

## ❖ Part II Licence Fees



- ❖ On December 18, 2008, the Supreme Court of Canada granted the CAB leave to appeal the Part II Licence Fee case. The case is expected to be heard in the fall of 2009.
- ❖ In June 2008, the CAB filed an application for leave to appeal to the Supreme Court of Canada regarding Part II licence fees, which Canada's private broadcasters believe are an illegal tax. The CAB disputes the Federal Court of Appeal (FCA) decision of April 2008 that overturned a Federal Court Trial Division ruling on this matter, and is awaiting the Supreme Court's determination on its application.
- ❖ In December of 2006, the Federal Court Trial Division agreed with the CAB, and ruled that the CRTC Part II Licence Fees collected by the federal government from broadcasters and broadcast distributors are an illegal tax. The Crown appealed that decision to the Federal Court of Appeal, which ruled that the fees are valid regulatory charges and not a tax.
- ❖ Following the CAB's decision to appeal to the Supreme Court, the CRTC confirmed it will not attempt to collect outstanding Part II fees until the Supreme Court either denies the CAB leave to appeal or upholds the FCA ruling, or the matter is settled between the parties.
- ❖ If the Supreme Court determines that the fees are taxes, the government would have to consider reimbursing the fees back to the period originally claimed, i.e., back to 2001, or even 1998, as claimed in the CAB's amended filing.
- ❖ Part II Licence Fees, which exceed \$100 million dollars a year, go directly to the government's Consolidated Revenue Fund. At the same time, private broadcasters pay a separate set of fees called Part I fees to cover the costs associated with the CRTC's operations.

### Background

- ❖ The CRTC's Part II Licence Fees are assessed under the Broadcasting Licence Fees Regulations (1997), with the approval of Treasury Board, under Section 11 of the *Broadcasting Act*. These fees have been paid by broadcasters and by BDUs (cable & satellite companies), calculated as a percentage of gross revenues (1.365% above certain exemptions).
- ❖ The fees collected were paid into the government's Consolidated Revenue Fund and, with the exception of the amount recovered for Industry Canada's cost of spectrum management (approximately 15% or \$10M in 2001-02), were not used for purposes relating to the broadcasting system. This contrasts with the fees paid by telecommunications undertakings that are strictly based on regulatory cost recovery. The costs associated with the CRTC's activities are paid from a separate set of fees (called Part I fees), also paid by private broadcasters, in the amount of approximately \$23M annually.

- ❖ In 2001 the CAB raised the issue of the Part II fees with several government departments, including Canadian Heritage, Industry Canada and Treasury Board, filing a formal submission with the President of the Treasury Board in January 2002. The CAB and its members have maintained an ongoing dialogue with these departments and the Finance Department since then. Many broadcasters paid Part II fees “under protest” in the years since 2001. The CAB has also brought this matter to the attention of Parliamentarians.
  - ❖ In December 2003, the CAB took a significant step with respect to Part II Licence Fees by initiating legal action against the Government claiming that these fees were an illegal tax on broadcasters. In a judgment handed down by the Federal Court in 2005, a judge agreed with the CAB that if the fees are considered a tax, this would be an unconstitutional delegation of Parliament’s taxation authority.
  - ❖ On December 14, 2006, the Federal Court (Trial Division) ruled that the Part II Licence Fees are an illegal tax. The Federal Court Judge Michel J. Shore stated that “one of the most fundamental principles of Canadian law is that taxes must be levied only with the authority of Parliament.” The current legislative framework does not empower the CRTC to levy taxes. Judge Shore also stated that “these levies are not connected to activities related to the broadcasting system.”
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