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FILED VIA GCKEY

Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
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Subject: Reply of CMAC to the 29 July 2020 reply of CBC/Radio-Canada to the 24 July 2020 Procedural Request of Community Media Advocacy Centre (CMAC) Re: Broadcasting Notice of Consultation CRTC 2019-379, 2019-379-1, 2019-379-2 and 2019-379-3; applications by the Canadian Broadcasting Corporation/Société Radio-Canada (the Corporation) to renew the broadcasting licences for its various English- and French-language audio and audio-visual programming services.

1. CMAC is in receipt of the 29 July, 2020 reply of CBC/RCI (the Corporation) to our procedural request dated 24 July, 2020. We find the Corporation's approach to be a narrow and flawed interpretation of its obligations as a National Broadcaster that must be reflective of Canadian multiculturalism. Respectfully, the Corporation adopts a defensive trench warfare strategy by hiding behind a narrow interpretation of the law to avoid providing information that will not place an undue burden on CBC/RCI. Assuming (without admitting) that this information is not strictly required under the Act, one would assume that as the National Broadcaster, the Corporation would seize the opportunity of a major hearing within the regulatory space to disclose particulars of its employment diversity record. Be that as it may, CMAC reiterates that the requested information is in the public interest because this employment equity and cultural diversity information is needed to assess if the CBC/SRC is delivering on its obligations in sections 3(1)(d)(iii) and 3(1)(m)(viii) of the Broadcasting Act to provide "access,

reflection and employment” to Canadians of diverse backgrounds and “to reflect the multicultural and multiracial nature of Canada.”

2. Given that CMAC is the only public interest and advocacy group in Canada that focuses on the rights of protected groups¹ (what the CRTC calls diversity groups) to access, reflection, and employment in the broadcasting sector, and given that CMAC is also exclusively constituted by members from these protected groups; the Corporation’s response to our requests betrays a reticence in dealing with requests of inclusion from the communities we represent.
3. In this reply, CMAC first details our legal interpretation of previous CRTC decisions that support our procedural request dated 24 July 2020, which focuses on mandating CBC/SRC to deposit on the public record of BNC CRTC 2019-379 more information on “employment” for protected groups within the Corporation. Then, CMAC motivates a further procedural request to also mandate CBC/SRC to deposit information on access, reflection, on-air presence, and the fair portrayal of protected groups or what the CRTC calls diversity groups, namely women, Indigenous and racialized people, and people with disAbilities.

Powers of the CRTC

4. In its reply, the Corporation first brings up CMAC’s request motivating the appointment of more Commissioners from protected groups to the CRTC, noting the request is misdirected or outside the mandate of the broadcaster (29 July 2020 Reply of CBC/Radio-Canada to the 24 July 2020 Procedural Request of CMAC). This purposefully ignores that this aspect of the request was directed to the Minister of Heritage. CMAC believes the object of the above request is clear and could not be conflated with a request to the Commission or the Corporation.
5. As for the powers of the Commission under the Act, it is also clear that the CRTC is a tribunal with powers superseding those of a Federal Court, and that this is evident from the fact that appeal against CRTC decisions lies to the Federal Court of Appeal or by petition to the Governor-In-Council. It is also clear from the historical record of the Commission, that the CRTC has the power to interpret the Act and that policies are nothing more than guidance on how to implement the

¹ CMAC uses the term “protected groups” because multiple international commitments, made by the UN and UNESCO as well as ratified by Canada, obligate the CRTC and the broadcasters the Commission regulates to uphold the communication rights of protected groups, including Indigenous and racialized people, and people with disAbilities.

Act and its objectives. In fact, during the oral hearing for 2017-1, the then Chairperson of the Commission stated that CRTC policies are “not binding,” adding, “But even if it was, the Commission can make exceptions to its policies. And, in fact, it would be a jurisdictional error to be bound by its policies” (Line 2261, public hearing for CRTC 2017-1 transcript from March 27, 2017). Given these facts, CMAC argues that the Commission has the power under the Act to compel the Corporation to release the information we requested.

Employment

6. During the last CBC/SRC licence renewal hearing, CRTC Decision 2013-263,² the Commission noted:

a. *“28. In its applications, the CBC noted that it is subject to the Employment Equity Act and files an annual report to Human Resources and Skills Development Canada on its adherence to this act, notably on the on-air presence of women, Aboriginal peoples, persons with disabilities and visible minorities. The Commission has not further explored the CBC’s plans to reflect the multicultural and multiracial nature of Canada as part of this proceeding. The Commission plans to evaluate its overall policy on cultural diversity at a later date to ensure adequate public consultation. The performance of all licensees, including the CBC, will be considered at that time.”*

and

b. *“357. For the new licence term, the CBC proposed to provide reports on PNI and OLMCs and to provide the Commission with all other reports that it provides to other public agencies to which it is accountable.”*

7. Unfortunately, the Commission has yet to evaluate its “overall policy on cultural diversity” and there is no indication in recent departmental plans as to when the CRTC would do so. Similarly, while the Corporation offered in 2013 to provide the Commission with “all other reports it provides to other public agencies to which it is accountable,” this has not happened under BNC CRTC 2019-379.

² Retrieved from: <https://crtc.gc.ca/eng/archive/2013/2013-263.htm>

8. Further, while the CRTC's Employment Equity Policy (CRTC 1997-34) does not apply to any organizations to which the Employment Equity Act is applicable, including the CBC, it is also true that "reflection," "fair portrayal" and the "on-air presence" of protected groups is dependent on diversity groups being employed at licensed broadcasters. According to academics and researchers, programming within the Canadian broadcasting system perpetuates "whiteness" as the "normative yardstick" (Cho and Luka, 2011, p. 8).³ This is in spite of scholars and activists historically calling for the CRTC to create more "colour-balanced" media more than two decades ago (Roth, 1998).⁴ Research continuously provides evidence of the direct link between who is represented in programming and who owns media organizations or who is working within media organization in employment and governance, noting that lack of diversity on air corresponds to lack of diversity within broadcasting organizations (Women in View, 2019; Conway, 2017; Byerly and Ross, 2006).⁵ While the CRTC has created policies for implementing section 3(1)(d)(iii) of the 1991 Broadcasting Act, monitoring the success of these policies is left to vague reporting mechanisms that provide scattered details on broadcaster compliance with diversity in programming and equity in employment requirements. CMAC believes this body of scholarship and research supports our call for employment equity and cultural diversity information to be published as part of BNC 2019-379.
9. Furthermore, during this proceeding, the Corporation opted to deposit vague and aggregated data on its employment equity in an effort to claim that it is a fair and reflective employer. This aggregation of data is similar in approach to the Corporation's Employment Equity Reports which are accessible online, but do not provide the particulars required for a comprehensive assessment of the Corporation's diversity commitments. CMAC's procedural request stems from the claims made by the Corporation during BNC 2019-379. The CBC/SRC opened the door for employment equity to be discussed and assessed during these

³ Cho, H. and Luka, M.E. (2011). Representations of Diversity in Canadian Television Entertainment Programming [report]. Ottawa: Media Action Média. Retrieved from:

<https://exhibits.library.utoronto.ca/items/show/2662>

⁴ Roth, L. (1998). The Delicate Acts of "Colour Balancing": Multiculturalism and Canadian Television Broadcasting Policies and Practices. *Canadian Journal of Communication*, 23(4). Retrieved from:

<https://www.cjc-online.ca/index.php/journal/article/view/1061/967>

⁵ Women in View (2019). On Screen Report. Retrieved from:

<http://womeninview.ca/wp-content/uploads/WIVOS19-Full-Report.pdf> ;

Conway, K. (2017). The Meanings of "Multicultural" in Canada's 1991 Broadcasting Act. *Canadian Journal of Communication*, 42(5). Retrieved from: <https://doi.org/10.22230/cjc.2017v4n5a3167> ;

Byerly, C., & Ross, K. (2006). Women and production: gender and the political economy of media industries. *Women and Media: A Critical Introduction*, 75-96.

proceedings by including it as a pillar of the Corporation's strategy to illustrate compliance. Therefore, CMAC and the public have the basis to question the evidence provided, and to ask for more information to be added to the record in order to ascertain the Corporation's accuracy about the general numbers provided concerning protected groups.

10. Today, this information is more crucial than ever, given the public outcry about systemic racism against Black and Indigenous people (see Black Lives Matter and Missing and Murdered Indigenous Women and Girls), as well as the actions of media producers from these communities who spoke out about systemic racism at the Corporation and the oppressive work environment they operate in (see #blackinthenewsroom, #BIPOC #CBC, as well as demands made by BIPOC employees of the CBC).⁶ It is disheartening to see that the CBC/SRC in their reply opted to ignore the demands of employees made on public platforms and deposited by CMAC in its procedural request. Unless the Corporation has something to conceal, it should have no problem placing the required information on the record.
11. To be clear, CMAC's requests are not asking the CRTC to regulate Employment Equity at the Corporation, a power that falls outside the Commission's jurisdiction. Our requests are for information necessary to ensure that the public has the requisite particulars about the CBC's diversity claims concerning its commitments in the context of sections 3(1)(d)(iii) and 3(1)(m)(viii) of the Broadcasting Act. CMAC trusts that going forward, its intervention will contribute to best practices by the Corporation and aid the Commission in ensuring the achievement of the diversity objectives under the Act. For these reasons, CMAC's procedural requests of 24 July 2020 and in this reply should be accepted by the Commission.
12. Finally, in its reply, the Corporation pointed out that it "responded directly to CMAC's information request and pointed CMAC to all the information on CBC/Radio-Canada's website arising from a recent Access to Information (ATI) request dealing with such information. This included all emails, memos (internal and external), documents, and correspondence that we have regarding the CBC/Radio-Canada's 2018-2021 Diversity & Inclusion Plan." While it is true that the Corporation released this information, it is also true that these documents

⁶ The demands were submitted to the CRTC with CMAC's 24 July 2020 Procedural Request. Retrieved from: <https://www.cmg.ca/en/2020/07/14/cbc-union-members-demand-action-on-systemic-racism/> and <http://cmac.qwradio.koumbit.org/wp-content/uploads/2020/07/Annex-C-10-Calls-to-Action.pdf>

were released in an unsearchable PDF image format, and numbered 1758 pages. It would take CMAC and the public weeks to sift through these documents, creating an undue burden to find relevant information and raising the public costs for CMAC's intervention on this file; and most probably would deplete the Broadcasting Participation Fund (BPF) that would have to cover these costs. Therefore, CMAC believes the information available in the ATI requests mentioned by the Corporation is a data dump consistent with the trench warfare strategy referenced above, whereas our procedural request is asking for clear, concise and relevant information that would better facilitate public engagement and help easily quantify compliance and authenticate the claims by the Corporation.

Leaked Employment Equity Numbers

13. Another point that is clear from the Corporation's reply is that they did not address the leaked employment equity numbers⁷ that we deposited with our procedural request made on 24 July 2020. The failure to contest this information constitutes a concession of its factuality by the CBC/SRC, meaning that the Corporation has acknowledged that the leaked employment equity numbers we deposited are correct and genuine. CMAC believes this concession of the leaked employment equity numbers further motivates the Commission to compel the Corporation to release the data requested in the procedural request we detail below. CMAC also maintains that the Commission should accept that releasing this data would cause no undue burden on the CBC/SRC, because this data is easily accessible by the Corporation as evidenced by the leaked employment equity numbers.

Access, Reflection, Fair Portrayal and On-Air Presence

14. As for the Corporation's duties under the Act to provide access, reflection, fair portrayal, and on-air presence to protected groups; there is almost no information on the record to assess how the CBC/SRC is delivering on these legal obligations. Given that the CBC/SRC attempted to use the Commission's purview over reflection as a deflection on the important and linked issue of employment equity, CMAC finds it imperative to now include another procedural request in this reply.

⁷ Retrieved from:

<http://cmac.qwradio.koumbit.org/wp-content/uploads/2020/07/Annex-A-Employment-Equity-Members.xlsx>

Further Procedural Request by CMAC

15. Given the above arguments, CMAC reiterates our procedural requests sent on 24 July 2020:
16. **CMAC respectfully asks the Commission to order the Corporation to release the requested Employment Equity information following the format that appears in the documents deposited with this procedural request as “Annex A,” but with a more complete breakdown of diversity groups added and the percentage of total employees indicated for each:**
 - a. **Able-Bodied White Males**
 - b. **Visible Minority Men**
 - c. **Indigenous Men**
 - d. **Men with Disabilities**
 - e. **Able-Bodied White Women**
 - f. **Visible Minority Women**
 - g. **Indigenous Women**
 - h. **Women with Disabilities**
17. **In addition, the Employment Equity Representation data for Management needs to be separated for each category of manager: PB8, PB9, PB10, and Executives, using the same diversity groups outlined above (in paragraph 19 a-h) to allow for a better understanding of equity and the management breakdown at the Corporation. CBC/SRC should provide separate sheets for these categories titled “Employment Equity Representation [category of manager]: Manager Salaries and Expenditures” to allow the public to ascertain how the Corporation represents diversity groups across manager categories, salaries, and expenditures.**
18. **CMAC believes the Employment Equity Representation data should also be broken down, using the same diversity groups outlined above (in paragraph 19 a-h), for each category of employee, such as journalist, anchor, editor, technical, support, etc. We believe that CBC/SRC has ready access to this information from the database it uses. These numbers will help the public determine if the Corporation is putting more emphasis on hiring “diversity groups” in outward or visible positions like on-camera roles, while failing to give them employment in creative, editorial, and technical positions. Similarly, we ask for separate sheets for these categories that should be titled “Employment Equity Representation [category of employee]: Employee Salaries and Expenditures” to determine if the Corporation discriminates against diversity groups across employee categories, in salaries, and expenditures.**

- 19. Additionally, the data for “Employment Equity Representation: All” should also offer a breakdown (following the groups outlined in paragraph 19 a-h), for representation of diversity groups at each of the Corporation’s radio and television stations across the country, as well as for the CBC/SRC’s web platforms and digital assets. We also ask for a second sheet for each of these stations and platforms titled “Employment Equity Representation All [per station/platform]: Salaries and Expenditures” again to be able to determine if the Corporation discriminates against “diversity groups” in salaries and expenditures in different regions of the country.**
- 20. Given the public testimonies concerning discrimination at the Corporation by BIPOC and other CBC/SRC journalists mentioned above, CMAC also respectfully requests that the Commission orders the CBC/SRC to release a record of all complaints known to its Human Resources department made by employees at the Corporation, alleging any form of discrimination or racism over the period of 2015-2020. This data can redact the names of the employees involved in these complaints, but must include if and how each complaint was resolved.**
- 21. Further, CMAC respectfully requests that the Commission panel for the public hearing for CRTC 2019-379 include at least two Commissioners that identify as Indigenous, racialized, and/or live with a disability. Diversity on the panel is needed to ensure that the issues of protected diversity groups are included. Additionally, equity representation among the panel of Commissioners will assure the public interest is upheld through the hearing process for CRTC 2019-379.**
- 22. Given that the composition of the Commission is made up of seven white members, one member who is Indigenous, one newly appointed member who is a person of colour,⁸ and is currently devoid of any Commissioners who identify as living with a disability, CMAC respectfully asks the Minister of Heritage (to whom this procedural letter is also addressed) to urgently appoint one new commissioner who identifies as living with a disability, and to do so before the selection of the Panel that will preside over the public hearing for CRTC 2019-379.**
23. CMAC also adds the following second procedural request relating to the CBC/SRC’s obligations to provide protected groups with access, reflection, on-air presence, and fair portrayal:

⁸ See press release issued June 25, 2020:
<https://www.newswire.ca/news-releases/minister-guilbeault-announces-two-new-appointments-to-the-crtc-811716931.html>

24. CMAC respectfully asks the Commission to order the CBC/SRC to place on the record a log of all its Category 1 News programming and non-Category 1 News programming, produced and aired between September 2013 - July 2020, on all its platforms, Television, Radio and Digital. These logs should indicate:

For Category 1 News programming

- a. **Date program was produced and duration of segment;**
- b. **If a protected group was provided reflection, and how (direct quote or in mention only);**
- c. **Whether the said reflection engendered any complaints and if so, their resolution;**
- d. **The percentage of segments that centered the issues and voices of protected groups within total Category 1 News programming.**

For non-Category 1 News programming

- e. **Date program was produced, duration, and aired as a first-time or a rerun;**
- f. **If the program was produced by the Corporation or by an independent producer;**
- g. **The budget for the program;**
- h. **If a protected group was provided access or reflection, including the status of the Creators, Writers, Directors and main stars of these programs;**
- i. **If the program is not produced primarily as providing access or reflection to a protected group; how are characters belonging to protected groups portrayed fairly, and how often they were included in the content of the program;**
- j. **The percentage of programs that centered the issues and voices of protected groups within total non-Category 1 News programming;**

25. CMAC appreciates the opportunity to file this reply.

Sincerely,
Laith Marouf
Policy Consultant
CMAC

cc: CBC/SRC

The Honourable Steven Guilbault
The Honourable Steven Blaney
The Honourable Alexandre Boulerice

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