

**Date: 20080213**

**Docket: A-578-06**

**Citation: 2008 FCA 55**

**CORAM: RICHARD C.J.  
DESJARDINS J.A.  
PELLETIER J.A.**

**BETWEEN:**

**MICHEL MATHIEU,  
broadcasting consultant**

**Appellant**

**and**

**THE ATTORNEY GENERAL OF CANADA,  
for the CRTC (Canadian Radio Television and Telecommunications Commission)**

**Respondent**

**CANADA 3553230 INC., CJMS RADIO**

**Respondent**

Hearing held at Montréal, Quebec on February 5, 2008.

Judgment delivered at Ottawa on February 13, 2008

**REASONS FOR JUDGMENT BY:**

**DESJARDINS J.A.**

**CONCURRED IN BY:**

**RICHARD C.J.  
PELLETIER J.A.**

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**REASONS FOR JUDGMENT**

**DESJARDINS J.A.**

[1] The appellant is appealing a decision by the Canadian Radio Television and Telecommunications Commission (CRTC), namely decision CRTC 2006-352 of August 10, 2006 on the renewal from September 1, 2006 to August 31, 2008 of the broadcasting licence of the French-language commercial radio programming undertaking CJMS Saint-Constant.

[2] Station CJMS went on the air in early May 1999 and operated under CRTC licence 1998-0456-01-2005, which was in effect from August 3, 1999 to August 31, 2005. At the time the licence was issued, station CJMS had not obtained the broadcasting certificate mentioned in section 22 of the *Broadcasting Act*, S.C. 1991, c. 11. A technical certificate, obtained or to be issued, is essential for the validity of a broadcasting licence, as indicated by subsections 22(1) and (4) of the *Broadcasting Act*, which read as follows:

**LICENCES**

Conditions governing issue, amendment and renewal

22. (1) No licence shall be issued, amended or renewed under this Part  
 (a) if the issue, amendment or renewal of the licence is in contravention of a direction to the Commission issued by the Governor in Council under subsection 26(1); and  
 (b) subject to subsection (2), unless the Minister of Industry certifies to the Commission that the applicant for the issue, amendment or renewal of the licence  
 (i) has satisfied the requirements of the Radiocommunication Act and the regulations made under that Act, and  
 (ii) has been or will be issued a broadcasting certificate with respect to the radio apparatus that the applicant would be entitled to operate under the licence.

...

Issue, etc., contravening this section

(4) Any licence issued, amended or renewed in contravention of this section is of no force or effect.

[Emphasis added.]

**LICENCES**

Interdictions relatives aux licences

22. (1) Il est interdit d'attribuer, de modifier ou de renouveler, dans le cadre de la présente partie, une licence soit en contravention avec les instructions données par le gouverneur en conseil en application du paragraphe 26(1), soit — sous réserve du paragraphe (2) — avant que le ministre de l'Industrie ait certifié au Conseil que le demandeur, d'une part, a satisfait aux exigences de la Loi sur la radiocommunication et de ses règlements d'application, d'autre part, a obtenu ou obtiendra un certificat de radiodiffusion à l'égard de l'appareil en cause.

...

Contravention : sanction

(4) Les licences attribuées, modifiées ou renouvelées en contravention avec le présent article sont sans effet.

[Je souligne.]

[3] On June 18, 2004, the CRTC notified Canada 3553230 Inc., operating station CJMS, that the radio station was operating without the broadcasting certificate and that section 22 of the Act

provided that the CRTC could not renew a licence until the certificate had been issued. The letter stated that if 3553230 Canada Inc. intended to proceed with renewal of the CJMS licence, it had to indicate to the CRTC the corrective measures taken to deal with the situation and make possible the issuing of a broadcasting certificate by the Minister of Industry.

[4] In its decision CRTC 2005-229-1 on June 1, 2005, the CRTC administratively renewed CJMS's licence for the period from September 1, 2005 to April 30, 2006. On November 4, 2005, the Minister of Industry issued the technical certificate. There was subsequently a second administrative renewal by the CRTC for the period from May 1 to August 31, 2006. Then, after a public hearing, the CRTC renewed CJMS's licence for the period for September 1, 2006 to August 31, 2008 (CRTC decision 2006-352).

[5] The appellant is asking the Court to [TRANSLATION] "rule that the six-year delay between the issuing of a licence and a certificate of technical compliance is unreasonable". He further asks the Court to set aside CRTC decision 2006-352, dated August 10, 2006.

[6] The appellant obtained leave to appeal this CRTC decision by an order of this Court dated October 19, 2006.

[7] In support of his conclusions, the appellant argued that the first licence, 1998-0456-01-2005, was void, the two renewals subsequently given were also void and the third decision, the licence renewal of August 10, 2006, was also void.

[8] It appears from the scheme put in place by the Act and the applicable precedents that a broadcasting licence is the privilege of using a limited public resource, namely a radio frequency, to the exclusion of anyone else and for a specific time. The awarding of such a licence is within the CRTC's discretion (*Canadian Broadcasting Corporation v. Métromédia CMR Montréal Inc.*, [1999] F.C.J. No. 1637, para. 2 (QL), and *Genex Communications Inc. v. Canada (Attorney General)*, 2005 FCA 283, [2005] F.C.J. No. 1440, para. 54 (QL)). According to the very language of the Act (paragraph 9(1)(b)), a licence is temporary. Further, it confers no vested right or other ownership right on its holder, any more than it confers a right to its renewal (*New Brunswick Broadcasting Co. v. CRTC*, [1984] 2 F.C. 410, p. 16). The only right enjoyed by the holder of a licence that has not been revoked or suspended during the course of its application is to apply for a renewal: *Confederation Broadcasting (Ottawa) Limited v. C.R.T.C.*, [1971] S.C.R. 906, para. 62. At the conclusion of a renewal procedure, it is always possible that a licence will not be renewed.

[9] The first licence was in effect from August 3, 1999 to August 31, 2005. The first administrative renewal covered the period from September 1, 2005 to April 30, 2006. The technical certificate was issued on November 4, 2005, during the period covered by the first administrative renewal. At the time of renewal of the second administrative renewal from May 1 to August 31, 2006, and at the time of renewal of the CJMS licence on August 10, 2006, the technical certificate had already been issued.

[10] There is no basis for intervening in this matter. The CRTC decision of August 10, 2006 is consistent with subsections 22(1) and (4) of the Act. As the earlier licences have expired, they have no effect on CRTC decision 2006-352 of August 10, 2006.

[11] I would dismiss the appeal with costs.

“Alice Desjardins”

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J.A.

I concur.

J. Richard C.J.

I concur.

J.D. Denis Pelletier J.A.

Certified true translation

Brian McCordick, Translator

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-578-06

**STYLE OF CAUSE:** Michel Mathieu v. The Attorney  
General of Canada *et al.*

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** February 5, 2008

**REASONS FOR JUDGMENT BY:** DESJARDINS J.A.

**CONCURRED IN BY:** RICHARD C.J.  
PELLETIER J.A.

**DATED:** February 13, 2008

**APPEARANCES:**

Michel Mathieu For himself

Anne-Marie Desgens For the respondent the Attorney  
General of Canada, for the CRTC  
(Canadian Radio Television and  
Telecommunications Commission)

**SOLICITOR OF RECORD:**

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General of Canada, for the CRTC  
(Canadian Radio Television and  
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