvier 1971, aucune licence de radiodiffusion ne pourra être délivrée ou renouvelée dans le cas d'un requérant d'une des classes définies à l'article 3."

2. Paragraph 3(a) of the French version of the said Order is revoked and the following substituted therefor:

> "a) les personnes autres que les citoyens canadiens et les sociétés autres que les sociétés canadiennes habiles;"

3. All that portion of section 4 of the French version of the said Order preceding paragraph (a) thereof is revoked and the following substituted therefor:

> "4. Pour l'application des présentes instructions, «société canadienne habile» s'entend d'une société :"

4. All that portion of section 5 of the French version of the said Order following paragraph (b) thereof and preceding paragraph (d) thereof is revoked and the following substituted therefor:

> "est, pour l'application des présentes instructions, réputée être une société canadienne habile, si :
>
> c) au moins 4/5 des administrateurs ou d'autres personnes occupant des postes semblables, y compris le président ou tout autre personne agissant en qualité de président, de la société qui possède ou détient le contrôle sont citoyens canadiens;"

* S.C. 1991, c. 11

Appendix G – 1996 Direction

P.C. 1996-479 — 11 April 1996 — SOR/96-192
Canada Gazette, Part II, Vol. 130, No. 9, 1 May 1996, pp. 1296–1300.

Direction to the CRTC (Ineligibility of Non-Canadians)

Whereas, pursuant to subsection 26(4) of the *Broadcasting Act*, the Minister of Canadian Heritage has consulted with the Canadian Radio-television and Telecommunications Commission with regard to the annexed Direction to the CRTC (Ineligibility of Non-Canadians);

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, pursuant to subsection 26(1) of the *Broadcasting Act*, hereby issues the annexed Direction to the CRTC (Ineligibility of Non-Canadians).

DIRECTION TO THE CRTC (INELIGIBILITY OF NON-CANADIANS)

Interpretation

1. The definitions in this section apply in this Direction.

"**Canadian**" means (a) a citizen within the meaning of subsection 2(1) of the *Citizenship Act* who is ordinarily resident in Canada; (b) a permanent resident within the meaning of subsection 2(1) of the *Immigration Act* who is ordinarily resident in Canada and has been ordinarily resident in Canada for not more than one year after the date on which that person first became eligible to apply for Canadian citizenship; (c) a Canadian government, whether federal, provincial or local, or an agency thereof, subject to the Direction to the CRTC (Ineligibility to Hold Broadcasting Licences); (d) a corporation without share capital where a majority of its directors or, where the corporation has no directors, those performing functions that are similar to the functions performed by directors, as the case may be, are appointed or designated, either by their personal names or by their names of office, by one or more of the following, namely, (i) a federal or provincial statute or regulation, (ii) the Governor in Council or the lieutenant governor in council of a province, or (iii) a minister of the Crown in right of Canada or a province; (e) a qualified corporation; (f) a qualified mutual insurance company; (g) a qualified pension fund society; or (h) a qualified cooperative.

"**control**" means control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, an agreement or arrangement, the ownership of a corporation or otherwise.

"**non-Canadian**" means a person or entity that is not a Canadian.

"**qualified cooperative**" means a cooperative, not less than 80 per cent of the members of which are Canadians, that is established under an Act of Parliament or any provincial legislation relating to the establishment of cooperatives.

"**qualified corporation**" means a corporation incorporated or continued under the laws of Canada or a province, where (a) the chief executive officer or, where the corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer, and not less than 80 per cent of the members of the board of directors are Canadians; (b) in the case of a corporation having share capital, Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way

of security only, not less than 80 per cent of all the issued and outstanding voting shares of the corporation; and (c) in the case of a corporation that is a subsidiary corporation of a parent corporation incorporated or continued under the laws of Canada or a province, (i) Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 66⅔ per cent of all of the issued and outstanding voting shares of the parent corporation, and (ii) the parent corporation, its board of directors, directors or other similar officers do not exercise control or influence over any programming decisions of the subsidiary corporation.

"**qualified mutual insurance company**" means a mutual insurance company, the head office and principal place of business of which are in Canada and not less than 80 per cent of the board of directors of which and of each committee of the directors of which are Canadians.

"**qualified pension fund society**" means a pension fund society, not less than 80 per cent of the board of directors of which and of each committee of the directors of which are Canadians, and that is established under An Act to incorporate the Guarantee and Pension Fund Society of the Dominion Bank, S.C. 1887, c. 55, S.C. 1956, c. 66, An Act to incorporate the Pension Fund Society of the Bank of Montreal, S.C. 1885, c. 13, the *Pension Fund Society Act* or any provincial legislation relating to the establishment of pension fund societies.

"**subsidiary corporation**" means a corporation that is controlled by another corporation.

"**voting share**" means a share of any class of shares of a corporation carrying voting rights under all circumstances or by reason of any event that has occurred and is continuing or by reason of a condition that has been fulfilled, and includes (a) a security that is convertible into such a share at the time a calculation of the percentage of shares owned and controlled by Canadians is made; and (b) an option or a right to acquire such a share, or the security referred to in paragraph (a), that is exercisable at the time the calculation referred to in that paragraph is made.

Direction

2. The Canadian Radio-television and Telecommunications Commission is hereby directed that no broadcasting licence may be issued, and no amendments or renewals thereof may be granted, to an applicant that is a non-Canadian.

3. Where the Canadian Radio-television and Telecommunications Commission determines that an applicant is controlled by a non-Canadian, whether on the basis of personal, financial, contractual or business relations or any other considerations relevant to determining control, the applicant is deemed to be a non-Canadian.

Repeal

4. The Direction to the CRTC (Eligible Canadian Corporations)[1] is repealed.

Coming Into Force

5. This Direction comes into force on April 11, 1996.

[1] C.R.C., c. 376.

Appendix H – 1997 Direction

P.C. 1997-486 — 8 April 1997 — SOR/97-192
Canada Gazette, Part II, Vol. 131, No. 9, 30 April 1997, pp. 1222–1228.

Direction to the CRTC (Ineligibility of Non-Canadians)

Whereas, pursuant to subsection 26(4) of the *Broadcasting Act*, the Minister of Canadian Heritage has consulted with the Canadian Radio-television and Telecommunications Commission with regard to the annexed Direction to the CRTC (Ineligibility of Non-Canadians);

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, pursuant to subsection 26(1) of the *Broadcasting Act*, hereby issues the annexed Direction to the CRTC (Ineligibility of Non-Canadians).

DIRECTION TO THE CRTC (INELIGIBILITY OF NON-CANADIANS)

Interpretation

1. The definitions in this section apply in this Direction.

"**acquiring corporation**" means a corporation referred to in paragraph 17(2)(a) of the *Canadian Telecommunications Common Carrier Ownership and Control Regulations* as they read on October 25, 1994, registered as SOR/94-667.

"**affiliate corporation**" means, in relation to a qualified successor, (a) a Canadian carrier referred to in subsection 16(2) of the *Telecommunications Act* or any of its subsidiary corporations; (b) an acquiring corporation or any of its subsidiary corporations; or (c) a corporation that controls the corporations referred to in paragraphs (a) and (b), or any of its subsidiary corporations.

"**Canadian**" means (a) a citizen within the meaning of subsection 2(1) of the *Citizenship Act* who is ordinarily resident in Canada; (b) a permanent resident within the meaning of subsection 2(1) of the *Immigration Act* who is ordinarily resident in Canada and has been ordinarily resident in Canada for not more than one year after the date on which that person first became eligible to apply for Canadian citizenship; (c) a Canadian government, whether federal, provincial or local, or an agency thereof, subject to the Direction to the CRTC (Ineligibility to Hold Broadcasting Licences); (d) a corporation without share capital where a majority of its directors are appointed or designated, either by their personal names or by their names of office, by one or more of the following, namely, (i) a federal or provincial statute or any regulation made thereunder, (ii) the Governor in Council or the lieutenant governor in council of a province, and (iii) a minister of the Crown in right of Canada or a province; (e) a qualified corporation; (f) a qualified mutual insurance company; (g) a qualified pension fund society; (h) a qualified cooperative; or (i) a qualified successor (i) for the purpose of holding a broadcasting distribution undertaking licence, or (ii) for the purpose of beneficially owning, directly or indirectly, 50 per cent or less of all the issued and outstanding voting shares, and 50 per cent or less of the votes, of a qualified corporation that holds a broadcasting licence for a distribution undertaking only.

"**control**" means control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, an agreement or arrangement, the ownership of a corporation or otherwise.

"**director**" means a person who is a member of the board of directors of a corporation or, where the corporation has no directors, a person performing functions that are similar to the functions performed by directors.

"**independent member**" means a person who is not an officer or employee of, or a contractor who provides goods or services to, a qualified successor or any of its affiliate corporations, who is not a director of any affiliate corporations of the qualified successor, and in respect of whom there are no considerations that could reasonably be anticipated to interfere with the person's ability to act in the best interests of the qualified successor.

"**non-Canadian**" means a person or entity that is not a Canadian.

"**qualified cooperative**" means a cooperative, not less than 80 per cent of the members of which are Canadians, that is established under an Act of Parliament or under any provincial legislation that relates to the establishment of cooperatives.

"**qualified corporation**" means a corporation incorporated or continued under the laws of Canada or a province, where (a) the chief executive officer or, where the corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer, and not less than 80 per cent of the directors are Canadians; (b) in the case of a corporation having share capital, Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 80 per cent of all the issued and outstanding voting shares of the corporation and not less than 80 per cent of the votes; and (c) in the case of a corporation that is a subsidiary corporation, (i) the parent corporation is incorporated or continued under the laws of Canada or a province, (ii) Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 66⅔ per cent of all of the issued and outstanding voting shares of the parent corporation and not less than 66⅔ per cent of the votes, and (iii) the parent corporation or its directors do not exercise control or influence over any programming decisions of the subsidiary corporation.

"**qualified mutual insurance company**" means a mutual insurance company, the head office and principal place of business of which are in Canada and not less than 80 per cent of the board of directors and of each committee of the directors of which are Canadians.

"**qualified pension fund society**" means a pension fund society, not less than 80 per cent of the board of directors of which and of each committee of the directors of which are Canadians, and that is established under An Act to incorporate the Guarantee and Pension Fund Society of the Dominion Bank, S.C. 1887, c. 55, An Act to incorporate the Pension Fund Society of the Bank of Montreal, S.C. 1885, c. 13, the *Pension Fund Societies Act*, R.S.C. 1985, c. P-8, or under any provincial legislation that relates to the establishment of pension fund societies.

"**qualified successor**" means a corporation referred to in paragraph 17(2)(b) or (c) of the *Canadian Telecommunications Common Carrier Ownership and Control Regulations* as they read on October 25, 1994, registered as SOR/94-667, incorporated or continued under the laws of Canada or a province and directly controlled by a Canadian carrier referred to in subsection 16(2) of the *Telecommunications Act*, or by its acquiring corporation, where (a) the control of the Canadian carrier and its acquiring corporation has remained unchanged since the date of the coming into force of this Direction; (b) the chief executive officer of the corporation or, where the corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer, and all its directors are Canadians; (c) all

the voting shares of the corporation that are not beneficially owned and controlled by the Canadian carrier or its acquiring corporation are beneficially owned and controlled by Canadians; (d) in the case of a corporation referred to in subparagraph (i)(ii) of the definition of "Canadian", all of the voting shares of the qualified corporation which are not owned by the corporation, shall be owned and controlled by Canadians; (e) the corporation operates only in the operating territory of the Canadian carrier; (f) the corporation does not beneficially own, directly or indirectly, voting shares of a corporation that holds a broadcasting distribution undertaking licence and that operates outside of the operating territory of the Canadian carrier; (g) the directors of the corporation and its officers have complete and exclusive control over all programming decisions and (i) at least 33 1/3 per cent of the directors are independent members, and (ii) a quorum at any meeting of the directors or of any committee of the directors must include at least one independent member; and (h) no parent corporation or affiliate corporation of the corporation exercises any control or influence over any programming decisions of the corporation.

"**subsidiary corporation**" means a corporation that is controlled by another corporation.

"**voting share**" means a share of any class of shares of a corporation carrying voting rights under all circumstances or by reason of any event that has occurred and is continuing or by reason of a condition that has been fulfilled, and includes (a) a security that is convertible into such a share at the time a calculation of the percentage of shares owned and controlled by Canadians is made; and (b) an option or a right to acquire such a share, or the security referred to in paragraph (a), that is exercisable at the time the calculation referred to in that paragraph is made.

Direction

2. The Canadian Radio-television and Telecommunications Commission is hereby directed that no broadcasting licence may be issued, and no amendments or renewals thereof may be granted, to an applicant that is a non-Canadian.

3. Where the Canadian Radio-television and Telecommunications Commission determines that an applicant is controlled by a non-Canadian, whether on the basis of personal, financial, contractual or business relations or any other considerations relevant to determining control, other than the beneficial ownership and control of the voting shares of a qualified successor by a Canadian carrier or its acquiring corporation, the applicant is deemed to be a non-Canadian.

Repeal

4. The Direction to the CRTC (Ineligibility of Non-Canadians)[1] is repealed.

Coming Into Force

5. This Direction comes into force on April 8, 1997.

[1] SOR/96-192.

Appendix I – 1998 Amendment

P.C. 1998-1268 — 15 July 1998 — SOR/98-378
Canada Gazette, Part II, Vol. 132, No. 16, 5 August 1998, pp. 2186–2187.

Order Amending the Direction to the CRTC (Ineligibility of Non-Canadians)

SOR/98-378 — Registration 15 July 1998 — P.C. 1998-1268

Whereas, pursuant to subsection 26(4) of the *Broadcasting Act*[a], the Minister of Canadian Heritage has consulted with the Canadian Radio-television and Telecommunications Commission with regard to the annexed Order Amending the Direction to the CRTC (Ineligibility of Non-Canadians);

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, pursuant to subsection 26(1) of the *Broadcasting Act*[a], hereby makes the annexed Order Amending the Direction to the CRTC (Ineligibility of Non-Canadians).

ORDER AMENDING THE DIRECTION TO THE CRTC (INELIGIBILITY OF NON-CANADIANS)

Amendment

1. Subparagraph (c)(iii) of the definition "qualified corporation" in section 1 of the Direction to the CRTC (Ineligibility of Non-Canadians)[1] is replaced by the following:

(iii) the parent corporation or its directors do not exercise control or influence over any programming decisions of the subsidiary corporation where

(A) Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, less than 80 per cent of the issued and outstanding voting shares of the parent corporation and less than 80 per cent of the votes,

(B) the chief executive officer of the parent corporation or, where the parent corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer is a non-Canadian, or

(C) less than 80 per cent of the directors of the parent corporation are Canadian. (personne morale qualifiée)

Coming Into Force

2. This Order comes into force on July 15, 1998.

[a] S.C. 1991, c. 11
[1] SOR/97-192