

Animal Protection Party of Canada Submission
to Broadcasting Arbitrator
regarding allocation of paid and free broadcast time

The purpose of this submission is to provide, in written form, to the Broadcasting Arbitrator, Monica Song, and Canada's registered political parties, the Animal Protection Party of Canada's (APPC) position on the allocation of paid broadcast time and, by extension, free time pursuant to Section 335(1), 345(1) and 345(2) of the Canada Elections Act (CEA):

Broadcasting time to be provided to registered parties

335(1) ... every broadcaster shall...make available, for purchase by all registered parties for the transmission of political announcements and other programming produced by or on behalf of the registered parties, six and one-half hours of broadcasting time during prime time on its facilities.

Free broadcasting time

345 (1) ... every network operator shall...make available, at no cost, to the registered parties and eligible parties referred to in subsection (2), for the transmission of political announcements and other programming produced by or on behalf of those parties...

Determination of free broadcasting time

(2) ...the minimum amount of broadcasting time that a network operator is to make available shall be no less than the amount of free broadcasting time made available by it at the last general election and shall be made available as follows:

(a) two minutes to every registered party...and

(b) the remainder to all registered parties that have been allocated any of the broadcasting time to be made available under section 335...

APPC's position relies on Section 338(5) of the CEA and determinations of the past Broadcasting Arbitrator, Peter Grant, and the current Broadcasting Arbitrator, Monica Song:

Discretion re allocation

- (5) If the Broadcasting Arbitrator considers that an allocation determined in accordance with subsection (1) would be unfair to a registered party or contrary to the public interest, the allocation may be modified, subject to subsections (3) and (4), in any manner that the Broadcasting Arbitrator considers appropriate.

Past allocations by the previous Broadcasting Arbitrator, Peter Grant, and the current recommended allocations by Broadcasting Arbitrator, Monica Song (see Marie-Pier Larose, Legal Counsel, Elections Canada email 6 November 2020) have established the precedent that the allocation of paid and free time is no longer determined by adherence to Section 338(1) of the CEA, but rather by Section 338(5).

Section 338(1) is, functionally, no longer applicable and effectively dormant; it is but one factor (argumentum ad antiquitatem: an appeal to tradition) of many that might inform the Broadcasting Arbitrator's determination.

Based on both Grant's previous and Song's current allocations, Broadcasting Arbitrators have also determined that 335(1) is, de facto, "unfair to a registered party or contrary to the public interest." If Grant and Song considered 335(1) to be fair to all registered parties and not contrary to the public interest neither would have deviated from it.

The issue before the Broadcasting Arbitrator now is not if Section 335(1) is unfair to registered political parties or contrary to the public interest, that has been established, but rather what allocation of paid and free time would be fair to registered parties and be in the public interest.

The APPC's position on the allocation of paid and free broadcast is that the equal allocation of paid and free time satisfies the 338(5) principles of fairness and public interest, and the suggested allocations included in the Marie-Pier Larose email do not.

The APPC also holds the view that if the Broadcasting Arbitrator chooses an allocation that is not equal, their decision should include demonstrably justifiable reasons why an unequal distribution is fair to all parties and in the public interest.

APPC's position broadly rests on two pillars. One pillar is the Equality Rights enumerated in the Charter of Rights and Freedoms:

Equality Rights

Equality before and under law and equal protection and benefit of law

15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law...

Political parties are merely individuals enjoying their right to freedom of association enumerated in the Charter of Rights and Freedoms. There is no mention of political parties in the Charter Rights and Freedoms.

Registered political parties regardless of size and representation in the House of Commons are equally subject to *all* the provisions, requirements, and penalties in the Canada Elections Act. They should equally enjoy *all* the benefits in the full spirit and the letter of the Equality Rights.

The second pillar supporting APPC's position is the Supreme Court's 27 June 2003 judgment in *Figueroa v. Canada (Attorney General)*.

"The ability of a party to make a valuable contribution is not dependent upon its capacity to offer the electorate a genuine 'government option'. Political parties have a much greater capacity than any one citizen to participate in debate and they act as a vehicle for the participation of individual citizens in the political life of the country. All political parties are capable of introducing unique interests and concerns into the political discourse and marginal or regional parties tend to raise issues not adopted by national parties. Political parties provide individual citizens with an opportunity to express an opinion on the policy and functioning of government. Each vote in support of a party increases the

likelihood that its platform will be taken into account by those who implement policy and votes for parties with fewer than 50 candidates are an integral component of a vital and dynamic democracy.”

In *Figueroa v. Canada* the Supreme Court affirmed and emphasized that it is in the public interest that parties not represented in the House of Commons “are an integral component of a vital and dynamic democracy” and, by implication, the public should hear—and have a right to hear—the views of citizens whom political parties represent.

The CEA should not be ‘gerrymandered’ to favour one party over another, including the allocation of paid and free broadcast time, especially when it includes provisions for fairness and defending the public interest.

The Charter of Rights and Freedoms and Supreme Court judgments should, in the opinion of the APPC, inform the Broadcasting Arbitrator’s decision regarding the allocation of paid and free broadcast time.

APPC also holds the position that if a registered political party opposes the equal distribution of paid and free broadcast time, as some of the parties with representation in the House of Commons have done, it should provide the Broadcasting Arbitrator with written reasons why an unequal distribution of paid and free broadcast time that favours them is both fair to other registered parties and is in the public interest. Submissions of such reasons would be both fair and in the public interest.

Submitted on 10 November, 2020.