

Official Language Minority Communities in Quebec

February 20, 2020

Claude Doucet
Secretary General,
Canadian Radio-television and
Telecommunications Commission
Central Building Les Terrasses de la Chaudière 1
Promenade du Portage
Gatineau, Quebec K1A 0N2

Re: Broadcasting Notice of Consultation CRTC 2019-379
Application 2019-0282-5 (English AV Services) and 2019-0280-0 (English Audio Services)
Licence renewals for the
Canadian Broadcasting Corporation

Dear M. Doucet,

Appearance at the Public Hearing

1. We request an appearance at the public hearing starting May 25th to elaborate on the issues we have raised in this intervention, and adequately represent the opinions and needs of the official language minorities (OLMCs¹) in Quebec.

¹ To distinguish between English and French minorities, we use the acronym “OLMC” (official language minority community) to refer to the English minority, and “CLOSM” (Communautés de langue officielle en situation minoritaire) to refer to the French minority. For emphasis or clarity, we may also say English or French OLMC/CLOSM.

Introduction

2. The following associations represent the official language minority communities which has lived, worked, and helped grow Quebec and Canada for over 250 years. We now include approximately 888,000 anglophones in the Montreal area, and 215,000 elsewhere in the province. We have joined together to intervene in the renewal of the CBC's licences, a subject of existential importance to us.

3. The Quebec English-language Production Council (QEPC) represents the official language minority (OLMC) film and television production industry in Quebec. This includes most independent Quebec producers of English-language programming, as well as ACTRA Montreal. We represent approximately 80% of those working in the OLMC industry.

4. The English-Language Arts Network (ELAN) represents over 6,000 English-speaking artists in Quebec.

5. Founded in 1995, the Quebec Community Groups Network (QCGN) is a not-for-profit organization linking most of the OLMC organizations across Quebec. As a centre of evidence-based expertise and collective action, the QCGN identifies, explores and addresses strategic issues affecting the development and vitality of the English-speaking community of Quebec and encourages dialogue and collaboration among its member organizations, individuals, community groups, institutions and leaders.

6. We welcome this opportunity to put forward the views of the official-language minority communities in Quebec.

Legislative Status of the Official Language Minority in Quebec

7. Both the CBC and CRTC have obligations under the *Broadcasting Act* (BA) and the *Official Languages Act* (OLA) to take positive measures² to enhance the vitality and development of the anglophone linguistic minority in Quebec.

8. The *Broadcasting Act* has given the CBC a specific mandate to support the needs of the English OLMCs and French CLOSMs:

“3.(1) It is hereby declared as the broadcasting policy for Canada that, (m) the programming provided by the Corporation should, (iv) be in English and in French, reflecting the different

² We note that the meaning of “positive measures” in Part VII, S.41(2) of the OLA was questioned in the Federal Court decision of Judge Denis Gascon, *Féd. des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*, 2018 FC 530. Judge Gascon’s decision has been appealed by the Commissioner of Official Languages to the Federal Court of Appeal, Court File A-182-18 and A-186-18. We await the results of that OCOL appeal.

needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,”³ (emphasis added)

9. Along with the *Broadcasting Act*, the CRTC and the CBC have a mandate under Part VII, of the *Official Languages Act* to enhance the vitality of the OLMC/CLOSMs:

“41.(1) The Government of Canada is committed to (a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and (b) fostering the full recognition and use of both English and French in Canadian society.

(2) Every federal institution has the duty to ensure that positive measures are taken for the implementation of the commitments under subsection (1). For greater certainty, this implementation shall be carried out while respecting the jurisdiction and powers of the provinces.”⁴

10. The CBC’s mandate was further clarified by Federal Court in 2012. The Commissioner of Official Languages Graham Fraser told the Federal Court that the *OLA* applied not only to CBC communications with the public, but to its programming⁵.

11. The Federal Court Judge Luc Martineau said that the Government cannot interfere with the Corporation’s programming choices, but agreed with the Commissioner of Official Languages that the *OLA* applied to CBC programming, and said:

“...freedom of expression and journalistic independence do not constitute a general licence allowing the Corporation to avoid implementing the linguistic aspects of the broadcasting policy for Canada, to ignore the regions and the OLMCs and to decrease the contribution of artists and other local talents in its national and regional programming.”⁶

12. Citing the *BA* as well as the *OLA*, the Federal Court was specific about the CBC’s programming responsibilities to the OLMC/CLOSMs.

“As regards the Corporation’s programming, the public broadcaster’s mandate expressly includes promoting both official languages, preserving the identity of French-speaking and English-speaking minorities within the Canadian federation and contributing to shared national consciousness and identity (subparagraphs 3(1)(m)(iv), (v) and (vi) of the *BA*). That is the law, and everyone must obey it, including Her Majesty in Right of Canada or a province (subsection 4(1) of the *BA*).”⁷

³ *Broadcasting Act*, S.C.1991, c.11, s.3(1)(m)(iv)

⁴ *Official Languages Act*, RSC, 1985, c 31 (4th Supp), s.41 and 42

⁵ *Canada (OCOL) vs CBC/SRC*, 2012 FC 650, #4

⁶ *Ibid*, #62

⁷ *Ibid*, #65

Canada Needs a Robust National Public Broadcaster⁸

13. First and foremost, we support the national public broadcaster, and we support the renewal of its licences. The CBC is the key institution connecting the English-speaking minorities across Quebec to themselves, the rest of Canada, and the world.

14. We believe it is self-evident that the CBC has a central role in our national communications system. This role is not served, and cannot be replaced, by any commercial broadcaster or digital platform, neither domestic nor, of course, foreign.

15. As noted above, the *Broadcasting Act* gives the CBC a special role to play supporting the official-language minority communities (OLMC/CLOSMs)⁹. OLMC/CLOSMs depend on our public broadcaster to meet our needs that cannot be met by commercial or foreign broadcasters.

16. We must depend on the CRTC to ensure that the CBC's special role is fulfilled. In our experience, OLMC objectives need to be clearly enunciated by the CRTC, preferably as a Condition of Licence (COL).

17. However, that special role cannot be fulfilled unless the CBC has the resources needed to carry out its diverse, important, and costly mandates in two official languages plus seven Indigenous languages across the second-largest geographical expanse on earth.

18. In 2012, the Federal Court stated the Federal Government is largely responsible for the CBC's inadequate funding.¹⁰ The Court said the Government cannot use the power of the purse to arbitrarily undermine the will of Parliament which is expressed in the CBC mandates in the *Broadcasting Act* and the *Official Languages Act*.

19. Specifically, the Federal Court said:

“Since the broadcasting policy for Canada has not been repealed or amended by Parliament, the federal government must comply with it in full, not only in letter but also in spirit. The onus is on the government, the Minister and any other responsible minister to ensure that the Corporation receives adequate public funding on an annual basis and has the financial capacity to provide Canadians with programming that is consistent with the values, objectives and legitimate expectations under the BA, which itself mirrors some key aspects of the OLA.”¹¹ (emphasis added)

20. We believe the Federal Government continues to underfund the CBC, and needs to significantly increase that funding.

⁸ We will use the term “broadcaster” referring to any communications medium or platform.

⁹ *Broadcasting Act, 1991*, s.3(1)(m)

¹⁰ *Canada (OCOL) vs CBC/SRC*, 2012 FC 650, #30

¹¹ *Ibid*, #64

Yale Report and CBC Funding

21. As we can see from the Broadcasting and Telecommunications Legislative Review ¹² (BTLR Report), Canada has one of the worst records in the world of public funding for Public Service Broadcasters.

22. We spend a meagre \$29 per capita. Among the 18 OECD countries that BTLR studied, only the US (\$4) and New Zealand (\$14) spend less per capita. Australia spends \$55. Northern European countries spend much more, from \$105 in Britain, \$135 in Germany, \$166 in Norway to \$196 in Switzerland. The OECD average expenditure in 2016 was \$87 per capita.

23. Given our linguistic diversity, our huge territory, and our location along the world's longest "undefended" border next to the world's most aggressive and prolific cultural exporter, we need to see the CBC's role not only as a matter of cultural sovereignty, but as a matter of national defence. The CBC should be budgeted accordingly.

24. The BTLR Report estimates that in 2017-18 CBC revenues totaled \$1.781 billion. This includes the parliamentary appropriation of \$1.208 billion (68%), \$318 million (18%) in advertising, \$127 million (7%) in subscriber fees, and \$128 million (7%) in financing, investments, and other sources. This excludes indirect programming support of \$86 million in CMF funding and \$60 million in tax credits for independent productions commissioned and broadcast by CBC¹³.

25. If CBC received the average OECD public funding of \$87 per capita, its public revenues would be \$3.058 billion¹⁴, and not \$1.208 billion. This public funding would more than pay for the lost \$318 million in advertising revenue, and for that matter, \$127 million in subscriber fees. Then, the quality of CBC programming would be more competitive.

26. The conventional broadcasting system is dissolving before our eyes. CBC expects to lose \$33 million in program funding during the next licence period¹⁵. It is time for the CBC to be given the resources it needs to fulfill its potential, and meet our needs as a robust and innovative public broadcaster.

27. We know the CRTC has traditionally avoided making recommendations to the Federal Government about the resources the CBC needs to fulfill its mandate. Given the issues now facing the broadcasting system as a whole, and the national importance of the CBC in particular, we believe it is time for the Commission to break that rule.

¹² Broadcasting and Telecommunications Legislative Review, *Canada's Communications Future: Time to Act*, January, 2020, "Figure 3-11 Per Capita Public Funding of PSB's in C\$ (2016)", *Excludes any commercial revenue earned by public broadcasters. Source: Based on data from Nordicity

¹³ Ibid, p.166.

¹⁴ Based on the 2016 Census population of 35.15 million x \$87.

¹⁵ CBC Oct.9, 2019, English TV services, Abridged, DM#3755582

28. Therefore, we request that the CRTC recommend to the Government that the CBC receive adequate and stable funding to fulfill its mandates, including sufficient funding to become advertising-free. To that end, we support Recommendation 81 of the BTLR Report ¹⁶.

Decline of English OLMC Production

29. Attached below is Table 2¹⁷ from our OLMC production research report. Despite anomalous bumps over the years, OLMC production remains in decline, and OLMC vitality has been seriously weakened.

30. In the five years from 1996 to 2000, OLMC production represented an average of 22% of total English-language Cancon. In the most recent five years for which we have data, from 2013 to 2017, it averaged 9% of total English-language Cancon.

31. The lowest level of production in our history was \$128 million in 2015-16. Total English Cancon production has suffered an average decline of 35% over the last twenty-two years¹⁸.

32. We request that the CRTC meet its obligation to support the vitality of the English OLMC by strengthening the obligation of the CBC to commission independent OLMC production.

CBC and Independent OLMC Production

33. We believe minimum spending quotas for OLMC/CLOSMs are effective, especially compared with various policy experiments the Commission has tried over the years to support OLMC/CLOSM production. In our opinion, these policy experiments¹⁹ seem to have been implemented solely to avoid an OLMC/CLOSM minimum expenditure requirement.

¹⁶ Op. cit., BTLR, Rec. 81 "...Recommendation 81: We recommend that the *Broadcasting Act* be amended to require the federal government to enter into funding commitments of at least 5 years with CBC/Radio-Canada, based on discussions with the Corporation on its funding needs, including those required to carry out its updated mandate and taking into account inflation and projected revenues from advertising and subscriptions. We further recommend that CBC/Radio-Canada gradually eliminate advertising on all platforms over the next five years, starting with news content."

¹⁷ Advance copy of Table 2 (2017-18) from QEPC's annual OLMC production report.

¹⁸ See Table 2. Federal tax credit data goes back to 1996-7. Percentage decline is calculated from average first four years and average last four years in that table.

¹⁹ CRTC 2016-343 requires that independent production funds report on their OLMC activities, but there is no obligation to fund OLMC productions. CRTC 2017-148 gives private broadcast groups a bonus to fund OLMC and Indigenous productions in competition with each other up to 10% of CPE. However, the worst decision was CRTC 1999-97 which eliminated the CPE. This affected the English OLMC more than any other region. OLMC production dropped by \$130 million in one year and never recovered. This failed experiment was eventually reversed by CRTC 2010-167, but that was too late for the English OLMC. Our talent had moved to Toronto, Vancouver, and Los Angeles. Our production industry was decimated, and OLMC vitality seriously undermined.

34. As we explain in Footnote 19, sometimes these decisions are direct and brutal in their consequences, such as CRTC 1999-97; sometimes weak and ineffective, such as CRTC 2016-343; or rubegoldbergian and counter-productive, such as CRTC 2017-148²⁰. Regardless of motivation or good intentions, the power of the CRTC to make decisions with unintended or catastrophic consequences in support of the OLMCs, is real.

35. We ask the Commission to learn from this experience. When dealing with the OLMCs and our highly vulnerable production industry, we hope the Commission keeps in mind Hippocrates' warning.²¹

36. On the other hand, CRTC 2013-263 has been a great help to the OLMC/CLOSMs. In the six years since its last licence renewal in 2013, the CBC has played a surprisingly large role in English OLMC production²². That is because two important Conditions of Licence imposed by the CRTC have provided considerable support to English and French OLMC production. They are a 6% minimum OLMC expenditure on CBC's independent production spending, and a 10% minimum OLMC expenditure on development spending²³.

37. In its application for this licence renewal, the CBC has agreed to maintain these OLMC/CLOSM quotas, and we are happy that is the case.

38. However, when we look in closer detail, the record of the CBC's 6% minimum OLMC quota is both positive and negative as we can see from Table 23.

39. On the positive side, over the last six years the CBC has spent an average of \$11.7 million annually in OLMC licence fees. This is 9.1% of the CBC's total English independent production budget, and exceeds the 6% minimum COL. The average OLMC development expenditure was 12.75%, and this exceeds the 10% minimum COL. We congratulate the CBC on this positive record.

40. Furthermore, we can see that CBC production makes up an extremely large percentage of English OLMC production. Comparing CAVCO and CBC data in Tables 2 and 23, we estimate in Table 52 that during the five years of the previous licence period, CBC independent production averaged a 45% share of total OLMC production²⁴. These estimated percentages demonstrate

²⁰ Both QEPC and APTN filed complaints with the CRTC about the potential negative impact of CRTC 2017-143/148 on Indigenous and OLMC production.

²¹ "Primum non nocere", or "First do no harm", a warning referenced in Hippocrates' *Epidemics, Book 1*.

²² See Tables 23 and 52.

²³ CRTC 2013-263, #132-133.

²⁴ Table 23 shows that in 2008 to 2010, CBC licence fees averaged 16% of CBC's OLMC production budgets. Using that average licence fee and CAVCO OLMC production in Table 2, Table 52 shows that CBC's estimated share of independent OLMC production ranges from 18% to 72%, with an average of 45% calculated for the five years that CAVCO and CBC data overlap. Note that the CBC broadcast year and CAVCO fiscal year do not match and we do not have CBC's OLMC production budgets, so the 45% estimate of CBC's share of English OLMC production is not precise, but indicative of the importance of CBC to English OLMC production.

the overall weakness of OLMC production in Quebec in the last five years, and the importance of CBC production to OLMC vitality.

41. On the negative side, Table 23 also shows the CBC's English OLMC expenditure for three years from 2008-9 to 2010-11. Licence fees averaged \$11 million which is approximately the same as the \$11.7 million over the last six years (without calculating inflation). However, as a percentage of CBC's total independent production in 2008-2010, this was 12.3%. Thus, CBC's average English OLMC production declined from 12.3% to 9.1% after the implementation of the 6% minimum expenditure in 2013.

42. The 9.1% is averaged over six years, but in 2018-19 we are now below the 6% quota. Table 23 shows a definite trend up from \$5.9 million in 2013-14 to a peak of \$24.8 million in 2016-17, followed by a steep decline to \$7.1 million in 2018-19. \$7.1 million is only 5% of the CBC's \$140 million total English independent production.

43. We can see from data filed by the CBC that the Corporation expects a decline of \$33 million in its Canadian Programming Expenditures (CPE) over the next five years. When anticipated inflation over the next five years is factored in, the impact will be much worse. We are concerned that the CBC will not be able to maintain its average 9.1% OLMC expenditure. Considering the overall weakness of OLMC production²⁵, and our estimate²⁶ that CBC production makes up 45% of total OLMC production, we need CBC production to maintain our vitality. We don't want to go even further backward during the next CBC licence period.

44. We have also looked at the titles the CBC has filed in its annual independent production reports²⁷. The Quebec titles on this list make up the 6% OLMC expenditures. However, some of these are not OLMC films. This list includes original French-language films such as *Monsieur Lazhar*, *Incendies*, *Gabrielle*, *J'ai Tué Ma Mère*, and *Rebelles*.

45. We are extremely happy these wonderful French-language films are being broadcast on the English network, but they are not original English-language Quebec productions²⁸ and should

²⁵ Table 2 shows that two of the last three years were the weakest in the 21 years on record, both in terms of number of projects and production budgets (\$128 and \$135 million).

²⁶ See paragraph #40 and Table 52.

²⁷ See Appendix 7 from 2013-14 to 2018-19. <https://cbc.radio-canada.ca/en/impact-and-accountability/regulatory/submissions>

²⁸ Our definition of an OLMC production is: "An official language minority community production, program, or project means an original English-language program or project produced by an independent production company headquartered in the province of Quebec with 51% of its ownership and control held by Quebec residents, including a majority of its board." CMF's OLMC definition in its *Anglophone Incentive Guidelines*: "The overwhelming majority of principal photography for the Television Component occurs in the province of Quebec, with suitable exceptions for documentaries;" The CRTC definition is: " 'Official language minority community producer' means a company that meets the definition of 'independent production company' and that * if operating in the province of Quebec, produces original English-language programming, or * if operating outside of the province of Quebec, produces original French-language programming". *Broadcasting Information Bulletin CRTC 2019-304*, #20.

not have been counted towards the 6% quota. We do not believe these errors are numerous, and the 6% OLMC COL was exceeded in any event.

46. We believe this data demonstrates that our original request at the last CBC/SRC licence renewal hearing in 2012 for a 10% minimum OLMC expenditure was appropriate and reasonable. 6% was too low in the last licence period, and if continued, will definitely be too low going forward. This licence renewal is the only chance the CRTC will have to correct this problem, and support our vitality in a way we believe works.

47. We recommend that the CRTC require a 10% condition of licence for CBC's English OLMC independent production, and 12% condition of licence for CBC's English OLMC independent production development.

OLMC Diversity and CBC Feature Films

48. The English-language Arts Network (ELAN) recently did a study²⁹ of nearly 30 English-Quebec feature films funded by Telefilm or SODEC during the four years from 2014-15 to 2017-18. This study found that there were two quite different film industries producing in English in Quebec.

49. The Report identified "... a French-language production industry working in English to reach global audiences. It includes 10 big budget commercial films produced by Francophone Quebecers. These are primarily international co-productions budgeted at more than \$5 million, and aimed at global markets."³⁰ Titles included major projects such as *Brooklyn*, *The Hummingbird Project*, *Eye on Juliet*, etc. To raise foreign money, most films in this category are not set in Quebec or Canada.

50. There is a second group of at least 15 features that included "...smaller budget films, usually under \$5 million, and most are set in Quebec. These usually have an artistic, personal, or cultural vision, and include Indigenous, emerging, or 'underground' films. OLMC (official language minority community) films can be found in this group."³¹ Titles such as *Boost*, *The Saver*, *Blood Quantum*, *Restless River*, etc. Most of these films have budgets less than \$2 million.

51. The CBC must broadcast 12 Canadian feature films each year. Among the English feature films in the CBC's list³² of Independent Quebec films, we believe many are not OLMC

²⁹ English-language Arts Network, *ELAN Feature Film Report*, December, 2019

³⁰ Ibid, p.5

³¹ Ibid, p.5

³² CBC-Radio-Canada, *Appendix 7, Investment in Independent Production*, Expenditures on Programming and Development on Independent Productions in Quebec (Condition of licence 23), CBC English Television, Annual Reports from 2013-14 to 2018-19

productions: *Beowulf and Grendel*, *Incendies*, *Monsieur Lazhar*, *Rebelles*, *Gabrielle*, *J'ai tué ma mère...*

52. The personal low-budget OLMC feature film industry needs all the help it can get. The CBC does seem to have a program designed to support low budget, personal, and “diverse” films. In response to a CRTC question, CBC said in its application documents:

“CBC Breaking Barriers Film Fund, announced in 2016, has been rebranded as CBC FILMS and encompasses the national public broadcaster’s continued investment in Canadian cinema and spans film initiatives including funding, pre-buys and acquisitions for CBC broadcast and streaming platforms.

CBC FILMS funding supports the production of feature films led by female, LGBTQ+, Indigenous and diverse filmmakers that reflect, represent, and reframe a range of perspectives through character-driven stories that represent the full range of the Canadian experience. CBC FILMS showcases homegrown film to wide audiences across Canada on CBC’s broadcast and streaming platforms.

This Fund is intended to increase screen diversity and recognize the quality of diverse perspectives through: on screen representation, project leadership (i.e., the key creative team) and enhance industry access and opportunities through conferences, outreach and sponsorship.”³³ (emphasis added)

53. However, many of the low budget OLMC films identified above would not be eligible for the CBC FILMS feature film program because the CBC doesn’t consider OLMCs to be “diverse” unless they are also female, Indigenous, disabled, or LGBTQ+. CBC told us:

“The [CBC] definition of diversity is the same as the CRTC's - women, visible minorities, Indigenous and persons with disabilities. OLMC is a distinct category that does not fall under diversity. CBC Film includes LGBTQ+ as described in the application.”³⁴

54. On the other hand, the CRTC does seem to consider OLMCs a “diverse” category. In the Notice of Consultation for this licence renewal, the CRTC said:

“...The Commission is of the view that the Corporation should:...
• support diversity in key production roles (for example, women, Indigenous peoples and OLMCs);...”³⁵

55. We are confused. We hope the CRTC will be able to clarify whether official language minorities should be included within the “diverse” classification, or not. We remind the CRTC and the CBC that OLMC production, including low-budget feature films, is in decline. In

³³ CBC, DM#3720736, Information Supplement, Sept 30, 2019, p.124-5

³⁴ Email from Bev Kirshenblatt, ED, CBC Corporate and Regulatory Affairs, to Kirwan Cox, ED, QEPC, Feb. 13, 2020.

³⁵ CRTC, Notice of Consultation 2019-379, #20

addition, we suffer from two-tier Quebec Provincial Government funding policies³⁶ in which OLMC production does not receive equal treatment.

56. We recommend that the CRTC require a minimum CBC investment in OLMC feature films of at least 10% of the total feature film investment; broadcast at least two medium or low budget OLMC feature films annually³⁷; and correctly identify OLMC films in Appendix 7 Annual Reports.

CBC Consultation With the English OLMC

57. In 2000, CBC/SRC joined the Department of Canadian Heritage and other Federal cultural institutions to sign a “Collaboration Agreement”³⁸ with the French official language minority. This Agreement has been regularly renewed since, and remains active. The Federal signatories are CBC/SRC, PCH, Telefilm, Canada Council, National Film Board, and the National Arts Center. The Fédération Culturelle Canadienne-française signs on behalf of the French CLOSM.

58. The purpose of this Collaboration Agreement is to strengthen the cooperation and coordination of the signatories, support positive measures for the development of CLOSM arts and culture, encourage the development of the Francophone and Acadian minorities, and promote their contribution to Canada’s cultural wealth. Practically speaking, there is a committee of signatories and sector working groups mandated to exchange ideas and support the cultural needs of the French CLOSM.

59. Among the subjects covered by this Agreement are increased access to arts and culture; increased visibility and outreach of artists, cultural organizations, and cultural industries; market and audience development of CLOSM culture; support for cultural creation; support for the financial and human capacity of Francophone cultural organizations; support for professional development of artists and cultural workers; research on Francophone arts and culture; development of infrastructure; and use of digital technologies to support production and distribution of Francophone culture.

³⁶ These Quebec policies include the lower provincial tax credit rate for non-French production, the 20% ceiling on SODEC funding of non-French production, and the regional bonus which is based on the location of the producer and not the location of the production (unlike the regional bonus in every other province).

³⁷ Op. cit., ELAN Report. We are defining low and medium budget as up to \$12 million. Our objective is to encourage OLMC films identifiably set in Quebec which are low or medium budget.

³⁸ *Collaboration Agreement for the Development of Arts and Culture in the Francophone Minority Communities of Canada 2013-18 Between the Department of Canadian Heritage, The National Arts Centre, The Canada Council for the Arts, The Canadian Broadcasting Corporation/Radio-Canada, The National Film Board of Canada, and Telefilm Canada of the one part, and The Fédération Culturelle Canadienne-française of the second part.*

60. On the English side, there is one Collaboration Agreement³⁹ between ELAN and QEPC signing on behalf of the English OLMC, and the National Film Board. This Agreement was negotiated and signed in 2015 and renewed since then. It remains active.

61. The purpose of this Agreement is to improve communication between the English OLMC and the NFB, and encourage the NFB's production and distribution of OLMC productions. To do this, the NFB will support the vitality and development of OLMC production; use its best efforts to maintain current levels of OLMC production; support OLMC research; develop digital platforms and school programs to access OLMC production; and increase visibility of OLMC artists, their works, and stories.

62. We wish to thank the NFB for taking this initiative with the English OLMC, and we regret that other Federal cultural agencies and Heritage have not yet followed the NFB's lead.

63. In addition to the Collaboration Agreement which encourages consultation between CBC/SRC and the French CLOSM, there are Conditions of Licence from the last CBC/SRC licence renewal which provide minimal consultation requirements. They are:

“354. The Commission considers that it is essential for the CBC to consult representatives of OLMCs so that the programming of all of its services responds to the particular needs and circumstances of OLMCs, as set out in section 3(1)(m)(iv) of the Act. While the CBC made commitments in this regard for its French-language television, the Commission considers that consultations should be required by condition of licence for all CBC services. Accordingly, the Commission has set out conditions of licence in Appendix 1 that require both the French- and English-language services of the CBC to:

- hold formal consultations at least once every two years with OLMCs in each of the regions of Atlantic Canada, Ontario, Western Canada, the North and Quebec to discuss issues that affect their development and vitality. For the French-language services, the relevant regions are Atlantic Canada, Ontario, Western Canada and the North. For the English-language services the relevant region is Quebec. Consultations shall include independent producers from OLMCs.
- report annually on consultations that took place that year and demonstrate how feedback from the consultations was taken into consideration in the CBC's decision making process.

355. The Commission reminds the CBC that OLMCs are dispersed all over the country and that it will expect the CBC to include communities located in the North to be considered when the CBC holds its consultations in each of the regions. An example of issues that the Commission will expect the CBC to discuss and ultimately resolve through its consultation process with OLMCs is that raised by ACFA concerning the inability of visitors to Jasper National Park in Alberta to

³⁹ *Collaboration Agreement for the Development of Arts and Culture and Heritage in Quebec's Anglophone Communities 2019-2020 to 2023-2024 Between National Film Board of Canada and The English Language Arts Network and The Quebec English-language Production Council.*

receive the signal of Première Chaîne over the air. The Commission further encourages the CBC to consult with OLMCs on important matters that might affect their development and vitality before decisions are taken.⁴⁰(emphasis added)

64. The CRTC COL says “For the English-language services...Consultations shall include independent producers from OLMCs.” While the CBC has been receptive to meeting with the QEPC, those meetings have been irregular. OLMC producers need organized programming meetings and pitch sessions with appropriate staff on a regular basis, at least annually.

65. We recommend that OLMC consultations include:

- * regular meetings to review OLMC production policy with senior CBC executives and QEPC;
- * meetings with appropriate OLMC associations and appropriate CBC staff to review annual information reports, and make changes in their design if needed;
- * annual meetings with programming executives that help OLMC producers understand CBC’s programming budget and objectives, and
- * annual pitch sessions with the appropriate CBC staff that will provide OLMC producers with information on CBC programming plans and opportunities.

News Network and RDI

66. The CBC’s News Network is an important news and information service, especially appreciated by OLMCs outside the Montreal area. To help pay for this service, News Network has mandatory carriage in Quebec, and RDI has mandatory carriage outside Quebec. The cost has been 15 cents in Quebec, and 10 cents outside Quebec. In its application, CBC/SRC quoted the last licence renewal decision (CRTC 2013-263) that:

“The Commission is of the view that mandatory distribution of RDI and CBC News Network on the digital basic service will continue to assist the services in fulfilling their mandates, notably with respect to offering high-quality information and news services that aim to serve Canada’s French and English OLMCs. The purpose of the mandatory orders is to serve OLMCs. The CBC did not request, nor would the Commission have granted, mandatory distribution in the principal language markets of RDI and CBC News Network. The Commission considers that the mandatory distribution of those services in OLMCs will also enable them to continue fostering the vitality of the OLMCs in Canada.”⁴¹ (emphasis added)

67. CBC points out that there has not been an increase in carriage fees for many years, and even with this request for an increase to 20 cents in Quebec and 13 cents outside Quebec, there will still not be enough to compensate for inflation. The official language minorities in

⁴⁰ CRTC 2013-263, #354-355

⁴¹ Op. Cit., CBC, DM#3720736, p.88, quote from CRTC 2013-263, #172-174

Quebec wish to support mandatory carriage for both News Network and RDI, as well as the higher funding to pay for these services, under Section 9(1)(h) of the *Broadcasting Act*.

68. We recommend the CRTC fulfill the CBC's request for increased funding and mandatory carriage of News Network and RDI.

CBC OLMC Research and Reporting Requirements

69. Public information is at the heart of transparent and accountable policy decisions. We believe the CBC/SRC needs to provide the annual regional data that it previously provided to the CRTC for 2008-2010, including regional aggregate production budgets, for the term of the next licence.

70. OLMC-CLOSM productions need to be clearly defined so they can be identified for statistical and financing purposes. Therefore, in consultation with OLMC-CLOSM associations, the Appendix 7 Independent production reports⁴² should break down production by language and region so it is clear which productions are OLMC, or CLOSM, and which are not.

71. In addition, besides the CBC/SRC, we believe all broadcasters should provide this data, including private broadcast groups and foreign over-the-tops.

72. The Collaboration Agreements between CBC/SRC and the French CLOSM, and the NFB and the English OLMC, include OLMC/CLOSM research objectives⁴³. CBC/SRC should provide OLMC/CLOSM data, and support OLMC/CLOSM research objectives.

73. We recommend that the CBC provide the annual regional data that it provided to the CRTC for 2008-2010⁴⁴, including regional aggregate production budgets, for the term of the next licence. The CBC/SRC should consult with OLMC associations to better define OLMC production statistics, and support OLMC production research.

CBC Terms of Trade for Independent Production

74. The Canadian Media Producers Association (CMPA) has requested that the CRTC maintain the Condition of Licence from CRTC 2013-263⁴⁵ for a CBC licence renewal decision stating that the CBC enter into a Terms of Trade Agreement with CMPA. We note that the BTLR Panel has also recommended that the CRTC re-establish Terms of Trade⁴⁶.

⁴² See Footnote 26.

⁴³ See paragraphs 59 and 61 above.

⁴⁴ See Table 23.

⁴⁵ CRTC 2013-263, #334-5

⁴⁶ Op. cit, BTLR, Rec. 61: "We recommend that the Broadcasting Act be amended to ensure that the CRTC may by regulation, condition of licence, or condition of registration:..."

75. QEPC supports the negotiation of a Terms of Trade Agreement between CMPA and the CBC and other broadcasters.

76. Therefore, we recommend that the CRTC maintain its Condition of Licence that the CBC enter into a good faith negotiation to achieve a timely Terms of Trade Agreement with CMPA.

Radio

77. CBC radio is an important service in the Greater Montreal Region and is absolutely indispensable in the more remote regions of Quebec. Quebec's English-speaking communities do not lack content in the English language. However, we have limited access to quality information about other regions of Canada, and about the English-speaking communities within Quebec. CBC is the most dependable broadcast service.

78. CBC radio continues to be an excellent source of news from all regions of Canada, from regular news bulletins to speciality programs such as 'As It Happens', 'Cross Country Check-up', 'The House' and 'Ideas'. CBC plays an essential role in contributing to our consciousness and identity, reflecting Canada to regional audiences, actively contributing to the flow and exchange of cultural expression, and contributing to shared national consciousness and identity. Bilingual Quebecers appreciate the same qualities with SRC, although content tends to have a Montreal-centric emphasis.

79. CBC radio does a good job of reflecting Canada to Quebec's audience. CBC radio also makes significant efforts to communicate local stories and experiences, although this is less true the further communities are located from Montreal. Regional morning, noon and afternoon programs could improve their arts coverage. CBC is not as successful at reflecting the Quebec region to national audiences or producing network programming reflective of and contributed from this region.

80. CBC radio contributes to shared national consciousness and identity and provides solid connections to the rest of English-speaking Canada particularly via national programs such as 'Cross Country Check-up' and 'The House'. Regional CBC radio has placed increasing emphasis on creating a bridge between the English-speaking minority and the Francophone majority of Quebec by providing news and interviews concerning the majority language community. This is an extremely important function for the national broadcaster. The inverse is far less true.

81. One on-going source of frustration for English-speaking Quebec audiences is that West Quebec (Gatineau) does not receive Quebec regional programming (it receives Ontario programming) and is isolated from the rest of Quebec.

• regulate economic relationships between media content undertakings and content producers, including terms of trade;”

Recommendations

82. We respectfully request that the CRTC undertake the following recommendations.

- 13. First and foremost, we support the national public broadcaster, and we support the renewal of its licences.
- 20. We believe the Federal Government continues to underfund the CBC, and needs to significantly increase that funding.
- 28. Therefore, we request that the CRTC recommend to the Government that the CBC receive adequate and stable funding to fulfill its mandates, including sufficient funding to become advertising-free. To that end, we support Recommendation 81 of the BTLR Report
- 32. We request that the CRTC meet its obligation to support the vitality of the English OLMC by strengthening the obligation of the CBC to commission independent OLMC production.
- 47. We recommend that the CRTC require a 10% condition of licence for CBC's English OLMC independent production, and 12% condition of licence for CBC's English OLMC independent production development.
- 56. We recommend that the CRTC require a minimum CBC investment in OLMC feature films of at least 10% of the total feature film investment; broadcast at least two medium or low budget OLMC feature films annually; and correctly identify OLMC feature films in CBC's Appendix 7 Annual Reports.
- 65. We recommend that these OLMC consultations include: * regular meetings to review OLMC production policy with senior CBC executives and QEPC; * meetings with appropriate OLMC associations and appropriate CBC staff to review annual information reports, and make changes in their design if needed; * annual meetings with programming executives that help OLMC producers understand CBC's programming budget and objectives, and * annual pitch sessions with the appropriate CBC staff that will provide OLMC producers with information on CBC programming plans and opportunities.
- 68. We recommend the CRTC fulfill the CBC's request for increased funding and mandatory carriage of News Network and RDI.

- 73. We recommend that the CBC provide the annual regional data that it provided to the CRTC for 2008-2010, including regional aggregate production budgets, for the term of the next licence. The CBC/SRC should consult with OLMC associations to better define OLMC production statistics, and support OLMC production research.
- 76. Therefore, we recommend that the CRTC maintain its Condition of Licence that the CBC enter into a good faith negotiation to achieve a timely Terms of Trade Agreement with CMPA.

Thank you.

Yours truly,



Kirwan Cox
Executive Director
Quebec English-language Production Council
1450 City Councillors #530
Montreal, Quebec H3A 2E6
qepc@bell.net
450-451-4664



Sylvia Martin-Laforge
Director General
Quebec Community Groups Network
1819 René-Lévesque W., Suite 400
Montreal, Quebec H3H 2P2

A handwritten signature in black ink, appearing to read "Guy Rodgers", with a long horizontal flourish extending to the right.

Guy Rodgers
Executive Director
English-language Arts Network
#708- 460 Ste-Catherine W.
Montreal, Quebec
H3B 1A7

cc- Bev Kirshenblatt, Executive Director, Corporate and Regulatory Affairs, CBC,
bev.kirshenblatt@cbc.ca

Attach: Tables 2, 23, and 52

APPENDIX

Q5. Does the programming offered on all of the Corporation's platforms and services reflect the diversity of Canadians? Are the following groups adequately and appropriately reflected? ...d) OLMCs...

Answer- We do not believe English OLMCs are adequately and appropriately reflected, especially outside the Montreal area.

Q6. Is programming that is reflective of the various groups mentioned above easily discoverable, available and identifiable? If not, what could the Corporation do to improve the discoverability, availability and identification of content that reflects these groups?

Answer- OLMC independent programming is underfunded and much of it is therefore inadequately competitive. Financing issues encourage OLMC independent programming to be produced outside Quebec and located or set outside Quebec.

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

Answer- Increase funding.

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?

Answer- Ideally, Cancon should be identifiable by its story and location. Unfortunately, Canadian content must raise funding from outside Canada, and that often comes with requirements concerning story and location. A recent analysis of OLMC feature films (see above) has found that lower budget films tend to be located in Quebec while bigger budget films, including international co-productions, tend not to be identifiably set in Quebec, or Canada.

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?

In the current media environment, expenditure requirements make more sense than exhibition requirements, though there should be some minimum level of exhibition.

TABLE 2
English-language Domestic Production
by Region
1996-97 to 2017-18
(\$ millions)

Year	Quebec			Ontario			B.C.			Prairies			Atlantic			Total English		
	#	Can. Cost	%	#	Can. Cost	%	#	Can. Cost	%	#	Can. Cost	%	#	Can. Cost	%	#	Can. Cost	%
1996-97	71	\$201	24	212	445	52	48	128	15	37	33	4	26	43	5	394	850	100
1997-98	74	240	27	181	472	53	56	96	11	43	50	6	25	37	4	379	895	100
1998-99	89	304	23	228	554	42	81	318	24	52	64	5	39	87	7	489	1,327	100
1999-00	91	306	22	241	609	45	90	305	22	63	92	7	38	55	4	523	1,367	100
2000-01	69	184	15	283	541	45	99	299	25	79	90	8	39	80	7	569	1,194	100
2001-02	75	211	17	326	694	56	92	206	17	74	79	6	41	58	5	608	1,247	100
2002-03	85	189	14	333	679	52	100	223	17	98	152	12	49	67	5	665	1,309	100
2003-04	92	169	14	337	726	60	98	188	16	85	72	6	43	58	5	655	1,213	100
2004-05	101	163	13	333	657	53	117	230	19	116	115	9	41	69	6	708	1,236	100
2005-06	102	191	14	356	752	54	119	278	20	109	89	6	42	73	5	728	1,382	100
2006-07	110	214	14	365	715	47	147	374	24	107	153	10	36	72	5	765	1,528	100
2007-08	95	182	12	377	791	52	129	356	23	113	146	10	39	61	4	753	1,536	100
2008-09	86	195	12	380	853	54	137	303	19	96	175	11	48	67	4	747	1,593	100
2009-10	71	242	16	334	894	59	112	192	13	101	113	7	39	76	5	657	1,516	100
2010-11	70	174	11	343	993	63	114	240	15	84	109	7	29	66	4	640	1,582	100
2011-12	66	165	8	356	1,288	65	111	324	16	111	124	6	51	88	4	695	1,988	100
2012-13	71	154	9	327	1,051	61	137	364	21	83	84	5	31	67	4	649	1,720	100
2013-14	70	187	10	333	1,130	60	132	375	20	91	107	6	41	96	5	667	1,895	100
2014-15	63	211	11	345	1,157	60	142	408	21	81	100	5	32	56	3	663	1,933	100
2015-16	62	128	7	346	1,191	62	146	403	21	94	107	6	30	80	4	678	1,909	100
2016-17	80	214	10	314	1,229	58	144	484	23	80	120	6	35	89	4	653	2,136	100
2017-18	61	135	8	291	1,062	60	120	358	20	82	127	7	39	104	6	593	1,786	100

Source: Estimated from CAVCO CPTC data, Spring 2019

Notes: Numbers from more recent years are subject to change.

CAVCO numbers reflect applications it has received for CPTC accreditation with principal photography start dates in the listed fiscal year.

are projects, and totals may not add due to rounding.

TABLE 23
CBC/SRC
English-language Independent Production Expenditures
OLMC by Region
2008-09 to 2010-11
and 2013-14 to 2018-19
(\$ millions)

Year	Quebec					Ontario				B.C.				Prairies				Atlantic				Canada			
	#	\$	Lic. Fee %	Dev.%		#	\$	Lic. Fee %		#	\$	Lic. Fee %		#	\$	Lic. Fee %		#	\$	Lic. Fee %		#	\$	Lic. Fee %	
2008-09	35	\$63	\$11	12		52	\$162	\$42	46	14	\$23	\$7	8	15	\$71	\$21	23	13	\$48	\$10	11	129	####	\$90	100
2009-10	25	65	9	12		39	177	42	57	10	9	3	4	9	33	10	13	9	41	10	14	92	324	74	100
2010-11	14	61	10	13		42	139	36	48	19	16	4	6	11	46	12	16	10	57	13	17	96	320	75	100
2011-12		na	na				na	na			na	na			na	na			na	na		na	na	na	na
2012-13		na	na				na	na			na	na			na	na			na	na		na	na	na	na
2013-14	21	na	5.9	7	20		na	na			na	na			na	na			na	na		151	na	87	100
2014-15	25	na	6.1	5	9		na	na			na	na			na	na			na	na		212	na	113	100
2015-16	27	na	12.6	10	16		na	na			na	na			na	na			na	na		192	na	126	100
2016-17	38	na	24.8	15	11		na	na			na	na			na	na			na	na		227	na	161	100
2017-18	56	na	13.8	9	11		na	na			na	na			na	na			na	na		288	na	147	100
2018-19	44	na	7.1	5	10		na	na			na	na			na	na			na	na		256	na	140	100

Source: CBC Independent Production Activity Reports

Notes: na- not available

#- number of projects

\$- total production budgets

Dev. %- CBC independent development fees. CRTC 2013-263 licence requires CBC spend at least 10% of its fees on OLMC development.

No other regional requirement.

CAGR is the compound annual growth, or loss, rate calculated for the last 5 years of this table.

Lic. Fee %- CBC independent production fees. CRTC 2013-263 requires that CBC spend at least 6% of its fees on OLMC production. No other regional requireme

TABLE 52
CBC/SRC
Estimate of CBC Percentage of
English OLMC Independent Production
2013-14 to 2017-18
(\$ millions)

Year	CBC Licence Fee	CBC Budget	CBC % of OLMC	Total OLMC	%
2013-14	\$5.9	\$37	20%	\$187	100
2014-15	\$6.1	\$38	18%	\$211	100
2015-16	\$12.6	\$79	62%	\$128	100
2016-17	\$24.8	\$155	72%	\$214	100
2017-18	\$13.8	\$86	64%	\$135	100
Average	\$12.6	\$79	45%	\$175	100

Sources: CBC, CAVCO; Tables 2 and 23

Notes: Independent English Quebec production with CBC funding.

CBC % of OLMC is the percentage of total OLMC production funded by CBC;

Total OLMC- see Table 2; CBC licence fee- see Table 23;

CBC Budget is production budget estimated from 16% licence fee

CAVCO tax credit data subject to change.

Caveat: CBC and CAVCO fiscal years do not match, and the 16% average lic. fee is an estimate during this period. Therefore, the 45% five year average will be closer to the actual percentage than the annual percentages.

*** End of Document***