

## Independent Panel of Experts on Journalism and the Written Press

### Minutes of the June 19 2019 meeting

Panel members present:

- Bob Cox
- Esther Enkin
- Brad Honywill
- Pierre-Paul Noreau
- Brenda O'Farrell
- Thomas Saras
- Pierre Sormany
- Pascale St-Onge

Officials from the Department of Canadian Heritage and the Department of Finance were present during the morning portion of the meeting, to greet panel members, make presentations and answer questions from the panel members.

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After welcoming remarks from senior officials, Canadian Heritage officials provided a review of the panel's mandate and answered questions. At the same time, panel members were presented with options as to levels of support the Government could provide in addition to financial (to cover the panel's operating costs) and logistical support (e.g. book meeting rooms, hotel rooms, etc.)

Officials from Finance Canada then provided an overview of the fiscal measures announced in the 2018 Fall Economic Statement for which further details were provided in Budget 2019 and answered questions.

Government officials then left the meeting to let panel members deliberate.

Subsequently, panel members elected Bob Cox as president.

Panel members further decided to keep the option of contacting government officials to obtain clarifications when questions on their mandate or criteria would arise during deliberations.

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Lunch Break

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The panel first proceeded with a roundtable during which each member expressed their expectations of the panel's work and the issues that should be addressed in its deliberations and potential areas for recommendations in its report.

Issues and topics that were raised include:

- On a broader level, the panel should be looking at preparing specific recommendations on criteria but it should also consider recommendations that are forward-looking and might include changes to other programs to address journalism issues.
- It is not clear whether the measures proposed would be sufficient to ensure the survival of newspapers. One consideration to address this is the possibility of recommending a new program that supports community papers across the country.
- The panel should consider providing definitions for terms such as “journalism” and “general interest publication”. In the case of journalism, a discussion should start from a look at existing definitions from associations or court decisions.
- The requirement that a publication must regularly employ 2 journalists who are at arm's length is particularly problematic for smaller publications, including the majority of newspapers in communities in official language minority situation and in ethnic communities.
- Recommendations to be considered could include:
  - that all QCJO applicants must be published
  - that the panel should show that the government's measures are un-inclusive. The government's view does not capture smaller publications, including from communities in official language minority situation and ethnic communities
  - that the government's advertising program be reviewed or modified to favour placements in community newspapers and in the ethnic press, including digital advertisement to get their message to Canadians.
  - That there be openness and transparency such as regarding donors.
- The panel should discuss the elephant in the room, which is the fact that social media have taken advertising revenues from newspapers. This is revenue that is leaving the country.
- On the question of the 2<sup>nd</sup> panel, this element of the mandate is more problematic. The panel will need to know more about how it will work. If the criteria developed by the 1<sup>st</sup> panel are already solid, there will be little to do in terms of interpretation.
- There is a message the government needs to get from the panel, namely that written journalism, print and digital is in a crisis. We will have to press to have changes happen before it is too late. The panel should also keep in mind that the future of journalism has to do with niches, including geographic.

End of roundtable portion of meeting

The Panel then turned its attention to a discussion about definitions.

- As a first step, the panel examined the definition of a QCJO.

- Criteria from the Government of Quebec’s « Programme d’aide à l’adaptation numérique des entreprises de la presse d’information écrite » were reviewed, as a possible starting point to define the criteria for the federal measures.
- The panel also examined the definition of journalism provided by the Canadian Association of Journalism’s Ethics Advisory Committee in its report, “What is Journalism?” was examined by the Panel members. In particular, journalistic types of actions were reviewed, namely, purpose, creation and methods.
- Other topics debated by the panel included:
  - Whether to define the percentage of audio-video allowable as this is not in the current legislation.
  - Adapting exclusions from the Quebec Government’s program.
- Here the subject matter is not as important. It needs to speak more to the future as new, young news sites would not otherwise qualify.

Following a discussion, consensus was reached by Panel members to create a list of deliverables:

1. Define original news content
  2. Define eligible newsroom employees
  3. Define scope of eligible publications
  4. Define a Qualified Canadian Journalistic Organization
  5. Recommendations on the 2<sup>nd</sup> panel
  6. General recommendations to the Government
- In the case of the definitions, there is a basis in the legislation that needs to be expanded upon. In the case of the general recommendations, this should be in reference to either legislation or program changes.
  - The discussion then turned to the content in the Budget and on the presentation from Finance Canada earlier in the day. It was suggested that the panel’s attention should be focussed on the top part of the list, but not on criteria such as defining Canadian ownership, e.g. the 75% ownership requirement, as this concept, for example, is based on the definition already found in Section 19 of the *Income Tax Act*.

## **1. Defining Original News Content**

- Panel members raised several questions in discussing a definition of “original news content”, including:
  - Should there be a mention of audiences, in the context of original news content and in particular the idea of general interest?
  - But what about sports publications such as *The Athletic*? Perhaps this is not the thinking for what the newsroom was meant to cover in this context. The question then is, is it journalism? The short answer is yes, but it illustrates that it is hard to draw a line on inclusions.

- What about a publication such as a science magazine? “Québec Science” was given as an example. It is a publication that has articles about scientific research funding programs, scientific education, or even climate change. The publication is about science but from a general interest angle.
  - Should there be a requirement that 50% of content created be of general interest, covering civic institutions? It was suggested that regardless of the percentage, whether it is 40%, 50% or 60%, if it is about politics, it should be about Canadian politics.
  - Looking at what is in the Budget regarding original news content, what else should there be, in addition to what is already there?
- One panel member noted that if the panel wants to be forward-thinking, then it needs to keep focus on content that is of general interest (as opposed to sports or science). In reference to the federal government’s goal, in the Budget there is more intent given to public or democratic institutions. The intent is to strengthen democratic institutions.
  - A suggestion was made that a definition should begin by defining “original” on its own followed by a definition of content, whether it is meant to have a particular focus or examining content from a particular angle. In this way, content could be about particular subjects but still of general interest. Exclusions, such as those listed in the Quebec Government’s program, would still be maintained.
  - A suggestion was made to add “eligible” to “original”.
  - When concluding the meeting, discussion returned to one of the problems raised earlier in the day about the money that goes to US companies from advertising. It was reiterated that the Panel should recommend something on this, and that it highlight the issues created by social media revenue.

End of meeting

## Minutes of the June 20, 2019 meeting

Panel members present:

- Bob Cox (chair)
  - Esther Enkin
  - Brad Honywill
  - Pierre-Paul Noreau
  - Brenda O'Farrell
  - Thomas Saras
  - Pierre Sormany
  - Pascale St-Onge
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The panel discussion began with an exercise to identify issues and ideas to park in a separate list, to ensure these ideas are addressed during the course of the discussion for the day and in future meetings. These included:

- Keeping in mind that the formal obligation to have 2 journalists currently excludes a significant number of small publications; the panel should explore recommending more flexibility in this criterion;
- The idea that there might be a need for another program for this, since the Budget law gives tax credits for hiring journalists – the program might not be made for smaller publications that don't hire many people;
- The requirement that government fulfill its official languages mandate and should consider doing direct ad buys to achieve this;
- The need to clarify the notion what is meant by the exclusion of single-topic publications and to differentiate between choosing multiple angles to cover a whole field and publishing on one subject.

In their discussions, panel members also considered the Budget law and recognized that they could propose amendments to the law to specify interpretation rules. However, they would need to be careful that regulations do not end up contradicting the legislation. Providing clear criteria would make it easier for bureaucrats and leave less room for interpretation.

They also noted the importance of keeping in mind that the panel's decisions will affect the next generations and the future of this country; as well as the need to recognize the democratic issue underlying the crisis.

Panel members listed a series of questions that they then discussed:

- In establishing a definition of original news content, would there be additional exclusions to those listed in the law?
  - A definition could list specific additional topics what is excluded as additions from the Quebec Government's program.

- Caution in proceeding as Ontario had done with its digital publishing tax credit was expressed, as those criteria were too loose, allowing everyone to qualify.
- Panel members discussed the exclusions of certain types of content such as offensive content, hate propaganda, pornography, sponsored content, media that primarily produce opinion, etc.
- List of excluded content identified by the panel included:
  - Ad or sponsored content
  - Advertorial
  - Newsletters
  - Publications produced primarily for industrial, corporate or institutional purposes.
- What about certain types of publications, such as newsletters? Should they be excluded?
  - The panel could look at what publications put out. A lot of them produce newsletters, for example. Do we want to include that?
- What would be the definition for “primarily focused on matters of general interest and reports of current events”?
  - The approach adopted by Investissement Quebec for the provincial tax credits for newspapers with regards to how the organization defines its requirements for content of general interest was noted, particularly the idea of requiring a newspaper to cover at least 3 of 7 given themes.
  - The panel debated the practicality of a list and the fact that it could be very difficult to establish a complete list.
  - It was pointed out, however, that the Budget emphasized coverage of current events, including coverage of democratic institutions and processes.
  - A list could be drawn up by the panel and include such topics as democratic institutions, education, health, etc.
- While the legislation does not address frequency of publication, is this a criterion on which the panel should provide recommendations?
  - The consensus was that there should be a recommendation to this effect.
- The question then posed was: What should be the criterion as to how often QCJOs should minimally publish?
  - The idea was put forward that a QCJO has to publish 10 times per year with a content refresh of at least once per week; etc. Putting such criteria together is good as they are measurable; otherwise it’s too interpretative for CRA staff.
  - Is once per week too demanding? There were views in favour and against but as was noted, once per week was a realistic criterion and not a terribly high bar – a bar that has to be set somewhere.
  - The concept of “refresh” will need to be defined. Is it just changing the headline? The panel will need to provide guidance around what a significant refresh means.
- Could the requirement to regularly employ 2 journalists be reviewed?
  - After a discussion, it was decided to ask Finance Canada officials if the panel could make recommendations to change this criterion in the context of the existing law,

and if a recommendation could focus on equivalencies instead of 2 employed journalists.

- It was also suggested that the panel could make a strong recommendation for 1 FTE, rather than 2.
- Members also debated whether to include independent contractors and freelancers as part of a criterion. Caution was raised that this could lead to publishers relying on freelancers rather than hiring journalists in the future.
- It was noted that the intent was to broaden the notion of “employee”, the same way the notion of “publication” was broadened from only print to include digital and mobile.
- Other questions for government officials included: could there be different rules for small and large publications? Does the word “employees” include independent contractors, and can the panel recommend combining different types of employees, e.g. permanent part-timers; contract and independent contractors? What about organizations that were found guilty of a criminal offensive in the past?
- What is understood by “arms-length”, and is there an established definition?
  - CRA documentation was reviewed and members decided to continue the discussion with Finance Canada officials to get a full understanding of the phrase and find out what options existed to modify the term or its meaning.
- How should “journalist” be defined?
  - One definition provided by a panel member was reviewed and suggestions for additions were made, including videography, fact-checking and interviewing.
  - It was noted that the problem with the list is that it will never cover everything.

A new topic was subsequently proposed: What level of standards does a journalism organization need to have?

- Some members favoured the idea that QCJO’s be required to adopt a journalism code of ethics or journalistic standards, while others did not.
- It was noted that the question could not be resolved through a Budget law. However, the idea of evidence-based journalism, fact-checking and a process of correcting errors could be introduced instead. We’ve received the definition of arms-length. If you have a family operation, none of you are arms-length.

Lunch break

- Should the panel review the tax credit requirement surrounding the percentage of time spent by an eligible employee on original news content?
  - After discussion, it was decided that the criteria not be subject to review or to a recommendation, as it is difficult to assess and can in fact change daily.
  - The distinction on percentage of time rather than another metric is good since it is operational and measurable.

- Should the panel review the criterion of Canadian ownership?
  - After discussion, panel members agreed that it would not review this criterion since it is based on the definition found in Section 19 of the *Income Tax Act*, already used to define ownership.
  - At the same time, the news content produced should be by and for Canadians.

Representatives from the Department of Finance were invited into the meeting to answer their questions.

- On the question of having equivalencies to 2 employed journalists, officials responded that it is the prerogative of the panel to make such recommendations, but that some, such as this one, would require a legislative change. Some changes could occur immediately, especially in the context of providing definitions to criteria.
- On the question of having publications choose between the tax credit and funding from the Canada Periodical Fund (CPF), officials indicated that the parameters for each program were thought out at different times, under different circumstances, and that access to CPF funding could be more advantageous to some publications. In this way, they are provided with a choice. A legislative amendment would be required to change this.
- On the question of arm's length, officials noted that determining such a relationship can be complex and that the concept is used in other places in the *Income Tax Act*, such that any change to the notion would affect it everywhere it is used. The arm's length text was added to ensure that only organizations that produced real journalism benefit. The two-employees test was a way to get there, after several options were looked at.
- Officials agreed to provide the panel with documentation on the methodology used to arrive at the estimations found in the Budget. Additionally, Canadian Heritage would provide funding data from the CPF for a variety of community newspapers identified.
- Panel members agreed to put aside for now the idea of recommending a separate program to cover expenses (contractors, freelancers) related to the production of news content.

Panel discussion continued after Finance Canada officials departed.

- The panel agreed that, to proceed with its work, one panel member would create a document with 3 columns as basis for the next discussion: 1) Budget law (Bill C-97); 2) the panel's clarifications (what they were asked); 3) the panel's discussion/extensions/prospective.
- In discussing how to define "regularly employed" journalists, panel members asked that officials from the Canada Revenue Agency be called at the next meeting to shed light on how they define and administer this type of criteria.
- The panel further asked to be able to discuss the panel's mandate item touching on the 2<sup>nd</sup> panel with other government officials. On reviewing the Budget law, members concluded that that panel's exact function and responsibilities were unclear. Various scenarios for its existence would need to be discussed with appropriate officials.

End of meeting

## Minutes of the June 26, 2019 meeting

Panel members present:

- Bob Cox (chair)
  - Esther Enkin
  - Brad Honywill
  - Pierre-Paul Noreau
  - Brenda O'Farrell
  - Thomas Saras
  - Pierre Sormany
  - Pascale St-Onge
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On convening, panel members agreed to spend the morning working through the document, consisting of three columns, prepared by one of the members.

The discussion began with a review of the criteria for Qualified Canadian Journalistic Organizations (QCJO).

- As an overall approach, it was noted that recommendations formulated by the panel must provide clarity to ensure the criteria and definitions are less likely to be subject to interpretation.
- The first item discussed was that of providing a definition for original news content.
- Panel members considered a first question put forward: when defining the production of news content, should a criterion around the application of journalistic standards, or a code of ethics for journalists be included? Arguments were presented on both sides of the issue. After lengthy deliberations, the panel reached a consensus to not include a reference to standards or to a code of ethics, as it would be difficult to evaluate and would not be easy to operationalize.
- It was suggested, however, that if a requirement for a code of ethics could not be recommended, it would be reasonable to suggest that, as a minimum, organizations have a process in place to correct errors, and that the panel incorporate the use of evidence-based research and verification in its definition, thus incorporating minimal standards of journalism. After discussion, panel members agreed to add these elements.
- The question discussed next was that of what defines original news content in the context of qualifying as a QCJO, specifically what it includes. Suggested elements included news, reports and analysis or commentary, to which were added profiles and interviews.
- Panel members further agreed to compare their list of exclusions to that found in Investissement Quebec's tax credit guidelines and to add any that were not in the former.
- The panel then reviewed the definition for "matters of a general interest". The list of seven topics found in Investissement Quebec's guidelines was considered as a starting point. To these, panel members suggested adding business and finance, science and

technology. Concern was expressed that the panel was looking at this from an elitist perspective, which is why sports was not being included, despite being a popular section in newspapers. Another concern focused on the idea that if the panel is looking towards the future, then digital news sites like The Logic, which are more specialized, that have niches, will be excluded.

- Ultimately, the panel reached a consensus that the third item on the list of QCJO criteria in the group's working document should be removed, namely: "Original information content includes news, reports and analysis or commentary, produced according to the highest standards of journalism and intended for the general public, and whose research, writing and formatting are conducted by permanent, contract or freelance employees who work for this organization."
- It was suggested that the panel could provide a policy recommendation that the future of journalism lies with subject-based material that addresses a variety of issues and social policies.
- On the question of publications funded by foreign entities, the panel reached a consensus to add foreign-funded publications to the list of excluded publications. One member offered to draft a text on this aspect.

#### Lunch Break

- Panel members returned to the criteria requiring an organization to regularly employ two journalists to qualify as a QCJO. The proposed language to define what is a journalist, found in the working document, was discussed. Panel members agreed to the definition proposed, with two changes: 1) add "writing" to the list of verbs; and 2) remove the text after the words "digital formats". The definition around which consensus was formed is the following: "The term "journalists" should be understood in the broad sense given to it by media companies and professional associations of journalists. This includes all staff, contract or freelance, directly involved in the planning, research and collection of facts, data analysis, reporting, writing, text verification and publishing, illustration, photography and videography, graphic presentation and adaptation to digital formats."
- A discussion of the expression "regularly employs" is postponed to the following day, as it will be discussed with officials from the Canada Revenue Agency (CRA) in the morning.
- Panel members discussed the concept of "primarily" used in the QCJO criteria, specifically in relation to producing original news content. What should be the proportion of content that must be original news to qualify as "primarily engaged in the production of original news content" and what should be the level of diversity of the news? It was suggested that perhaps 50% of content be of general interest but this would be difficult to evaluate.
- Regarding the criteria touching on content of general interest, it was suggested that the list of topics of general interest from the Investissement Quebec tax credit guidelines be added. As such, it would read: "primarily focused on matters of general interest and reports of current events, including coverage of democratic institutions and processes

and, further general interest can include...” to which the elements from the Quebec list would be integrated.

- Turning to the refundable labour tax credit, the panel set to define the term “eligible newsroom employee”. Upon first reading, the concept seemed to members to be well-defined, although exclusions could be added to the definition. At the same time, certain functions could be added. Panel members reached a consensus that a section could be added to the sentence on functions that states “and those otherwise involved in preparing content such as managers directly working on preparing content.”
- The panel returned to the criteria excluding publications that receive foreign funding, based on a text proposed by one of the members. The idea is that foreign organizations should not control content in Canadian publications, thus preventing foreign influence. Should it then exclude publications where a majority of funding is from foreign sources? It was suggested that the language be changed to “publications receiving funding from a foreign entity for the purpose of influencing the Canadian democratic process.”
- The panel discussed the Quebec government’s approach – that publications cover three of the seven topics listed – and applying it as a criterion for the federal measures. It was noted that covering democratic institutions should be a basic requirement on top of the selection of three topics. This could then be read as “publications regularly covering any level of democratic institutions, as well as at least three of the following topics”. A list of topics would follow.
- Panel members turned their attention to general recommendations the panel could propose. Proposals brought forward included:
  - A recommendation that government advertising should be placed in Canadian publications, that it commit a percentage of its advertising budget, maybe 50%, to be placed in Canadian written news media.
  - A recommendation to create a separate program for small publications, including ethnic publications.
  - A recommendation that government live up to its official languages obligations.
  - It was also suggested that the recent Senate report’s four recommendations, subsequent to its study of Bill C-97, be reiterated. Attention was brought to the recommendation related to advertisement revenues that have migrated to the FANG group of companies. In order to address the long-term viability of the news industry, the government must address the structures that favour foreign social media platforms that do not create news content.
  - A recommendation that the government reexamine the labour tax credit requirement to have employees working 26 hours for 40 consecutive weeks.
  - The government should review Section 19 of the *Income Tax Act* to level the playing field. The government should address all inequities in the *Act* that disadvantage Canadian media.

- Internet Service Providers that also benefit from Canadian media content should also be taxed accordingly.
  - The government should raise the tax credit for digital subscriptions to 25% if it wants to encourage the transition to digital.
  - The report should indicate that the program is a good first step but it will need to be broader to be effective. Similarly to the message in the Senate report, the panel report will need to express the urgency of the situation. The risk exists that many organizations will fail before they can receive funding from the tax credit.
- The panel agreed that discussion on the 2<sup>nd</sup> panel should be postponed until after the discussion with government officials occurs the following day.

End of meeting

## Minutes of the June 27, 2019 meeting

Panel members present:

- Bob Cox (chair)
  - Esther Enkin
  - Brad Honeywill
  - Pierre-Paul Noreau
  - Brenda O'Farrell
  - Thomas Saras
  - Pierre Sormany
  - Pascale St-Onge
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The meeting started with a conference call between panel members and CRA and Finance Canada officials to have officials answer clarification questions.

- CRA officials were asked to elaborate on their definition of formal employment, to which officials replied that each case is analyzed on its merits, but this generally requires that someone have an employment that defines the relationship. This does not include independent contractors or freelancers.
- Panel members asked CRA officials about the arm's length concept. CRA confirmed the panel members' understanding based on the answers provided at the previous meeting by Finance officials and CRA documentation provided earlier.
- CRA officials were then asked about the expression "regularly employs" used in the legislation. How does CRA interpret this concept? Officials first noted that the expression is not used elsewhere in the *Income Tax Act*. They also indicated that a definition of it would not be limited to full-time employment but can refer to employment that has some regularity, including part-time. It was noted that many situations meeting the criteria can exist on a broad spectrum. Of course, each would need to be reviewed individually.
- CRA suggested that another avenue could be for the panel to review the criterion as it is stated and recommend changes to it. Panel members suggested various employment scenarios for which CRA officials provided answers, emphasizing that each case would be subject to an analysis of its specific conditions.
- The role of CRA and its relationship to the 2<sup>nd</sup> panel was briefly discussed. Panel members asked if CRA could be in a position to recommend organizations as QCJOs. CRA officials referred to the agency's mandate and its capacity to interpret regulations, while also acknowledging the eventual establishment of a 2<sup>nd</sup> panel charged with recommending or not organizations as QCJOs.
- The conference call concluded with a panel member suggesting that the panel could add some specifications to the concept of "regularly employs".
- Panel members then discussed the specific situation of small publishers that are run as family businesses. These publications could be excluded due to the arm's length criterion. Some panel members suggested recommending the establishment of another program since many of these publications would likely not benefit from the labour tax credit in any

case. The new program could be funded from partially retrieved social media platforms' advertisement revenues. A deadline should also be set to ensure funds are made available quickly, not several years from now.

- Other panel members were uncomfortable extending panel recommendations beyond the mandate by recommending the creation of a new program. As a compromise, it was suggested that the report make note of the limitations of the tax measures, that they do not address the problems of small publications or publications for official language minority communities. This observation would not include specific recommendations.
- Panel members agreed to take back to their respective groups a list of the recommendations such as those on criteria applied to obtain QCJO status.
- In further discussing support for small publications, panel members agreed to recommend that government advertising spending include an amount, perhaps as a percentage of the total advertising budget, for ad placements in community publications.
- The panel's discussion then turned to the criterion requiring that an organization's original news content "be primarily focused on matters of general interest". The argument was made that many Internet publications present news but on a particular topic, examined from many angles including public policy. Another member suggested the panel keep in mind digital publications like The Logic as the type of publication the measures should try to support.
- The panel mandate item on the 2<sup>nd</sup> panel was subsequently the focus of deliberations. The question of the composition of the 2<sup>nd</sup> panel was looked at, in particular what qualifications its members should have.
- The question was asked of whether a second panel would be required if the current panel's definitions are sufficiently clear. There was also concern that setting up a second panel would further delay implementation of the tax credit. However, it was argued that clear definitions would accelerate the process since it would be a question of checking boxes rather than relying on judgement calls from a 2<sup>nd</sup> panel.
- Members expressed concern over the fact that some news organizations pay executives high salaries and bonuses while also cutting jobs in the newsroom. The panel wanted to verify with Finance Canada officials whether there were provisions elsewhere in the *Income Tax Act (ITA)*, for other tax credits, that addressed this issue and imposed conditions on qualification for the credits based on executive compensation. Upon verification with Finance Canada officials, the panel was informed that there are no provisions of this type in other tax credits in the *ITA*.
- The question was asked of whether to recommend changes to the tax credit to include other expenses such as legal fees and other services. It was pointed out however that the measures were about a labour tax credit and extending the program to include expenses would require a whole different tax credit.
- On the eligible employee criteria and the required hours and weeks of work, it was suggested that equivalencies be considered such as counting together three employees who work 15 hours a week each, rather than limiting it to the hours worked by individual employees. Another member countered that it would perhaps be better to lower the number of hours for a single employee rather than recommend combining times from

several employees since this would make it rather complicated to calculate and track. The question then becomes where to set the bar.

- Officials from the Privy Council Office and from the Department of Finance joined a conference call to discuss the panel of experts' mandate related to a 2<sup>nd</sup> panel. In opening remarks, officials invited panel members to be guided by government statements and Bill C-97 in their deliberations on the 2<sup>nd</sup> panel. The government, in its statements, has committed to the creation of a 2<sup>nd</sup> panel and would like the panel of experts' best advice on its composition.
- When asked if, in a scenario where a 2<sup>nd</sup> panel is not put in place before an election, the measures would still be in place, officials answered that yes, the measures would still be in place even under such circumstances. A process would still be in place involving CRA to administer the measures.
- Officials explained to the panel that government recognized the risk of a perceived risk of government influence over media with the application of financial support to the industry, which is why a body to make recommendations to the Minister of National Revenue on QCJO applications was thought out. Officials also pointed out that CRA staff have the technical expertise to administer the majority of objective criteria but would turn to the advisory body on criteria of a more subjective nature, that require some industry knowledge, criteria such as whether an applicant primarily produces original news content.
- On the panel's suggestion that a third party, such as an accounting firm, could take on that role, officials pointed out that such a group would perhaps have tax expertise but not journalism expertise.
- When asked about the possibility of putting limitations on amounts that could be received by a QCJO that gives executives large bonuses in a given year, officials indicated that this would be very unusual in the context of a tax credit.
- Since the panel of experts is being asked to make recommendations on the composition of the 2<sup>nd</sup> panel, officials were asked if they had an indication of the size of this panel. Officials replied that the legislation was discreet in this respect and that the government would make a decision on this at a later date.
- When asked if the 2<sup>nd</sup> panel could act as an appeal body, officials answered that there is nothing in the legislation that gives the body this role and that there is already an appeal process in place for taxation decisions.
- On questions related to the application process, officials reiterated the 2<sup>nd</sup> panel's function as advisory and indicated that it still needed to be determined whether the body would review all or only some of the applications.

The conference call was then concluded.

#### Lunch break

- Panel members continued deliberations on the 2<sup>nd</sup> panel. Referring to Bill C-97, a panel member noted that its purpose seemed to be that of advising the Minister specifically on journalism questions. It was then suggested that the 2<sup>nd</sup> panel be composed of the heads of large journalism schools from each of the regions of Canada. There was agreement that there should be no more than five members.
- In proceeding this way, a member noted that the question of diversity of composition would still need to be addressed. Perhaps the way to proceed would be to ask the heads of the schools for names of individuals for the 2<sup>nd</sup> panel.
- It was suggested that there should still be a recommendation to not have a 2<sup>nd</sup> panel at all as it makes the process cumbersome and creates delays.
- As a compromise, a member proposed that there be a series of recommendations on the composition of the 2<sup>nd</sup> panel, where: 1) there should not be a 2<sup>nd</sup> panel; and 2) if this is not accepted, then the government should better define the role of the panel, i.e. only refer to the panel for applications for which CRA is not in a position to make a determination.
- On the question of naming individuals instead, one member suggested that employees from journalist associations would be well placed to carry out the duties of the panel because of their current tasks. It was however pointed out that there would be strong pressure on them and it would create a conflict of interest.
- One member expressed concern on making recommendations on the composition of the 2<sup>nd</sup> panel when some of its characteristics remain unclear, such as the question of its workload, duration, compensation for panel members, etc.
- One panel member countered by suggesting that if the administration of the measures is left only to CRA, the panel of experts is dooming the measures to failure, since the government could ultimately say that it is not working properly and then proceed to reversing the measures.
- Panel members agreed then to proceed with the earlier suggestion of having a series of recommendations and that a list of the journalism schools to consult be prepared as a mechanism for identifying individuals for the 2<sup>nd</sup> panel. Journalism schools from the following universities were identified: UBC, Carleton, Ryerson, Laval, UQAM, Dalhousie - King's College and a First Nations college from the prairies.
- Criteria should be listed to inform the nominations, including:
  - Knowledge of the industry and of written journalism
  - Understanding of the goals of the program
  - Knowledge of emerging platforms
  - Overall composition should reflect the diversity of Canada
- As a second option, it was suggested that names come from professional journalists associations (FPJQ, CAJ, etc.) to which would be added an Indigenous representative.

- Returning to the tax measures criteria, the panel then examined the digital subscription tax credit and agreed to recommend it be changed to 20% instead of 15% if it is to have any impact.
- On the qualified donee measure, the panel noted that the measure, as they understood it, would not allow foundations to fund newspapers or other news organizations. A note was made to ask Finance officials if there is a way to allow foundations, who would have charitable status, to support journalism.
- A member suggested that the report should note that it is difficult if not impossible for a newspaper to change its status to not-for-profit status with the goal of eventually becoming a qualified donee. Panel members generally did not believe that this measure would result in many news organizations becoming qualified donees.
- Panel members discussed the creation of a form that would be the basis to test out if the criteria are operational. With the goal of ensuring the panel definitions and criteria are operational, panel members asked that Finance Canada officials attend part of the next panel meeting to provide technical assistance in reviewing the text of the panel's definitions and answer questions panel members may have.
- Discussion then turned to the topic of the communication of the recommendations. Members expressed their interest in having the report be made publicly available on the Internet. The objective is to ensure transparency in the process. Panel members asked if the report could be housed on the Canadian Heritage site. An inquiry would be made to see if this is a possibility. The panel further discussed the idea of having one person designated as a spokesperson and of emitting a press release. This would not prevent individual panel members from answering press questions on an individual basis.

End of Meeting

## Minutes of the July 3, 2019 meeting

Panel members present:

- Bob Cox (chair)
  - Esther Enkin
  - Brad Honywill
  - Pierre-Paul Noreau
  - Brenda O'Farrell
  - Thomas Saras
  - Pierre Sormany
  - Pascale St-Onge
- 

The chair started the meeting by checking with all members to see if there were major concerns that needed to be addressed during the day. With none identified, the panel proceeded to review the draft document on definitions prepared by one of the panel members as well as the draft introductory letter prepared by the chair.

- When asked, members thought the tone was appropriate and to the point.
- A suggestion was made to make the reference to ethnic press and government advertising stronger.
- On referring to the 2<sup>nd</sup> panel, the letter should suggest to the government that it make the 2<sup>nd</sup> panel's mandate clear on what it would be doing and how it would operate. Some members was some concern about the fact that its role is not well defined.
- One member noted that there is a need to implement the tax measures as soon as possible and questioned the need for a second panel since crating it and operating it would slow down the process.
- Discrepancies were noted between the Budget, other government documents and Bill C-97. This however was due to amendments to the Bill at committee. The question was asked about the phrase "if necessary" and reserved for review with Finance Canada officials later in the day.
- Discussion focussed on how tax credits are administered and on the process. If an application is straight forward, then it should flow quickly and not be held back by a 2<sup>nd</sup> panel evaluation. It was proposed that government should be able to proceed with applications that are not problematic and only refer the difficult applications to the 2<sup>nd</sup> panel.
- It was pointed out that the 2<sup>nd</sup> panel is only active on the application for status as a QCJO, not for any of the tax measures themselves.
- Questions were set aside for officials on the anticipated process of administering the applications (is it analogous to applying for charitable status or applying for tax credit for medical expenses?) and on the necessity of having a second panel.

- Turning to the criteria, there was a discussion on limiting or excluding organizations who give executives bonuses. A text was proposed and reviewed. Some members agreed in principle but could not see how such a criteria could be applied. Concern was also expressed about overstepping the panel's mandate. On the other hand, an argument was made that it is a question of eligibility and as such, it really isn't outside the mandate. There could be difficulties in identifying what is excessive and who executives are, according to one member.
- It was suggested that it could be mentioned in the report as a preoccupation without developing a recommendation on it. Another member suggested that the panel should say something on it as it has been a source of difficulty to get support from MPs. Executive bonuses invariably make their way into the conversation. The point was made that these are public funds and the measures must make sure the money goes to employees, not to executives.
- Debate continued on how to address the issue since it is recognized as being outside the mandate. Ultimately, there was agreement among panel members to add a sentence to the introductory letter suggesting the government limit funding to companies that receive bonuses.
- The panel then focussed its attention on the working document containing proposed definitions and precisions on the criteria. The review started with criteria related to QCJO status. One member remarked that the paragraph in the top section need to be taken as a whole, not a discreet sections. There was agreement to use the word news rather than information as it is consistent with the legislation, as in "original news content".
- Proposed exclusions to what is original news content were then discussed, with some discussion around the exclusion of content from press agencies. Specific wording changes were made to the proposed text after which panel members agreed with the text on original news content.
- In the next section, the panel reviewed the list of accepted topics and freed to a list of 9 from which an organization would need to cover at least 3. Panels members proceeded to make changes to the order of the paragraphs, syntax and some wording changes to the proposed text. This included changes to the French and English documents to ensure both versions were saying the same thing.
- Draft definitions reviewed, changed and ultimately agreed to "original news content", "matters of general interest", "regularly employs" and "journalists".
- On the concept of regularly employs, members debated the notion of being under contract and the exclusion of freelance journalists from the criteria.

- The question was then asked if the panel should define what is excluded from the functions undertaken by a journalist as part of that definition. There was consensus to have the exclusions.
- The panel also looked at a list of types of news organizations that would be ineligible for QCJO status that was prepared based on the discussion from previous meetings. Panel members debated the wording related to the exclusion of publications receiving funding from foreign entities and how this could be applied by a review body.
- Panel members examined certain terms used in the three fiscal measures including the definition of “digital news” under the digital subscription tax credit and “eligible newsroom employee” under the refundable labour tax credit.
- On the qualified done tax incentive, it was suggested that the panel recommend that charitable foundations be allowed to fund journalism, including in for-profit publications. Under such a change, foundations that are set up specifically to support journalism would be allowed to fund news organizations and have charitable status. They cannot currently have charitable status. A member illustrated the limitations of the situation using the example of Les amis du Devoir. It was admitted that a change in legislation which would only occur at a later date.

Department of Finance officials joined the meeting at this point

- When asked about the 2<sup>nd</sup> panel, officials confirmed that it is an advisory body and that this changed at the committee level as thinking around it evolved since the Budget was tabled. They also confirmed that there is nothing in the legislation that addresses criteria for the composition of the second panel.
- When asked if they think Canadian Heritage could carry out the assessment as it does for CAVCO and the film tax credits, officials reminded the panel that the government, in the recent past, has publicly declared that it wanted a second panel to ensure the independence of the press by removing itself as much as possible from the process.
- When asked if CRA could administer the applications and only refer difficult or uncertain applications to the 2<sup>nd</sup> panel, and while uncertain if this could work, officials indicated that some flexibility was built in to the legislation. Regardless, the Minister of National Revenue is required to take into account any recommendations but if there are none, then there is no obligation.
- Officials were asked how they see the process of application working. Officials answered that in a normal process, applications would be sent to CRA for initial screening. Following this, all applications that passed this step would be sent to the 2<sup>nd</sup> panel. Again, the legislation provides flexibility in this respect. Some of the elements in the process still need to be determined.
- Officials pointed out that CRA has expertise on certain criteria such as determining is Canadian-owned and controlled but for criteria like “primarily focussed on original news

content”, CRA would likely be looking to a second body to carry out this portion of the evaluation,

- Finance officials were then asked to review the draft definitions developed by the panel to see if any of the proposed language was unworkable.
- On the term “original news content”, officials expressed uncertainty at being to apply the definition as written. This was from a non-expert perspective. Officials suggested that the more precise the definitions are, the easier it will be to apply them. But, as one panel member pointed out, there is a point where it becomes very difficult to be more precise since even within the journalistic community, consensus on more precise definitions becomes very difficult.
- Still in the context of the QCJO criteria, officials indicated that CRA was looking to the expert panel for more precision on the term “primarily” and in particular a quantifiable measure such as a percentage.
- Officials also noted that language about coverage of democratic institutions and processes could be made more precise as well, again to lessen the level of interpretation. Officials explained that from the department’s perspective, this should be about governmental activities but the panel could suggest that it do this but also that it should be broadened. The government’s intention was on the coverage of governmental institutions first and foremost.
- A panel member suggested that perhaps removing the expression “social issues” and add “municipal institutions, school boards, etc.” might be better. The panel agreed to develop new language for this section.
- One member expressed a problem with the insistence on coverage of democratic institutions and that is a much broader process than the narrower topic of covering parliaments only.
- On the definition of “eligible newsroom employees”, officials indicated that there are well-defined criteria defining who is an employee. Officials noted how close the definition for this expression were to that of journalists elsewhere in the panel’s document. But as one panel member pointed out, it is about eligible employees, not all employees found in the newsroom.
- Given some ambiguities officials expressed regarding certain expressions used by the panel, officials suggested that it would be very useful to have either definitions, precisions or examples to better understand the terminology. Many of the expressions are specialized and could be difficult for non-experts to properly understand.

- Regarding the qualified done tax credit, the panel asked officials if regulations could address the issue of registered charities being allowed to donate funds to for-profit news organizations. The answer was that could not occur in the existing legal context and would require a change in the law.

End of meeting

## Minutes of the July 4, 2019 meeting

Panel members present:

- Bob Cox (chair)
  - Esther Enkin
  - Brad Honywill
  - Pierre-Paul Noreau
  - Brenda O'Farrell
  - Thomas Saras
  - Pierre Sormany
  - Pascale St-Onge
- 

The meeting started with panel members reading through a new draft of the document with the proposed interpretation rules. This started with the section on general recommendations prepared by a panel member.

- Members started the discussion by reviewing the labour tax credit's criteria touching the maximum salary and percentage of a salary the measure would refund. Members debated a change to the salary cap of \$55,000 based on their knowledge of average salaries in newsrooms. Concerns were expressed about the optics of raising the cap, making it look like large newspapers were trying to take advantage of the program. Another member counter-argued that the measure is to incentivise newspapers to keep or hire journalists. As an illustration of this, if a journalist makes \$100,000 a year, then the maximum labour credit of \$13,000 will not suffice.
- After discussion, panel members agreed to a recommendation to raise the cap on labour costs to \$85,000 and the percentage of the tax credit to 35%. Members agreed to provide context and explanation around this recommendation and agreed to recommend that it be retroactive.
- The panel agreed that, in the opening paragraph of the general recommendations section of the report, digital media be added to print. Similarly, the panel agreed to modifications in another recommendation to refer to digital media as well as online start-ups.
- On the recommendation concerning the allocation of government advertising budgets to papers in official language minority communities for the purpose of meeting its obligations, one member was concerned that ethnic press was not reflected. The Panel member wanted ethnic press to be included with the recommendation that 5% of advertising dollars be spent in official languages minority outlets. There was some discussion over the Official Languages Act, with some members pointing out that the federal Government has special obligations to French and English minority communities under the law. Panel members agreed that the question of ethnic media should be dealt with in a separate recommendations.
- The panel discussed a proposed recommendation whose intention is to support small publications, including whether the Aid to Publishers component of the Canada Periodical Fund should be the subject of a recommendation as well.

- One member suggested there could be a recommendation to incite the government to adapt its programs more rapidly to reflect the rapid changes in technology and news consumption habits of Canadians, especially younger Canadians.
- On the recommendation to address foreign social media and the regulatory and tax laws, members noted that the unfair treatment favouring these platforms has occurred simply due to a void in the tax framework. The tax system does not address their existence and the government should make changes to address this.
- One member provided the example of Section 19 of the *Income Tax Act* as an example of such an imbalance. As has been detailed in other reports, the section favours foreign media on the digital platforms, something that did not exist when the section was created. One member suggested adding a recommendation to make modifications to Section 19.
- The panel also deliberated on a proposed recommendation to have a list of companies who successfully filed for the tax credits made publicly available. Arguments for (principle of transparency) and against (optics for papers who are not on the list, not because they were unsuccessful, but because they did not apply) were presented. One member pointed out that any company wanting to have their subscribers benefit from the digital subscriptions – which would be almost all newspapers – would want to be listed as being eligible.
- After debate, members agreed to include a broad recommendation regarding limiting the tax credit amounts for companies where executives receive large bonuses.
- The panel agreed to incorporate proposed text from a panel member regarding the role of the 2<sup>nd</sup> panel and that of CRA in the administration of applications. The text would be incorporated into the introductory letter.
- A panel member reminded everyone that while it will be up to the government to name individuals to the 2<sup>nd</sup> panel, it is nonetheless indicated in the mandate letter that the government expects recommendations on this from the panel of experts. Panel members agreed to try to identify individuals to nominate, as per the mandate, despite the challenge of reaching people during the summer months.
- On the recommendation for frequency of publication, the panel agreed to the suggestion to require publications to exist for at least 12 months and that they publish at least 10 times in a given year.
- Under the “original news content” criterion, one member explained that the requirement for publications to have 60% original content was to force them to have a few more articles than just what is necessary than a simple majority of 50%.
- The panel improved on the draft text regarding the need for QCJO’s to cover democratic institutions and processes to provide greater clarity. The fundamental message the panel wishes to deliver is that coverage of democratic institutions is a basic requirement to be considered a QCJO.
- The panel deliberated at length the idea of recognizing as publications with content of general interest those that deal with a large spectrum of policy issues through a specific lens, such as the environment, science, technology or economics and business, while remaining “of general interest” by the scope of the topics covered and the general audience they target. The concern for many was that this would open the program too widely; it would allow too many types of publications to qualify for which the measures were not intended. In this view, the panel would be changing the measure to move away from its

original goal of supporting general interest newspapers. After the debate, the panel agreed to remove the suggested text, at the reluctance of some members.

- The panel also made improvements to wording for the definition of “regularly employs” and to the definition of “journalist” that was proposed. In this latter case, text was added, describing the journalistic method.
- A call was then placed with Daniel Giroux, who was on an expert panel that advised the Quebec government on its program of tax credits to support digital transformation in print media companies, which developed eligibility criteria for written media to be considered outlets producing original written news content relating to news of general interest. Mr. Giroux provided his feedback on the proposed definitions to help the panel improve upon them.
- Mr. Giroux reviewed new text on the concept of “evidence-based”, in particular with a lens to see if there were problems with the applicability of the criteria. Ultimately, it was determined that in the context of determining the eligibility of an organization, it should not be a problem.
- After the call, all the day’s changes were incorporated into a new version of the interpretation rules document. Panel members then reviewed the revised document to ensure it reflected the changes to which they had agreed.
- In deliberating on the criterion for a minimum percentage of original content, panel members agreed that this should be qualified to say “over the course of a given year.” On the definition of “newsroom employee”, one panel member suggested that it would be useful here to clarify the similarities and differences between it and the definition of journalist found earlier.
- Panel members then agreed to check with some individuals who work in newsrooms to ensure the definitions are not off base from the reality of these workplaces.
- When the chair asked the other members if there were outstanding items that still needed to be addressed, one member suggested adding a paragraph to the introductory letter describing the situation of newspapers, particularly the state of the crisis, using data to illustrate this. Another member suggested adding a paragraph to explain how the panel went about developing its recommendations, in particular as it relates to the mandate the panel was given.
- Panel members agreed to hold a conference call on Wednesday, July 10, to continue the work on the report.

End of meeting

## Minutes of the July 10, 2019 meeting

Panel members present (conference call):

- Bob Cox
- Esther Enkin
- Brad Honywill
- Pierre-Paul Noreau
- Brenda O'Farrell
- Thomas Saras
- Pierre Sormany
- Pascale St-Onge

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The panel began the conference call with a discussion of whether a recommendation should be made that journalists should be members of a professional association in the context of the administration of this program.

- One member weighed the merits of this suggestion against its impracticality, saying that several important news organizations in Quebec would certainly oppose it; in addition, there is no actual organization to which journalists are required to adhere, and forcing them to be a member of something would not be a good recommendation.
- One member concurred, pointing out that the vast majority of journalists would not belong to such an association.
- One member noted that this would enhance the profession's self-respect and that a small annual paid membership should not be an obstacle. However, the member recognized that this is a complex situation and that many people would oppose the idea in Quebec.
- One member said that the idea of a professional association is not a bad one, but as there is currently no requirement to be part of one and as it should not be up to government to say who should or should not be, this would not be a good recommendation.
- One member explained that this is a controversial issue in Quebec that has been discussed extensively, with no emerging consensus. The member also noted that this is an issue that should be discussed amongst the industry and not a decision that should be made by this panel about the current program.
- One member concurred, pointing to the fact that the panel had defined the term "journalist" in one of its articles in the interpretation rules.
- One member agreed, saying that a committee would be required to judge behaviour, and that this would be out of the question, at least in Quebec. The text prepared by the panel describing who is and isn't a journalist is enough. The member mentioned being in favour of adding something to the effect of peer evaluation (e.g. Ombudsperson or Press Council), but recognized that this idea had already been discussed and decided against.
- Consensus was reached not to pursue this as a potential recommendation further.

The discussion then moved to the draft public letter addressed to Minister Rodriguez and Minister Morneau.

- The panel agreed to highlight key messages at the top, including that the needs are pressing; that, while this program is very important, it is not enough for an industry in crisis; and that smaller publications will not benefit much from it. Further and more recent statistics will also be sought for inclusion in the letter.
- One member suggested pointing out that having the government put money in advertisement in Canadian media is in fact an efficient measure.

The discussion then moved to the draft interpretation rules.

- The panel discussed the definition of “editorial content”, in particular how the understanding of the term can vary between French and English.
- One member mentioned that, while it is rightly not considered a journalistic task when a journalist produces some branded content, the frontier between branded and editorial content is increasingly blurred. The member explained that they would agree to a description of the work of journalists that would exclude this content, but that things are less clear when it comes to defining editorial content.
- One member suggested adding text to say that original news content should be understood as editorial content.
- One member indicated that this would cause a problem, since editorial content is larger than news.
- One member expressed concern that Canada Revenue Agency (CRA) staff might not understand what “editorial content” means and would need a clearer definition.
- The question was raised of whether content used in a newspaper that comes from its ownership group would be considered original content.
- It was decided that, since the definition provided indicates that the research, writing, and presentation were to be done by and for the organization, then it should not be included.
- One member suggested separating the definitions for “editorial content” and “original news content”, but pointed out that the Budget law uses the terms “written news content”, not “editorial content”.
- It was decided that when the law refers to “written news content”, it should be interpreted as “editorial content”, and that the panel would further provide a definition for “original news content”.
- It was further clarified that articles in a newspaper that were generated from other newsrooms within the same ownership group, including articles from news agencies and any other publication, would not be considered as original content.
- On the topic of journalistic judgement, the panel debated whether to define the term and, if so, in what way.
- One member described the concept as the consideration of issues such as timeliness, public interest, and importance, which are things all journalists consider all the time, even if their judgement about them might be subjective.
- One member expressed concern that if CRA staff does not understand what is meant by these considerations, then everything would be referred to the 2<sup>nd</sup> panel.
- One member suggested that instead of listing the considerations upon which journalists make judgements, the panel identify the types of things that result from the judgements

journalists make, such as whether something (e.g. violent photograph) is published, where, or with what presentation.

- One member suggested expanding a previous paragraph to integrate this concept, rather than have it be its own separate paragraph, to which the panel agreed.

The panel then discussed recommendations for the composition of the 2<sup>nd</sup> panel.

- The panel noted the importance of having regional, linguistic, cultural, and ethnic representation amongst the members of the panel and agreed to recommend several names for consideration – more so than would be needed, as some people might refuse due to too busy schedules, for example.

The panel then discussed its draft general recommendations.

- The panel discussed suggesting a review or consolidation of the three federal government programs that support media.
- The panel also agreed to mention something to the effect of copyright law, insofar as media should receive compensation for use of their material.
- The panel discussed issuing separate recommendations regarding newspapers in official language minority communities, which are covered by the *Official Languages Act*, and for Indigenous publications and ethnic press, which should also receive their fair part.

The panel concluded by agreeing to make a public statement to inform the public formally that they have finished their report, once it is published.

End of meeting.