

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2026-03-27
Citation *SOCAN Tariff 18 (2023-2025)*, 2026 CB 1
Member Katherine Braun
Proposed Tariff Considered SOCAN Tariff 18 – Recorded Music for Dancing (2023-2025)

Approval of Proposed Tariff

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SOCAN Tariff 18 – Recorded Music for Dancing (2023-2025)

Reasons for Decision

I. Overview

[1] This proceeding considers a proposed tariff filed with the Copyright Board of Canada (“the Board”) by the Society of Composers, Authors, and Music Publishers of Canada (SOCAN).

[2] The proposed tariff concerns the royalties to be paid for the public performance of musical works in SOCAN’s repertoire by means of recorded music for dancing by patrons, at any time and as often as desired, in bars, cabarets, restaurants, taverns, clubs, dining rooms, discotheques, dance halls, ballrooms, and similar premises, for the years 2023, 2024, and 2025 (the “Proposed Tariff”).

[3] The Hotel Association of Canada (HAC) and Restaurants Canada (RC) are participating in this proceeding as objectors (together, “the Associations”).

[4] Having reviewed the evidence on record, I find that the last approved tariff can serve as a basis to approve a fair and equitable tariff in this proceeding, subject to minor modifications in tariff wording.

[5] The approved royalty rates are adjusted for inflation using the Board’s default methodology.

[6] For the reasons that follow, I approve the Proposed Tariff, with minor modifications, as *SOCAN Tariff 18 – Recorded Music for Dancing (2023-2025)*.

II. Background

A. The Last Approved Tariff

[7] The previous tariff (for 2018-2022) was approved by the Board in August 2022 (the “Last Approved Tariff”).¹ No rate increase was approved compared to the previously approved (2015-2017) tariff. For the years 2020 and 2021, a 50% discount was applied to the annual royalty rate to account for closed businesses due to the COVID-19 pandemic.

Last Approved Rates for 2018-2022:

Months of Operation	Days of Operation	
	1 to 3 days/week	4 to 7 days/week
open 6 months or less/year	\$ 286.85	\$ 573.69
open more than 6 months/year	\$ 573.69	\$ 1,147.38

[8] These flat rates are for a capacity of 100 people or less, depending on both the number of days a premise operates per week and the number of months a premise operates per year. These rates increase by 10% for each 20 persons of increased capacity when the capacity is greater than 100 people.

B. The Proposed Tariff

[9] The Proposed Tariff rates and terms and conditions for the years 2023, 2024, and 2025 are based on the Last Approved Tariff.

[10] The proposed rates reflect anticipated inflation² determined in accordance with the Board’s default methodology³, which uses the Consumer Price Index (CPI) – All Items.

Proposed Rates for 2023-2025:

Months of Operation	Days of Operation	
	1-3 days/week	4-7 days/week
open 6 months or less/year	\$ 340.16	\$ 680.30
open more than 6 months/year	\$ 680.30	\$ 1,360.61

¹ *SOCAN Tariff 18 – Recorded Music for Dancing (2018-2022)*, 2022 CB 4.

² The actual inflation rate was not available at the time of filing the proposed tariff.

³ Copyright Board, *Inflation Adjustments To Royalty Rates: Default Methodology*, 2024.

[11] These flat rates are for a capacity of 100 people or less, depending on both the number of days a premise operates per week and the number of months a premise operates per year. These rates increase by 10% for each 20 persons of increased capacity when the capacity is greater than 100 people.

C. Procedural History

[12] SOCAN filed its Proposed Tariff on October 15, 2021. The Associations filed their objections to the Proposed Tariff on December 3, 2021. However, this occurred before the Copyright Board Rules of Practice and Procedure came into effect.⁴

[13] To complete a preliminary file assessment, including determining the type of hearing that may be required and any next steps, the Board issued Order CB-CDA 2024-009 on February 7, 2024, and requested SOCAN to file its Notice of Grounds for Proposed Tariff by March 8, 2024. The Associations filed a joint Notice of Grounds for Objection on April 8, 2024.⁵ SOCAN filed its reply to the Notice of Grounds for Objection on May 10, 2024.⁶

[14] Order CB-CDA 2024-083⁷ initiated the proceeding and asked Parties to file their Statement of Issues. Parties confirmed their agreement⁸ with the Board's pre-identified issues to be considered in this proceeding, namely: 1) Should the royalty rate be adjusted to account for inflation? and 2) What methodology, if any, should be used to adjust for inflation?

[15] Order CB-CDA 2024-104⁹ requested Parties to provide a joint Schedule of Proceeding. Parties agreed to the Schedule of Proceedings.¹⁰

[16] SOCAN filed its Case Record on March 28, 2025, and the Associations filed their Case Record on May 12, 2025. SOCAN filed its reply arguments on May 30, 2025.

[17] Notice CB-CDA 2025-069 of August 11, 2025 confirmed the Board was ready to conclude its written hearing process and fixed August 26, 2025 as the final date for submissions. No additional submissions were received.

⁴ *Copyright Board Rules of Practice and Procedure*, SOR/2023-24.

⁵ Hotel Association of Canada and Restaurants Canada, Notice of Grounds for Objection to SOCAN Tariff 18 – Recorded Music for Dancing (2023-2025), April 8, 2024.

⁶ Order CB-CDA 2024-031 was a follow-up Order noting that SOCAN was not served the original Notice of Grounds for Objection CB-CDA 2024-009. SOCAN was to file its Notice of Grounds for Objection by May 13, 2024.

⁷ Order CB-CDA 2024-083.

⁸ Statement of Issues, Hotel Association of Canada and Restaurants Canada, November 24, 2024, and, SOCAN Statement of Issues, November 24, 2024.

⁹ Order CB-CDA 2024-104. Order CB-CDA 2024-113 of December 18, 2024, granted an extension to January 17, 2025 for parties to file their proposed Schedule of Proceedings.

¹⁰ Notice CB-CDA 2025-012 set the final schedule of proceedings.

D. Position of the Parties

The Associations

[18] The Associations object to any proposed rate increase based on inflation. They present two main arguments.

[19] The Associations claim the hospitality sector has not fully recovered from the COVID-19 pandemic and that it faces ongoing challenges in the current economy. They argue that an inflation adjustment will increase the cost of music, which they claim is not fair or reasonable. In their view, there is no evidence that “the value of music has increased on par with [inflation]” and that “music streaming services in Canada have not seen a clear business case to increase prices over time.”¹¹ They contend that SOCAN provided no evidence on how factors driving inflationary increases across broad sectors of the economy, are applicable to music in its repertoire. While acknowledging that the Board has accepted inflation as a justification for price increases in other tariffs, the Associations submit that absent valid justification, SOCAN’s proposed rate increase “should be rejected outright, and the Board should certify the tariffs at status quo rates and terms.”¹²

[20] The Associations claim SOCAN’s proposed inflation adjustment using the Statistics Canada CPI-All Items index “is a poor proxy from which to calculate the change in the value of music overtime.”¹³ The Associations submit that “[w]ithout clear evidence of increased value or use, a blanket increase tied to general inflation is unjustified”¹⁴ and suggests that a ‘music-specific price index’ is a more appropriate index.¹⁵

SOCAN

[21] SOCAN notes that its proposed tariff applies to public performances of recorded musical works in its repertoire for the purpose of dancing by patrons in various establishments. SOCAN states that: “Importantly, it is the nature of the *use*, and not the nature of the user, that determines whether the tariff applies.”¹⁶

[22] SOCAN submits that its proposed inflation adjustment is fair and justified. The proposed royalty rate is determined by reference to the capacity of the premises and the amount of the time a premise operates during the year. The proposed tariff sets out flat royalties for premises that have a capacity of 100 people or less. Rates vary with both the number of

¹¹ Hotel Association of Canada and Restaurants Canada, Notice of Grounds for Objection to SOCAN Tariff 18 – Recorded Music for Dancing (2023-2025), April 8, 2024, p 1.

¹² Statement of Case, Restaurants Canada and Hotel Association of Canada, May 12, 2025, para 8, p 5.

¹³ Associations’ Notice of Grounds for Objection to SOCAN Tariff 18 – Recorded Music for Dancing (2023-2025), April 8, 2024, p 1.

¹⁴ Associations’ Economic Report, May 12, 2025, para 53, p 24.

¹⁵ *Ibid*, p 13.

¹⁶ SOCAN, Notice of Grounds for Proposed Tariff for SOCAN Tariff 18 – Recorded Music for Dancing (2023-2025), March 8, 2024, p 1.

days a premise operates per week and the number of months a premise operates per year. The proposed royalty rates are based on the Last Approved Tariff, and adjusted for inflation according to the Board's established methodology.¹⁷

[23] SOCAN argues the Board's long-standing methodology to inflation adjustment should be used to preserve royalty purchasing power of rightsholders' royalties. SOCAN claims the Associations offer no convincing reasons for the Board to depart from its jurisprudence on inflation adjustment and adopt another methodology in this proceeding.

III. Issues

[24] After reviewing the evidence on the record, the following issues will be considered:

1. Is the Last Approved Tariff an appropriate proxy for the Proposed Tariff?
2. Is an inflation adjustment for the years 2023, 2024, and 2025 appropriate?
3. Which inflation adjustment methodology should be used?
4. What would the inflation adjusted royalties be?
5. Should the Board be concerned about the users' ability to pay the tariff?
6. Are changes to the wording of the Proposed Tariff required?

IV. Analysis

Issue 1: Is the Last Approved Tariff an appropriate proxy for the Proposed Tariff?

[25] I find that the Last Approved Tariff can serve as an appropriate proxy for the Proposed Tariff.

[26] No questions were raised by the Parties concerning the appropriateness of the Last Approved Tariff as a proxy in this proceeding. SOCAN has not proposed any changes in royalty rates compared to the Last Approved Tariff, except for an inflation adjustment. The terms and conditions in the Proposed Tariff mirror the Last Approved Tariff.

[27] The Board has frequently held, that it is appropriate—absent reasons to the contrary—to use the Last Approved Tariff as a proxy of what could be fair. In several past decisions, the Board identified changes in the relevant market as one potential indicator of whether an adjustment to royalty rates is appropriate.¹⁸

[28] In this proceeding, the relevant market is the use of recorded music for dancing in establishments where music is in the foreground. There is no conclusive evidence on the record indicating that a change in this market has occurred.

[29] The Associations argue that the Board should consider the broader economic conditions that confront Tariff 18 users in its determination, including reduction in consumer

¹⁷ *Ibid.*

¹⁸ See e.g. *SOCAN Tariff 9 – Sports Events (2018-2023)*, 2021 CB 9; *SOCAN Tariff 22.G - Game Sites (2007-2019)*, 2022 CB 7.

spending and the declining number of restaurants. However, they do not offer any specific evidence concerning market changes specific to recorded music for dancing, or, how music for dancing has become less valued in the marketplace.

[30] In my view, the Associations do not make a compelling case concerning market changes specific to recorded music for dancing or to premises that offer dancing for their patrons. The evidence they submit is related to general consumer spending habits that impact the broader hospitality sector.

Issue 2: Is an inflation adjustment for the years 2023, 2024, and 2025 appropriate?

[31] I conclude that an inflation adjustment is appropriate for the years 2023, 2024, and 2025.

[32] Adjustment for inflation preserves the purchasing power of rightsholders' royalties. The Board has previously acknowledged inflation as a valid justification for price increases in other tariffs.¹⁹ Adjustment for inflation ensures the real value of royalties remains consistent over time, reflecting current economic conditions. The absence of such adjustments would erode the value of royalties received by collective societies through tariffs.

[33] The Associations argue that, while preserving the purchasing power of rightsholders' royalties is an important objective, it cannot be the sole consideration for the Board in its assessment of this proposed tariff.²⁰ They claim that SOCAN offers no explanation for why preserving the purchasing power of rightsholders' royalties, is or should be, paramount to preserving the viability of Tariff 18 users. They claim that any inflation adjustment would jeopardize their members' chances of financial survival and that tariff rate increases will lead to higher prices for consumers and/or negative economic impacts on businesses.²¹

[34] The Associations state that music is not a core business expense, and thus not subject to the same economic forces driving increases in food, labor, and energy costs. They claim that increases in such expenses cannot be used as a rationale for increasing music tariffs, saying, "music is a desirable business input, but SOCAN music is not a core business expense and is not subject to the same economic forces driving other increases" and that "music is not the same type of business input as alcohol and food, or labour and utilities, and it should not be subject to same type of inflationary increases."²²

[35] SOCAN argues that rightsholders should not have to reduce the purchasing power of their royalty dollar to compensate businesses in the restaurant and hotel sector for any

¹⁹ See e.g. *SOCAN Tariff 11.A – Circuses, Ice Shows, Fireworks Displays, Sound and Light Shows and Similar Events (2023-2025)*, 2023 CB 10; *SOCAN Tariff 14 – Performance of an Individual Work (2025-2027)*, 2024 CB 4; *SOCAN Tariff 21 – Recreational Facilities Operated by a Municipality, School, College, University, Agricultural Society or Similar Community Organizations (2026-2028)*, 2025 CB 6.

²⁰ Statement of Case, Restaurants Canada and Hotel Association of Canada, May 12, 2025, para 21, p 9.

²¹ *Ibid*, para 24, p 9.

²² *Ibid*, paras 25, 28, p 10 and 11.

increase they face in operational costs such as food, energy, and labour. SOCAN notes that rising costs for basic needs such as food and energy, affect rightsholders as well. In their view, it is not fair or equitable to expect rightsholders to forgo fair compensation to effectively subsidize businesses that benefit from using their music.²³

[36] SOCAN also challenges the Associations' argument that royalties are threatening the economic survival of hospitality sector businesses, noting there is no evidence to confirm this claim. SOCAN states that the Associations represent only a small segment of Tariff 18 users. The majority of Tariff 18 users are 'colloquially known as nightclubs.' Claims that Association members are experiencing economic hardship, does not mean the majority of Tariff 18 users are similarly situated.²⁴

[37] SOCAN disputes the Associations' claim that music is not the type of business that is subject to inflationary adjustment. Rather, it says that recorded music for dancing is a critical input to Tariff 18 users that provide such activities for their patrons. As such, there is no reason why the cost of music should not follow inflation while other inputs (labour, energy, food) do.²⁵ SOCAN submits that an inflation adjustment is not an increase in the value of music, as claimed by the Associations, but a measure to maintain the dollar value of royalties. Not adjusting for inflation would imply that the value of music has changed, and SOCAN claims there is no evidence of this.²⁶

[38] Some past Board decisions considered 'extraordinary circumstances' such as the COVID-19 pandemic or a severe economic downturn, and postponed an inflation-based adjustment out of public interest or fairness considerations.²⁷

[39] In my view, such extraordinary circumstances are not present in this proceeding to warrant departure from the Board's practice of approving an inflation adjustment. The Board has accepted inflation as a valid justification for price increases in other tariffs to preserve the purchasing power of rightsholders' royalties. Postponement of an inflation adjustment may create price distortion in the longer term, as parties attempt to 'catch-up' at a later time having no direct connection to the actual inflation rate.

[40] Additionally, I do not agree with the Associations' claim that an inflation adjustment is an increase in the value of music. Rather, inflation adjustment ensures that the real value of royalties remains consistent over time. While the Associations state that music is not a core business expense, where recorded music for dancing is used, it is a cost of doing business

²³ Reply to Associations, SOCAN, May 30, 2025, paras 2-5, p 1 and 2.

²⁴ *Ibid*, paras 4, 10, p 1 and 4.

²⁵ *Ibid*, para 3, p 1.

²⁶ *Ibid*, para 9, p 3.

²⁷ See e.g. *Re:Sound Tariff 6.C - Use of Recorded Music to Accompany Adult Entertainment (2019-2023)*, 2021 CB 2: [22] [...] This request for an inflation-related increase is in keeping with the evolving "time-to-time" adjustments recommended by the Board. While this request would undoubtedly be perfectly admissible under normal circumstances, we believe that the accrued repertoire adjustment in addition to the inflation adjustment is not reasonable at this time owing to the economic slowdown caused by COVID-19.

similar to the cost of food, labour and energy. As such, music can be subject to inflationary impacts from time to time, and an inflation adjustment is justified.

Issue 3: Which inflation adjustment methodology should be used?

[41] I find that the Board's default methodology for inflation adjustment to be the most representative and relevant index. The methodology applies the Statistics Canada Consumer Price Index (CPI)–All Items index, which includes a broad basket of goods and services, is not seasonally adjusted, and excludes taxes.²⁸

[42] This is the best approach to use in this proceeding for several reasons. First, this index is based on a larger sample and as such, it exhibits smaller fluctuations and greater stability compared to other measures. Second, this approach remains the simplest and most direct method of calculating the rate of inflation. Third, it complies with the principle of using known values to adjust for inflation, rather than expected values. And lastly, it is consistent, having been used in numerous Board decisions and, is familiar to parties and the general public.²⁹

[43] The Associations and SOCAN each submitted economic research to support their position concerning the appropriate methodology to apply in determining the inflation adjustment.

[44] The Associations submit there are more appropriate indices instead of the CPI-All Items index. In their Economic Report,³⁰ they argue that the Price Index of Purchase of Digital Media (PIPDM) is a more suitable index to determine inflation adjustment, claiming it aligns more closely with music valuation. The Report suggests that the PIPDM tracks specific changes in what consumers pay for digital media, including music. The Associations also propose a second index to determine inflation adjustment; the Other Cultural and Recreational Services (OCRS).

[45] SOCAN's Expert Report reviews different methodologies for inflation adjustment and compares the Board's default methodology with the two alternative indices proposed by the Associations – the PIPDM and OCRS.³¹

[46] SOCAN submits that the CPI–All Items index is a common and widely accepted methodology to maintain purchasing power and avoid erosion of the value of royalties. SOCAN concludes that “ ... the Board's default inflation adjustment methodology ... is the appropriate tool to use to arrive at an inflation-adjusted dollar-denominated royalty amount

²⁸ Copyright Board, *Inflation Adjustments To Royalty Rates: Default Methodology*, 2024.

²⁹ See e.g. *SOCAN Tariff 3.C – Adult Entertainment Clubs (2023-2025)*, 2022 CB 13; *SOCAN Tariff 7 – Skating Rinks (2026-2028)*, 2025 CB 4.

³⁰ Economic Report of Restaurants Canada and Hotel Association of Canada, Chris Elliott, Chief Economist and Vice President Research, Restaurants Canada, May 12, 2025, paras 52 and 53, p 24.

³¹ Expert Report, SOCAN, M. Dobner, Price Waterhouse Coopers LLP (PWC), March 25, 2025.

that preserves the purchasing power of SOCAN's members"³² The Board's methodology is aimed at reflecting the reality of inflation that is faced by both copyright holders and copyright users.³³ SOCAN submits there is no basis for the Board to depart from its default methodology for inflation adjustment.

Assessment

[47] The three indices identified by the Parties are reviewed below: Statistics Canada CPI–All Items; Price Index of Purchase of Digital Media (PIPDM); and Other Cultural and Recreation Services (OCRS). Each index has its strengths and weaknesses.

[48] The CPI-All Items index measures the average change over time in prices paid by Canadian consumers for a fixed basket of goods and services³⁴, without adjusting for seasonal fluctuations. Each item in the basket is assigned a weight based on its relative importance in the average consumer's expenditures. This measure presents several strengths; neutrality, reliability, predictability, and stability. As such, it preserves the dollar value of royalties and purchasing power of rightsholders in the long term. However, music for dancing is not specifically named in the CPI basket, so any price fluctuations are unknown or deeply buried in the basket.

[49] Price Index of Purchase of Digital Media (PIPDM) is a subcomponent of Statistics Canada's CPI–All Items index, reflecting evolving consumption patterns of Canadians in the digital age. This index includes digital audio, digital video, digital reading material, digital software, and games. It tracks the average change over time in the prices paid by consumers for digital media products and services. Its strength is that it is potentially more relevant to music usage in the form of digital audio. However, high volatility is an attribute of this index. Relevance is uncertain, given no clear evidence that music for dancing is captured in this index, so any price fluctuations are unknown or diluted in the basket.

[50] Other Cultural and Recreation Services (OCRS) is a subcomponent of Statistics Canada's CPI– All Items index, falling under the broad category of "recreation, education and reading." This index tracks price changes over time for various cultural and recreational services used by Canadian households, including expenditures on spectator entertainment, cablevision and satellite, recreational facilities, and similar services. Like the PIPDM, its strength is that it is potentially more relevant to music usage. However, high volatility and uncertainty are concerns, given that music for dancing is not clearly included in this index, so any price fluctuations are unknown or diluted in the basket.

Conclusion

³² Case Record, SOCAN, March 28, 2025, para 5.

³³ *Ibid*, para 17.

³⁴ The CPI-All Items index includes a comprehensive basket, including; food, shelter, transportation, clothing, health and personal care, recreation, education, and alcohol and tobacco products.

[51] Having reviewed the economic reports submitted by the Parties and given due consideration to their arguments and suggestions concerning inflation adjustment methodology, I see no compelling reason to depart from the Board’s default methodology in this proceeding. The CPI–All Items index is the preferable approach for adjusting royalties for the tariff under consideration and, remains the Board’s default methodology. In my view, this approach provides greater predictability and stability for this tariff.

[52] I note that the PIPDM and OCRS indices proposed by the Associations, are typically based on a small sampling which can be subject to significant error and thus subject royalty rates to higher fluctuations and unpredictable results.

[53] Moreover, it is unclear if these alternative indices better capture music for dancing. Music represents only a minor component in each index. For example, in the OCRS index, music comprises less than 2% of the value of the basket, while music in the PIPDM index comprises less than 0.2% of the value of the basket.³⁵

Issue 4: What would the inflation adjusted royalties be?

[54] I find that a 24.37% inflation adjustment to the royalty rate is fair and I approve the inflation adjusted rates.

[55] The Board’s approach to calculate the inflation rate is the percentage change in the CPI between January of the first year and December of the last full year of available data. In general, the calculation begins after the last period for which an inflationary adjustment was made and ends before the tariff is effective.

[56] Using the Board’s default methodology to calculate the inflation adjustment, the time frame will start January 2014 and end December 2022. The CPI for January 2014 is 123.1, and for December 2022, it is 153.1. Applying the inflation calculation method in the Board’s guidelines, the actual inflation rate for this period is calculated to be 24.37%. Applying this increase to the last approved royalty rates, results in new royalty rates based on actual inflation as follows:

Royalty Rates based on actual inflation 2023-2025

Months of operation	Days of Operation	
	1-3 days	4-7 days
6 months or less	\$ 356.76	\$ 713.50
more than 6 months	\$ 713.50	\$ 1,427.00

³⁵ Statistics Canada, *An Analysis of the 2023 Consumer Price Index Basket Update, Based on 2022 Expenditures* (June 20, 2023), online: <https://www150.statcan.gc.ca/n1/pub/62f0014m/62f0014m2023003-eng.htm>

[57] Rates based on actual inflation are higher than the 18.58% inflation adjustment proposed by SOCAN:

Royalty Rates based on proposed inflation 2023-2025

Months of operation	Days of Operation	
	1-3 days	4-7 days
6 months or less	\$ 340.16	\$ 680.30
more than 6 months	\$ 680.30	\$ 1,360.61

[58] The rate variation is 5.79%, (24.37% – 18.58%) which is not significant enough to raise procedural fairness issues. Users were notified that proposed rates were based on projected inflation for the relevant years, as the actual inflation rate was not available at the time of filing. SOCAN notes that while its proposed inflation adjustment was prepared “According to the Board’s adjustment formula, this figure will likely change once actual CPI data is available.”³⁶

Issue 5: Should the Board be concerned about the users’ ability to pay the tariff?

[59] Having given consideration to the evidence filed and claims submitted by the Associations, I do not find a compelling reason for any rate adjustment for the years 2023, 2024, and 2025. In my view, reliable data and evidence specific to the users of Tariff 18 was not put forward by the Associations, to support consideration of any rate adjustment owing to ability to pay.

[60] Ability to pay is a factor which the Board has held to be relevant in several proceedings, although not determinative, in deciding what constitutes a fair and equitable tariff. Tariffs should be based on strong economic evidence presented by the parties. The Board’s consistent jurisprudence is that it will not reduce a rate or deny an increase based on the users’ ability to pay, if it is not satisfied with the supporting evidence.

[61] Some Board decisions have determined that ability to pay was a persuasive factor. In the *Application to Fix Royalty Rates for the Reproduction of Musical Works in the Repertoire of CONNECT Music Licensing Service Inc.* by Totem Médias Inc.,³⁷ the Board accepted the filed evidence concerning ability to pay, including data on main input costs, revenues per customer, and impact on profitability. The Board concluded that Totem would be paying royalties per customer that would be greater than Totem’s revenues per customer. This was deemed as unfair by the Board.

³⁶ SOCAN, Notice of Grounds for Proposed Tariff for SOCAN Tariff 18 – Recorded Music for Dancing (2023-2025), March 8, 2024, p 1.

³⁷ *Totem Médias Inc. v CONNECT Music Licensing Service Inc.*, 2025 CB 8.

[62] Other Board decisions concluded that evidence on the record was not supportive of a rate adjustment. For example, in *Re:Sound - Tariff 6.B (2008-2012)*,³⁸ evidence was filed to support an argument about ability to pay, yet the Board was not satisfied with it and did not accept the argument.

[63] In *SOCAN Tariff 18 (2013-2017)*,³⁹ Restaurants Canada and the Hotel Association of Canada argued that, because their members were facing intense financial pressure, it would be unfair to burden them with an inflation adjustment on rates, when their own revenues had declined significantly. No evidence was filed to support their assertions and the Board did not accept the arguments.

Economic evidence concerning the ability to pay – the current proceeding

[64] The Associations claim that the hospitality sector continues to face challenges in the current post-pandemic economic climate, including a shift in consumer spending patterns, higher operating costs, labor shortages, and lower profitability, all of which affect their ability to remain open.

[65] The hospitality sector – bars, cabarets, restaurants, taverns, clubs, dining rooms, discotheques, dance halls, ballrooms, and similar premises – is a cyclical industry and routinely susceptible to broad economic and market conditions, as well as changing consumer tastes.

[66] All businesses are faced with rising operating costs from time to time. It is always the choice of a business owner to manage their costs and adapt to changing conditions. In doing so, they may, among other things, modify their services, adopt new technologies, or reduce use of a particular input. The Associations claim that “licensees under SOCAN 18 have reduced engagement with music in the post-pandemic economy”⁴⁰ although no evidence of such behaviour was submitted.

[67] Evidence filed by the Associations in their Economic Report primarily reflects general economic conditions impacting restaurants and hotels. While perhaps useful to understand the circumstances faced by the broader hospitality sector, such evidence may not be entirely relevant to the current proceeding. Evidence was clearly lacking to address the matter at hand, namely, use of recorded music for dancing.

[68] Specifically, no evidence was submitted concerning how many premises represented by the Associations, actually offer recorded music for dancing by their patrons. Businesses

³⁸ *Re:Sound - Tariff 6.B (Use of Recorded Music to Accompany Physical Activities) (2008-2012)* (reasons) (July 6, 2012), paras 58-63 and 172. See other decisions that denied owing to insufficient evidence. *SOCAN - Tariff 15.A (Background Music), 2005* (reasons) (June 2, 2006); and *SOCAN - Tariff 2.A (Commercial Television Stations), 1994-1997* (reasons) (January 30, 1998).

³⁹ *Collective Administration of Performing Rights and of Communication Rights, CB-CDA 2017-038*, (reasons) (May 5, 2017).

⁴⁰ Statement of Case, Restaurants Canada and Hotel Association of Canada, May 12, 2025, para 10, p 6.

operating in the hospitality sector engage in a wide range of activities, such as food service, beverage sales, and event hosting. And, it may only be a minority of these premises, as suggested by SOCAN, that offer dancing for their patrons and thus, pay the tariff.

[69] I have concerns with the data and methodology contained in the Associations' Economic Report. In particular, data that are 'snapshots' of economic activities without providing broader context. The Report lacks a benchmark for comparing historical conditions prior to the COVID-19 pandemic with current market data, making it difficult to assess long-term trends accurately. Additionally, the Report relies on a survey to conclude that most restaurants were operating at a loss or just breaking even in 2024. But this survey did not capture data specific to venues offering recorded music for dancing. It is possible that some reporting bias compromises data reliability. More information may have addressed this risk, but was not included in the Economic Report. The Board has prepared guidance on acceptable reporting of economic evidence in its Practice Notice on the Filing of Economic Evidence (PN-2023-009).⁴¹

Issue 6: Are changes to the wording of the Proposed Tariff required?

[70] The Proposed Tariff is modified to remove the General Provisions section. In particular, references pertaining to "licences" are removed, in keeping with the Board's practice to reflect the legal distinction between a tariff and a licence.⁴² This practice reflects reasoning by the Supreme Court of Canada in *York University v Canadian Copyright Licensing Agency* 2021 SCC 32. This decision clarified that a tariff approved by the Board is distinct from a licence granted by a collective society. The Board's mandate in approving tariffs does not include the issuance of licences. This role belongs to collective management societies.⁴³ This modification does not alter the scope of the application of the tariff.

[71] In addition, I modify the Proposed Tariff to substitute the word "royalties" for the word "fee," throughout the tariff. This is because "royalties" is more consistent with the word "redevance" in French.

V. Decision

[72] Having reviewed the evidence on record, I find that that the Proposed Tariff can serve as a basis to approve a fair and equitable tariff. An inflationary increase of 24.37% is approved for the years 2023, 2024 and 2025.

⁴¹Practice Notice on the Filing of Economic Evidence (PN-2023-009), March 1, 2023.

⁴²See e.g. *SOCAN Tariff 3.A – Cabarets, Cafes, Clubs, Cocktail Bars, Dining Rooms, Lounges, Restaurants, Roadhouses, Taverns, and Similar Establishments - Live Music (2018-2024)*, 2022 CB 5, paras 27-30; *SOCAN Tariff 9 – Sports Events (2018-2023)*, 2021 CB 9, para 30; *SOCAN Tariff - 4.B Classical Music (2018-2024)*, 2021 CB 11, para. 27.

⁴³ See *Access Copyright v York University*, 2021 SCC 32 (July 30, 2021), for a discussion of the distinct role of the Board to approve tariffs and collective management societies to grant licences.

Approved Rates 2023-2025

Months of operation	Days of Operation	
	1-3 days	4-7 days
6 months or less	\$ 356.76	\$ 713.50
more than 6 months	\$ 713.50	\$ 1,427.00

[73] The Proposed Tariff is approved, with the above noted modifications, under the title *SOCAN Tariff 18 – Recorded Music for Dancing (2023-2025)*.