



17 June 2022

Claude Doucet
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: Broadcasting Notices of Consultation CRTC [2019-379](#) (Ottawa, 25 November 2020), [2019-379-1](#) (Ottawa, 28 January 2020), [2019-379-2](#) (Ottawa, 8 April 2020) and [2019-379-3](#) (Ottawa, 22 June 2020), [2019-379-4](#) (Ottawa, 10 November 2020), [2019-379-5](#) (Ottawa, 18 December 2020), [2019-379-6](#) (Ottawa, 14 January 2021), and [2019-379-7](#) (Ottawa, 9 February 2021) – Procedural request

Attached is a procedural request with respect to the above-noted proceeding.

Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,

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Executive Director
Forum for Research and Policy in Communications (FRPC)
Ottawa, Ontario

c. Ms. Bev Kirshenblatt Bev.kirshenblatt@cbc.ca
CBC/Radio-Canada



Procedural request

Regarding the admission of evidence concerning new online services of the CBC

Broadcasting Notices of Consultation CRTC [2019-379](#) (Ottawa, 25 November 2020), [2019-379-1](#) (Ottawa, 28 January 2020), [2019-379-2](#) (Ottawa, 8 April 2020) and [2019-379-3](#) (Ottawa, 22 June 2020), [2019-379-4](#) (Ottawa, 10 November 2020), [2019-379-5](#) (Ottawa, 18 December 2020), [2019-379-6](#) (Ottawa, 14 January 2021), and [2019-379-7](#) (Ottawa, 9 February 2021)

Forum for Research and Policy in Communications (FRPC)

17 June 2022

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Executive Summary

- ES 1. The Forum for Research and Policy in Communications (FRPC) has been and remains a party to the proceeding initiated by the CRTC in Broadcasting Notice of Consultation 2019-379.
- ES 2. In the last week evidence has come to light regarding new online programming services being launched by the CBC: an e-mail from the CBC's General Manager, CBC News, Current Affairs and Local English Services to all CBC news staff, dated 31 May 2022 ("GM's e-mail").
- ES 3. Specifically, the GM's 31 May 2022 e-mail announced that the CBC is this year launching a free 24/7 news video channel along with other "Free Ad Supported TV (FAST) channels".
- ES 4. As a party to the 2019-379 proceeding, the Forum submits that the evidence in the GM's e-mail is both material and relevant to the 2019-379 proceeding, and that the CBC's failure to disclose this evidence before the conclusion of the public phase of the proceeding has been procedurally unfair to other parties in the proceeding.
- ES 5. While the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure (CRTC Rules)* do not specifically address procedural requests, the CRTC's practice regarding procedural requests in this proceeding has been to invite the Corporation's response to the request before rendering a decision on the request and publishing the related materials. In light of the imminence of the CRTC's determinations in this proceeding, the Forum is asking that the CRTC exercise its authority under subsections 5(1) and 7 of the *Rules* to
- a. immediately post this procedural request on the 2019-379 applications page;
 - b. ask the CBC to answer any CRTC questions and the Forum's questions about the FAST 'channels' – copying all appearing interveners with its answers – within two calendar days of receipt;
 - c. provide interested interveners with two days to respond to the CBC's answers, and consider the CBC's answers and interveners' replies within one calendar day.
- ES 6. The Forum respectfully submits that a delay of five days in issuing the CRTC's determinations in a proceeding that has lasted three years will not unduly disadvantage any party to the proceeding, and to the contrary, will serve to protect the public interest and the integrity of the CRTC's broadcasting proceedings.

I Introduction

- 1 The Forum for Research and Policy in Communications (FRPC) is making this procedural request to ask that the Commission seek clarification from the Canadian Broadcasting Corporation/Radio-Canada about newly disclosed evidence that is both material and relevant to the renewal application filed in 2019 by the English-language programming services of the Corporation (CBC) and about which the CRTC may be shortly issuing a decision.
- 2 Part II of this request describes the evidence provided in support of the request. Specifically, new facts set out a 31 May 2022 e-mail sent by the CBC’s General Manager, CBC News, Current Affairs and Local English Services (“GM’s e-mail”) to “ALL CBC NEWS STAFF” [uppercase letters in original text] are relevant and material to the 2019-379 proceeding.
- 3 Part III sets out and explains the basis of the Forum’s concerns about the CBC’s failure to disclose the evidence in the GM’s e-mail until more than a year after its final reply to interveners in the 2019-379 proceeding and when the CRTC’s determinations about the 2019-379 proceeding are imminent.
- 4 Part IV sets out options to address the new evidence in the GM’s e-mail and makes a recommendation

II New evidence about CBC’s 24/7 FAST ‘channels’ is material and relevant to the 2019-379 proceeding

A. *The 2019-379 proceeding*

- 5 In late 2019 the CRTC published the CBC’s applications to renew its broadcasting licences and to maintain the exempted status of its online broadcasting services and invited interventions that addressed “the question and issues” set out in BNoC 2019-379, by 20 February 2020.¹ (The Forum filed its [written intervention](#) by the deadline.) In early April 2020 the Commission postponed the 2019-379 public hearing to an unspecified later date.²
- 6 In mid-June 2020 the CRTC announced that its 2019-379 hearing would begin 11 January 2021.³ It also stated that interveners had “expressed concerns over a lack of transparency by the Corporation in regard to information on digital revenues and expenses”, that CBC, in response, had “committed to submit additional financial information pertaining to its digital activities, and that any interested party could “make submissions regarding the new information only” by 13 July 2020.⁴ (The Forum filed its [written intervention](#) by the deadline.)
- 7 The CRTC held its public hearing with respect to BNoC 2019-379 in January 2021. It heard testimony from CBC from 11 January 2021 to 15 January 2021, heard interveners from 18 January

¹ BNoC 2019-379 set an initial intervention deadline of 13 February 2020 which was extended to 20 February 2020 by way of BNoC 2019-379-1.

² BNoC 2019-379-2 postponed the hearing to a date that would be announced later.

³ BNoC 2019-379-3, para. 2.

⁴ BNoC 2019-379-3, paras. 5-6.

2021 to 27 January 2021 (including the Forum on 21 January 2021), and heard CBCs' reply on 28 January 2021

- 8 The CRTC's deadline for interveners to make final submissions was 1 March 2021 (and the Forum submitted [final comments](#)) and CBC filed its final reply on 17 March 2021.⁵
- 9 At the time of this writing the CRTC has not issued its determinations regarding CBC's applications, meaning that the 2019-379 proceeding has not yet concluded.

B. The GM's e-mail of 31 May 2022

- 10 The GM's e-mail states that the CBC wishes to drive its "accelerated push into the world of streaming video". The Corporation therefore plans to launch "Free Ad Supported TV (FAST) channels", including the launch "[t]his year" of "a free 24/7 news video channel" that will
- stream "the best of CBC News and original programs"
 - operate "as a companion offer to [CBC's] popular live & breaking news subscription channel, CBC News Network", and
 - "drive an ambitious digital & social video strategy for our entire division".
- 11 The Forum respectfully submits that as CBC's new evidence about its FAST 'channels' is relevant and material, it should be added to the record of the CRTC's 2019-379 proceeding. The CRTC should also seek clarification from CBC about, and afford the public an opportunity to comment on, this new evidence.

1. Materiality

- 12 The materiality of evidence is generally considered when applications to admit new evidence in the context of an appeal are considered. In this matter, however, the CRTC has not yet published its determinations and only it knows whether the admission of the GM's e-mail affect those determinations.
- 13 The Forum respectfully submits, however, that it is the absence throughout the proceeding of any statement by the Corporation about its plans to begin launching the FAST 'channels' in 2022 which makes evidence of the actual launch of such services material to the BNoC 2019-379 proceeding. The CBC's Executive Vice-President made a single statement that in hindsight *might* have referred to the FAST 'channels':

95 [MS. WILLIAMS] And we're not stopping, on any platform. A comprehensive and diverse slate of new domestic content in all genres will be announced this year, and in every year of the next licence term.⁶

- 14 It defies belief, however, to conclude that Canadians in general and interveners in the 2019-379 process in particular, could have interpreted a "slate of new domestic content in all genres" to mean one or more new online digital platforms supported entirely by advertising revenue.

⁵ BNoC 2019-379-7, unnumbered paragraphs 3-4.

⁶ CRTC, *Virtual Hearing Transcript* (12 January 2022).

15 The Forum believes it is eminently more reasonable to believe that if CBC had disclosed its plans for the FAST ‘channels’ either in its written applications or during any one of the six days when the Corporation responded to questions from the Commission, the CRTC might have asked about CBC’s plans for the FAST services, their impact on CBC’s programming plans and financial projections, and the Corporation’s practices regarding its use of data from its online audiences. Had CBC’s intention to launch the FAST ‘channels’ in 2022 been disclosed in the BNoC 2019-379 proceeding, the Forum would have addressed the services in its submissions so as to strengthen its arguments for a very short licence term and the removal of the exemption order now permitting CBC to operate programming and non-programming services online without regulatory oversight.

2. Relevance

16 The Supreme Court of Canada has explained that “[e]vidence is relevant when it has ‘some tendency as a matter of logic and human experience to make the proposition for which it is advanced more likely than the proposition would be in the absence of that evidence’”.⁷ In 2020 the Court set out three aspects of relevance: a fact is relevant if it is in issue, if it contributes to proving a fact in issue or if it helps the court to assess testimony’s probative value.⁸

17 Evidence “does not have to firmly establish, on any standard, the truth or falsity of a fact in issue” to be logically relevant: it “must simply tend to ‘increase or diminish the probability of the existence of a fact in issue’”; “there is no minimum probative value required for evidence to be relevant.”⁹ That said, the probative value of evidence must outweigh its prejudicial effects.¹⁰

18 In BNoC 2019-379 the CRTC asked interveners to comment on a number of specific issues, including four specific aspects of CBC’s online and offline services: online services’ impact on local programming, CBC’s news-trustworthiness, CBC’s expenditures and CBC’s request for a 33% increase in the monthly whole rate per subscriber charged for its discretionary news services in official-language minority locations. Three of these issues were raised by questions that the CRTC invited interveners to answer, while the fourth was raised by CBC’s application to increase the monthly rate charged to certain subscribers of CBC News Network:

Q18. To what extent is the Corporation adequately serving, or not adequately serving, local, regional and national communities with news and information programming on all of its platforms and services? **How has the Corporation increased use of online services affected its local programming as well as news and information content on its traditional platforms?**

⁷ *British Columbia (Attorney General) v. Provincial Court Judges’ Association of British Columbia*, 2020 SCC 20 (CanLII), at para. 57:

Evidence is relevant when it has “some tendency as a matter of logic and human experience to make the proposition for which it is advanced more likely than the proposition would be in the absence of that evidence”: *R. v. White*, 2011 SCC 13, [2011] 1 S.C.R. 433, at para. 36, quoting D. M. Paciocco and L. Stuesser, *The Law of Evidence* (5th ed. 2008), at p. 31. Put another way, [translation] “a fact is relevant, in particular, if it is a fact in issue, if it contributes to rationally proving a fact in issue or if its purpose is to help the court assess the probative value of testimony”: J.C. Royer and C. Piché, *La preuve civile* (5th ed. 2016), at para. 215.

⁸ *Ibid.*

⁹ *R. v. Arp*, 1998 CanLII 769 (SCC), [1998] 3 SCR 339, at para. 38.

¹⁰ *R. v. Seaboyer; R. v. Gayme*, 1991 CanLII 76 (SCC), [1991] 2 SCR 577/1991 CanLII 76 (SCC).

Q20. In an era where false and misleading news is increasingly being shared on the Internet, what should the Corporation do to continue being a trusted, verified and non-biased source of news and information? **What key role will the Corporation play in the future online world of trustworthy news and information?**

...

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?

Q27. **How could programming requirements (relating to expenditures or exhibition) normally imposed by condition of licence on a specific service take into account programming provided on a number of platforms by linear and/or on-demand services?**

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?¹¹

[bold font added]

...

CBC News Network

The Corporation is currently required to adhere to the following condition of licence:

The licensee shall charge distributors of this service in French-language markets a maximum monthly wholesale rate per subscriber of \$0.15 when it is distributed as part of the digital basic service.

The licensee is proposing to amend that condition of licence as follows (changes in bold):

The licensee shall charge distributors of this service in French-language markets a maximum monthly wholesale rate per subscriber of \$0.20 when it is distributed as part of the digital basic service.

[bold font in original text]

19 The Forum respectfully submits that the GM's e-mail relates to these four issues as follows.

a) Impact of new online programming services on local programming

20 The GM's e-mail is relevant to the issue of adequate local programming service because it is unclear what impact this new online service will have on local programming. Until now the only specific statement made by CBC was its desire to reduce linear local programming from 14 to 12 hours per week.¹² Meanwhile the CBC's written application¹² stated that it would both "enhance its local presence" and "expand" the programming on its "digital platforms".¹³

¹¹ BNoC 2019-379, paragraph 34.

¹² CRTC, *Virtual Hearing Transcript* (15 January 2021), at paras. 5674 – 5679.

¹³ (DM#3733727, 9 October 2019 response of CBC, p. 7)

21 It is somewhat unclear whether all of the programming on CBC's online services will be available on its offline services and if so, when the programming would be come available.¹⁴ Clarification about the evidence in the GM's e-mail would help the CRTC to confirm whether CBC plans to reduce local programming offline by shifting some or all of this programming to the new online service, so that Canadians seeking the full panoply of CBC news would be required to access its online news services.

b) Impact of new online news programming services on trustworthiness of news

22 The GM's e-mail is relevant to the issue of news trustworthiness because the business model of CBC's FAST online 'channels' is unknown. The CBC told the CRTC at the BNoC 2019-379 hearing that the trust and credibility of its news is its "most precious asset":

5383 MS. TAIT: We take the trust and the credibility of our news so much to heart. It is our most precious asset. And so when we became aware of the concern, we had not really had much push-back prior to this announcement of Tandem. So when we became aware of the -- you know, the really serious concerns people were raising, we felt it was very important to do this review process. We put the whole thing on pause as I said, and we consulted throughout. And as I said, everybody had a chance at the table to talk about their concerns.¹⁵

23 CBC said that it must "continually innovate to reach" and satisfy younger Canadians.¹⁶

24 Yet CBC also disclosed at the CRTC hearing that it offers different types of advertising and that sponsorships, product placements, and branded program content – based on the Tandem model – are all types of advertising.¹⁷ While advertisements – clear breaks in a program – are generally easy to perceive, branded content may be more difficult to discern, and raises concerns about the relationship between journalistic independence and CBC's need for money. The Corporation confirmed that it uses branded content on its digital platforms¹⁸ and that the revenue from this

¹⁴ CRTC, *Virtual Hearing Transcript* (12 January 2021), at paras. 716-717.

¹⁵ CRTC, *Virtual Hearing Transcript* (15 January 2021).

¹⁶ DM#3733727 – Response – 9 October 2-19 – 20199-0282-5_CBC_Application_Form_TV_and_Radio_EN-Final.doc, at p. 19, CBC response to question 14.

¹⁷ CRTC, *Virtual Hearing Transcript* (15 January 2021), at para. 5364:

[Ms. Tait] And the branded content is one type. There are also other types of advertising like sponsorship and product placement that fall into kind of the same category of advertising, let's call it tools in the advertising toolkit.

...

¹⁸ CRTC, *Virtual Hearing Transcript* (15 January 2021), at paras. 5372-5374:

5372 [M. LIZOTTE] Madame la Comissaire, oui, en 2016-17, on a fait du « branded content » ou du contenu de marques, et c'était sur nos plateformes digitales, ça n'a pas été sur la télé conventionnelle et on n'en fait pas... on ne fait pas d'émissions qui seraient du « branded content » pour prendre notre temps d'antenne sur la télé conventionnelle ou nos téléés spécialisées, c'est seulement sur le digital, sur les plateformes alphanumériques à l'époque.

5373 CONSEILLÈRE BARIN: Alors, pour reprendre, dans le passé, vous n'avez pas fait l'utilisation du contenu « branded » sur les plateformes traditionnelles, ç'a toujours été sur les plateformes numériques.

5374 M. LIZOTTE: Oui, exactement, tout comme aujourd'hui.

type of advertising is growing.¹⁹ The Corporation confirmed its intention, for instance, to deploy branded-content advertising on its digital and alphanumeric platforms, on GEM and TOU.TV and eventually on Listen.ca and OHdio.ca.²⁰ Several days later the CBC confirmed that the only constraint on its use of branded content is “a self-imposed constraint”;²¹ at that time, however, CBC appeared to be speaking of its alphanumeric content – its “news page”²² – not an online audiovisual programming service.

- 25 Moreover, branded content is not the only way that online programming services can earn income – data-mining has been a serious concern for several years due to its potentially harmful effects on Canadians’ privacy rights. As CBC presented no evidence about the FAST ‘channels’ the implications of an online service that may monitor the type of news content consumed by individual users could not be fully explored in this proceeding. Moreover, while the Corporation told the CRTC at the January 2021 hearing that the CBC ‘does not’ “traffic in people’s data”,²³ it made no specific commitments not to traffic such data in the future, and did not make specific commitment with respect to the tracking of young Canadians.
- 26 The GM’s e-mail is relevant to the issue of the trustworthiness of news and CBC’s news because at present, CBC’s online programming services are exempted from licensing and, hence, from regulation with respect to adherence to the requirement for programming of high standard. Clarification from CBC about the types of advertising intended to support CBC’s FAST news would help the CRTC to confirm how CBC is maintaining the trustworthiness of its news services: even if each of its FAST ‘channels’ is subject to the CBC’s internal committee (or data council), to the decisions of the Corporation’s Chief Privacy Officer, to federal privacy laws and to industry best practices – will CBC’s FAST ‘channels’ be tracking users?

¹⁹ CRTC, *Virtual Hearing Transcript* (15 January 2021), at paras. 5549-5550:

5549 MS. TAIT: So you see, this still represents a small portion of the business, of the advertising business. And within that digital revenue, as even smaller portion is attributed to sponsorship, product placement, and branded content.

5550 So however, as Donald has explained, it is a growing part of the business, as our digital revenues have been quite important, especially during Covid, to mitigate the hit on conventional advertising drops.

²⁰ CRTC, *Virtual Hearing Transcript* (15 January 2021), at para. 5495:

5495 [M. LIZOTTE] En fait, un, ça va se retrouver seulement sur les plateformes numériques, et ça l’inclut l’alphanumérique, donc le site de Radio-Canada.ca et de CBC.ca, ça va se retrouver dans l’audiovisuel sous la plateforme TOU.TV et Gem, ainsi que éventuellement sur la plateforme Listen.ca et le OHdio.ca de Radio-Canada.

²¹ CRTC, *Virtual Hearing Transcript* (15 January 2021), at para. 5597:

5597 MS. TAIT: Yeah. You know, we have a pretty -- as Donald pointed out, we have a very -- what’s the word; constrained, not constrained; a self-imposed constraint in the sense of what we put up on our platforms. We try to be as respectful of the public as we can.

5598 One of the guidelines is that you’re not going to see branded content on the news page. We don’t want people to have that feeling of being in a cluttered advertising environment, and we’re very, very careful about that. That’s something that Donald and his team are constantly grappling with. So it’s not our intention to, you know, all of a sudden, you’d have five branded content pieces and one journalistic piece. That is not the intention at all.

²² *Ibid.*, at para. 5598.

²³ CRTC, *Virtual Hearing Transcript* (11 January 2021), at para. 727, (Mr. Galipeau).

c) Impact of new online programming services on offline resources

27 The GM's e-mail is relevant to the issue of CBC's expenditures because new financial evidence filed by CBC in June 2021 appears to show that CBC is already shifting resources from its offline to its online services. This evidence – copied below - disclosed that CBC forecast that its total expenditures from 2018/19 to 2022/23 on its conventional television services would decrease by \$51 million (or 5.9%). Meanwhile expenditures on GEM and TOU.TV would rise by \$21 million (or 48.2%), expenditures on Listen and Ohdio would increase by \$3.2 million (16.7%) while expenditures on CBC's websites, Curio and "other" would increase by \$79.2 million (or 38.9%).

PUBLIC FINANCIAL SUMMARY

AGGREGATE FINANCIAL SUMMARY FOR ALL CBC/RADIO-CANADA SERVICES

This document summarizes the revenue and expenses for all of CBC/Radio-Canada's services.

The Corporation operates broadcasting undertakings pursuant to licences and exemption orders. The traditional broadcasting undertakings consist of conventional television, radio and discretionary services and they operate pursuant to CRTC licences. The Corporation also operates digital services which consist of programming and non-programming services. The digital programming services operate pursuant to the Digital Media Exemption Order. The proportion of the Corporation's revenue and expenses coming from digital services continues to increase over the next licence term. These figures are consistent with the financial projections filed as part of the record of the licence renewal application and do not reflect any changes that may result from the impact on revenue and expenses of the Covid-19 pandemic.

REVENUE		2018-2019	2019-2020	2020-2021	2021-2022	2022-2023 (Note 1)
TOTAL PARLIAMENTARY APPROPRIATIONS (Note 2)		1 215 898 920	1 237 319 627	1 246 785 787	1 260 482 358	1 268 600 671
CONVENTIONAL AND DISCRETIONARY	TV Advertising	216 962 189	214 979 570	213 561 593	212 178 900	210 645 000
	TV Subscriptions	113 698 817	110 448 700	106 787 360	103 464 580	101 080 760
	Syndication/Production revenue	41 137 902	32 468 560	29 449 946	29 477 480	29 477 480
	Other revenue	47 535 329	44 513 517	43 624 348	44 464 523	44 464 523
	TOTAL CONVENTIONAL AND DISCRETIONARY	419 334 237	402 410 347	393 423 247	389 585 483	385 667 763
DIGITAL	Advertising	32 762 726	35 951 757	38 072 689	40 359 952	42 013 969
	Subscriptions	10 752 000	13 200 000	15 950 000	19 275 000	23 323 000
	Syndication/Production revenue	10 254 389	9 255 678	9 073 712	9 088 768	9 088 768
	Other revenue	7 818 177	7 458 246	7 276 093	7 363 000	7 568 000
	TOTAL DIGITAL	61 587 292	65 865 681	70 372 494	76 086 720	81 993 737
TOTAL REVENUE		1 696 820 449	1 705 595 655	1 710 581 528	1 726 154 561	1 736 262 171

OPERATING EXPENSES		2018-2019	2019-2020	2020-2021	2021-2022	2022-2023 (Note 1)
CONVENTIONAL AND DISCRETIONARY	Television	864 002 747	841 394 241	822 377 517	820 312 964	812 630 523
	Specialities (discretionary services)	143 087 854	140 012 277	138 075 953	134 741 717	132 119 901
	TOTAL AUDIO-VISUAL (TELEVISION)	1 007 090 601	981 406 518	960 453 470	955 054 681	944 750 424
	TOTAL AUDIO (RADIO)	290 724 451	293 267 731	295 820 691	298 813 751	302 399 541
	TOTAL CONVENTIONAL AND DISCRETIONARY	1 297 815 052	1 274 674 249	1 256 274 161	1 253 868 432	1 247 149 965
DIGITAL	CBC Gem and ICI TOU.TV (Note 3)	42 948 219	47 558 372	57 201 162	60 286 435	63 653 068
	CBC Listen and OHdio (Note 3)	19 034 570	22 951 086	21 791 883	21 930 262	22 208 386
	Websites, Curio and other (Note 4)	202 947 083	236 378 881	253 755 095	267 348 018	282 137 798
	TOTAL DIGITAL	264 929 872	306 888 339	332 748 140	349 564 715	367 999 252

28 The GM's e-mail is relevant to the issue of CBC's shifting of resources from its offline to its online services because it confirms that CBC is launching a new online news service that may require use

of CBC's existing resources. Does CBC intend to support any or all of the FAST 'channels' with the resources – financial, programming content or people – of its offline or conventional services? What impact will the loss of these resources have on CBC's conventional English-language programming services?

- 29 Clarification from CBC about the relationship between the Corporation's licensed conventional, licensed discretionary and exempted programming and non-programming services would provide the CRTC with a stronger evidentiary foundation to evaluate CBC's plans and the *Broadcasting Act's* requirement that the Corporation provide a balanced range of information and entertainment programming to all Canadians.

d) Impact of new online news service on CBC News Network

- 30 The GM's e-mail is relevant to the issue of CBC News Network because the CBC has argued in the BNoC 2019-379 proceeding that this service' advertising and subscription revenues are decreasing.²⁴
- 31 What is unknown, because the facts stated by the GM's e-mail have so far not been presented by the Corporation in the 2019-379 proceeding, is the projected impact of a free online news service on the advertising and subscription revenues of CBC's non-free discretionary news services whose revenues are by CBC's own admission, decreasing.
- 32 Clarification from CBC about its own assessment of the impact of its FAST news 'channel' on its licensed services would provide Canadians and the CRTC with a better understanding of CBC's plans for its next licence term, and of the degree to which the CRTC should exercise stronger oversight over CBC's digital programming and non-programming services.

III Concerns raised by the GM's e-mail's evidence

- 33 The evidence in the GM's e-mail of May 2022 should have been made available in CBC's written applications in 2019, but could also have been made available at the CRTC's public hearing in January 2021.²⁵ The Corporation could in fact have provided this evidence to the Commission at any time in the 15 months since the public-hearing component of the 2019-379 proceeding concluded – and apparently did not.

²⁴ CRTC, *Virtual Hearing Transcript* (15 January 2021), at paras. 5053:

5053 [MS. WILLIAMS] Let me just emphasize. Costs are going up, you've heard that clearly from Michel and Luce, and revenue is going down, as Catherine said, from both advertising and subscription. So we are not talking about can we add new programming to these services, we are talking about trying to ensure that after a 25 year run with not a rate increase that we can continue to provide the programming we do today in the high quality, breaking news, expansive way that Luce just talked about.

²⁵ The CRTC's hearing secretary reminded parties about the Commission's rules in this area at the beginning of the January public hearing:

32 [THE SECRETARY] Just a reminder that pursuant to section 41 of the Rules of Practice and Procedures, you must not submit evidence at the hearing unless it supports statements already on the public record. If you wish to introduce new evidence as an exception to this rule, you must ask permission of the Panel of the hearing before you do so.

34 The Corporation's failure to provide the evidence about its FAST 'channels' raises two basic concerns. First, the e-mail establishes that the evidence provided by the CBC in the renewal process regarding its strategy for online programming services was in fact incomplete. Second, CBC's failure to disclose its plans to launch new advertising-free online services in 2022 means that interveners were unable to comment on this evidence.

35 Without CRTC action at this time, the incomplete evidentiary record of the renewal process and interveners' inability to comment on the CBC's plans to launch new online services creates a serious risk that the Commission's determination – as of today expected in the week of 20-24 June 2022 – may be challenged on the grounds of procedural unfairness, however reasonable the determination may be. In 2018 the Federal Court of Appeal held that "[t]he reasonableness of a decision is of no consequence if it was reached in a procedurally unfair manner"²⁶ that decision is unlawful.²⁷ Justice Rennie wrote,

[56] No matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond. It would be problematic if an a priori decision as to whether the standard of review is correctness or reasonableness generated a different answer to what is a singular question that is fundamental to the concept of justice – was the party given a right to be heard and the opportunity to know the case against them? Procedural fairness is not sacrificed on the altar of deference.

....

36 Interveners in the 2019-379 proceeding did not know the case they had to meet because CBC failed to disclose its intentions regarding the FAST 'channels'. As the proceeding's interveners and, apparently, the Commission were unaware of these intentions, it could not reasonably be expected that either interveners or the CRTC hearing panel would ask the Corporation when the FAST 'channels' would launch, how much first-run programming they would provide, how many people they would employ and how much net revenue they might generate.

IV Options, the Forum's request and its recommendation

A. Options

37 The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure (CRTC Rules)* apply to all proceedings before the Commission.²⁸ They permit the CRTC to exercise its powers under the *Rules* at the request of a party²⁹ including an intervener or an applicant.³⁰ The Forum and the Corporation are parties to the 2019-379 proceeding. The CRTC may "decide whether to admit a document as evidence".³¹ The Commission may – but in the 2019-

²⁶ *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 (CanLII), [2019] 1 FCR 121, <<https://canlii.ca/t/hrgf2>>, retrieved on 2022-06-16, per Rennie J.A., at para. 48.

²⁷ *Ibid.*, at para. 53, citing *Mission Institution v. Khela*, 2014 SCC 24 at para. 80, [2014] 1 S.C.R. 502.

²⁸ S. 2(1).

²⁹ S. 5(1).

³⁰ S. 1 ("party" means an applicant, respondent or intervener").

³¹ S. 10(c).

379 proceeding did not – permit parties to request information from each other.³² The CRTC’s *Rules* do not specifically address procedural requests, but the Commission may dispense with or vary its *Rules* if it “is of the opinion that considerations of public interest or fairness permit”.³³

- 38 In addressing this procedural request the Commission or hearing panel has several options:
- a. return the Forum’s procedural request without considering it
 - b. post the request, seek a response from the Corporation, consider the Forum’s request and then
 - i. not render a determination on the request
 - ii. render a determination on the request before it issues its determination in the BNoC 2019-379 proceeding,
 - iii. render a determination on the request in its determination on the BNoC 2019-379, or
 - iv. render a determination on the request after it issues its determination in the BNoC 2019-379 proceeding.

39 The Forum is respectfully requesting that the CRTC grant FRPC’s three-part procedural request in its entirety, on the grounds that the public interest will be served by a process that is procedurally fair and that offers all parties – interveners, applicant and the regulator – the opportunity to know and understand the case being made by the applicant.

B. Forum’s request

40 The Forum’s request has three parts.

41 ***First***, we respectfully request that the Commission post this procedural request as part of the 2019-379 applications page.

42 ***Second***, while the CRTC’s normal practice regarding procedural requests is to invite the applicant’s response to the request, the Forum respectfully submits that it would be more efficient – should the CRTC consider that our request has merit – to simply provide the CBC with a copy of Appendix 1 and invite it to answer questions including but not limited to the following:

- a. When did the CBC decide to launch the 24/7 FAST news video channel?
- b. What other FAST ‘channels’ will the CBC launch, and when?
- c. What percentage of the programming hours of the 24/7 FAST news video channel will be provided by
 - i. CBC’s conventional television and radio programming services,
 - ii. CBC’s discretionary news programming services, and by

³² S. 72: “If the Commission is of the opinion that it is in the public interest to permit requests for information from one party to another, it may give that permission in the notice of consultation.”

³³ S. 7.

- iii. Independent producers?
 - d. How many new full-time or equivalent employment positions will the 24/7 FAST news video channel create in 2023, 2024 and 2025?
 - e. What percentage of the total programming hours of the 24/7 FAST news video channel will be Canadian, first-run (not appearing on any other programming services prior to appearance on the 24/7 FAST news video channel) programs?
 - f. In how many languages will the 24/7 FAST news video channel provide programming?
 - g. What are the projected revenues (by source including but not limited to advertising sub-components such as branded content and data trafficking) and expenditures of each 24/7 FAST 'channel' that has launched or will launch in 2022, 2023 and 2024?
 - h. What is the projected impact, if any of each FAST 'channel' on the CBC's conventional, discretionary and online audiovisual programming services?
- 43 ***Third***, if the CRTC grants the first two parts of the Forum's request, we ask that the Commission post CBC's answers, if any, to the questions posed by the CRTC and/or in the Forum's procedural request, on the CRTC's 2019-379 webpage.

C. *Recommendations*

- 44 Finally, as the Forum has no interest in impeding the CRTC's determinations in this proceeding, we suggest that the Commission set out an expedited, one-week timeline for obtaining answers from the Corporation about its FAST 'channels': two days for the CBC to respond to questions about the FAST 'channels', two days for parties who intervened in the public hearing phase of the proceeding to comment (if they wish) on the CBC's responses and one day for the Commission to consider whether and how the new evidence in the GM's e-mail affects its determinations.

Appendix 1: CBC GM's 31 May 2022 e-mail

From: **Susan Marjetti** <susan.marjetti@cbc.ca>
Date: Tue, May 31, 2022, 5:14 PM
Subject: Some leadership updates
To: ALL CBC NEWS STAFF <all-cbc-news-staff-grp@cbc.ca>

We are pleased to announce a number of new roles and structure changes that will help position CBC News, Current Affairs and Local for the future of live and on-demand programming. Our goal remains: to provide essential journalism and community connections for all Canadians, while meeting new and younger audiences where they are, on their platform of choice

Driving these changes will be our accelerated push into the world of streaming video. This year, we will launch a free 24/7 news video channel streaming the best of CBC News and original programs as a companion offer to our popular live & breaking news subscription channel, CBC News Network.

We'll have more to say in the future about the CBC News streaming channel and how it will also drive an ambitious digital & social video strategy for our entire division. Stay tuned for an invitation to a special lunch and learn.

In the meantime, we want to explain some leadership changes that will enable and enhance this work:

- The network News and Current Affairs reporting lines will be reorganized under General Manager **Susan Marjetti**, with **Cathy Perry** as Executive Director of Newsgathering and Operations, and **Brodie Fenlon** as Executive Director of Programs and Standards. Brodie continues as Editor in Chief, accountable for all of CBC's journalism.
- Reporting to Cathy will be **Marc Lefebvre**, our Senior Director of Operations. His responsibilities were outlined in a [previous announcement](#). Cathy will oversee operations and news production services, world bureaus, domestic newsgathering, the content units and national assignment under **Cathrin Bradbury** and **Tracy Seeley**, and the Parliamentary Bureau under **Chris Carter**. With Cathrin preparing to retire at the end of August, we will soon post the job of Senior Director of Newsgathering, reporting to Cathy. We will then post the job of Managing Editor of World Newsgathering with **Greg Reaume's recent retirement**. Until then, Tracy will oversee the world bureaus.
- Reporting to Brodie will be leaders responsible for programming and digital teams, journalistic standards and legal risk. This includes the new position of Senior Director of Digital Publishing and Streaming, which will be posted soon. Also reporting to Brodie are **George Achi** (Journalistic Standards and Public Trust), **Marie Caloz** (Legal Issues and Risk), **Andree Lau** (Digital News) and **Seema Patel** (News Programs). **Alison Broddle** (Current Affairs and Investigative Journalism) will also report to Brodie, with Cathy Perry remaining closely involved with Radio Current Affairs.

- Under Investigative, we hope to soon announce the new Managing Editor of Investigative Journalism, overseeing The Fifth Estate, Marketplace and the Investigative Unit. And congratulations to **Nelisha Vellani**, the new executive producer of Marketplace.
- As Chief of Staff, **Catherine Gregory** will now directly oversee a team that supports our employees in the areas of administration, development and engagement, including **Binay Bajwa, Sharon Easby, Liz Hadfield, Mark Mietkiewicz, Melissa Charles, Laura McIsaac, Tim Richards, Natalie Sheehan** and **Nadia Thadhani**.
- As previously announced, **Michael Gruzuk** now reports to **Susan Marjetti** and leads the [CBC News Studios team](#) with a mandate to support content development, original production and news specials across CBC News, Current Affairs and Local. This team will lead the development of streaming content for our new channel, and help guide the wider video ecosystem across the division. We are pleased to announce **Lara Chatterjee** is the successful candidate for the role of Executive Producer of Original News Programming. Lara will focus on developing the original and special news programming for streaming platforms, including CBC Gem, from within the CBC News Studios team. Michael also continues to oversee CBC News Network.
- We are pleased to announce that **Spencer Walsh** is taking on the role of Executive Producer of Streaming Curation and Distribution. Spencer will be focusing with program, operations and technology teams on the curation, packaging of video content for distribution on CBC products and our Free Ad Supported TV (FAST) channels. The team that is focused on packaging our programs for Connected and Smart TVs reports to him and he will work closely with staff already doing video work through our system.

These changes are about innovating to meet CBC audiences where they are now and where they will be in future. In a sentence, our promise is to be “live when you need us, and on-demand when you want us.”

The Local leadership structure under the Senior Managing Director’s remains unchanged.

Please don’t hesitate to reach out to any one of us if you have questions. Everything we are doing is aimed at strengthening our offer, better serving Canadians and positioning CBC News, Current Affairs and Local for a strong and vibrant future.

— *Susan Marjetti on behalf of Brodie Fenlon, Catherine Gregory, Michael Gruzuk, Cathy Perry and Kenny Yum*