

Oral presentation: CBC Licence renewal hearing January 2021

John Roman

****NOTE TO TRANSLATORS, I WILL NOT BE READING THE BROADCASTING ACT LEGISLATION QUOTED IN MY WRITTEN SPEECH, IT IS INCLUDED FOR THE CONVENIENCE OF THE COMMISSIONERS ONLY****

1 Chairman, commissioners, thank you for allowing me to appear before you today.

2 The CBC has put you in an impossible position. On one hand they say their digital activities have no bearing on their licence renewals for TV and Radio, yet they present a strategy that's primary focus is digital as a means to lower their conventional broadcasting burden. The CBC wants to be a public broadcaster when it is advantageous, but behave like a private business the majority of the time. I will treat the CBC as it wants to be treated - a private broadcaster with a public mandate - thereby deserving no special treatment above its mandate and its parliamentary appropriation for that mandate.

Can the CRTC exempt itself out of a job?

3 Let's begin with the question of the digital exemption order itself. Can the CRTC exempt the CBC from its own mandate? If the CBC's digital activities are allowed under the act because of s3(1)m(vii):

“the programming provided by the Corporation should be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose,”,

4 ...then it stands to reason that their digital services are defacto mandated services. As it stands, based on the information provided by CBC for this hearing the CBC is growing the amount of money from its budget to digital to above 30% of its total budget. Relying on s9(4) of the act:

“The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where the

Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).”,

5 ... to exempt the CBC in this way creates a paradox which enables the CBC to devote up to 100% of its parliamentary appropriation to online services - thereby leaving the licences irrelevant - and the CRTC cuckolded. Already at this hearing we have seen this approach taken by the CBC. Logically the digital services must not be included by the exemption order and this can be further supported by s3(1)N:

“where any conflict arises between the objectives of the Corporation set out in paragraphs (l) and (m) and the interests of any other broadcasting undertaking of the Canadian broadcasting system, it shall be resolved in the public interest, and where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (l) and (m);”

6 To paraphrase: In cases of conflict between the objectives of the CBC and interests of other broadcasting undertakings, **“it shall be resolved”** in the public interest with a priority to sections 3(1)L+M. Unfortunately Commissioners, the CRTC does not have the power under S9(4), nor the exemption order to exempt itself from settling matters in Part 1 of the act. You are the body that “shall resolve” such issues.

7 We have a case where the exemption order favours the interests of new media broadcasters, and the CBC’s digital services at the expense of 3(1)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;”

8 - in that the CBC has been diverting funds from the legacy - legally mandated services to its digital services. This can be seen as a breach of 3(1)N and must be addressed by the regulator.

CBC - Licensed to Sell

9 The CBC cannot set the roof on fire to heat the house! In hearing 2016-353 -paragraph 5 - the Commission set out a four part public interest commercial test to see whether CBC broadcasting licences could remain commercial or be commercial free. Though it was a radio licence hearing, the precedent and principle are exactly parallel for the TV licences CBC is seeking to renew at this hearing. As a first step to deciding if the licence should be amended - it is clear that this new test must be applied.

10 When applied the CBC's licences under review will fail for the exact same reason as did the commercial element of the Radio 2. CBC will have to acknowledge that some of the monies for Radio AND TV have been going to their digital service (discussed more below) as a justification. Unfortunately, CBC's own arguments that digital is not relevant to this hearing then preclude this defensive argument. The CBC's TV services, (based on the CRTC's figures) show that investment since 2009 has on the whole declined by about 20% - and that number applies to news as well! Based on the 2016 ruling (as per paragraph 21), that CBC TV licences must become non-commercial if we are to have any consistency in CRTC rulings. This test has been on the books and applied to the CBC already, they can hardly feign ignorance, or lack of realization that their actions have consequences.

11 Some interveners will no doubt argue that this would further reduce income for the CBC, however that same argument applied to the 2016 decision, and yet the commission removed advertising from the licence anyway. Your authority does not extend to the CBC's financial viability - that is ultra vires in this licensing hearing. What is required is consistency. And consistency of the test regarding public broadcasting licences must be applied.

So what does this mean?

12 Commissioners given the two points I've just made, you are left with two options: the first is accept that the digital exemption order DOES apply to the CBC. This will mean that it can spend as much as it wants on its digital services. You can be silent on the whole digital part of their business - Tandem included - BUT if that's the case - because of the pub-

lic interest commercial test (PICT) set out in 2016-353, the CBC's licences for TV and Radio must all become non-commercial for the next licensing period - meaning the CBC will ONLY be able to advertise online.

13 If this happens, the CBC will necessarily lose roughly 14 minutes per hour of advertising time or about 5.5 hours a day or 38.5 hours a week, and 1848 hours per year on their main TV service alone. That's a good amount of new Canadian production you can fill those hours with - and a LOT of new news!

14 Alternatively, you can choose option two. The digital exemption order DOES NOT apply to CBC. In this case, you will be responsible for regulating the CBC's online activities - perhaps as a new license or as addendums to both radio and TV licenses. Further, it will also mean you will be required to decide whether the CBC's online activities, including its recent advertising proposals, and any collection of user information is acceptable in terms of the public interest.

15 As I said in the beginning of this submission, the CBC has put you in an impossible position. Here are my recommendations for the Conditions of Licence:

1: For Radio 1, increase the amount of new content (to reduce repeated content) by 7 hours per week (or 1 hour per day). This could be news or entertainment or a combination of both.

2: For the main TV service and Newsnet, both services should lose the commercial elements to their licence. This will keep the digital exemption order intact. Further it will help both services meet the objectives of 3(1)L+M. The Commission should also mandate an appropriate amount of new Canadian entertainment content per week - perhaps 21 hours. And 14 hours of new news content- being broken up to 7 hours of local and regional news a week, and 7 hours of national and international.

3: Impose as a condition of licence that any programming the CBC makes must be aired on Television or Radio before other distribution media. It makes no sense to have digital exclusives of content when there is insufficient content on traditional services already.

4: It would be incongruous given the CBC's proposed three year plan to give them any licences for more than two years. This would allow a hearing to take place after those two years over the course of a year with the normal one year extension provided.

16 I would like to close saying that I sincerely hope the government will give the CBC a new mandate to include its online undertaking desires. Further I also hope the government will increase the CBC's standing budget considerably so it doesn't have to worry about setting the roof on fire to heat the house. I appreciate that there's a lot of the Ottawa bubble around this hearing, but the CBC isn't an Ottawa issue, or a Toronto and Montreal service. It's a national public service... or at least it's supposed to be.

Thank you for your time.

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