



## Broadcasting Decision CRTC 2023-322

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Reference: Part 1 application posted on 17 April 2023

Ottawa, 20 September 2023

**Canadian Broadcasting Corporation**  
Across Canada

*Public record: 2023-0187-8*

### **Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence amendments**

#### **Summary**

The Commission **denies** an application by the Canadian Broadcasting Corporation (CBC) to amend conditions of service 59 to 62 set out in Appendix 3 to *Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence renewals*, Broadcasting Decision CRTC 2022-165 and Broadcasting Orders CRTC 2022-166 and 2022-167, 22 June 2022, as amended by Broadcasting Decision CRTC 2022-165-1, 20 June 2023, regarding consultations with Indigenous Peoples.

In addition, the Commission **directs** the CBC to hold the consultations set out in conditions of service 59 and 60 by **31 March 2024**, and to file the report set out in condition of service 62 by **30 June 2024**.

#### **Background**

1. As part of its licence renewal application submitted in 2019, the Canadian Broadcasting Corporation (CBC) proposed the imposition of a requirement to hold consultations with Indigenous communities.
2. Accordingly, in *Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence renewals*, Broadcasting Decision CRTC 2022-165 and Broadcasting Orders CRTC 2022-166 and 2022-167, 22 June 2022, as amended by Broadcasting Decision CRTC 2022-165-1, 20 June 2023 (Broadcasting Decision 2022-165), the Commission determined that it would be appropriate to expand the CBC's consultation and reporting requirements to include Indigenous communities. In this regard, it imposed conditions of licence<sup>1</sup> requiring the CBC to hold consultations with Indigenous groups starting in the 2022-2023 broadcast year.

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<sup>1</sup> Pursuant to subsection 49(1) of the *Online Streaming Act*, the conditions of licence that existed prior to the date of royal assent of that Act are deemed to be conditions imposed under an order made pursuant to

3. Specifically, the Commission imposed the following conditions of service set out in Appendix 3 to Broadcasting Decision 2022-165:

59. The [CBC] shall hold formal consultations beginning in the 2022-2023 broadcast year and at least once every two (2) years with Indigenous Peoples, groups and communities and with English- and French-language official language minority communities (OLMC). These consultations shall be gender balanced and shall be representative of each of the regions of Atlantic Canada, Quebec, Ontario, Western Canada and the North. These consultations shall discuss:

- a. broadcasting issues of importance to Indigenous Peoples, groups and communities, and to OLMCs, including reflective and relevant audio and audiovisual Canadian programming, with a particular emphasis on the reflection and relevance of news and information, children's and youth programming, and programs of national interest to Indigenous Peoples and OLMCs, on all licensed services and digital media broadcasting undertakings;
- b. the results of the perception public opinion research as described in condition of licence 71 in this appendix in order to determine whether:
  - measures must be taken to ensure that relevant and reflective programming is provided for these communities;
  - the [CBC] is adequately measuring whether its programming is meeting the needs of Indigenous Peoples, groups and communities, and of OLMCs, through perception public opinion research or other appropriate mechanisms; and
  - the manner in which the [CBC] is consulting (or surveying depending on the group) is done in a culturally sensitive, meaningful and methodologically sound manner.

60. In parallel with the consultations identified in condition of licence 59, the [CBC] shall hold consultations with Indigenous creators and independent Indigenous producers, and official language minority community (OLMC) producers and creators of audio and audiovisual content in each of the regions of Atlantic Canada, Quebec, Ontario, Western Canada and the North. During these consultations with producers, the [CBC] shall discuss the relevance of the audio and audiovisual programming being produced for Indigenous Peoples and each OLMC and develop collaboration strategies for content creation.

61. In choosing the programming it broadcasts to Canadians, the [CBC] shall take into consideration the results of the consultations required by conditions of service 59 and 60 and the results of perception public opinion research as outlined in condition of licence 71 in this appendix.

62. For each broadcast year of the new licence term, commencing in the 2022-2023 broadcast year, and by no later than 30 November following the end of each broadcast year, the [CBC] shall file with the Commission a report on the efforts it has taken to ensure that the needs of Indigenous Peoples, groups and communities, and of official language minority communities are being addressed in its audio and audiovisual programming choices. The [CBC] shall also demonstrate how it will address any concerns or issues raised during the consultations specified in conditions of licence 59 and 60, or any adjustments that would be required to its programming strategies in order to be relevant to these communities.

4. These conditions of service were imposed following an extensive public process as well as consultations with the CBC pursuant to subsection 23(1) of the *Broadcasting Act*.

## **Application**

5. On 22 February 2023, the CBC filed an application to amend the above-noted conditions of service regarding the consultations with Indigenous Peoples set out in Appendix 3 to Broadcasting Decision 2022-165.
6. Specifically, the CBC requested that the timeline for the consultations with Indigenous Peoples be extended by one year and begin in the 2023-2024 broadcast year.
7. The CBC stated that the amendment would allow it to complete the development of its National Indigenous Strategy before launching a new set of consultations with Indigenous Peoples.
8. The CBC also stated that the amendment would provide it additional time to develop the necessary privacy measures to protect the identities of participants who voluntarily self-identify as a member of one of the designated groups during the consultations with Indigenous Peoples, racialized persons, persons with disabilities, and persons who identify as 2SLGBTQI+.<sup>2</sup>
9. Finally, the CBC stated that it is mindful of the potential overlap in multiple consultations and the consultation fatigue that is being experienced by some Indigenous Peoples. The CBC noted that during the engagement sessions it conducted

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<sup>2</sup> Conditions of service 83 and 84 set out in Appendix 3 to Broadcasting Decision 2022-165 require the CBC to conduct a consultation on the parameters of self-identification, to report on these self-identification parameters before 30 November 2023, and to use the report on parameters for self-identification when it is gathering information on individuals self-identifying as members of one of the designated groups.

from April to November 2022 as part of phase 2 of the development of its National Indigenous Strategy, some communities expressed feeling over-consulted by various industries and cautioned against holding further consultations without a concrete action plan and concerted effort in strategy development.

### **Procedural matters**

10. In light of the fact that Indigenous Peoples would be affected by any amendment to conditions of service 59 to 62 and that one of the CBC's arguments relies on a concern expressed by members of Indigenous communities, Commission staff sent a letter to the CBC requesting that the application be served on groups representing the interests of Indigenous Peoples, including the groups that expressed feeling over-consulted during the CBC's engagement sessions.
11. In its response to that letter, the CBC stated that it was not in a position to serve the application the parties that participated in the engagement sessions given that consent had neither been requested nor obtained from participants for the purpose of sharing personal information with third parties. However, the CBC noted that the two consultant firms it had retained to facilitate the engagement sessions had provided copies of the application directly to unnamed participants and had invited them to communicate their personal information directly to the Commission.
12. As such, the deadline for submission of interventions on the application was extended by 10 days to allow the unnamed groups sufficient time to comment.

### **Interventions and reply**

13. The Commission received three interventions in comment and six interventions in support of the present application from UTAPI Consultants, the National Campus and Community Radio Association (NCRA), and four individuals employed by or associated with the Indigenous Leadership Development Institute.
14. The interventions submitted in comment generally highlighted the importance of consultations with Indigenous Peoples, without pronouncing on the appropriateness of the implementation delay sought by the CBC.
15. The interventions in support generally argued that the CBC's requested amendment would facilitate more meaningful consultations with Indigenous Peoples. The interveners also agreed with the CBC that it would be more appropriate to wait until the adoption of the CBC's National Indigenous Strategy before launching a new set of consultations with Indigenous Peoples.
16. Furthermore, the NCRA pointed to the significant amount of current and upcoming proceedings related to the implementation of the new *Broadcasting Act*, which will make it more challenging to find capacity to participate in additional consultations. It argued that an extension of time for the CBC's consultations would enable the NCRA to better support its Indigenous members to participate in such consultations.

17. In its reply, the CBC reiterated the importance it attaches to formal consultations with Indigenous Peoples. The CBC also noted that it considers the approval of its application is in the public interest and would facilitate more meaningful consultations to ensure that the CBC's programming is reflective of, and meets the needs and interests of, Indigenous Peoples.

## **Issues**

18. After examining the record for this application in light of the applicable regulatory framework, the Commission considers that the issues it must address are the following:

- the potential impact on Indigenous producers and artists;
- the lack of clear support on the public record; and
- the timing of the application.

## **Potential impact on Indigenous producers and artists**

19. The Commission acknowledges that an extension for the consultations with Indigenous Peoples would allow the CBC to complete the development of its National Indigenous Strategy and that the adoption of that strategy could have an impact on the conduct and content of any future consultations with Indigenous Peoples. However, as the CBC advocated in its 2019 licence renewal application and as set out in Broadcasting Decision 2022-165, further to an extensive public process which included consultations with the CBC on the appropriateness of the imposition of conditions of service 59 to 62, the Commission maintains its view that there would be value in holding consultations with Indigenous Peoples in line with the purpose underlying the imposition of those conditions of service to achieve the outcomes prescribed in Broadcasting Decision 2022-165.

20. Specifically, in Broadcasting Decision 2022-165, the Commission stated that consultations with Indigenous producers and artists would give those creators a chance to have their voices heard and establish relationships between them and the CBC as it adjusts its operations to meet the Commission's audiovisual Indigenous programming expenditure requirements and Indigenous musical selection requirements. Implementing feedback from Indigenous communities would allow the CBC to make meaningful adjustments to ensure that the programming tailored towards Indigenous Peoples is relevant for them, and that its internal processes are more inclusive.

21. Consequently, the Commission considers that the proposed amendments to conditions of service 59 to 62 would undermine the outcome outlined in Broadcasting Decision 2022-165 and that the CBC's proposed amendments could negatively impact Indigenous producers' and artists' ability to have their voices heard and establish relationships with the CBC.

### **Lack of clear support on the public record**

22. While many of the interventions received were in support of the application, the support received has been mainly expressed by organizations or individuals who play a role in the CBC's consultations with Indigenous Peoples for its National Indigenous Strategy rather than by participants or potential participants in such consultations. Specifically, four interventions were submitted by individuals that are employed by or associated with the Indigenous Leadership Development Institute, which is one of the consultant firms retained by the CBC to facilitate the engagement sessions for its National Indigenous Strategy. Another intervention was submitted by UTAPI Consultants.
23. The Commission acknowledges that Indigenous consultants are stakeholders and that their positions have value. However, it is concerned that a public record composed mostly of interventions from consultants may only draw a partial portrait of the issue, as challenges faced by parties organizing consultations may differ from challenges faced by participants of such consultations.
24. The Commission is also concerned by the CBC's inability or unwillingness to serve the application upon potentially affected parties. The Commission is of the view that the CBC could have decided to serve the application on a number of Indigenous groups and producers with whom it has relationships, regardless of their participation in the engagement sessions. To that end, the Commission notes that the Commission staff request to serve the application was not limited exclusively to engagement session participants, but rather on groups representing the interests of Indigenous Peoples, including the groups that expressed feeling over-consulted during the engagement sessions. As a result, the Commission is of the view that the CBC's actions in this regard may have had a negative impact on participation by potentially affected parties to the present application.
25. While the CBC could not oblige any party to intervene and support its application, the Commission considers that when an applicant puts forward an argument based on the opinion of a third party, it is the applicant's responsibility to provide sound evidence that this argument is valid, which the CBC has not done in an unequivocal manner.
26. Furthermore, none of the interveners addressed the CBC's argument that a one-year extension would provide it with additional time to develop the necessary privacy measures to protect the identities of participants who self-identify as Indigenous Peoples. The Commission acknowledges the importance of developing such privacy measures going forward. However, the Commission does not consider that this should delay consultations.

### **Timing of the application**

27. Pursuant to conditions of service 59 to 62, the CBC was required to hold consultations with Indigenous Peoples before 31 August 2023, which marks the end of the 2022-2023 broadcast year. However, by filing this application on 22 February 2023, the Commission considers that the CBC put itself in a position

where it was highly unlikely that it would have been able to comply with these obligations should the amendment sought be denied. The Commission reiterates that these obligations were imposed further to a lengthy and detailed public process and following additional consultation with the CBC pursuant to subsection 23(1) of the *Broadcasting Act*. The Commission finds that the CBC was clearly aware of its obligations well in advance of the renewal of its licences.

28. Therefore, the Commission is of the view that it would have been more appropriate for the CBC to file the application earlier in order to allow it to organize, hold and report on consultations with Indigenous Peoples, should its application be denied.

### **Conclusion**

29. In light of all of the above, the Commission **denies** the CBC's application to amend conditions of service 59 to 62 set out in Appendix 3 to Broadcasting Decision 2022-165 regarding the consultations with Indigenous Peoples.
30. Moreover, given that the broadcast year during which the CBC was supposed to hold the consultations set out in conditions of service 59 to 62 ended on 31 August 2023 and as the outcomes sought in Broadcasting Decision 2022-165 remain important, the Commission **directs** the CBC to hold consultations set out in conditions of service 59 and 60 by **31 March 2024**, and to file the report set out in condition of service 62 by **30 June 2024**.

Secretary General