

TRANSCRIPTION OF PROCEEDINGS BEFORE THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

SUBJECT: To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2011-188, 2011-188-1, 2011-188-2, 2011-188-3, 2011-188-4 and 2011-188-5 and 2011-188-6

HELD AT: Outaouais Room, Conference Centre, 140 Promenade du Portage, Gatineau, Quebec  
18 May 2011

Transcription: In order to meet the requirements of the Official Languages Act, transcripts of proceedings before the Commission will be bilingual as to their covers, the listing of the CRTC members and staff attending the public hearings, and the Table of Contents. However, the aforementioned publication is the recorded verbatim transcript and, as such, is taped and transcribed in either of the official languages, depending on the language spoken by the participant at the public hearing.

— — Excerpt

2644 We will now -- I will now invite Shelley Robinson and Kim Vallière from NCRA. You have 10 minutes for your presentation.

INTERVENTION

2645 MS ROBINSON: Good afternoon. I appreciate the opportunity to speak today.

2646 I'm Shelley Robinson, the Executive Director of the National Campus and Community Radio Association, l'Association nationale des radios étudiantes et communautaires, also known as NCRA/ANREC.

2647 With me is Kim Vallière, the NCRA's new Membership Coordinator.

2648 The NCRA is a not-for-profit association committed to volunteer-driven, non-profit community-oriented radio across Canada. We have more than 70 licensed members and CFRO is among them.

2649 Our goals are to ensure stability and support for individual stations and promote the long-term growth and effectiveness of the sector. We are

here today to support CFRO in their efforts to achieve ongoing regulatory compliance moving forward.

2650 We also want to ensure our other members learn from CFRO's experience.

2651 Finally, we ask the Commission to implement constructive measures based on sector-wide challenges with compliance. We recognize that compliance with legislation and policies is of the utmost importance.

2652 We also appreciate that it is every licensee's responsibility to be fully apprised of its regulatory obligations, and to comply with the Regulations, regardless of their circumstances.

2653 In this case, we believe the focus should be on CFRO's solid governance and the solutions they have implemented to ensure that their regulatory mistakes aren't repeated.

2654 MS VALLIERE: First, a preliminary comment. We mainly communicate with our members from our Ottawa office. We are not at stations, aside from occasional visits. We rely on their staff and boards of directors to

apprise us of any issues or problems, solutions and progress. Sometimes this means we base our comments on what we have heard, rather than what we know first-hand.

2655 But in this case the NCRA's Regulatory Affairs Director, Freya Zaltz, was elected on CFRO's board in 2010. For the past year she has been attending the board programming committee and finance committee's meetings, visiting the station and helping draft and implement new policies to address compliance issues.

2656 Although she alone can't guarantee anything, her involvement might help reassure the Commission that the NCRA has direct knowledge of CFRO's efforts to identify and address important issues.

2657 Based on what we have seen, CFRO's governance, structures and policies are functional and strong enough to resolve problems when they arise. Although they are experiencing financial difficulties this isn't new nor is the station in crisis at the moment. Instead, CFRO has steadily improved its internal practices and services and increased its capacity since it was first licensed in 1974.

2658 CFRO has also consistently reached out to groups underrepresented in mainstream media.

2659 For example, Aboriginal programmers produced several locally-relevant programs in several languages.

2660 It's also home to iconic programs like Arts Rational, Red Eye and Radio Vancouver featuring public affairs and local music.

2661 Regarding CFRO's non-compliance with the radio regulations, we know that they and their more than 350 volunteer programmers have consistently made good faith efforts to understand and comply with all requirements. We are informed that CFRO usually exceeds the minimum

levels of Canadian content, spoken word and Canadian free music programming.

2662 We believe the instances of non-compliance identified by the Commission haven't illustrated ongoing deficiencies. In each case, CFRO took steps to address the roots of the problem.

2663 For example in 2009, although CFRO's staff collective confirmed that the financial manager filed that year's annual return, they didn't know she filed it late until contacted by the Commission this year.

2664 Then, in 2010, just as annual returns were due, CFRO's subsequent financial manager was terminated for failure to perform her duties. Although CFRO should have filed its annual return on time, we think it significant that other staff did so immediately upon realizing that it might not have been done and submitted a letter with the return explaining the circumstances.

2665 CFRO then made prompt improvements to this oversight mechanism to prevent these problems from reoccurring. This included creating an annual calendar listing all official deadlines which staff review biweekly and the board of directors review bi-monthly, requiring also written proof that each deadline is met on time and providing more training for the financial manager's position.

2666 Regarding CFRO's 2006 Category 2 Canadian content deficiencies, we believe they provided reasonable explanations for the 2.2 percent shortage and took steps to ensure that it will not happen again.

2667 Specifically, the Commission and CFRO assigned the same songs different category specifications. The Commission didn't recognize some original audio sound art productions that CFRO counted as Cancon and a regular volunteer programmer missed one week and his volunteer replacement didn't place sufficient Canadian content.

2668 Regarding the last point, the problem is not unusual in organizations that rely on large numbers of volunteers who face occasional illness and scheduling conflicts.

2669 We believe CFRO took appropriate steps to rectify their situation by requiring all replacement programming by the same genre as regularly scheduled programming, reminding programmers of Canadian content requirements and reviewing logs for compliance more often.

2670 Finally, CFRO's response was similarly prompt in 2004 when their audio logs weren't audible. Within a few months they raised money to replace their outdated VHS logging system with a digital one and they have had reliable quality logs ever since.

2671 CFRO's responses to these issues suggests to us that they are dealing successfully with sector-wide challenges posed by inadequate funding, poor quality equipment, difficulty attracting and retaining experienced staff due to low salaries and a large pool of volunteer programmers who occasionally make mistakes despite excellent training and supervision.

2672 MS ROBINSON: These challenges don't excuse CFRO or any other CNC station from complying with policies and regulations.

2673 However, we ask the Commission to recognize the unique role CNC broadcasters play in the Canadian broadcasting system and to support them in compliance as part of their commitment to their communities. In the recent CNC policy review, the Commission showed a keen interest in ensuring that our stations have sufficient volunteer participation and create diverse and local programming.

2674 We absolutely support these initiatives but we believe they come at a cost.

2675 Diverse local content produced by volunteers can be a messy and time-consuming process and in that case I don't mean messy in a

pejorative way. I mean messy in the way that nature is messy, beautifully messy. The more people involved, the more mistakes get made, no matter how comprehensive the station's training and supervision.

2676 CFRO is a leader in this kind of work. It has the most volunteers of any of our members. As far as I know, it has the most volunteers of any campus and community licensed station across the country and it's got an active community structure for people to get involved even beyond the mike.

2677 But monitoring large numbers of volunteers for compliance requires a huge investment of staff time and, as you know, CFRO currently has four part-time staff on a very tight budget. So we would like to see some flexibility in assessment procedures to reflect the realities of our sector.

2678 For instance, the Commission currently monitors one week at a time. That means it requires only a few small errors for a station to fall below the required levels for that week, despite as we have seen, longer term compliance and even over performance.

2679 We further note that CFRO, like many other CNC stations, uses paper logs. This makes it very hard to evaluate in the middle of any given week how compliance is going. This is very different from the sophisticated software programs that are tracking pre-programmed play lists at commercial stations.

2680 So to this end, we believe it would help if the Commission broadened the assessment period to four broadcast weeks for stations found in non-compliance. We think this longer assessment period would more accurately represent station's compliance and illustrate whether the problem is systemic and ongoing or due to a single human error.

2681 Regarding Canadian content, we appreciate the Commission's proposed changes to the Category 3 experimental music definition. This will help.

2682 Further refining contact categories would also address the range of musical diversity played at CNC stations and help avoid unintentional non-compliance in the future.

2683 We would also like to see the Commission take into account how egregious any non-compliance was, the licensee's degree of good faith responsiveness when non-compliance is brought to their attention, their past history in meeting the requirements of that same section of the Regulations.

2684 In each case, we believe CFRO acted as a responsible community broadcaster. We also believe it's important to evaluate the station's effort to ensure ongoing compliance moving forward.

2685 We recommend that after stations make reasonable and effective improvements, previous instances of non-compliance shouldn't be held against them in future proceedings if they haven't reoccurred.

2686 In this proceeding CFRO was asked to show cause why the Commission should not suspend or refuse to renew their broadcasting licence. We strongly discourage the Commission from taking this action.

2687 As you know, on all occasions when CFRO was notified that it was in non-compliance they promptly made effective changes to technology, training, policies and procedures and they have complied with those sections of the Regulations on all subsequent occasions.

2688 Suspending or refusing to renew CFRO's licence would be extremely detrimental and unnecessarily punitive to CFRO's hundreds of volunteer programmers, the communities it serves and its thousands of listeners, the general CNC radio sector of which, as mentioned, CFRO is a legacy station and the larger Canadian broadcasting system.

2689 The Commission also asked whether a mandatory order should be issued requiring CFRO to comply with section 9(2) of the Regulations.

2690 CFRO has already demonstrated their commitment and ability to comply through their actions, so we believe that a mandatory order is not necessary in this case. In fact, we discourage the Commission from issuing mandatory orders to our stations in our sector whenever possible. We think this only increases stations' stress and fear of more severe repercussions, without supporting them to develop better systems to ensure future compliance.

2691 CNC stations want and intend to be fully compliant, but some encounter legitimate challenges. The NCRA is increasingly proactive with our members around compliance issues, and we suggest that the Commission can also support this work by providing clear summaries of regulatory requirements, sample documents, how-to guides and advice, which would be more constructive and effective than punitive measures.

2692 We believe this work will help CFRO and other CNC stations as they continue to offer diverse, high-quality local programming, while meeting the regulatory requirements. It also ensures that all three sectors of Canadian broadcasting are healthy and vibrant.

2693 Thank you.

2694 THE CHAIRPERSON: Thank you. We appreciate your evaluation, opinions, recommendations, and defence of CFRO. We have a lot of work to do. From what I understand, we are doing everything wrong.

2695 That being said, we do have to take a two-minute technical break. Thanks.

-- another presentation and questions to other panelists

2782 Ms Robinson and your colleague, whose name I'm sorry I don't have.

2783 MS ROBINSON: Ms Vallière.

2784 COMMISSIONER PATRONE: Ms Vallière. Welcome.

2785 I have a couple of questions regarding your presentation as well.

2786 What's the best way for other stations to learn from CFRO's regulatory experience, as you mentioned in your submission?

2787 MS ROBINSON: Yes. So there are lots of ways for that to happen.

2788 One of the ways that is already in the works is that at our upcoming conference, which is hosted by CKDU in Halifax in June, we have a session - well, we have a whole track of compliance sessions, number one, so that stations -- and CRTC staff are coming to some of them, Industry Canada are coming to some of them, and we are also running our own -- but specific to the case of CFRO there is one session that is going over the case of CFRO and saying what happened? How did they address it? How can you make sure that this doesn't happen to your station? So it's a very overt way that we are doing it.

2789 Additionally, we have a policy exchange on our website and it has been up, I don't know, a couple of months now, and so as stations develop good policies, which is in line with what Commissioner Simpson was talking about, best practices, those are shared in a very direct way.

2790 Also, CFRO has been having these discussions, and our members have been having a lot of discussions around CFRO on our LISTSERV and so what's happening is that people send -- in fact yesterday a programmer from CIVL, which is a station in Abbotsford, sent out a program log and

said, "Here's what we are thinking of our new program log, can everyone else tell us what you think? Does this fit will all the requirements?" Freya Zaltz, our Regulatory Affairs Director, said, "Here's how it is, you could tweak it a little bit this way", other stations said, "Here's how we do it, different layouts." So that's another way.

2791 Additionally, we share a lot of these resources so that they see --

2792 COMMISSIONER PATRONE: Okay.

2793 MS ROBINSON: Yes. So there's all kinds of ways that they learn.

2794 COMMISSIONER PATRONE: On issues like logger tapes, annual filings, do you have any thoughts about how we should deal with these if for instance we don't do it in the way that we usually do, I mean insofar as organizations like CFRO are concerned and dealing with --

2795 MS ROBINSON: How you could deal differently with annual returns for instance?

2796 Is that what you are asking?

2797 COMMISSIONER PATRONE: Well, that seems to be the message vis-à-vis -- do you have any issues, as Ms Kitching does, regarding our compliance, a way of trying to get compliance from our members? Should it -- go ahead.

2798 MS ROBINSON: Okay. Well, in the case of annual returns a lot of what the NCRA does is we don't think -- our focus is not actually how the Commission has done things wrong, our focus is how we can strengthen our internal processes.

2799 COMMISSIONER PATRONE: Okay.

2800 MS ROBINSON: So for instance November 1st every year, like I said -- and this is certainly true in my time, so I have been the Executive Director for a year -- we are getting more and more proactive with regulatory and compliance matters. So November 1st next year we are going to send something out to members that will trigger and say, "Did you get your annual returns? Did you have questions?"

2801 I also know from my colleagues representing ARC du Canada and ARC du Québec this past year that there were some problems both with the access key filing system, which our members also had problems with, and with some of the French translations. So being able to -- and, like Leela referenced, getting out ahead of things so that even if there are problems we have that time to address them. So again, that's on our side.

2802 I think François Côté from ARC du Canada spoke to maybe changing some of the way that the reporting is done to better reflect the revenue of our station and how that works and so that's certainly something we are open to.

2803 But for annual returns I would say it's mostly about us trying to get the word out.

2804 We have been working a lot with CRTC staff to make sure that -- so we are producing a series of sort of regulatory plain language one-sheets and so we have hired a summer student who is going to be our regulatory support coordinator to develop those. We now have Kim as our membership coordinator who can call and follow up with stations. It's just been me in the office for the last year.

2805 So what that means is that, number one, we can remind stations, we have a newsletter. Number two, we will have plain language information for them to do it and we have been working with Commission staff so that

we know that the information we are sending out is correct on the Commission side.

2806 So honestly, most of our concerns are about what we can do better.

2807 The things that we want the Commission to change or refine are the things that we said in our presentation, so that would be about assessment periods for those found in non-compliance and potentially looking at changing some of the musical categories, but in fact we feel like over the last couple of years the Commission has been coming -- doing all kinds of things that make it easier for a sector, so you dropped the spoken word requirement from 25, for many stations, to 15 local. That was great.

2808 I'm trying to think. You changed the mandate, you unified the policies. We are pretty happy.

2809 COMMISSIONER PATRONE: One of the recommendations that was heard earlier was to overshoot the level of Cancon for instance in order to ensure that they meet --

2810 MS ROBINSON: Yes.

2811 COMMISSIONER PATRONE: -- in case something happens in the course of the programming.

2812 MS ROBINSON: Yes. Absolutely.

2813 COMMISSIONER PATRONE: Isn't that kind of standard operating practice anyway? I mean it's seems pretty -- and I have seen circumstances where commercial stations fail to do that, too, but doesn't everybody know that?

2814 MS ROBINSON: Well, two things I would say about Canadian content and that people know.

2815 The first would be there are lots of -- to some degree that gets back to Leela's point about educating, especially educating people who have been in the sector a long time. It's very easy for people who know, oh, it's 35 percent. They feel like they have dipped down one week, but they feel like other people will make it up, so it's cultivating that culture of everyone over performing. So I think that's really important.

2816 I know some stations are trying to develop software that will flash if a show goes under and then they will know, "My show went under", so then they can inform staff. So that's really important.

2817 I also think that when you are talking about -- when you are aggregating to 400 volunteers for instance it's very -- it's like littering, it's

— — questions to other panelists

2840 COMMISSIONER LAMARRE: Thank you very much, Mr. Chairman.

2841 Ms Robinson, listening to your presentation I cannot help myself but critique it a little bit because -- for lack of a better word I cannot find in English -- I'm a little bit agacéé by a couple of paragraphs in your presentation.

2842 Up until paragraph 19 you are doing a very good job of defending CFRO and their track record, but when you get into paragraphs 20, 21 and 22 I get the feeling you are trying to have us revisit the policy we just adopted last year.

2843 Having been on the Panel that reviewed the community and campus radio policy I must say I don't think this was either the place or time to bring it up. So I thought I would let you know how I feel about it, it was only fair that I did.

very easy for people to think "It's just me", so that kind of level of small infraction builds up to be a problem. So again, it's that changing the culture.

2818 So my second point on that would be that's part of our argument for why we want to keep Canadian content where it is so that we can encourage stations to over perform as they do and then they will consistently be doing a good job and complying.

2819 COMMISSIONER PATRONE: Okay. That's fair enough. I think you have pretty much answered my questions as far as your presentation is concerned.

2844 Not that I'm not sympathetic to the issues you bring forward, but I really think that today is CFRO's day in court and that there may have been another appropriate moment to bring it up.

2845 Continuing on, you then go into paragraph and forward saying that what the Commission should take into account in assessing non-compliance, for example the licensee's degree of good faith in responding to non-compliance, and all of that.

2846 So if I may ask you a question: Do you have any doubt that a show-cause hearing like today is exactly what it's all about?

2847 MS ROBINSON: No, absolutely not. I think we just wanted to underscore the idea that it's not something that the station or the NCRA takes lightly and just is like here to try and put on a show, but that this is a very serious thing and so we want that good faith to be recognized.

2848 COMMISSIONER LAMARRE: Okay.

2849 MS ROBINSON: That's it, yes.

2850 COMMISSIONER LAMARRE: Fair enough. Fair enough.

2851 Now, in paragraph 29 of your presentation you suggest ways that the Commission could support the work of community radios or NCRA, because when you say:  
"We suggest that the Commission can also support this work by providing clear summaries of regulatory requirements..."

2852 My initial reaction is to think, well, that's your Association's role to do that.

2853 MS ROBINSON: So what are we asking for?

2854 COMMISSIONER LAMARRE: Yes, what are you asking for?

2855 MS ROBINSON: Right. Fair question.

2856 So I think in some cases we are asking for more of the same. So, as I talked about, we have been working with Commission staff on developing our own things and having that feedback. We want to keep that going.

2857 Additionally, when the Commission set up the small undertakings line, that was a really big step and it meant that stations could call and ask very basic questions without fearing that they got the language wrong.

2858 COMMISSIONER LAMARRE: Yes. That was my next comment.

2859 MS ROBINSON: Yes.

2860 COMMISSIONER LAMARRE: So you are fully aware of that also, okay.

2861 MS ROBINSON: Oh, and we direct our members to it all the time. I call them all the time.

2862 So it's not that we are saying, again, that it's a deficiency, but just that we like that work and the more of that that can happen, the better.

2863 COMMISSIONER LAMARRE: Okay. Well, thank you.

2864 Those were all my questions.

2865 THE CHAIRPERSON: Merci, la Conseillère Lamarre.

2866 Monsieur le Conseillère Simpson.

2867 COMMISSIONER SIMPSON: Thank you very much.

2868 I just wanted to clarify one point. I'm addressing the NCRA here.

2869 I had slightly misspoken when I was referring to a committee at a Board level of CFRO. I had said that this committee would be tasked with the best practices. I was really thinking more about being tasked with oversight of regulatory policy compliance, because the two are different --

2870 MS ROBINSON: Right.

2871 COMMISSIONER SIMPSON: -- one being operational and I just wanted to clarify that.

2872 For the sake of Ms Kitching, for all the things that we find at fault with the conduct of community radio, I do entirely agree with you that for all the things that are wrong seldom are heard kudos for all the things they get right.

2873 With the tremendous work of all volunteers in community radio I echo Commissioner Patrone's remarks that you are preaching to the



converted because it is a staple of the industry here and their work is very professional and very much appreciated by the Commission and I would like to go on record as saying that.

2874 THE CHAIRPERSON: Thank you very much. I have to second that emotion.

2875 You did a great job defending CFRO, we appreciate you coming down.

2876 Madam la Secrétaire.

2877 THE SECRETARY: This concludes Phase II. We only need two or three minutes --

2878 THE CHAIRPERSON: A five-minute technical break.

2879 THE SECRETARY: -- to get Vancouver Co-op set up again for their reply.

2880 THE CHAIRPERSON: A five-minute technical break.

2881 THE SECRETARY: Yes.

2882 LE PRÉSIDENT: Merci.