



Broadcasting Public Notice CRTC 2008-5

Ottawa, 15 January 2008

Regulatory policy

Journalistic Independence Code

*In this public notice, the Commission **approves** the Journalistic Independence Code as proposed by the Canadian Broadcast Standards Council (CBSC), subject to some clarifications in regard to the selection of its adjudicators and the presence of journalists on its panels adjudicating complaints related to the Journalistic Independence Code.*

In Diversity of Voices, Broadcasting Public Notice CRTC 2008-4, 15 January 2008, the Commission also sets out its determinations with respect to the proceeding on the diversity of voices in Canada that was the subject of the 17 September 2007 public hearing.

The Commission is also issuing Call for comments on the public disclosure of aggregate financial data for large ownership groups of over-the-air radio and television broadcasters, Broadcasting Public Notice CRTC 2008-6, 15 January 2008, which seeks comment on the publication of financial data related to broadcasting undertakings.

Introduction

1. In Broadcasting Public Notice 2007-41, the Commission invited interested parties to comment on a proposed code of conduct concerning cross-media ownership, filed by the Canadian Broadcast Standards Council (CBSC) and entitled the Journalistic Independence Code (the Code). The Code sets out procedures to ensure that broadcasters maintain news management and presentation structures that are separate and distinct from those of their affiliated newspapers.
2. The CBSC first submitted the Code to the Commission in November 2002. Following studies by the Standing Committee on Canadian Heritage and the Standing Senate Committee on Transport and Communications concerning Canadian broadcasting and cross-media ownership respectively, and in response to a request by the Commission for modifications to the Code, the CBSC submitted its final version of the Code on 31 January 2007.
3. The Commission considered written comments as well as oral comments heard at the public hearing on Diversity of Voices (Broadcasting Notice of Public Hearing 2007-5) (the Public Hearing).

Background

4. The Commission has dealt with the issue of cross-media ownership in the past with the 2001 licence renewals of television stations controlled by TVA Group Inc. (TVA), CTV Television Inc. (CTV) and Global Communications Limited¹ (Global). In Decision 2001-384, the Commission imposed conditions of licence with respect to independence between news operations for the first time when Quebecor Media Inc. (QMI), which at that time owned the *Journal de Montréal*, acquired Vidéotron, which owned TVA. In that proceeding, QMI had proposed its own code of professional conduct that included requirements for the structural separation of newsgathering activities, the structural separation of news management and the separation of decision making on content and presentation. Subsequently, the Commission imposed on both CTV and Global,² whose owners owned *The Globe and Mail* and the *National Post* respectively, conditions of licence concerning the separate management of the news services of their television stations and their affiliated newspapers.
5. In those proceedings, the Commission stated, in response to proposals by the licensees, that if the CBSC adopted a self-regulatory code of conduct concerning cross-media ownership applicable to the industry as a whole and that code was approved by the Commission, the Commission would be prepared to consider suspending the application of the conditions of licence discussed above for CTV, Global and TVA.

The proceeding

6. The Commission received and considered written comments from 14 parties in response to the call for comments set out in Broadcasting Public Notice 2007-41 and considered these comments in the context of the Public Hearing. The parties included, among others, CTVglobemedia Inc.; CanWest MediaWorks Inc.; QMI; various unions and associations representing journalists and other media employees; consumers and the cultural sector. The public record for this proceeding is available on the Commission's Web site at www.crtc.gc.ca under "Public Proceedings."
7. After considering all of the written and oral comments made in the course of this proceeding, the Commission has identified four primary issues to be addressed in its determinations:
 - Should the Code include a requirement for the structural separation of newsgathering activities?
 - Should the CBSC administer the Code?
 - How will the CBSC select adjudicators for all adjudication panels?

¹ On 1 September 2005, Global Communications Limited amalgamated with Global Television Network Inc. and 120 other CanWest affiliates to form CanWest MediaWorks Inc.

² The Commission imposed these conditions of licence in Decisions 2001-457 and 2001-458.

- Is it appropriate to include a minimum number of journalists on panels adjudicating complaints under the Code?

Issue 1: Should the Code include a requirement for the structural separation of newsgathering activities?

8. As part of their comments, some parties expressed concern over the absence of a requirement for the structural separation of newsgathering activities. Given the particularities of the French-language market, various Francophone parties in particular emphasized this point. According to the parties, the absence of a principle related to the separation of newsgathering activities could dilute the diversity of editorial voices, standardize content, result in a loss of editorial independence in newsrooms, reduce local and regional content, and permit the redistribution of the same content on multiple platforms.
9. Other parties submitted that collaboration between journalists, including the exchange of information and resources among journalists employed by different media outlets, can be useful and efficient. For their part, the unions and associations representing journalists submitted concerns about current situations wherein a single journalist is required to research, prepare and write a news story for publication or broadcasting via various media, such as television, newspapers and Web sites.
10. The Commission notes that the CBSC's Code accurately reflects CTV's and Global's current conditions of licence. In TVA's case, however, the QMI code, which was proposed to maintain diversity in the French-language market and was approved by the Commission, contains more stringent requirements than those imposed on CTV and Global, including a requirement for the separation of newsgathering activities.
11. The Commission continues to have doubts about not only the effectiveness and enforceability of a requirement for the structural separation of newsgathering activities, but also the relevance in terms of mitigating the concerns noted above. The Commission considers that it would not be appropriate to restrict interactions between journalists working for a single owner while interactions between journalists working for different owners often occur. It may be difficult to set reasonable limits as to when resources and information can and cannot be exchanged, without compromising the benefits that may arise from the sharing of information. Moreover, the Commission is sensitive to the need for limits to its involvement in newsroom management, which could be perceived as overly intrusive and thus risk becoming an obstacle to the free circulation of information. It is for these reasons that the Commission did not impose the separate newsgathering requirement on CTV and Global.

Commission's determination

12. **The Commission considers that the principles set out in the Code will ensure a diversity of editorial voices and that the Code's principles concerning the separation of management structures, news management decisions and editorial boards are sufficient to ensure that Canadians can access a broad range of news coverage. By eliminating the principle of separation of newsgathering structures in the case of TVA, and by applying the Code to all ownership groups in instances of cross-media ownership, the Commission is enabling transparent, equitable and uniform regulation for all broadcasters in Canada. Accordingly, the Commission will not include a requirement in the Code for the structural separation of newsgathering activities.**

Additional observation

13. The Commission recognizes that the concerns raised by the associations and the unions representing journalists with regard to the broadcast of the same news story on multiple platforms represent a major issue in respect of the quality of news programming provided by Canadian broadcasters. The Commission considers that the evaluation of the quality of information is largely subjective and must be dealt with carefully. The Commission has the power to set out key indicators of the quality of the broadcasters' news services such as the number of hours of programming devoted to local and regional news, the expenses devoted to news services, the number of regional offices, etc. The Commission considers that these powers, coupled with the ability to assess the quality of a broadcaster's news programming at the time of licence renewals, are sufficient to ensure continuous improvements to the quality of the programming offered, and particularly in relation to information and news services offered at the local levels.

Issue 2: Should the CBSC administer the Code?

14. Some parties were of the view that if the CBSC administers the Code, the Commission will be abdicating its authority to adjudicate complaints or sanction breaches of the Code. They submitted that the CBSC, a private, self-regulatory organization, does not have the authority to impose effective penalties for Code breaches and should not administer the Code. Instead, they favoured maintaining conditions of licence to ensure compliance with the principles of structural separation of news presentation and the structural separation of news management in instances of cross-media ownership.
15. The Commission attaches great importance to the role that self-regulatory organizations play in the broadcasting system and is satisfied with the CBSC's work administering other industry codes. The Commission also recognizes the quality of the work accomplished by the CBSC, its efficiency, as well as the transparency and level of detail in its decisions. For these reasons, the Commission considers that the CBSC has the competencies required to properly administer the Code.

Commission's determination

16. **The Commission considers that, in light of its current record and performance, the CBSC is the appropriate body for administering the Journalistic Independence Code.**

Additional observation

17. Nevertheless, the Commission reiterates that transparency and equity must remain priority principles in the CBSC's adjudication of breaches of the Code. Furthermore, it should be noted that the CBSC remains accountable to the Commission and must report annually on all complaints and adjudications concerning the Code. The Commission further notes that it is maintaining its jurisdiction on matters that are within its powers and that any party may ask the Commission, as the final arbiter, to adjudicate its complaint, particularly if it is not satisfied with the CBSC's findings.

Issue 3: How will the CBSC select adjudicators for all adjudication panels?

18. At the Public Hearing, the CBSC stated that its adjudication panels are created by ensuring equal representation from the industry and the public, and that no representative can sit on a panel dealing with a complaint against the company it represents. The Chair of the CBSC selects panel adjudicators taking into account a variety of factors such as gender, ethno-cultural community, reputation, commitment to public service, geographic representation and professional experience. The CBSC stated that in addition to holding broad consultations based on these specific criteria and before nominating an adjudicator, the name of the person selected must be submitted to the CBSC National Executive for approval. The CBSC explained that the members of its adjudication panels, as set out in section 5 of the Code, would be appointed solely by the CBSC, which will ensure their independence and general qualifications.

Commission's determination

19. **The Commission considers that the CBSC's adjudicator selection process should be formalized in order to ensure a fair and transparent appointment process. Accordingly, the Commission directs the CBSC to submit in writing to the Commission for approval, within 90 days of the date of this public notice, detailed guidelines outlining its adjudicator selection process.**

Issue 4: Is it appropriate to include a minimum number of journalists on panels adjudicating complaints under the Code?

20. While the CBSC stated that, barring a conflict of interest, it would always appoint one journalist to the panel adjudicating complaints under the Code, some parties were of the view that not enough journalists or representatives of the journalism profession would be included on these panels. These parties submitted that journalistic experience and expertise are necessary to fully understand newsroom operations and overall journalistic functions. They argued that such knowledge is essential for assessing complaints and the principles set out in the Code.
21. The Commission shares the concerns raised by the parties concerning the presence of journalists on the adjudicating panels dealing with complaints related to the Code. The Commission considers that given that the nature of this Code is specific to a profession rather than to broad community standards,³ including a minimum number of journalists on the panels adjudicating complaints under the Code would increase the credibility of the adjudication process and reduce the possibility of complaints being referred back to the Commission.

Commission's determination

22. **The Commission directs the CBSC to include a minimum number of journalists on its panels adjudicating complaints under the Code and to report this number to the Commission for approval, within 90 days of the date of this public notice.**

Conclusion

23. The Commission considers that the principles set out in the Code will ensure a diversity of editorial voices and that the principles relating to the structural separation of management, news management and editorial boards are sufficient to ensure that Canadians have access to a broad range of news coverage. The Commission is further of the view that the Code offers transparent, equitable and uniform regulation for all broadcasters in Canada.
24. In light of all of the above, the Commission **approves** the Journalistic Independence Code as proposed by the CBSC, subject to the clarifications identified in paragraphs 18 and 21 regarding the selection of its adjudicators and the presence of journalists on its panels adjudicating complaints related to the Code. The Code is set out in the appendix to this public notice.

³ Codes such as the Canadian Association of Broadcasters' (CAB) *Sex-Role Portrayal Code for Television and Radio Programming* and the *Voluntary Code Regarding Violence in Television Programming* are an example of codes that deal with broad community standards.

25. Once the Commission has approved the guidelines outlining the adjudicator selection process and the report on the minimum number of journalists on the panels adjudicating the Code, the Commission will consider applications to suspend the conditions of licence respecting cross-media ownership issues for CTV, Global and TVA. The Commission also expects the CBSC to confirm that CTV, Global and TVA support the CBSC Journalistic Independence Code and that they are members in good standing of the CBSC.

Secretary General

Related documents

- *Diversity of Voices*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Call for comments on the public disclosure of aggregate financial data for large ownership groups of over-the-air television and radio broadcasters*, Broadcasting Public Notice CRTC 2008-6, 15 January 2008
- *Diversity of Voices Proceeding*, Broadcasting Notice of Public Hearing CRTC 2007-5, 13 April 2007
- *Call for comments on the Canadian Broadcast Standards Council's proposed Journalistic Independence Code*, Broadcasting Public Notice CRTC 2007-41, 13 April 2007
- *Licence renewals for the television stations controlled by CTV*, Decision CRTC 2001-457, 2 August 2001
- *Licence renewals for the television stations controlled by Global*, Decision CRTC 2001-458, 2 August 2001
- *Transfer of effective control of TVA to Quebecor Média inc.*, Decision CRTC 2001-384, 5 July 2001

This document is available in alternative format upon request, and may also be examined in [PDF format](#) or in [HTML](#) at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Public Notice CRTC 2008-5

Journalistic Independence Code

Introduction

Broadcast news reports are vitally important to Canadians. They contribute information that helps Canadian audiences to form opinions and make decisions regarding matters, events and issues of public interest and importance.

The innovative use of new technologies and the improved co-ordination and deployment of newsgathering resources can improve news coverage available to Canadian audiences. News reporting by broadcasters and newspapers can often be complementary, with distinct strengths determined or influenced by their respective technologies. That diversity and the differing scope of their respective delivery platforms ensure for their respective viewers and readers the ability to access appropriate information in a timely and relevant fashion.

As the number of sources of information in society increases, the nation's broadcast news organizations have the collective goal of assuring the diversity and quality of information, and the distinctiveness of editorial voices presented to Canadians. This is not inhibited by the common ownership of newsgathering resources and the use of complementary technologies, which can together create greater opportunities to provide information to Canadians; consequently, nothing herein shall be understood as requiring the separation of such resources. The broadcast news organizations of corporate groups that include broadcast and print media can achieve the goals of diversity and distinctiveness while harnessing the benefits of cross-media ownership arising from appropriate economies of scale to expand and diversify the coverage of events.

Accordingly, through the application of this Code, and in accordance with the Principles and Practices established herein, the broadcasters subscribing to it support

- the effective use of newsgathering resources in a manner which ensures that Canadians have access to diversity and quality of information assembled and reported by broadcast journalists;
- the existence of diverse and distinct editorial and news reporting voices in their broadcast and print media; and
- the independence and separation of the management of news departments in their broadcast and newspaper divisions with common ownership.

It is, of course, the case that each owner of a broadcasting organization that subscribes to this Code is separate and distinct in its corporate structure as well as its management goals and practices. It follows that each such organization will manage its activities differently and in accordance with its own corporate philosophy. Nonetheless, the owners of broadcasting organizations that subscribe to this Code will conform to the Principles and Practices established herein, will collaborate fully with requests made by the Canadian Broadcast Standards Council to obtain the information necessary for it to fulfill its mandate hereunder, will accede to the authority of the Council to declare a broadcasting organization in compliance with or in breach of this Code, and will comply with any rulings made by the Council.

Overriding principle

This Code is intended to support the provision to Canadians of the broadest possible scope of news coverage by distinct broadcast news organizations which comply with the standards that are: a) established herein and b) consistent with the journalistic provisions in the *Code of Ethics* and the *Voluntary Code regarding Violence in Television Programming* of the Canadian Association of Broadcasters and the *Code of Ethics* of the Radio Television News Directors Association of Canada.

All broadcast licensees which subscribe to this Code, including their news organizations, owner corporations and employees, will be expected to respect the spirit, as well as the letter, of this policy, as interpreted by the Canadian Broadcast Standards Council. The responsibility for adherence to the Principles and Practices established herein lies with the broadcaster members of the Council.

Principles and Practices

1. Management Structures

Broadcasters will maintain news management and presentation structures that are separate and distinct from those of their affiliated newspapers. Affiliated newspapers are those over which the broadcaster or the owner corporation of a broadcaster has effective control or which the broadcaster or the owner corporation of a broadcaster operates.

2. Separation of News Management Decisions

Every broadcaster will ensure the independence and separation of its news management from that of any affiliated newspaper in order that decisions on journalistic content and presentation on its broadcasting services be made solely by that broadcaster.

3. Advisory Conflicts

News managers will not sit on the editorial boards of affiliated newspapers; nor will broadcasters permit any member of the editorial board of any affiliated newspaper to participate in the news management of their broadcasting operations. News managers may, however, sit on committees or bodies intended to co-ordinate the use of newsgathering resources.

4. Complaints

Complaints concerning issues relating to broadcast journalistic aspects of cross-media ownership shall be submitted to the Canadian Broadcast Standards Council, which will deal with them in accordance with the Council's established procedures. Complaints may come from any source, including both the broadcast industry and the general public. They will be initially reviewed by the CBSC Secretariat in order to determine whether or not they relate to the Principles and Practices established herein and raise an issue requiring adjudication. Any complaints requiring adjudication shall be submitted to the Council's Journalistic Independence Panel.

5. Panel Membership and Operation

The Journalistic Independence Panel will be an impartial and neutral body, composed of a minimum of six and a maximum of ten Adjudicators, half of whom may be, or have been, officers or employees of licensees of Canadian broadcasting undertakings or companies related or affiliated thereto, and half of whom shall not be, or have been, officers or employees of, or have any remunerative association with, Canadian broadcasting undertakings or companies related or affiliated thereto. The Canadian Broadcast Standards Council will exercise sole authority over the appointment of Panel Adjudicators and will assure their independence and general qualifications. The Canadian Broadcast Standards Council will also be responsible for the good operation of the Panel.

When investigating or adjudicating any matter, the Panel shall sit as a body of three, the CBSC National Chair, one person representing the industry and one the public, none of whom shall have a conflict of interest vis-à-vis the broadcaster under investigation.

6. Panel Investigations and Adjudications

Upon receipt of a complaint that appears to raise an issue relating to the Principles and Practices, the CBSC Secretariat will provide the broadcaster an opportunity within three weeks to provide a response to the substance of the complaint. The Secretariat may, at that time, request that the broadcaster reply to any specific questions it raises and that the broadcaster furnish any documentation related thereto. The Secretariat will then respond to the complainant within 45 days thereafter regarding the CBSC's proposed disposition of the matter, advising the complainant either that the file will be closed and providing the reasons therefore, or that it will be referred to the Journalistic Independence Panel.

If, in order to investigate the merits of a complaint referred to the Journalistic Independence Panel, the Panel considers it necessary to request information from the broadcaster or any affiliated broadcasting company, it shall be entitled to:

- obtain all information which it considers necessary from the broadcaster with respect to it, its subsidiaries and affiliates, as well as any employee involved;
- examine all files relevant to the complaint, subject to any constraints relating to privacy and the protection of sources.

The Panel shall review the submissions and arguments of all the parties and any evidence it has gathered; it shall be entitled to draw an adverse inference in circumstances in which the broadcaster does not collaborate in furnishing any evidence requested by it.

No employee will be financially or professionally penalized for complying with the requests of the Panel, including for any loss of time required to comply with any such requests.

7. Panel Decisions

Once all necessary material has been delivered to the Journalistic Independence Panel and it has deliberated, the Panel will render a written decision, which will set out its reasons and conclusions and the steps, if any, that it recommends be taken by the broadcaster.

8. Compliance with CBSC Decisions

The broadcaster will respond to the decision of the Journalistic Independence Panel within 30 days of receiving the written notification from the Panel and will, if any action is required, within 60 days of that notification, indicate the steps it has taken to comply with the terms of the decision.

9. Code Publicity

A subscribing broadcaster will provide a copy of this Code to each of its employees and freelance journalists and will emphasize the importance of complying with the Principles and Practices set out in this Code.

Broadcasters subscribing to this Code will air Public Service Announcements to make audiences aware of the Principles and Practices as well as the role of the CBSC and the process to file a complaint.

10. Reports

The CBSC will prepare an annual report, consisting of summaries of all complaints and adjudications, along with such other information as may be appropriate, which it will make public and transmit to the Canadian Radio-television and Telecommunications Commission at a regular date every year to be determined by the CBSC in consultation with the Commission.