



## Broadcasting Public Notice CRTC 2008-95

Ottawa, 20 October 2008

### Regulatory policy

#### **Journalistic Independence Code – Final approval – Selection of adjudicators and composition and operation of the Panel**

*Further to Journalistic Independence Code – Regulatory Policy, Broadcasting Public Notice CRTC 2008-5, 15 January 2008 (Broadcasting Public Notice 2008-5), the Commission **approves** the principles and criteria provided by the Canadian Broadcast Standards Council (CBSC) relating to its adjudicator selection process, as well as the creation of a Nominating Committee responsible for the appointment of adjudicators to all CBSC panels in accordance with these principles and criteria.*

*The Commission also **approves** the amendments to Clause 5 of the Journalistic Independence Code (the Code) as regards the presence of journalists on the panels adjudicating complaints related to the Code and the number of adjudicators required both for the composition of the Journalistic Independence Panel and for the investigation of matters related to the Code. An updated version of the Code is set out in the appendix to the present notice. This version supersedes that issued in Broadcasting Public Notice 2008-5.*

#### **Introduction**

1. In Broadcasting Public Notice 2008-5, the Commission issued its determination that the principles set out in the Canadian Broadcast Standards Council's (CBSC) proposed Journalistic Independence Code (the Code) will ensure a diversity of editorial voices. Specifically, the Commission concluded that the Code's 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 also expressed its view that the Code offers transparent, equitable and uniform regulation for all broadcasters in Canada. The Commission accordingly approved the Code. However, the Commission's approval was subject to certain clarifications. These clarifications related to concerns raised by several interveners, most notably journalists, unions and associations representing journalists' interests, in the course of the Diversity of Voices Proceeding announced in Broadcasting Notice of Public Hearing 2007-5, as well as in response to the call for comments on the proposed Code (Broadcasting Public Notice 2007-41).

2. The clarifications required relate to the selection of CBSC adjudicators and the presence of journalists on its panels adjudicating complaints related to the Code. More precisely, the Commission directed the CBSC to submit in writing detailed guidelines outlining its adjudicator selection process and to include a minimum number of journalists on such panels and report this number to the Commission for approval. The Commission indicated that once the guidelines outlining the adjudicator selection process and the report on the minimum number of journalists on the panels were approved, it would consider applications to suspend the application of the conditions of licence respecting cross-media ownership issues for CTV Television Inc. (CTV), Global Communications Limited<sup>1</sup> (Global) and TVA Group Inc. (TVA), subject to their being members in good standing of the CBSC.

### **Selection of CBSC adjudicators**

3. As noted in Broadcasting Public Notice 2008-5, the CBSC stated during the Diversity of Voices Proceeding that its adjudication panels, which render decisions on complaints before the CBSC, 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 he or she represents. The National Chair selects adjudicators who form the panels, taking into account a variety of factors, such as gender, ethno-cultural community, reputation, commitment to public service, geographic representation and professional experience. In addition to broad consultations based on these criteria, the National Chair submits the name of the person selected must be submitted to the CBSC National Executive for approval before the person is appointed to a panel. Finally, the CBSC explained that, as set out in Clause 5 of the Code, the members of its adjudication panels are appointed solely by the CBSC, which ensures their independence and general qualifications.
4. The Commission considered that the CBSC's adjudicator selection process needed to be formalized in order to ensure a fair and transparent appointment process. Accordingly, in Broadcasting Public Notice 2008-5, the Commission directed the CBSC to submit for approval detailed guidelines and criteria outlining its adjudicator selection process.

### **CBSC's reply**

5. The CBSC announced that it will be creating a Nominating Committee to appoint adjudicators. The CBSC's National Executive would appoint the members of the Nominating Committee and would ensure a balanced representation comprising men and women and members from the francophone, anglophone and ethno-cultural communities.
6. The CBSC indicated that the Nominating Committee would be composed of no fewer than five and no more than seven individuals (including the CBSC National Chair, sitting

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<sup>1</sup> On 1 September 2005, Global Communications Limited amalgamated with Global Television Network Inc. and 120 other CanWest affiliates to form CanWest MediaWorks Inc. On 1 January 2008, CanWest MediaWorks Inc. changed its name to Canwest Media Inc.

*ex officio*). As well, since the CBSC National Chair is considered a representative of the public rather than the industry, the CBSC stated that half of the remaining committee members would be from the public and half from the broadcasting industry, resulting automatically in a higher representation from the public. Finally, with the exclusion of the National Chair, up to half of the remaining members of the Nominating Committee could serve as CBSC adjudicators, i.e. current members of CBSC panels, and at least half of the remaining committee members would not, at the time of their appointment, be CBSC adjudicators serving on a CBSC panel.

7. The CBSC also indicated that its Nominating Committee would be responsible for the nomination of adjudicators to all CBSC adjudicating panels, including the five regional panels, the two national panels, and the Journalistic Independence Panel, as well as any specialized panels that might be required in the exercise of the CBSC's future responsibilities. The CBSC specified that the Nominating Committee would meet as required to fill panel vacancies or, as in the case of the Journalistic Independence Panel, to make the initial set of appointments and thereafter to fill vacancies, if need be.
8. In regard to the criteria that the Nominating Committee would employ to choose its adjudicators, the CBSC responded that it would not establish precise criteria for appointing its adjudicators because it wished to include the widest possible variety of potential candidates in its selection process and did not wish to exclude potential candidates who do not meet specific criteria.
9. Nonetheless, the CBSC stated that the Nominating Committee would be mandated to ensure that, collectively, their panel nominations include men and women as well as balanced representation from Canada's ethno-cultural and Aboriginal communities and persons with disabilities. The CBSC also committed to the following principles:
  - The Nominating Committee will be responsible for ensuring that panels include individuals who are objective, manifesting no discernible bias for or against the broadcast sector, and who appear to have an interest in issues of public concern. The Nominating Committee will also take into account the overall configuration of panels, with the goal of having representation from different parts of the country in the case of national panels.
  - In appointing industry adjudicators, the Nominating Committee will ensure that every panel includes at least one broadcast journalist and that, collectively, persons with program, regulatory, and management experience will also be represented.
  - Since, in the case of the Journalistic Independence Panel, whether sitting on an English or French adjudication, every adjudicating panel will include one industry adjudicator with broadcast journalistic experience, the Nominating Committee shall ensure that sufficient broadcast journalist adjudicators will be appointed to enable such panel formation.

### **Commission's analysis and determination**

10. The Commission considers that the creation of a Nominating Committee by the CBSC that includes representation from both the public and the industry sectors will provide for a balanced perspective on adjudication appointments. The Commission views this as an improvement over the current practice whereby the National Chair is solely responsible for selecting adjudicators for the National Executive's approval. As well, the Commission deems the criteria to be used by the Nominating Committee in the selection process sufficient to ensure credible representatives with no discernible bias, without unduly limiting the ability of the committee to nominate adjudicators. The Commission believes that by ensuring that adjudicator nominations include men and women, persons with disabilities and representation from various ethno-cultural and Aboriginal communities and from different parts of the country, this nomination process will help to ensure that CBSC decisions reflect the perspectives of Canadian society.

### **Presence of journalists on panels adjudicating complaints related to the Code**

11. During the Diversity of Voices Proceeding and in response to the call for comments on the CBSC's proposed Code, many interveners, most notably unions and associations representing journalists, noted that journalistic experience and expertise were necessary to fully understand newsroom operations and overall journalistic functions. While the CBSC stated that barring a conflict of interest, it would always appoint one journalist to the panels adjudicating complaints related to the Code, journalists and their representatives were concerned that not enough journalists would be included on these panels.
12. In Broadcasting Decision 2008-5, the Commission determined that given that the nature of the Code is specific to a profession rather than to broad community standards, as is the case of the Canadian Association of Broadcasters' *Equitable Portrayal Code* and *CAB Violence Code*, including a minimum number of journalists on panels adjudicating complaints related to the Code would increase the credibility of the adjudication process and reduce the possibility of complaints being referred back to the Commission. Accordingly, the Commission directed 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.

### **CBSC's reply**

13. The CBSC replied that it had reviewed the terms of the Code and that it considered that amendments to Clause 5 of the Code were necessary to properly respond to the Commission's direction. Currently, Clause 5 reads as follows:

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 Broadcasting 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.

14. To facilitate the naming of members to participate in the Panel meetings to adjudicate matters related to the Code, the CBSC proposed to amend the first paragraph of this clause by increasing the minimum and maximum number of adjudicators from six to ten and ten to sixteen respectively.
15. The CBSC also proposed an amendment to the second paragraph of the same clause in order to increase the number of adjudicators on an adjudicating panel from three to five adjudicators, to be comprised by “the CBSC National Chair, two persons representing the industry, one of whom shall be a journalist, and two the public.”
16. Accordingly, the revised Clause 5 of the Code would read as follows:

The Journalistic Independence Panel will be an impartial and neutral body, composed of a **minimum of ten and a maximum of sixteen 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 five, the CBSC National Chair, two persons representing the industry, one of whom shall be a journalist, and two the public**, none of whom shall have a conflict of interest vis-à-vis the broadcaster under investigation.

17. The CBSC explained that, on this basis, fifty percent of the industry adjudicators sitting on any panel adjudicating complaints related to the Code would be journalists, therefore amounting to one journalist per such adjudication. The CBSC was of the view that there would be an imbalance if both adjudicators were broadcast journalists. Consequently, the CBSC decided that one industry adjudicator would automatically be a broadcast journalist and the other not.

### **Commission's analysis and determination**

18. The Commission considers that the proposed structure of the Journalistic Independence Panel will ensure that journalistic expertise and perspective is provided when adjudicating complaints. The Commission is also of the view that the presence of an industry adjudicator from another area of expertise should ensure that a comprehensive outlook is taken into consideration when rendering a decision concerning a complaint related to the Code.

### **Conclusion**

19. The Commission considers that the CBSC has supplied adequate and sufficient information regarding the selection of CBSC adjudicators and the presence of journalists on panels investigating complaints related to the Code. The Commission believes that the proposed principles and criteria will ensure a transparent and equitable decision-making process and will help to ensure that decisions reflect the perspectives of Canadian society as a whole. As well, the proposed amendments to the Code will ensure that the Journalistic Independence Panel will have the appropriate journalistic expertise and perspective needed in order to render informed decisions concerning complaints related to the Code.
20. In light of the above, the Commission **approves** the principles and criteria provided by the CBSC relating to its adjudicator selection process, as well as the creation of a Nominating Committee responsible for the appointment of adjudicators to all CBSC panels in accordance with these principles and criteria, as set out at paragraph 9 of this notice. The Commission also **approves** the amendments put forth by the CBSC concerning the provisions of Clause 5 of the Code and the presence of journalists on the panels adjudicating complaints related to the Code.
21. As a result of this public notice, the Commission is now prepared to consider applications to suspend the conditions of licence respecting cross-media ownership issues for CTV, Global and TVA. As noted in Public Notice 2008-5, the Commission expects the CBSC to confirm that CTV, Global and TVA support the Code and that they are members in good standing of the CBSC.
22. An updated version of the Code is set out in the appendix to the present notice. This version supersedes that issued in Broadcasting Public Notice 2008-5.

Secretary General

### **Related documents**

- *Journalistic Independence Code* – Regulatory Policy, Broadcasting Public Notice CRTC 2008-5, 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

*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 2008-95

## 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 ten and a maximum of sixteen 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 five, the CBSC National Chair, two persons representing the industry, one of whom shall be a journalist, and two 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 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.