

CRTC Hearing 2019-379

CBC's Broadcasting Licence Renewals in the Face of the Digital World

"More Questions Than Answers"

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Table of Contents

Introduction	3
CBC's 3 year plan	3
Notice of Consultation Para 12	5
Breaches	6
Online vs existing services	6
Question 1	7
Questions 3 & 8	8
Question 9	9
Questions 12-15	10
Questions 17 & 19	11
Questions 22-25	12
Questions 26 & 28	13
Question 30	14
Questions 31-33	15
Conclusion	16

Re: 2019-379 - CBC/Radio-Canada Renewal of Licenses

For the Commission's information, I am responding to this Notice of Consultation as a consumer of the Corporation's English-language services only.

1. Introduction

1 For the CRTC this hearing undoubtedly lead to a difficult decision. As the CBC shifts its services from broadcasting to online, the CRTC will have less authority to regulate it under the terms of the Digital Media Exemption Order (DMEO). Further, if USMCA is passed as is, streaming services will no longer be definable as 'broadcasters'. What will the implications of that change be for the Canadian industry - and for the regulator?

2 While some elements of the Corporation's new 3-year plan (*Your Stories, Taken to Heart*) appear reasonable on their face, digging a little deeper does show that they may not be as firmly rooted in the existing broadcasting policy's public service mandate as one might have hoped.

2. CBC's New 3-Year Strategic Plan

3 Reviewing the pdf summary of '*Your Stories, Taken to Heart*' left many questions unanswered.¹ That being said, it's important to extrapolate where possible and with as much positivity as possible.

Customized digital:

"We will create the personal, relevant, and engaging experiences that Canadians expect. Our goal is to make sure all Canadians see themselves reflected in our digital services while connecting them to the many communities and voices that make our country great."

4 It must be noted that reflecting the Canadian reality back to Canadian audiences is one of the legislated objectives of the national public broadcasting service, as is 'connecting Canadians'.

5 As addressed in this strategic plan, Priority One is not about content at all, but rather about accessibility. In an era when online viewers in the digital marketplace are overwhelmed with choice, accessibility without attractive content is irrelevant. Unfortunately, given the evidence provided by external (as opposed to CBC) audience numbers for most of CBC's current English television programming, it is improbable that viewership will grow substantially, even if it appears on more platforms and becomes more accessible. Jane, the 18-year-old in Halifax might have grown up with a screen in her hand, but it is unlikely she will choose Gem over Netflix.

6 Moreover, creating personal and relevant experiences can only be done by gathering the personal information revealed by their online viewing habits. To my knowledge, the CBC's current mandate neither allows nor PREVENTs CBC/R-C from collecting such personal data, but this issue and its implications for privacy and potential sale of such data must be examined as a priority during this consultation process.

¹ An obvious one being: 'why there is only a three year plan for a five year licence renewal request?'

7 The Commission may wish to consider imposing a condition of license that would permit CBC/RC to collect only viewing data to aid in selection of future content and **preclude** any sale or transmission of data to 3rd parties.

3. Engaging with young audiences

“We will become a leader in bringing the best content to our children and youth with the goal of enriching their lives and engaging them with their country.”

Section 3(i) of the Broadcasting Act requires that

the programming provided by the Canadian broadcasting system should

- **(i)** be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and **children of all ages**, interests and tastes,

8 Since the beginning of television in 1952, CBC and Radio-Canada both made a point of airing children’s programming. In fact, it was Dr. Fred Rainsberry, then head of children’s programming for CBC, who brought Fred Rogers and Ernie Coombs to Toronto to develop programs for this special audience. Rogers eventually returned to the United States and his place was taken by Bob Homme, the ‘Friendly Giant’. Building on that base, CBC built a strong children’s schedule that it maintained as a public service, despite the introduction of several specialty Kids’ Channels. Youth programming too became a focus in the after-school and early evening hours and, for years, parents could count on CBC-TV as a reliable entertainment source for their young families.

9 Over time, as resources declined and priorities shifted to ‘Digital-First’, CBC increasingly relied on ‘evergreen’, animated programming. The result is that the weekday children’s schedule is almost totally reliant on animated series, presented in quick succession with hardly a human being in sight. The Commission may wish to explore with CBC how it plans to redevelop its children’s programming commitment and whether it intends to reintroduce the occasional human host or live-action program.

10 Focusing on the statement itself though, there are implications in its language that the Commission may wish to question the CBC about. Their statement implies they aren’t in a leadership situation. It might be reasonable to ask when was the CBC’s leadership position lost, and why. Further, how, and with what resources does the CBC plan on reversing its current non-leadership situation?

4. Prioritizing local connections

“This is the heart of our connection with Canadians. We will strengthen this connection with significant local and regional content that is relevant to people in their communities, and bring those communities to the rest of the country.”

11 As the Commission is aware, since its last license renewal in 2012, CBC has been reducing the human and financial resources available for local and regional news coverage and current affairs programming. If the Corporation is committed to winning back its local TV audiences, the Commission may wish to explore in some detail how revitalization of this core service will occur and ensure that it is not restricted to digital platforms only. CBC’s services (i.e., radio and TV)

still remain the preferred option of most CBC audiences and continuing to starve them will serve no public or national interest.

5. Taking Canada to the world

“Anyone who watches Netflix or uses iTunes knows that today we live in a global market. If Canadian culture is going to be strong, it needs to be part of the global market from which Canadians now consume more content. We will ensure our country and Canadian creators are seen and heard the world over.”

12 In the absence of revisions to Canada’s current broadcasting legislation, this objective is clearly beyond the mandate of the CBC/Radio-Canada. No where in the broadcasting act does the CBC have responsibilities to a global market, specifically 3m(ii) of the act specifically omits the global market as a responsibility of the CBC. As such, it is patently misplaced as a corporate priority. Further it appears the CBC may have misconstrued ‘being of comparable quality to international content’ with ‘being part of the global market’.

13 Reading between the lines, it appears this may be about selling its Canadian entertainment programming internationally in an effort to generate revenue. It is important to remember that the CBC/Radio-Canada is Canada’s national public broadcasting service; its networks are not like those of Canada’s commercial operators. And it is not a production studio whose *purpose* is to generate profits by selling its programs into foreign markets. If that occurs, it is a bonus – but it is not the Corporation’s *raison d’être*.

6. Outcomes Paragraph 12

14 In Paragraph 12 of the Notice of Consultation for this hearing, the CRTC lists a number of points, the second and third of which require special attention, to wit,

“establishing a regulatory approach that is consistent with the Corporation’s mandate and best meets the needs of Canadians, with consideration given to how it should include the Corporation’s evolving approach to the delivery of content across multiple platforms, including on online platforms;”

15 The CRTC is unable to give consideration across multiple platforms (including online) unless it is prepared to regulate the internet. As previously mentioned, USMCA appears to prevent the regulation of OTT broadcasters like Netflix until such time as new broadcasting legislation is rewritten to assign it that authority over domestic and foreign OTT operations. Indeed, one might go so far as to say that this paragraph is *ultra vires* as there can be no regulatory oversight of unlicensed services beyond the reach of the CRTC - which Gem, CBC.ca, etc., currently are.

In addition,

“establishing a measurement framework that reports on the achievement of the Corporation’s mandate as set out in the Act in order to ensure it remains transparently accountable to Canadians and to the Commission in regard to its programming and activities.”

16 Such a measurement framework is an excellent concept and will be a useful – and long overdue - innovation. It will, however, have to be carefully designed to be specific enough for the Commission’s data analytics’ uses but neither hackable nor available for third party sales.

7. Concerns Regarding Performance Breaches

I must raise here one apparent breach of CBC’s ‘Radio One’ broadcast license, and one grey area for which CRTC guidelines could be useful.

Inappropriate commercial on CBC

17 In the station-break preceding its national news broadcast at 9:00 am on 6 November 2019, the audio track from the online commercial for Gem was played (exactly as online) on Radio One.

18 Though it was advertising a CBC program, it was still the audio from an advertisement on a commercial service being played on a non-commercial service. This was not program promotion that had a host interview someone to talk about the program, but a commercial service running an existing ad on a non-commercial service, which I submit is a violation of the conditions of the Radio One license as a non-commercial broadcasting service.

Grey Area guidelines

19 Increasingly, the host of CBC Radio One’s Toronto morning show, ‘Metro Morning’ have been discussing Netflix programs that they watch while seemingly ignoring other streaming services. In the past, CBC and Netflix have partnered in the development of certain programs. It is understandable there would be some discussion of such streamed content but it would be useful to have some regulatory guidance about such ‘promotion’ (given the aforementioned alliance) and the limits within which is it appropriate for non-commercial licensees- especially in light of the recent recommendations of the Broadcasting and Legislative Review Panel’s report, *Time to Act*.

8. Online vs Existing Services

20 As a final point, I’d will address the mandate of the CBC/Radio-Canada found in sections 3(l) and 3(m) of the Broadcasting Act.

“3(l) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains”

As mentioned in paragraph 12 of the Notice of Consultation, the Commission has afforded the CBC authority to invest in and deliver online content, presumably pursuant to Section 3(m):

the programming provided by the Corporation should:
(vii) be made available throughout Canada by the most appropriate and efficient means and *as resources become available for the purpose,*" (italics added)

21 The CBC has utilized this power based on internet delivery being the most appropriate and efficient means of service distribution. While the internet is still being deployed across Canada, the principle of public broadcasting services being universally available means it cannot yet be considered the 'most appropriate' (given the already universal nature of radio and TV) although its eventual efficiency is clear.

22 With time, Canada will eventually get past this universality hurdle, but another problem remains. The outline of the Corporation's three-year strategic plan indicates that it wants to expand its online activity but I have been unable to confirm that any new funds will become available for this purpose. Put another way, section 3(l) identifies the CBC's primary responsibilities as **Broadcasting: radio and television** - which (according to USMA) streamed content is not. Other distribution media are acceptable as long as the principle service responsibilities are maintained. The Broadcasting Act does not make allowance for redirection of existing budgets necessary to sustain primary services into development of another. In fact, when the CBC/Radio-Canada applied for a license for CBC-II/Télé-II in 1980, the CRTC's denial of the application rested on this very point.

23 If the CBC can demonstrate where the funds to contribute to their plan originate (new advertising revenue gains, additional funds from the gov't earmarked for this purpose, etc.) then the CRTC could consider endorsing these ideas. However, if no new incremental funds are being committed to online distribution and content development throughout the three years, then the only way such endeavours can be financed by the Corporation is to claw back resources from its radio and television services – a clear breach of its enabling legislation.

24 If the CBC is applying for CRTC renewal of its licenses conditional on a breach of the Broadcasting Act's section 3m(vii) to enable expansion of its online service, the Commission cannot accede to that request.

9. Responses to Commission Questions:

Q1. Comment on the types, range and quality of the programming offered on the Corporation's English-language platforms and services.

25 While I was once a regular listener to CBC Radio One - and occasionally CBC online for radio streaming - between 6am and 6pm, my attention and interest has now dwindled to specific loyalty to 'Under the Influence'. Google provides my traffic updates instead of Metro Morning. I now use non-CBC podcasts driving to work and, going home.

26 With respect to 'CBC-TV content', it is rarely watched in our millennial household because, now that The Mercer Report is gone, aside from the occasional documentary its programming is less appealing than foreign content, despite our being the demographic that CBC says it is wooing. We recognize that the network is trying to provide programming for a range of diverse au-

diences but, given the choices available, what possible reason would there be to tune in to the Canadian version of 'BAKEOFF' when the original is just so much better?

27 As to how CBC could get more millennials interested in its content ... If we were to be tempted in future, a bigger production budget to generate more programming of higher quality would be required especially for local and regional news and information that is unavailable elsewhere. My household subscribes to a range of OTT platforms (Netflix, Prime, Disney, Crave/HBO, etc.) so can readily access great entertainment and WORKIN' MOMS and FAMILY FEUD CANADA just cannot compete.

28 However, if CBC Radio One were to restore its former program quality and CBC-TV become non-commercial, we would certainly revisit them as an option.

Q3. The English- and French-language viewing and listening markets in Canada have different dynamics and realities, both of which can affect the programming needs of the various communities within these markets. Is the Corporation addressing the distinct needs and interests of each linguistic market in the best ways possible? What improvements could be made to ensure that the Corporation's programming meets those needs and interests?

29 Perhaps it's time for CBC-TV to focus programming that would have real mass market appeal that would be engaging to ALL Canadians (old and new, regardless of demographic distinctions), to encourage nation-building, unity and sense of shared experiences. It's current segmentation of markets accommodates every individual group while ignoring the collective whole in English Canada.

Q8. What, if any, improvements could be made to ensure that the Corporation creates and broadcasts high-quality original Canadian productions?

30 In order to answer this question, we must first establish what the CRTC means by 'broadcasts' and 'high quality content'. As defined by USMCA, article 20.H.1:

"broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" if the means for decrypting are provided to the public by the broadcasting organization or with its consent; "broadcasting" does not include transmission over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public"

31 Because international agreements supersede domestic law and USMA is expected to be approved by the Government of Canada before the end of this hearing², we must interpret this question as referring to radio and television only, excluding internet distribution.

² Or at least before this hearing is concluded

The second question is the definition of 'high quality'?

32 Does 'high quality' refer here to international standards of production quality as compared to, say, *The Price is Right Canada* - or high quality measured by price, or some other determination? Since international content is competing with the Corporation's in-house or independently-produced programs for eyeballs, I shall assume the international standard of 'high quality', though the Commission may intend some other metric.

33 On the basis of recent and current performance, I submit it's time to start fresh and begin again. The mandate requires updating, service options must be reviewed and perhaps re-focused in light of new technologies and consumer needs, and the annual budget must be reconsidered.

34 Moreover, the management structure is far too heavy for a nimble national service provider and the creative energy that once existed across all levels of the Corporation has for far too long been deprived of oxygen.

35 Ultimately, funding must be a major concern for an organization with such a complex mandate, and a responsibility as large as the CBC's: 5 time zones, vast distances with regional differences and multiple languages. That being said, the corporation must realize that its future depends on rebuilding and connecting with its audiences at local, regional and national levels. And this will have to begin with restoration of its core news and information services, without which it has no secure foundation ... and no future.

36 To that end, acting on the recommendations of the BTLR study, *Time to Act*, the Corporation would be well advised to (continue to) pressure government for a revised, modern mandate AND the appropriate funds necessary to meet that mandate; at the same time, I believe it is critical that the Corporation commit to becoming a distinctive and fully non-commercial national public service. If it is to be truly public, then let it be so across all platforms, not just on Radio One. Otherwise, as recent years have amply demonstrated, there are competing interests within the organization and conflicting loyalties which prevent the public interest from being well served.

Q9. How could the Corporation ensure that the programming provided across all of its platforms and services remains predominantly and distinctively Canadian?

37 Is this question asking about different measurement systems that could be used? 'The Handmaids Tale', for instance is a Canadian story in the sense that the book was written by a Canadian and the series was produced in Canada, but it isn't a story specifically about Canada, about Canadians or their trials.

38 Further, what does 'distinctively' mean in this context? Does it refer to the CAVCO point system or that it 'look' Canadian with recognizable Canadian brands in-shot throughout qualifying TV episodes? Must Timbits be nibbled or hockey played in every episode, or must 30% of shows of 'Under the Influence' be about Canadian products?

39 I suggest that these criteria may need to be flexible, depending on program genres. Canadian news, Canadian current affairs, Canadian sports ... even Canadian documentary ... are all easily defined. It's drama and comedy that present a challenge and perhaps less so in their definition than in their carriage requirements where some elasticity of commitments may be useful, depending on the nature of the platform.

Q12. The Corporation must provide programming that is distinctively and predominantly Canadian. By what means does the Corporation make consumers aware of the origin of the content (Canadian or international) provided on its services and platforms? What improvements, if any, could the Corporation make in regard to identifying the origin of such content?

40 To some degree this question appears to be based on an antiquated and flawed premise - that Canadians are so patriotic as to prioritize content because it was made using Canadian production funds. The fact is that many Anglophone millennials view 'Canadian content' as stigmatized, so for the CBC to brand its content as 'proudly Canadian' could at present be antithetical to attracting audiences. Perhaps once the reputation of the service is rebuilt it will be possible to once again celebrate its domestic status, but that transformation is likely to take at least a generation to accomplish.

Q13. Is the Corporation effectively leveraging international partnerships for the creation of high-quality content? If not, how could the Corporation do this more effectively?

41 Yes, I believe CBC-TV has been harnessing international partnership opportunities (especially with Netflix and other public broadcasters) quite effectively, recent criticisms of Netflix by the CBC president aside.

Q14. "Taking into consideration the content that the Corporation has made available on multiple online platforms (for example, mobile applications and online streaming services), what could it do to continue to serve and meet the needs of Canadians who cannot or do not consume content via online platforms? In other words, how could the Corporation ensure that Canadians are well served regardless of the platform they use or to which they have access?"

42 It should be noted that CBC is currently governed by its mandate and broadcasting licenses and that online distribution is NOT considered broadcasting in the eyes of the Canadian government, given its approval in principle of USMCA. However, if consideration is given to allowing CBC to divert public funds to online services, then there seems no reason not to find a way to first include such programming in the schedules of its radio and television services.

Q15. "Should the Commission take a different regulatory approach in regard to the Corporation's services, depending on the platform or service, to ensure that its programming continues to be available to Canadians across the country? If

yes, how should such an approach differ on a per-platform basis? For example, are there certain types of programming that would best be offered through online platforms or through traditional television or radio services?

43 As previously noted, the CRTC has no regulatory authority over online platforms as they fall outside the Broadcasting Act as per USMCA s20. That being said, the CRTC has authority over conventional broadcasting of radio and television signals. While, therefore, the Commission cannot regulate the Corporation's online services, it can enforce regulations governing any traditional broadcasting services that it can, should or does provide. To that end, the CRTC should be required to ensure that CBC/Radio-Canada is meeting all obligations that are within the CRTC's sphere of oversight. Therefore, a digital-first strategy by the CBC must remain immaterial to the CRTC (until a new act provides authority), and a RADIO and TV strategy should be the only issues of relevance to this consultation process from a regulatory standpoint.³

Q17. Is the Corporation's programming (both audio-visual and audio) available and easily discoverable on multiple platforms, both here and abroad? What, if any, improvements could be made in this regard?

44 Recently I when accessed CBC Gem through my Apple TV, I found a British program but was unable to watch or preview it unless I logged into the Gem app. This is a clear limitation of accessibility and discoverability. Had I been able to watch a few minutes to see if the content interested me, I might have signed up. Further, I question the legality of such restriction. As a Canadian taxpayer, why am I unable to view something the CBC is providing and has paid for using tax dollars? If an email address and password are not required to access radio or TV broadcasts, why is it justifiable for the online distribution medium? Ultimately I watched the program on Youtube, so the CBC lost out on advertising revenue and on recouping some of the license fee for this purchased program.

Q19. Has the Corporation's use of online platforms to make news and information available to Canadians had a positive effect on democratic life in Canada? If yes, what is that effect, and who benefits from these new ways of sharing information? If no, what improvements can be made?

45 Yes, the Corporation's use of online platforms has made information more accessible which has been positive. For instance, in the 43rd general election, I was able to view and share information on each party's platforms (in side by side comparison).

46 Nonetheless, while the news service on CBC Radio is fairly balanced and unbiased, news coverage on television and particularly online news service is sometimes unbalanced, demonstrating favouritism depending on which journalist has written the non-opinion pieces. While fine for a private newspaper like the Globe or the Star, the public broadcaster must be mindful of the danger if any perception of bias on matters of public concern.

³ Though I do of course appreciate how... 'inconvenient' this is!

Q22. Would it be appropriate to regulate the programming activities of the Corporation in a manner that focuses solely on the provision of content via traditional television and radio services? If yes, elaborate on the reasons why.

47 At present it would be appropriate as online content distribution is not 'broadcasting' and presently falls outside the jurisdiction of the CRTC. Obviously this is not an ideal solution, however until Government provides new direction in the form of an updated act, the scope is limited by the age of the last act and the ratification of USMCA.

Q23. In regard to the Corporation's proposal for a new flexible approach to content commitments, does this new approach continue to ensure that the Corporation is meeting its mandate and serving Canadians across the country? Are there new approaches the Commission should consider in this regard?

48 Commitments are not flexible by nature. An employer cannot pay a workforce flexibly - as the Phoenix payroll system has demonstrated. Either the CBC meets its mandated responsibilities on its mandated licensed services: radio and TV, or it doesn't. The CRTC could and perhaps should ask for enhanced authority as part of revised communications legislation – as has been recommended in the BTLR report or, should that not prove timely, a direction from government that would allow a broader interpretation of the rules.

49 Ultimately though, the CBC Radio One audience is entitled to content that is mandated and appropriate to its license conditions separate from those that properly attach to CBC-TV.

Q24. Taking into account the entirety of the Corporation's operations, how could including content on online platforms and services better allow the Commission to ensure that broadcasting policy objectives and outcomes are being achieved?

50 Given USMCA, in terms of law broadcasting policy does not apply to online services. That being said, however, if legislation is changed, then applying 3d and 3g of the act to online platforms independently of broadcasting platforms would be appropriate. To view them as shared or complementary would, in my view, be an incorrect interpretation.

51 The goal is to make great content that is Canadian. A great radio program is great not because of its placement on radio but because of its content. The delivery mechanism should not be confused with the content itself. The policy objectives must be met regardless of what 'pipe' the content (i.e., the program) is transmitted through. The Commission can ensure that the broadcasting policy objectives are met by having the regulated broadcasting services distribute the content, and then by providing it online as a supplementary means for consumption. This is not be a 'digital-first' approach, but it is a broadcasting-first policy approach.

Q25. In what way could the Corporation's online platforms and services and their content be incorporated into such an approach, and how should the existing regulatory tools be used?

52 The Corporation's online platforms and services can be used as a supplemental delivery method until such time as universality of internet delivery is reached. I say this not as an elderly luddite, but as someone who appreciates that 'we're not quite there yet' and that the 'old system' is still the only one everyone has. I look forward to a day when online distribution can become the primary form delivery for audiovisual content but, at present, even radio podcasts aren't available to everyone in Canada, and universality of access is an essential component for a public broadcaster. If we were just starting out with a single access point - online - as a distribution system, then of course it would be appropriate to provide content before universality was achieved (knowing it was being worked towards), but that's not the case here. We already have two existing services with universality.

Q26. The activities of the Corporation are generally regulated through exhibition requirements. Would it be appropriate to consider expenditure requirements in regard to its traditional or online services as a way to ensure that the Corporation continues to meet its mandate under the Act while being regulated in a more adaptive manner?

This is a troubling question to ask.

53 Why is 'a more adaptive manner' likely to be desirable unless it is to find ways to assist the Corporation to meet its mandate in a reduced capacity? This would imply that without a more 'adaptive approach' the CBC/Radio-Canada would be unable to meet their existing service requirements and in turn, this would foreshadow such a diminution that Canadians were unable to enjoy service standards that have existed for decades.

54 If the CRTC's intent is to view the CBC's mandate holistically under the Act, then why continue to issue separate licenses for radio and TV? It would be simpler to consider the Corporation one licensed organization, allowing it to apportion funds as it sees fit, perhaps producing only one newscast nightly to be shared across all platforms. This implies that, despite being different pipelines, format and content and form are indistinguishable. But the method of story-telling between media is fundamentally different and, for instance, a podcast on the jobs in the oilsands would require far more descriptive elements than if pictures were provided.

55 There could, however, be some value in having the CBC register its program expenditures annually per service and platform to the Commission to enable an appropriate level of performance monitoring that any five-year funding cycle would surely require.

Q28. Considering the strengths and weaknesses of each platform, how can the Commission ensure that the Corporation is using them in the most effective way in order to serve Canadians across the country and meet public policy goals? What other regulatory requirements would be appropriate under a framework that considers online activities? Why would they be appropriate?

56 At present the Commission can only ensure that the Corp is using its broadcasting platforms (TV and radio) effectively. This is as much to do with the strengths of those platforms (univer-

sality) as to the the current weakness of the online platform as it is to meet those public policy goals laid out in the Broadcasting Act.

57 To achieve this objective, in current circumstances the Commission would have to ensure that any content delivered online would first be made publicly available on a broadcast service owned by the Corporation⁴. This policy approach should be introduced as a temporary measure, after which with new legislation and universal uptake of internet, Canada can fundamentally shift its policy focus to maximizing the strengths of all three platforms while minimizing their respective weaknesses.

Q30. The Corporation's success should be measured against its mandate, as set out in the Act. How could success best be measured on online platforms and services? How could it be measured better on traditional platforms and services?

58 Looking at various platforms, we see distinct differences in success. CBC Radio One is the most successful radio service in the country. It also has the least international competition as much of its programming is more regionally directed. It is also a non-commercial service, which gives it extra appeal. CBC Radio Two was non-commercial and had a loyal following until it introduced advertising which automatically changes the nature of much of its program schedule. This single shift caused a drastic decrease in audience numbers which shows how valuable the distinctive nature of a public broadcaster's services can be.

59 By comparison, CBC-TV is one of a multitude of commercial operators competing for the eyeballs of Canadians with domestic and international services. Its specialty service, CBC-NN is doing the same but in an important niche market where cable subscriptions are diminishing.

60 Online, CBC's success is even more challenged. It competes not just with CTV and Global but also, in terms of entertainment with Netflix, video games companies YouTube, Disney, Prime, etc., and with the BBC and PBS as public broadcasters; and with Wikipedia, and a multiplicity of foreign online offerings in the native languages of immigrants of our vibrant immigrant communities.

61 How, then, could CBC's online success be measured appropriately? General clicks are immaterial; a catchy headline has led to BuzzFeed and cat videos doing very well for years now. It may be that 'click throughs' for further content (as Netflix and YouTube do) would be the best indicator of success. If CBC makes a single hit, that's good. But, if audiences go from watching one great show to wanting to watch more content from a different series (a form of cross pollination) - whether that be news or entertainment, or podcasts... that's a demonstration of strong audience retention, and objectively a measure of the success of the mandate and the policies that support it.

62 There will, of course, be some audiences that are only interested in specific content (e.g., daily news) but that is why multiple metrics are of value. Perhaps some measure that weighs single individual clicks, length of time spent watching, and click-throughs to additional content into a ranking could be a useful measure.

⁴ Even if time delay was a only a minute

Q31. The Corporation's mandate requires programming that is reflective of Canada and its regions and of Canada's linguistic and multicultural diversity, in both the English and French languages. How should this be measured in this framework?

63 This framework works reasonably well with radio (a largely geographically circumscribed medium) but becomes less viable with television and even less useful online, where audiences are not location-limited. Effective measurement should still be possible through clicks of the mouse and hours of content watched. Of course, there will be fewer viewers watching regional content covering say rural Manitoba but, if the proportion of audience to inhabitants is substantial, then the mandate is being met. That said, this is an element the CBC/Radio-Canada may wish the government to re-examine as part of the legislative review.

Q32. The Corporation's mandate requires that its programming be of equivalent quality in English and French. How should the Commission define the notion of quality as expressed in the Act and how can this be best measured on all platforms and services?

64 Is quality a factor or audience share (regional or national), money spent, the number of Canadians working on the project, exportability of the content or some combination? I doubt that, by most metrics, the English-TV service quality is even near the quality of the Radio-Canada's service. And if equivalency is the dominant notion, is the goal to preserve the quality of French content and boost the caliber of CBC-TV, or to reduce the quality of French radio and content to bring it into line with ETV?

65 It should be noted that question 32 is legally incorrect. The act says the services should "strive to be of equivalent quality". Equivalent does not mean identical, and strive does not mean succeed, as different markets may at times have different requirements relating to distinct service needs. Though a small distinction it's an important one given the previous paragraph for means of analysis. If we factor money spent, should it be equivalent despite the obvious differences in distance, infrastructure maintenance costs, and number of people to be served?

Q33. What is the best way to measure or assess the reflection of and engagement with groups such as women, Indigenous peoples, ethnic and multicultural groups, OLMCs, children and youth, Canadians with disabilities, and LGBTQ2 Canadians in the production and broadcast of content on all of the Corporation's platforms and services (television, radio and online services)?

66 This is a difficult question to answer but a great one to raise. S3d(iii) raises this concern but does not specify goals or amounts. Should the goal be to be reflective of society based on per-

centage make up⁵, societal need⁶, or should content happen organically based on audience preference and content the CBC wants to broadcast? I suggest there is no right or wrong answer but that this needs to further exploration.

67 Is s3d(iii) even an appropriate question for the CBC and, if so, what weight should be implied, given that the Corporation's specific mandate includes no similar responsibility but that it is a responsibility of the broadcasting system on the whole? Does the existence of OutTV, for instance, meet the needs of the LGBTQ2 community sufficiently to lower requirements for other broadcasters? A similar question could be raised of indigenous representation because of the existence of APTN?

68 Of additional importance is that this question raised by the commissions identifies every group specified in section 3d(iii) by name (and some not mentioned by name, but by intention) but ignored 'men' who are literally the first group listed in the legislation. This omission must have been intentional and demonstrates an absurd policy bias. Surely, if we are breaking down society into subcategories for policy purposes, excluding 'men' is just as undesirable as excluding women or children.

69 Moreover, this effort to micromanage 'groups' inevitably will reduce the quality of the collective whole which is important in a country with a small population. Reflection of society, of the whole society, is important but, if we stress it over quality of content we won't have a policy problem we will have an audience problem. One need look no further than the British panel shows (e.g., *Mock the Week*, *QI*, etc.) to see how well it can be done. They have talented people from different cultures and backgrounds (including Canadians, Nigerians, Germans, etc.) on their programs. Being a Lesbian, Black, disabled, German, or a Man (though obviously not combined) is not a barrier to entry because the goal is entertainment, and it is intrinsically accepted that anyone can be entertaining. Stephen Fry, a gay man, was the longtime host of *QI*; he was succeeded by Sandy Toksvig (who until recently also hosted the British Bakeoff), a Danish lesbian. No one calls *QI* a show representing gay people or 'a gay show', nor do they identify it as a show for the Danish expat community in the UK. It is simply a highly entertaining, very popular entertainment and educational program.

70 The restricted – even prudish – approach Canada takes towards representation is a hindrance to our creative sector because it is neither progressive nor internationally competitive.

10. Two Final Considerations

Online vs existing services

71 As a penultimate issue, I'd like to address the mandate of the CBC. This can be found in sections 3l and 3m of the Broadcasting act.

⁵ If 10% of the population is LGBTQ2, and say, 3.5% is Muslim, and another 3.5% is Ukrainian, should we require programming blocks be dedicated based on such metrics, or insist that guests on shows appropriately reflect demographics?

⁶ If a large refugee population is coming to Canada, should the CBC spend time doing special content to prepare Canadian society, or to better help the new refugees adjust?

“3(l) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains”

72 As mentioned in the notice of consultation paragraph 12, the CRTC has afforded the CBC authority to do online content and are encouraging it. This would have to be possible in legislation by:

“3(m) the programming provided by the Corporation should ...

(vii) be made available throughout Canada by the most appropriate and efficient means and **as resources become available for the purpose**”

73 The CBC has probably sought this power based on it being the most appropriate and efficient means. While the internet is still getting deployed in every location, the principle of universality (for a public broadcaster) means it cannot be the most appropriate, but from an efficiency stand point at least it is hard to argue against.

74 If we can (in time) get past the universality hurdle, there is still another problem however. The CBC wants to do MORE online activity in its 3-year plan, but as far as I can tell, no new funds will become available for this purpose, thereby making it counter to their responsibilities under the Act. Put another way, 3l clearly states the CBC’s primary responsibilities are to **radio** and **television** - which streamed content is not (according to USMCA). Other distribution mediums are acceptable as long as existing funds are not stripped away from Radio and Television to be used for new services. Ultimately, there must be no decrease in quality of mandated services to develop new services.

75 If the CBC can demonstrate where the funds to contribute to their plan originate (new advertising revenue gains, additional funds from the gov’t earmarked for this purpose, etc.) then the CRTC can consider endorsing these ideas. However, if no new/additional funds are being committed to online distribution and content, then the only way such endeavours can be financed is to take resources from Radio and Television services, which is a breach of the act. If the CBC is asking the CRTC to approve a breach of the Broadcasting Act section 3m(vii) in order to do more online content, there can be no way the CRTC can renew the radio and television licenses of the CBC.

Everything old is new again

76 A final point I would like to raise relates to a proposal I made back in 2014 at the Let’s Talk TV hearing.

77 Back in 2014 I told the CRTC that online streaming was NOT broadcasting. I am glad to see my position 6 years ago has been proven correct. At the time, it seemed imprudent to have the Canadian BROADCASTING Corporation doing ‘non-broadcasting’.

78 At the time I’d proposed stripping the entertainment requirements from CBC TV (English) and devoting its existing funds strictly to News and Information services. Letting that be the core of

the CBC's TV and online responsibilities, given the limited budget. I'd further proposed that a new online streaming service be created specifically to be a non-commercial Canadian entertainment service. If we are to re-imagine our public broadcasting system in this new age, I would like to have those submissions to the previous hearing be on the table as an option for the CRTC to propose to government.

All of the above is respectfully submitted,

John P. Roman