



## Broadcasting Decision CRTC 2019-393

PDF version

Reference: Part 1 licence renewal application posted on 7 May 2019

Ottawa, 3 December 2019

**Radio Centre-Ville Saint-Louis**  
Montréal, Quebec

*Public record for this application: 2018-0883-3*

### **CINQ-FM Montréal – Licence renewal**

*The Commission **renews** the broadcasting licence for the French-language community radio station CINQ-FM Montréal until 31 August 2023. This short-term renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.*

#### **Application**

1. Radio Centre-Ville Saint-Louis (Radio Centre-Ville) filed an application to renew the broadcasting licence for the French-language community radio station CINQ-FM Montréal, which expires on 31 December 2019.<sup>1</sup>

#### **Complaints**

2. During its current licence period, CINQ-FM was the subject of several complaints. These dealt primarily with the following issues:
  - The governance of Radio Centre-Ville: allegations that the board of directors of Radio Centre-Ville is illegitimate because non-members allegedly participated in the election of a new board of directors at the January 2017 general meeting;
  - Station programming: blocks of programming hours were allegedly sold to third parties and ethnic programming allegedly exceeded the limit permitted in the licensee's conditions of licence.
3. The complaints received relate to the same issues as those raised in the interventions and originate primarily from the same individuals.

---

<sup>1</sup> In Broadcasting Decision 2019-255, the Commission administratively renewed the broadcasting licence for CINQ-FM from 1 September 2019 to 31 December 2019.

## **Interventions**

4. The Commission received two interventions in support of this application and two interventions in opposition to the application, as well as two comments.
5. The two individuals who submitted an intervention in support of the application ask that Radio Centre-Ville's licence be renewed. One of them stated that CINQ-FM broadcasts numerous programs in different languages, enabling people from diverse cultures to listen to the news, artistic and cultural events and other programming in their own language. According to this intervener, it would be an irreversible loss to Montrealers if Radio Centre-Ville's licence were not renewed.
6. In his opposing intervention, Mr. Marc Provencher, the station's former technical director, stated that the station is experiencing governance problems and is not in compliance with some of its conditions of licence related to programming. According to Mr. Provencher, over three quarters of the programming is allegedly ethnic in nature. He added that the majority of the programming targets the Haitian community. He also stated that CINQ-FM has become a quasi-private radio station, because independent producers buy airtime.
7. The other opposing intervention came from a former station employee who reported being dismissed without cause.
8. In the first comment, members of Radio Centre-Ville stated that they have gone to court to have the general meeting of 22 January 2017, and all subsequent actions of the board of directors, including the changes made to the bylaws, declared illegal. These interveners indicated that the Superior Court of Quebec hearing will take place in December 2019 (case 500-17-097855-175). They stated that they will present a series of evidence and testimony that confirms that the general meeting in question was illegal.
9. The second comment came from Mr. Michel Mathieu, broadcasting consultant. He emphasized that Mr. Wanex Lalanne, Radio Centre-Ville executive director, asked him to act as a representative to help him complete certain documents to submit to the Commission. Due to disputes, Mr. Mathieu decided to stop representing CINQ-FM.

## **Licensee's reply**

10. In response to Mr. Provencher's intervention, Mr. Lalanne indicated that the board of directors has never contravened the statutes and regulations of Radio Centre-Ville. Regarding programming, he pointed out that the programs Mr. Provencher stated are ethnic in nature and directed toward the Haitian community are not all produced by members of the Haitian community.
11. Mr. Lalanne also stated that he already responded to the employee who was dismissed when she submitted complaints and he informed her of the reasons for her dismissal.

12. Regarding the intervention of certain members of Radio Centre-Ville, Mr. Lalanne indicated that these members tried to boycott the board meeting of 22 January 2017, and they failed. According to him, these members will not stop hindering CINQ-FM. Mr. Lalanne also indicated that he would like to wait for the Court decision regarding the legality of the general meeting of 22 January 2017.
13. Lastly, in response to Mr. Mathieu, Mr. Lalanne maintained that their collaboration ended due to financial issues.

### **Commission's analysis and decision**

14. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:
  - the station's governance;
  - the programming; and
  - the possible non-compliances.

### **Station's governance**

15. As set out in Broadcasting Regulatory Policy 2010-499 (the campus and community radio policy), a community radio station is owned, operated, managed and controlled by a not-for-profit organization that provides for membership, management, operation and programming primarily by members of the community served.
16. Further, the campus and community radio policy sets out that, pursuant to the *Direction to the CRTC (Ineligibility of non-Canadians)*, the Commission must ensure that:
  - 80% of the station's directors are Canadian;
  - the chief executive officer, or where there is no chief executive officer, the person(s) performing functions similar to the functions performed by a chief executive officer, is Canadian; and
  - the station is not otherwise controlled by non-Canadians.
17. The Commission notes that Radio Centre-Ville is a not-for-profit organization and that the composition of its board of directors meets the three ownership criteria set out in the campus and community radio policy.
18. Regarding the issues related to the board of directors' legitimacy, its decisions, and holding annual or special meetings, the Commission specifies that these are before the Superior Court of Quebec, which is the appropriate forum to address these issues.

19. In light of the foregoing, the Commission finds that the current governance structure and board of directors' composition do not raise issues related to the campus and community radio policy. However, the licensee will have to inform the Commission of the decision of the Superior Court of Quebec as well as any change made to its governance or the composition of its board of directors, if applicable, within **30 days of the Superior Court decision**. A condition of licence requiring this information to be submitted is set out in the appendix to this decision.

## **Programming**

### **Blocks of programming hours sold to third parties**

20. Some interveners expressed concern about the fact that the station's new manager is selling airtime to third parties. The licensees are responsible for the choice, content and scheduling of all programs and the Commission does not change or censor a given station's programming. While broadcasters are responsible at all times for the programming broadcast on their airwaves, nothing specifically prevents them from dedicating a portion of their schedule to programming acquired from a third party, insofar as Commission policies and regulations are respected.
21. In response to a letter from the Commission on 18 March 2019, Mr. Lalanne indicated that the station remains a not-for-profit organization. He added that after losing government grants, Radio Centre-Ville has had to "rent out" certain programming hours to improve the station's financial situation. He also specified that five language groups and a group of independent producers broadcast their programming on CINQ-FM.
22. After reviewing the file, and despite the sale of certain blocks of programming, the Commission notes that the licensee has a mechanism in place to integrate communities into station activities, in particular the opportunity to be members of the organization or to broadcast a program on station airwaves. Thus, even if the programming blocks are sold, as in the present case, the station is fulfilling the community access requirements set out in the campus and community radio policy.

### **Ethnic programming**

23. Condition of licence 3 for CINQ-FM states that licensee shall devote no more than 40% of its weekly broadcast time to ethnic programming. The *Radio Regulations, 1986* (the Regulations) defines an ethnic program as a program in any language that is specifically directed toward any culturally or racially distinct group, other than one whose heritage is Aboriginal Canadian, from France or from the British Isles.
24. Based on the version of the station schedule sent to the Commission as part of this application and having verified that the schedule was being respected, the Commission finds that some blocks of French-language programming are not specifically directed toward the Haitian community and that the station is not exceeding the ethnic programming limit to which it is subject.

25. Regarding the opposing intervention alleging that the station is exceeding the ethnic programming limit indicated in its conditions of licence, raised by only one intervener, the Commission finds that the intervener considered certain programs in French presented by hosts of Haitian origin to be ethnic programming.
26. In addition, as specified in its condition of licence 5, it appears that ethnic programming on CINQ-FM targets five distinct cultural groups and is offered in five different languages: Spanish, Portuguese, Greek, Arabic and Creole.
27. In light of the foregoing, the Commission finds that Radio Centre-Ville is complying with the limits for ethnic programming and representation of the cultural groups indicated in CINQ-FM's conditions of licence.

## **Non-compliance**

### **Filing of annual returns**

28. Section 9(2) of the Regulations requires licensees to file annual returns, including financial statements, by 30 November of each year for the broadcast year ending the previous 31 August. The specific filing requirements are set out in Broadcasting Information Bulletin 2011-795.
29. According to Commission records, the annual returns for broadcasting years 2015-2016 and 2016-2017 were submitted on 30 March 2018, nearly a year and a half late and four months late respectively. In addition, the licensee did not submit financial statements for broadcasting year 2015-2016.
30. Mr. Lalanne indicated that since August 2015, CINQ-FM has been experiencing an unprecedented crisis. The previous director dismissed all the station employees without following the applicable regulations and submitted his resignation. Mr. Lalanne added that the new executive director was unaware of the deadline for submitting annual reports to the Commission and that other problems occurred in 2016, which delayed the financial statement audit.
31. Mr. Lalanne stated that the situation is resolved and all the documents have been sent. He explained that he implemented a reminder system to inform management and the accounting firm of the deadlines.
32. In light of the above, the Commission finds the licensee in non-compliance with section 9(2) of the Regulations for the 2015-2016 and 2016-2017 broadcast years.

### **Participation in the National Public Alerting System**

33. In Broadcasting Regulatory Policy 2014-444, the Commission announced amendments to various regulations, standard conditions of licence and certain exemption orders to require mandatory distribution of emergency alert messages by broadcasting undertakings. Section 16(3) of the Regulations required campus,

community and Native radio stations to participate in the National Public Alerting System (NPAS) by 31 March 2016.

34. According to Commission's records, and as confirmed by the station's management, the licensee has not yet implemented the NPAS.
35. In response to this issue, Radio Centre-Ville indicated that the implementation of the NPAS will be its priority for 2019.
36. In light of the above, the Commission finds the licensee in non-compliance with section 16(3) of the Regulations. A condition of licence requiring the licensee to implement the NPAS by no later than **2 March 2020** is set out in the appendix to this decision.

### **Regulatory measures**

37. The Commission's approach to non-compliance by radio stations is set out in Broadcasting Information Bulletin 2014-608. Under that approach, each instance of non-compliance is evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The circumstances leading to the non-compliance, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.
38. The Commission also specified in the bulletin that it may apply certain measures on a case-by case basis depending on the nature of the non-compliance, including the imposition of conditions of licence or mandatory orders, short-term licence renewal or the non-renewal, suspension or revocation of the licence.
39. In light of the seriousness of the non-compliances with sections 9(2) and 16(3) of the Regulations, the Commission finds it appropriate to renew the broadcasting licence for CINQ-FM for a short-term period.

### **Conclusion**

40. In light of all of the above, the Commission **renews** the broadcasting licence for the French-language community programming undertaking CINQ-FM Montréal, Quebec, from 1 January 2020 to 31 August 2023. This short-term renewal will allow for an earlier review of the licensee's compliance with regulatory requirements. The terms and **conditions of licence** are set out in the appendix to this decision.

### **Reminders**

41. The licensee must comply at all times with the requirements set out in the *Broadcasting Act* (the Act), the Regulations and its conditions of licence.
42. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. Annual returns are key components of the Commission's ongoing monitoring plan and an authoritative source for Canadian broadcasting

industry statistics available for use by all stakeholders. In addition, annual returns allow the Commission to effectively assess, supervise, and regulate the radio broadcasting industry as a whole. They also allow the Commission to monitor a licensee's performance and compliance with regulatory requirements. The timely filing of complete annual returns is therefore an important regulatory obligation.

43. Licensees are responsible for filing complete annual returns on time, including financial statements. As set out in Broadcasting Information Bulletin 2011-795, it is the licensee's responsibility to ensure that all appropriate forms and documentation are included with its annual returns and to contact the Commission if further clarification is required.
44. The full participation of the broadcasting industry is important for the NPAS to be effective in safeguarding and warning Canadians. The Commission holds that compliance is mandatory. Therefore, timely compliance by stations will be closely monitored. The Commission could, at any time, choose to apply more stringent regulatory measures, such as those set out in Broadcasting Information Bulletin 2014-608, should the requirements with respect to the NPAS not be fulfilled.
45. A campus or community radio station is owned, operated, managed and controlled by a not-for-profit organization that provides for membership, management, operation and programming primarily by members of the community served. In its openness to community involvement, campus and community stations offer ongoing opportunities for training in the operation of their station to volunteers from the community served.
46. The Act holds broadcasters accountable for the choice and content of on-air programming and for their compliance with regulatory requirements.
47. Pursuant to section 22 of the Act, the broadcasting licence renewed in this decision will cease to have any force or effect if the broadcasting certificate issued by the Department of Industry lapses.

Secretary General

### **Related documents**

- *Various programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2019-255, 16 July 2019
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders - Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014

- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010

*This decision is to be appended to the licence.*

## Appendix to Broadcasting Decision CRTC 2019-393

### Terms, conditions of licence, expectation and encouragement for the French-language community radio programming undertaking CINQ-FM Montréal, Quebec

#### Terms

The licence will expire on 31 August 2023.

#### Conditions of licence

1. The licensee shall adhere to the conditions set out in *Standard conditions of licence for campus and community radio stations*, Broadcasting Regulatory Policy CRTC 2012-304, 22 May 2012, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. The licensee shall devote a minimum of 65% of the category 2 vocal musical selections broadcast in each broadcast week to French-language musical selections, except for musical selections broadcast during the periods devoted to ethnic programming.
3. The licensee shall devote no more than 40% of its weekly broadcast time between 6 a.m. and midnight to ethnic programming, as defined in the *Radio Regulations, 1986*.
4. The licensee shall ensure that at least 7% of musical content aired during ethnic broadcast periods is Canadian.
5. The licensee shall provide ethnic programming aimed at a minimum of five cultural groups in at least five languages.
6. In order to comply with the requirements set out in sections 16(2) and 16(3) of the *Radio Regulations, 1986* and *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014, the licensee shall implement the National Public Alerting System (NPAS) by no later than **2 March 2020**. As part of this requirement:
  - The licensee must file with the Commission a letter attesting to the implementation date of its NPAS within 14 days after the installation. In this letter, the licensee must confirm whether maintenance, testing and updating procedures have been adopted for its automated emergency alert message distribution equipment.

- In addition, the licensee must file with the Commission the results of its first NPAS tests, as scheduled by the relevant alerting authorities, within two weeks after the occurrence of such system tests.
7. The licensee must inform the Commission of the decision of the Superior Court of Quebec in case 500-17-097855-175 as well as any change made to its governance, including corporate documents, or the composition of its board of directors, if applicable, within **30 days of the Superior Court decision.**

### **Expectation**

The Commission expects all community and campus licensees to file yearly updates on the composition of their board of directors. These annual updates can be submitted at the time of submission of annual returns, following annual board of directors' elections or at any other time. Licensees may submit such information through the Commission's website.

### **Encouragement**

The Commission considers that campus and community radio stations should be particularly sensitive to employment equity issues in order to fully reflect the communities they serve. The Commission encourages the licensee to consider these issues in its hiring practices and in all other aspects of its management of human resources.