



PRIVILEGED and STRICTLY CONFIDENTIAL

REPORT

**CBC WORKPLACE INVESTIGATION
REGARDING JIAN GHOMESHI**

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Table of Contents

PART ONE - PROCESS	1
Introduction to Report.....	1
The Parties	1
Mandate	3
The Policies.....	5
The Collective Agreement	8
Conduct of the Investigation	11
PART TWO – ANALYSIS OF THE EVIDENCE AND CONCLUSIONS	17
1. Breach of the Behavioural Standard	17
2. Knowledge of Management.....	23
3. Missed Opportunities to Investigate	26
4. The Role of the Union.....	35
5. Existence of “Host Culture”	36
6. Who is the Boss?.....	37
7. Weak Systems and Procedures	39
(i) Over-Reliance on Formal Complaints	39
(ii) Lack of Comprehensive Data.....	40
(iii) Narrow Survey Information.....	41
(iv) No System to Measure Behaviour	41
(v) Generic Training	42
8. Summary of Conclusions.....	42
PART THREE – RECOMMENDATIONS	45
Introduction.....	45
Recommendation One – Review and Clarify Policies which set out the Behavioural Standard and with the CMG review related Articles in the Collective Agreement	46
Recommendation Two – Training	47
Recommendation Three – Conduct Surveys and “Spot Audits”	48
Recommendation Four – Establish a Confidential Workplace Hotline	49
Recommendation Five – Refresh Workplace Investigation Competencies and Data Keeping	49
Recommendation Six – Establish a Respect at Work and Human Rights Ombudsperson	50
Recommendation Seven – Examination of the Role of Executive Producer.....	51

Recommendation Eight – Respect at Work Competencies to be Included in Every Stage of the Employment Relationship.....	51
Recommendation Nine – Task Force with the CMG to Address Young People in Organization.....	52
A Final Note to the Recommendations.....	52

PART ONE - PROCESS

Introduction to Report

On November 4, 2014, we were retained by the Canadian Broadcasting Corporation/Société Radio-Canada, (the “CBC”) to conduct a workplace investigation and to prepare a report (the “Report”) of our findings. The investigation was prompted by the termination of Jian Ghomeshi (“Mr. Ghomeshi”) and allegations of inappropriate workplace behaviour on his part that surfaced at the CBC in the summer of 2014 and in the media shortly after the termination of his employment on October 26, 2014. Our role was to act as an objective and neutral party, and to conduct an investigation that was independent. While we are employment lawyers, we did not act as any party’s advocate, nor did we provide legal advice to anyone involved in the investigation, including anyone employed at the CBC or the CBC itself.

We confirm that we were able to conduct this investigation independently, without interference on the part of the CBC in terms of the process undertaken, the evidence obtained, our analysis and conclusions, or the formulation of our recommendations.

The Parties

The parties to whom we repeatedly refer in this Report are:

The CBC - the “CBC” is Canada’s national public broadcaster that operates both in English and French across the country. It broadcasts programming on radio and on television. As a federally regulated entity, it is subject to both the *Canada Labour Code*¹ and the *Canadian Human Rights Act*.²

The events described in this Report occurred in the English division of the CBC, and primarily in radio.

¹ R.S., c. L-1, s. 1.

² R.S.C., 1985, c. H-6

The Canadian Media Guild - the “CMG” or the “Union” is the Union which represents the production, technical, administrative and support staff outside of the province of Quebec and Moncton, New Brunswick, including producers, executive producers, on air talent and radio hosts. The terms and conditions of the employment relationship between employees who are members of the CMG and the CBC are contained in a Collective Agreement (the “Collective Agreement”). The current Collective Agreement runs from 2014 to 2019. As such, the provisions of the Collective Agreement apply to the above-mentioned group of people. We note that there are a number of other unions that operate within the CBC. They did not play a role in this investigation, and do not appear in this Report.

Mr. Ghomeshi – Mr. Ghomeshi was the former host of Q³, which is a national radio program which runs live on CBC One at the 10:00 AM time slot. The program first went to air in 2007, and Mr. Ghomeshi was the host until the termination of his employment. During that time, Mr. Ghomeshi was not a permanent employee of the CBC. While his employment was subject to the terms of the Collective Agreement, he was also party to a series of term contracts that he negotiated with the CBC. These contracts contained additional terms of his employment agreement with the CBC. The last such contract was dated July 1, 2013 and ran for two years.

At the time of his termination, Mr. Ghomeshi was considered one of CBC radio’s “stars”. He was one of the best known personalities of the CBC.

Managers – these are the people who held managerial positions within the CBC, and who had some role in relation to Mr. Ghomeshi, and who are discussed within this Report. Collectively, they are referred to as “Management” in the analysis and conclusion sections of the Report. Managers do not include producers or executive producers.

Staff/Employees – we have used this term interchangeably in the Report. These are individuals who are non-managerial and are unionized. This includes all levels of producers and executive producers. Most of the staff we interviewed were members of the CMG.

The Executive Producer – there were two Executive Producers at Q. Both were members of the CMG. The first occupied this role for a very short time. The second began his role in September

³ We have referred to the program as “Q” throughout this Report. That was the show’s original name. For a time it was called “Q with Jian Ghomeshi”. It is currently called Q on the CBC.

2007. Executive Producers are not managers, but have a supervisory role vis-à-vis a show or program, and the show or program's content.

Mandate

The initial mandate was contained in a letter to us dated November 4, 2014. It stated in part as follows:

You will be engaged by CBC/Radio Canada to carry out the following mandate:

- (i) Current and former CBC/Radio Canada employees who worked on the “Q” or “Play” programs during the period in which Jian Ghomeshi hosted these programs and who have complaints, concerns or experiences they wish to share regarding harassment, discrimination, violence or other inappropriate workplace conduct during their work on these programs will be directed to contact you.
- (ii) You will make available to such employees an accessible and secure telephone number (with sufficient voicemail capacity) and email address through which they can contact you directly and you will acknowledge receipt of each message sent to you as soon after receipt as is reasonably possible.
- (iii) You will arrange to meet each employee as soon as possible. Some employees may only wish to discuss with you their concerns or experiences without any further action being taken. However, if any employee has a specific complaint that they wish to have investigated, you will do so in accordance with applicable CBC/Radio Canada policies. You will gather all the material facts, including the identity of all individuals involved, the specific conduct complained of and the date(s) and time(s) on which such conduct occurred.
- (iv) You will conduct all of your meetings as confidentially as possible. CBC/Radio Canada will fully co-operate with you in completing your mandate and will ensure you have access to any CBC/Radio Canada personnel to whom you may require access, and any CBC/Radio Canada documents to which you may require access, in the course of completing your mandate.
- (v) Following the completion of your investigation, you will prepare and deliver to CBC/Radio Canada's Vice President, People & Culture, or other individuals designated by CBC/Radio Canada, a final written Report which sets out:
 - (i) A summary of the complaints, concerns or experiences shared with you, maintaining confidentiality to the extent possible;

- (ii) Your findings to the extent you are able to make them with respect to each specific complaint that you are asked to investigate; and
- (iii) Your recommendations as to any steps CBC/Radio Canada should take to resolve the complaints, concerns or experiences shared with you and to prevent similar issues arising in the future, including any recommended changes to CBC/Radio Canada's policies and procedures related to harassment, discrimination, respect in the workplace and workplace violence and the investigation of these issues.

A mandate given to a workplace investigator is not written in stone. Sometimes it requires clarification, and it can evolve as the process unfolds. This is not unusual in our practice. Indeed, this was contemplated by the mandate letter itself. As the investigation took shape, the mandate was clarified and expanded. In addition to what we had been tasked with initially, it was agreed that we would conduct the investigation with a view to answering the following questions:

1. Were there allegations/evidence of inappropriate behaviour on the part of Mr. Ghomeshi that pre-dated his termination? In this regard, it was understood that inappropriate behaviour would include not only allegations of sexual harassment, but also allegations relating to the CBC's respect at work policies and provisions; and
2. If there were allegations/evidence of inappropriate behaviour on the part of Mr. Ghomeshi, were these allegations known to CBC management, and if so, what actions, if any, did it take in regard to these allegations/evidence? If they were unknown to CBC management, why were they unknown?

Initially, the scope of the investigation was limited to Mr. Ghomeshi's time at Q and at Play, the latter of which he hosted on CBC Newsworld from 2002 - 2005. However, it was eventually expanded to include Mr. Ghomeshi's time at Canada Reads, a seasonal radio program he hosted from 2008 - 2014 and Sounds Like Canada, a program for which he was the substitute host for a few weeks in the summer of 2005, and then again during the summer of 2006. The expansion of the mandate was as a result of evidence provided to us that suggested that there were allegations of inappropriate behaviour on the part of Mr. Ghomeshi stemming from these shows.

The Policies

There are a number of policies that are relevant to this investigation and which form the framework against which the behaviour and conduct of Mr. Ghomeshi and the CBC was measured. These are:

Code of Conduct (the “Code”)⁴.

The Code applies to every CBC/Radio-Canada employee, “regardless of level, position, or union affiliation” and acceptance and adherence to it “is a condition of employment”.

The Code contained a number of provisions that we found directly applicable to the subject matter of this investigation. The opening “Statement” states that the Code:

...outlines the values and expected behaviours that guide CBC/Radio-Canada employees in all activities related to their professional activities...

Under “Application”, the Code states that:

Acceptance of these values and adherence to the expected behaviours is a condition of employment for every CBC/Radio Canada employee, regardless of their level, position or union affiliation. Employees shall confirm annually to their immediate supervisor that they have read and understood this Code of Conduct.

Under “Expected Behaviours”, the Code specifies that:

...Employees who are also managers are in a position of influence and authority that gives them a particular responsibility to exemplify the values contained in this Code of Conduct.

Section 2 of the Code is entitled “Respect for People”. It states:

CBC/Radio Canada employees shall respect human dignity and the value of every person by:

⁴ The Code of Conduct is dated June 21, 2012, but we have been advised that there were previous versions of the Code during the time in which Mr. Ghomeshi was employed by the CBC. A previous version in force from November 2006 to June 21, 2012 applied to all employees of CBC/Radio Canada, and set out that all employees are expected to “foster an environment of integrity, respect, and trust.” This previous version also included a Respect in the Workplace provision that stated that “every employee must behave in a respectful and professional manner” and that “behaviour that is disrespectful, intimidating or humiliating, intentional or otherwise, will not be tolerated.” Similarly, this version noted that discrimination and harassment would not be tolerated in any form or from any group or individual.

- 2.1 Treating every person with respect and fairness.
- 2.2 Valuing diversity and the benefit of combining the unique qualities and strengths inherent in a diverse workforce.
- 2.3 Helping to create and maintain safe and healthy workplaces that are free from harassment and discrimination.
- 2.4 Working together in a spirit of openness, honesty and transparency that encourages engagement, collaboration and respectful communication.

Finally, we note that the Code contains a provision entitled “Avenues for Resolution”. It states, among other things, that:

...When issues arise or there might be a possible breach of this Code of Conduct, employees are obliged to immediately notify their immediate manager. The immediate manager is responsible for immediately notifying the local Human Resources Business Partner...

Anti-Discrimination and Harassment Policy⁵

The Anti-Discrimination and Harassment Policy protects against discrimination and harassment that relates to a prohibited ground under the *Canadian Human Rights Act* and applies to all CBC/Radio-Canada employees. The policy states that the CBC “considers all forms of discrimination, including discriminatory and sexual harassment, to be unacceptable; will not tolerate its occurrence; and will make every reasonable effort to ensure that no employee is subjected to it.” This policy includes the following relevant definitions:

Discrimination means:

- denying an individual employment, goods, and services, based on a prohibited ground as described below; or
- differentiating adversely between individuals in the course of employment, or in the provision of goods and services, based on a prohibited ground as described below. Prohibited grounds include: age, race, colour, religion, national or ethnic origin, sex including pregnancy and childbirth, family status, marital status, sexual orientation, pardoned conviction or mental or physical disability.

Discriminatory Harassment means:

⁵ This Policy has been in force since 2010. The previous version which was in force from January 1, 2003 until 2010, contained identical definitions.

- any conduct, comment, gesture, or contact based on any of the prohibited grounds:
 - that is likely to cause offence or humiliation to an employee or customer, or
 - might reasonably be perceived as placing a condition on the employment, employment opportunities, or the provision of goods and services.
- Examples include: unwelcome remarks, jokes or taunts about an individual's prohibited ground; display of derogatory, racist or offensive pictures or material.

Sexual Harassment means:

As defined in the *Canada Labour Code*:

- Any conduct, comment, gesture, or contact of sexual nature that is likely to cause offence or humiliation to an employee, or that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.”
- Sexual harassment...is generally comprised of objectionable and offensive behaviour that may occur once or repeatedly.
- Examples include: unwelcome advances, flirtations, jokes or propositions of a sexual nature; sexually degrading words, images or other material; conduct of a sexual nature, including leering, pinching, touching and patting.

The Anti-Discrimination and Harassment Policy provides a “chain of communication for addressing concerns or complaints” which we have reproduced below⁶:

1. If it is appropriate, the employee should tell the person who is acting in a discriminatory/harassing manner that it is offensive and request that s/he immediately stop.
2. If this is inappropriate or if the informal discussion is not resolved, then the employee should advise his or her immediate supervisor (or, if unionized, his or her union representative and/or supervisor) who shall, in turn, notify the Human Resources Manager.
3. If advising the immediate supervisor is difficult, inappropriate or otherwise unsuccessful, then the employee should contact his or her CBC Human Resources Manager directly.
4. The employee will then be asked to prepare a written complaint, outlining the nature of the allegations and any important details of facts (including the name(s) of the alleged

⁶ The previous version of this policy in force between 2003 and 2010, stated that the investigation process would be initiated by Human Resources upon receipt of a written formal complaint by Human Resources or a manager (who would forward the complaint to Human Resources).

- harasser(s), witnesses, dates, and location of the incidents) that may assist the subsequent investigation.
5. Upon receipt of the written complaint, the Human Resources Manager will immediately acknowledge its receipt to the employee and will meet with the employee as soon as reasonably possible.
 6. The Human Resources Manager will exercise its discretion as to whether an internal investigation is warranted and to determine its scope. Where appropriate, the Human Resources Manager may conduct an investigation even if the employee refuses to submit a written complaint.

The CBC also has “Guidelines to Investigations” which we have reviewed, but have not reproduced below.

The Collective Agreement⁷

There are protections with respect to Discrimination, Harassment, and Respect in the Workplace in the Collective Agreement between the CBC and the CMG. They are:

(i) Discrimination

Article 6 of the Collective Agreement deals with Discrimination. Subsection 6.1 states:

The parties shall not discriminate against employees with respect to sex, colour, age, disability, religion, creed, race, ethnic or national origin, marital or parental status, sexual orientation, political affiliation, membership or activity in the Union, or conviction for an offence for which a pardon has been granted.

The section incorporates the protections afforded to employees who work for federally regulated entities under the *Canadian Human Rights Act*.

(ii) Harassment

⁷ We have referred to the articles in the current Agreement. However, this article appeared in the Agreements that preceded this one, at least going back to 2004.

Article 7 of the Collective Agreement deals with Harassment. It states:

7.1 The Parties recognize the right of employees to work in an environment free of harassment.

7.2 Harassment will have the same meaning as defined in the *Canadian Human Rights Act* and the *Canada Labour Code*. Harassment includes engaging in a course of vexatious comment or conduct that is known or ought to be known to be unwelcome.

For clarification, sexual harassment means any conduct, comment, gesture or contact of a sexual nature:

- a. that is likely to cause offence or humiliation to any individual.
- b. that might, on reasonable grounds, be perceived by that individual as placing a condition of a sexual nature on the employment or on any opportunity for training or promotion.

Sexual harassment is generally comprised of objectionable and offensive behaviour which may occur once or repeatedly. Unwelcome sexual advances, requests for sexual favours, and other verbal, pictorial or physical conduct of a sexual nature constitute sexual harassment.

It is a discriminatory practice, in matters related to employment, to harass an individual on any of the following prohibited grounds of discrimination: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, or conviction for an offence for which a pardon has been granted. It includes any comment or conduct based on the grounds listed above, that offends or humiliates. Discriminatory harassment will have taken place if it is known or ought to have reasonably been known that the behaviour in question was unwelcome or inappropriate in the workplace. Discrimination on the basis of childbirth and pregnancy is covered under the category – sex.

7.3 The normal exercise of management rights, in particular the right to assign tasks and the right to reprimand or impose discipline under the terms of this Agreement, are not defined as harassment.

7.4 When a complaint is filed alleging harassment, the Corporation will immediately investigate to resolve the issue and to protect the rights and wellbeing of all the parties involved. The complaint will be dealt with in accordance with the Corporation's policy on Harassment. It is agreed that the procedures set out in the Policy will not be changed during the life of this Collective Agreement.

Further, the Corporation will take corrective or disciplinary measures as required. Such disciplinary action when taken against an employee in this bargaining unit shall be covered by the provisions of this Collective Agreement. Such action must be taken in a timely manner.

7.5 An employee alleging harassment in the workplace, as described above, has the right, after informing his/her supervisor or manager, to be assigned to other suitable work, if available, until an investigation has been undertaken.

7.6 No employee risks reprisals as a result of filing a complaint in good faith, or being a party to the investigation of a complaint.

(iii) Respect in the Workplace

Article 8 of the Collective Agreement deals with “Respect in the Workplace”. Subsections 8.1 and 8.2 set out the standard of behaviour and conduct expected:

8.1 The Corporation and the Union recognize the dignity and worth of every individual and are committed to a climate of understanding and mutual respect in the workplace.

8.2 The Parties agree that they will not tolerate, ignore or condone bullying, improper comments, conduct, actions or gestures directed towards a specific individual that would be reasonably considered to create an intimidating, humiliating, hostile or offensive work environment.

Improper comments, conduct, actions or gestures:

- a. include profanity and abusive language; verbal and physical threats or assault; intimidation; taunting or ostracizing; rude or inappropriate jokes or innuendo; overly aggressive, embarrassing, humiliating or demeaning behaviour; and malicious gestures or actions;
- b. must not be a trivial occurrence that could reasonably be expected to take place in a work environment; and
- c. do not include the good faith exercise of supervisory or management duties or responsibilities and/or do not serve any other legitimate workplace purpose.

8.3 This Article does not apply to allegations of sexual or discriminatory harassment, which will continue to be dealt with in accordance with the Corporation’s Harassment Policy. No complaint can be filed under both the Harassment Policy and this Respect in the Workplace Article.

8.4 Complaints regarding respect in the workplace shall be treated seriously and in strict confidence. An employee has the right to have a Union representative present throughout this process.

8.5 Where possible, an employee who believes this Article is being violated should attempt to resolve the matter by discussing objectionable behaviour with the alleged offender and making it clear that the behaviour is unwelcome.

8.6 If the problem is not resolved as a result of this discussion, an employee who believes that this Article is being violated should discuss the matter with his/her immediate manager as soon as possible after the alleged violation(s). If the issue relates to

behaviour of the immediate manager, the employee should discuss the matter with the next higher level of management. The manager, together with the employee and a representative of Human Resources, will develop a plan of action to review the alleged violation and resolve the issue in as timely a manner as possible if a problem is found to exist.

We note that there is no free standing “Respect in the Workplace” policy. There is the provision in the Collective Agreement above, and it is a concept that is embedded in the Code also referenced above.

Contained within these provisions is the standard of behaviour expected of all CBC employees. We have referred to this as the “Behavioural Standard” throughout this Report. Very generally, the Behavioural Standard means that employees must refrain from behaviour which is discriminatory, constitutes harassment (as defined under the *Canadian Human Rights Act*) or lacks respect, such as bullying, intimidation, abusive language, and acts of aggression and hostility (among other things).

We were advised by witnesses within Human Resources that where an individual alleges that there has been a breach of the Anti-Discrimination and Harassment Policy, or the Harassment, Discrimination or Respect in the Workplace Articles under the Collective Agreement, he or she would first make a complaint that would be investigated, and then should the outcome of the complaint be unsatisfactory, the CMG may then file a grievance on his or her behalf. The Human Resources witnesses did not believe there had been any such complaint made in relation to Mr. Ghomeshi.

Conduct of the Investigation

In the five months that followed our retainer, we conducted interviews of 99 people. We refer to the people we interviewed as “witnesses” throughout this Report. For the most part, these interviews were conducted in person, although in the case of some witnesses, interviews were conducted by phone or via Skype. In a number of cases, we conducted follow up interviews or asked witnesses additional questions by phone or email. How we intended to use the information given to us in these interviews was explained to each witness in what we referred to as a “pre-

interview”, and each witness was provided with a letter confirming the same. The terms of these letters were essentially the same for individuals for whom we believed it would be possible to include their evidence in this Report on a “no names” basis. In other words, we would include their evidence, but, it would not be attributable to them by name, nor did we think that they would otherwise be identifiable. Other individuals, by virtue of their role, their position, or their evidence, were so unique that we could not provide this assurance. In our view, they would be identifiable to individuals reviewing the Report who had some knowledge of the subject matter of the investigation.

There were three individuals within the CBC Legal and Human Resources department who were our contacts for the purposes of this process. They provided us with various pieces of information by way of context and background, as well as a roadmap of the organization itself. We would apprise them of the status of the process from time to time, but only in very general terms. At the outset of this process, we made them aware of the terms under which information would be obtained from witnesses, and the manner in which that information would appear in the Report.

At the start of this process, we established a dedicated email and phone line, so that anyone who had relevant information could contact us. We interviewed these people first. There were approximately 30 people who fell into this category. Then, based on the evidence we obtained from these people, we contacted others. Witnesses included unionized employees, non-unionized managers, current and former CBC employees, former interns, as well as individuals who had no affiliation with the CBC past or present, but did appear to have information that was relevant to this process. Any witness or prospective witness who was a member of the CMG was advised that they could bring a CMG representative with them to the interview. Only one decided to do so. In that case, the representative was

Not everyone we contacted agreed to be interviewed. Some individuals ignored our requests entirely, while others told us they did not wish to participate. Some gave us reasons. Some did not.

We make particular note of one witness we attempted to interview, but were unable to do so.

We provided an alternative proposal to _____ which we believed fairly addressed the _____ concerns. This proposal was rejected by the _____, and instead, the prospective witness provided us with a written statement as an alternative to an interview. _____ Later on in this process,

_____ we made a second attempt to interview this person as we believed that a face-to-face meeting was a more effective and fair way to deal with what was in part, an issue of credibility. This request was also denied.

A request to interview Mr. Ghomeshi was sent to the CMG's legal counsel on February 11, 2015. We received a reply on February 17, 2015 that indicated that he had passed the request on to Mr. Ghomeshi's counsel and that Mr. Ghomeshi was not prepared to participate. Given the fact that there was a criminal proceeding underway, and a grievance filed, we did not find this response surprising.

In total there were 17 people who declined to be interviewed.

We did attempt to interview _____ of the CMG to determine if it had any record or knowledge of concerns or complaints brought to its attention with respect to Mr. Ghomeshi, and if so, what were those concerns or complaints, and what actions if any were taken by the CMG. We wanted to understand how it generally handled matters relating to harassment and discrimination and respect at work on behalf of its members. We also wanted to have input from the CMG in terms of the recommendations that would flow from this Report and if there was anything else the CMG wanted to bring to our attention, or thought we needed to know as part of

this process. We were advised by _____ the CMG that the witness who we identified as being the right person to assist us, was not. Instead, we were provided with a written reply to our questions which included, among other things, a copy of a policy entitled “Member-to-Member Conflicts”.

In response to our question about the CMG’s own knowledge of concerns and complaints, we were advised (in part) that CBC management could provide us with any specific information that any CMG member wanted it to bring to the attention of management or wished to pursue through a Respect in the Workplace complaint process or grievance. For reasons of confidentiality, the CMG could not provide us any other information regarding specific complaints raised by any of its members. (their words)

We did have a number of follow up questions regarding the information we were provided by the CMG through its _____ in particular, the CMG’s input in terms of the recommendations we had been asked to make.

_____ we were advised by legal counsel that _____

We wish to emphasize that attendance at all interviews was entirely voluntary. We did not have the power to summons witnesses, nor did we have the authority to ask witnesses questions under oath. Moreover, we did not see it as our role as workplace investigators to aggressively cross-examine witnesses. Instead, we asked probative questions to understand what had occurred, and to understand the witnesses’ own experiences and perceptions.

As the process began to unfold, we noted a high degree of interest among individuals to participate. Indeed, many witnesses told us that they were deeply committed to the mission and mandate of the CBC as a public broadcaster, and that they hoped their insights and experiences would make a positive contribution to their workplace. At the time of their interviews, no witnesses informed us that they wished to pursue making a formal complaint. Rather, they were content to share information with us about their experiences in the workplace, as part of the process we were undertaking.

We ask that the spirit in which these employees came forward and recounted their experiences be taken into account by the CBC as it considers its next steps now that the workplace investigation is finished.

The vast majority of the interviews were recorded so that we could review the evidence at a later date and to prepare this Report. The recordings were made for our use only. Along with our analysis and summary of them, they form a part of our internal work product in relation to the preparation of this Report. Each recording contains personal and identifiable information and each one is reflective of the witness's unique experience at work. We asked witnesses not to make their own recordings of the interviews. This was because it was important for us to maintain control over the evidence, as a means of protecting the confidentiality of this process as best we could. No recording has been provided to anyone at the CBC to date, nor do we intend to voluntarily provide any recording in the future.

In cases where we interviewed witnesses by phone or Skype, we took handwritten notes. In one instance, a witness and their representative,

objected to being recorded. Therefore, we agreed to take handwritten notes as an alternative.

All witnesses were asked to keep the fact of the interview, as well as what was discussed in it, confidential.

There were no restrictions placed on us by the CBC in terms of who we could interview. Indeed, we had unfettered access in terms of who we could contact. That being said, we only contacted individuals who we thought had information that was relevant to this process. We did not inform

the CBC who we requested to interview, who we actually interviewed, and when we interviewed them.

Finally, we note that our mandate did not include a review and assessment of the overall CBC workplace culture and it was not our intention to interview a specific “sample” of the employee population. However, given the number of people we interviewed, we think it is reasonable for the CBC to consider whether some of the themes that emerge from this matter are applicable to other areas of its organization.

PART TWO – ANALYSIS OF THE EVIDENCE AND CONCLUSIONS

Based on the evidence available to us in this process, we have reached the following conclusions:

1. Breach of the Behavioural Standard

As we indicated at the outset of this Report, the CBC had a number of policies and articles in the applicable Collective Agreement that set out the standard of behaviour that is expected of all of its employees. We have referred to this as the “Behavioural Standard”. Very generally, it means that CBC employees must refrain from behaviour that is discriminatory, constitutes harassment (as defined under the *Canadian Human Rights Act*) or which lacks respect, such as bullying, intimidation, abusive language, and acts of aggression and hostility (among other things).

While some witnesses reported having no difficulty working with Mr. Ghomeshi, the majority of the witnesses who worked with him over the course of his career at the CBC described a pattern of behaviour and conduct that fell well below the Behavioural Standard.

We do not have Mr. Ghomeshi’s response to how other people have described his behaviour.

We found the evidence compelling even in the absence of Mr. Ghomeshi’s participation in this process.

Therefore, we have concluded that elements of Mr. Ghomeshi’s workplace behaviour consistently breached the Behavioural Standard. There may have been aspects of Mr. Ghomeshi’s behaviour that alone, would have been merely inconvenient or inconsiderate and not contravened the Behavioural Standard. Similarly, there may have been aspects of his behaviour that if only occasionally exhibited would not have fallen below what is acceptable. However, the aggregate effect of various behaviours and conduct, both in terms of volume, impact, and

persistence as described in this Report meant that his behaviour fell well below the Behavioural Standard.

By far, the most prevalent of this type of behaviour was of the kind that was deeply disrespectful to employees. This behaviour is at odds with the Code provisions that outline the requirement to treat “every person with respect and fairness” and prohibits the type of “improper comments, conduct, actions or gestures”, that are listed in Article 8.2 of the Collective Agreement, which include, among other things, “abusive language, intimidation, taunting, rude or inappropriate jokes and overly aggressive, embarrassing, humiliating or demeaning behaviour”. The evidence suggests that many of those who worked with Mr. Ghomeshi expended a great deal of energy dealing with this behaviour and conduct, and that it was deeply distressing to them, and impactful on them. To be clear, it is our opinion that Mr. Ghomeshi’s conduct such as yelling, belittling and humiliating those with whom he worked fell well below the acceptable standard.

We have compiled a summary of the evidence pertaining to Mr. Ghomeshi’s conduct as well as examples that are illustrative of each type of behaviour. It should be noted that these examples are not necessarily the most egregious, as disclosing the latter may have resulted in the identity of the witnesses being compromised.

We found evidence that:

- Mr. Ghomeshi was persistently late and consistently disrespectful of colleagues’ time.

Example:

- Mr. Ghomeshi would ignore colleagues for short or lengthy periods of time if they had done something that displeased him.

Example:

- Mr. Ghomeshi as scheming in the manner in which he dealt with them.

he was dismissive of them.

Example:

- Mr. Ghomeshi was moody, difficult and emotionally unpredictable.

Example:

- Mr. Ghomeshi yelled and doled out harsh criticism.

Example:

- Mr. Ghomeshi made requests of a personal nature of several colleagues that fell outside of these colleagues' job duties.

Example

- Mr. Ghomeshi diminished the role and contribution of colleagues by not attributing credit to them for their work.

Example:

- Mr. Ghomeshi made comments about the appearance of some colleagues. These comments were described as demeaning, inappropriate and unwanted,

Example:

- Mr. Ghomeshi played pranks and cruel jokes. .

made them feel embarrassed, anxious, or upset.

Example:

- Mr. Ghomeshi gave a number of colleagues back and shoulder massages. Most of the witnesses did not find these massages sexual (although several did), but instead described them as “creepy” and disrespectful of their personal boundaries.

Example:

Mr. Ghomeshi’s behaviour on the whole created a stressful and “dysfunctional” environment,

Less prevalent, but still present in a small number of cases, was behaviour on the part of Mr. Ghomeshi that was sexual harassment. This behaviour consisted of sexualized conduct and comment, including physical contact that was known or ought to have been known to be unwelcome and inappropriate. This behaviour was “objectionable and offensive” and was “likely to cause offence or humiliation to an employee” as set out under the Anti-Discrimination and Harassment Policy, and contrary to “the right of employees to work in an environment free of harassment” as set out in Article 7 of the Collective Agreement.

We have set out below a summary of the evidence that relates to the sexualized conduct and comments of Mr. Ghomeshi. We have not included examples for each type of behaviour due to the possibility of the examples identifying the witnesses:

- Mr. Ghomeshi was overly familiar with a number of female employees and gave them back rubs and massages. In addition to what is described below, we found one

additional occasion where Mr. Ghomeshi subjected a female employee to unwanted physical contact that was sexual in nature;

- On a few occasions, Mr. Ghomeshi solicited women in the workplace for dates and/or personal contact,
- Mr. Ghomeshi flirted with a number of women present in the workplace, including on air guests.
- Mr. Ghomeshi shared details about his own sex life. There were incidents where Mr. Ghomeshi shared information that witnesses found too personal, too graphic, and generally unsavoury. We found evidence that this was not only directed at women, but at a certain number of men, who were also the inadvertent recipients of “too much information” from Mr. Ghomeshi about his private life and his sexual activities.

There was also evidence of at least one personal relationship Mr. Ghomeshi had with a co-worker _____ which those who had knowledge of it assumed was intimate in nature. This co-worker worked in a junior position and was not a permanent employee. _____ These witnesses believed the relationship to be consensual. We did not have the benefit of information from the co-worker as she declined our request to be interviewed.

In our experience, determining consent when one person in the employment relationship is far more powerful and influential than the other is often challenging. Therefore, we are left with a number of unanswered questions about the nature of this relationship, and the consequences, if any, to the woman involved. However, if for the purpose of this analysis, we assume that the relationship was consensual, it was not sexual harassment. However, it was still problematic, because as a host, Mr. Ghomeshi was in a position to potentially influence this woman's career at the CBC. At the very least it was a conflict of interest and in our view, it was inappropriate.

We found no evidence of a formal complaint made against Mr. Ghomeshi under the CBC's policies. In considering this, we have noted the context in which the above conduct took place. Mr. Ghomeshi became a star of the CBC. This is a fact with which many witnesses, including those directly responsible for him, agree. We do not wish to overstate the powerlessness of those who worked with him. Based on our interviews with them, they appeared to be highly professional, creative, and productive people. However, relative to Mr. Ghomeshi, they were vulnerable. We asked witnesses whether they ever considered making a formal complaint against Mr. Ghomeshi. They told us that they were reluctant to do so for a number of reasons, including a lack of trust and confidence in the complaint process, the sense that the workplace was a "sealed unit", and that it was expected that they deal with their concerns regarding Mr. Ghomeshi internally. We noted that there was also a pronounced power and status differential between Mr. Ghomeshi and those who worked to support him. In this regard, and among other things, we noted the presence of many younger employees who were new to the world of work, who were not permanent employees and who were concerned with establishing a career. They were particularly vulnerable which made them unwilling to complain or "rock the boat". Therefore, we do not find the absence of a formal complaint surprising nor do we find it suggestive that the events the witnesses described did not occur.

2. Knowledge of Management

We have also concluded that managers who directly managed Mr. Ghomeshi and who were involved in decisions about his employment at the CBC had knowledge and awareness of aspects of his problematic behaviour, in as much as it related to disrespectful behaviour at work. This

knowledge and awareness varied from manager to manager in terms of depth and detail as well as when in the course of Mr. Ghomeshi's employment they had this knowledge and awareness. In this regard, we noted a tendency that as information was shared upwards from Executive Producer (a non-managerial role) to line manager, from line manager to senior manager, and from senior manager to executive manager, it became diluted.

In some cases, managers with whom Mr. Ghomeshi was directly involved had an inclination that something was wrong, and failed to inquire any further or failed to take adequate steps to stop the behaviour. In other cases, despite actual knowledge of concerns expressed by employees, Mr. Ghomeshi's behaviour was often left unexamined, characterized as "difficult" or was accepted as the norm of how hosts were expected to behave. The evidence shows that while Mr. Ghomeshi's star was allowed to rise, his problematic behaviour was left unchecked.

That said and more specifically, we found evidence, often by the admission of each manager, that over the course of Mr. Ghomeshi's career at the CBC, managers, either individually or jointly, became generally aware that:

- Mr. Ghomeshi was often late and that this impacted on those with whom he worked. At least five managers were aware of Mr. Ghomeshi's lateness and the chronic nature of the issue;
- Mr. Ghomeshi was moody and temperamental and this made it difficult for others who worked with him;
- Mr. Ghomeshi was critical and mean towards those with whom he worked. At least one manager was aware that Mr. Ghomeshi was hard on staff;
- Mr. Ghomeshi yelled at a colleague in front of others. A manager became aware of the incident shortly after it occurred;
- Mr. Ghomeshi picked on another colleague. This was known to at least one manager who heard from the colleague about Mr. Ghomeshi's conduct;
- Mr. Ghomeshi was difficult and unappreciative of staff and his various demands created stress on those who worked with him. At least six managers were aware of

Mr. Ghomeshi's demanding and difficult nature throughout Mr. Ghomeshi's employment with the CBC;

- Mr. Ghomeshi had a relationship with a co-worker who was in a junior and non-permanent position. At least two managers knew about this relationship shortly after it occurred; and
- Mr. Ghomeshi shared too much personal information with colleagues. This was disclosed to three managers.

To be clear, we did not find evidence that managers were aware of information relating to sexual harassment, or any complaints or allegations in that regard.

It would be wrong to conclude that managers did absolutely nothing in the face of the knowledge and awareness that they had. To be fair, the evidence was that over the course of Mr. Ghomeshi's employment at the CBC, managers did discuss with him his lateness, in particular. However, these discussions were infrequent, informal, and not part of the CBC's progressive discipline process and, as the evidence shows, were ultimately ineffective.

We also heard of three more pointed conversations with Mr. Ghomeshi about his workplace behaviour. The first was with _____ in relation to the personal relationship Mr. Ghomeshi had with a co-worker which is described above. The second and third conversations occurred in the summer of 2014, between Mr. Ghomeshi and _____

Again, these conversations were not part of the formal discipline process that exists at the CBC. To put it plainly, we saw no compelling evidence that Mr. Ghomeshi was ever told his behaviour would have to improve, or he would have to refrain from certain types of behaviour, or else face disciplinary action including termination. As a result, it is our view that management did not enforce the Behavioural Standard, and failed to hold Mr. Ghomeshi accountable to the Behavioural Standard.

We accept the evidence that employees who voiced their concerns about the treatment they experienced at the hands of Mr. Ghomeshi were told to work around him, or solve the problem themselves. To the extent that there was management intervention, it was limited and ultimately ineffective at dealing with the central issue: that is that Mr. Ghomeshi's treatment of and conduct

towards those with whom he worked was deeply problematic. The consequences of management's failure to adequately act resulted in employees who legitimately felt disempowered and abused.

Indeed, we believe that management's failure to effectively deal with Mr. Ghomeshi's behaviour gave him license to continue. In fact, over the course of his relationship with the CBC, while these behaviours continued, Mr. Ghomeshi's salary rose, and Q grew bigger with a larger staff, more shows on remote locations, and higher profile guests. In our view, he took advantage of his powerful status and exploited those around him. In a word, his conduct was abusive, and it was directly contrary to the type of workplace the CBC promised to provide.

It is our conclusion that CBC failed to live up to its obligations to provide its employees a workplace that is free from disrespectful and abusive behaviour. It failed to take decisive steps to deal with Mr. Ghomeshi in the workplace. The actions taken by managers were ineffective, infrequent, and inconsistent. Indeed, this tacit acceptance of disrespectful and abusive behaviour that was contrary to the Behavioural Standard had the effect of condoning the behaviour.

3. Missed Opportunities to Investigate

In addition to our conclusion that managers had actual knowledge and awareness of aspects of Mr. Ghomeshi's problematic behaviour, we have also concluded that those charged with managing Mr. Ghomeshi and making decisions about his employment at the CBC "ought to have known" more about his workplace behaviour, and in particular, as it pertained to his breaches of the Behavioural Standard.

Indeed, in reviewing the CBC's oversight of Mr. Ghomeshi, we have identified at least three separate and distinct missed opportunities to fully investigate Mr. Ghomeshi's behaviour. In each of these cases, even in the absence of a formal complaint, CBC managers were clearly put on notice that there were allegations that Mr. Ghomeshi's behaviour was contrary to the Behavioural Standard. This notice went beyond the general information to which managers, either individually or jointly, became aware, as outlined above. These allegations were direct and they were specific. In our opinion, upon receipt, notice of these allegations triggered an

obligation on the part of CBC management to investigate. The purpose of such an investigation would have been to thoroughly consider the allegations regarding Mr. Ghomeshi's behaviour, and to determine whether the allegations were isolated, or were part of an overall pattern in the workplace. The obligation to investigate flows from the CBC's commitment to its employees to provide them with a workplace that is free from harassment and discrimination, or disrespectful behaviour (as has been defined previously). With respect to each of these three missed opportunities, however, management failed to do so.

To be fair, we did see evidence that management responded to the information provided by employees by taking some form of action. This was particularly true in response to the Red Sky Document. However, the information available to management in relation to each of the missed opportunities was incomplete. This, coupled with their own limitations in understanding the nature of the information presented, meant that they were prevented from seeing and assessing the entirety of the situation. On each of these occasions, the CBC would have benefitted from the information that a thorough workplace investigation could have provided them.

These missed opportunities were:

Missed Opportunity One – Red Sky Document

The Red Sky Document was prepared by members of the Q staff, and outlined their concerns about working conditions at Q, which included their observations about working with Mr. Ghomeshi. The Red Sky Document was prepared in the summer of 2012. The witnesses said the Red Sky Document went through several drafts, did not set out all of their issues, and was eventually toned down to seem more "nice" because they wanted to present the issues in a professional and respectful way and for the document to come across as reasonable and clear. One witness said that they took care to include solutions because they felt scared writing such a document and because the onus was always on them to come up with solutions.

The witnesses said that while the document did cover workflow issues and related to such matters as workload, lack of feedback, and overtime, the document was intended to go beyond those issues. These issues included feeling burned out and exhausted (especially given Mr. Ghomeshi's demands), not feeling valued or respected, and coping with Mr. Ghomeshi's behaviour in general. It set out concerns about the tone of the show and its host, and lack of

conversation about the show with its staff. One of these witnesses emphasized that the opening paragraphs of the document were very important as they identified ways in which the Q staff were being treated disrespectfully including not being trusted or valued by Mr. Ghomeshi.

Having considered the evidence of those involved in the preparation of the Red Sky Document as well as reviewing the document on its face, we have concluded that the Red Sky Document presented to management was clearly a workplace complaint, albeit not in the form which appeared to conform to the requirements of article 8.7 of the Collective Agreement, which sets out how formal Respect in the Workplace complaints are made.

We do acknowledge that the Red Sky Document addressed issues involving workflow, workload and job classification among other things. We also acknowledge the role of the
who many of the witnesses point out, appeared to be sincere and helpful to Q

employees around some of the issues raised in the Red Sky Document and otherwise. We note again that some action was taken to address employees' concerns, including a follow up meeting.

Nevertheless, in our view, a central point raised in this document was missed. That was Mr. Ghomeshi's behaviour in the workplace. Employees stated in writing that they "*did not have a respectful workplace*". They stated that they "*feel they cannot honestly express criticism or speak up for themselves without being blamed*". Their solution was that "*leadership fosters a safe place* for staff members to express concerns and problems as they arise". They stated that they wanted "*leadership to actively set boundaries to help and protect staff members*". They stated that "*staff members are often held at the whim of the host. If [they] don't do what he what he said, [they] will be punished in some way*". They asked that the "*leadership holds the host to account, rather than operating out of fear of stirring the beast*", the beast being Mr. Ghomeshi. (our emphasis)

The behaviours to which these allegations speak are directly at odds with the CBC's promise to its employees that it will not "tolerate, ignore, or condone bullying, improper comments, conduct, actions or gestures towards a specific individual that would reasonably be considered to create an intimidating, humiliating, hostile or offensive work environment" as set out in the Collective Agreement. Moreover, the Code states that its employees are to treat "every person with respect and fairness". It further states that when managers become aware of possible breaches of the Code of Conduct, they are responsible for immediately notifying the local Human Resources Business Partner. Based on the evidence we reviewed, this did not occur.

Missed Opportunity Two – Allegation of Inappropriate Behaviour in the Workplace

There was a second opportunity that the CBC similarly missed, when it became aware of an allegation that inappropriate behaviour on the part of Mr. Ghomeshi may have crossed over to the workplace through an email from a journalist in the summer of 2014. The email inferred that there may be conduct in the workplace that was sexually inappropriate. The process to consider this allegation was seriously lacking. The response, in our view, was likely influenced by managers' own knowledge of Mr. Ghomeshi's personal legal strategy at the time. Most of those who were involved in the matter at the time were aware of the legal position Mr. Ghomeshi took in regards to allegations of inappropriate sexual conduct outside of the workplace that had

been raised in the spring of 2014. He threatened to sue the journalists asserting the allegations for defamation. The message was loud and clear: “there is no basis for the allegations, and get off the story”. The managers involved were aware of the possible implications the story becoming public might have on the CBC’s own image and its listeners. In our view, they were too reliant on Mr. Ghomeshi’s rendition of events, and too quick to believe that he was telling the truth when he denied the allegation contained in the email.

We acknowledge that any workplace investigation, or pre-investigation process leading up to it, should be conducted carefully and confidentially with as much discretion as the circumstances afford. However, there is another interest at play. That is the employer’s obligation to provide employees with a workplace that is free from discrimination, harassment, and disrespectful conduct. When an employer is in receipt of an allegation of inappropriate workplace conduct, it must be thorough in its response. This is part and parcel of the employer’s obligation as described above. We recognize that in the case at hand, there were investigatory challenges. Clearly an allegation that comes from an unconventional source, such as an investigative journalist, which does not contain particulars and fails to identify a complainant, is difficult to investigate.

We have asked ourselves based on the knowledge that CBC decision makers had at the time, could that difficulty have been addressed? Our answer is yes. There were several options to obtain additional information available at that time.

One option was to write to the investigative journalist and ask for more information. CBC management considered this option and pursued it to the point of writing a draft letter, but then abandoned this option.

A second option was to obtain information from more of the staff on Q. As it was, several members of the Q staff were already aware of the allegation. Some of them had spoken to a number of managers about the allegation. In other words, the allegation was not in any way a secret. In our view, the CBC should have expanded the pool of those involved in this process to include a greater number, or all, of the Q staff. The information upon which it relied was restricted to only those who had approached them. In our view, Q staff members should have been interviewed in a comprehensive fashion to determine if they were aware of any sexual harassment in the workplace, so as not to implicate Mr. Ghomeshi.

Indeed, had they done so, they would have learned that there were at least four witnesses who had information relevant to the allegation of sexual harassment in the workplace. More specifically, there were witnesses who had knowledge of:

- An allegation that Mr. Ghomeshi made the “comment” to a former
- An allegation that Mr. Ghomeshi grabbed the same ‘s behind;
- Mr. Ghomeshi’s flirtatious conduct with employees, guests and interns; and
- Mr. Ghomeshi’s unwelcome back massages.

In addition, witnesses would have had an opportunity to describe Mr. Ghomeshi’s behaviour in general, as they have now done through the course of this investigation.

Quite apart from the failure to dig deeply enough, the pre-investigation was fundamentally flawed in other ways. First, it was led by

To be fair to

this person, this was within the knowledge of the CBC.

Second, there was a failure to follow up on information provided as part of the pre-investigation.

A key element of the pre-investigation was obtaining information from Mr. Ghomeshi. We accept that the efforts on the part of [redacted] were sincere in this regard.

Regrettably, it appears that Mr. Ghomeshi’s managers were all too ready to believe his version of the truth. Indeed, no one involved in the pre-investigation appeared to carefully and objectively assess the veracity of the information gathered during this process or the sufficiency of it.

Third Opportunity – Communication from a Staff Member

There was one final opportunity for the CBC to meaningfully respond to information offered to it by one of its employees. The information was contained in an email that was sent by an employee Embedded in the email was language that asked, among other things, that Mr. Ghomeshi “respect this employee’s personal space both physically and emotionally”, that Mr. Ghomeshi not put him in an “uncomfortable and compromising situation”, and that Mr. Ghomeshi not “embarrass or belittle” him.

Surely the use of this language indicated that there was behaviour in the workplace that was deeply at odds with the Behavioural Standard. Once again, management was put on notice that something was profoundly off in the Q workplace.

did not investigate the conditions in further detail or follow up on them directly, as he assumed would do so.

In our opinion, this was not enough. This email should not have been read in isolation. By the end of the summer of 2014, management had the following information:

- The Red Sky Document and the workplace issues discussed within it;
- Knowledge of a relationship between Mr. Ghomeshi and a as well as her name;

- A report from two staff members that they were uncomfortable working with Mr. Ghomeshi as he had disclosed too much information about his personal life, and wanted him to observe professional boundaries;
- The name of two interns in relation to potentially inappropriate workplace conduct on Mr. Ghomeshi's part;
- Mr. Ghomeshi's admission that he had two relationships with co-workers at the CBC;
- An allegation that Mr. Ghomeshi's inappropriate behaviour may have crossed over into the workplace; and
- The name of a : with whom Mr. Ghomeshi apparently had a "flirty" relationship.

The fact that this information had *cumulative meaning* was missed. While the immediate concerns set out in the staff member's email were addressed, the state of the overall workplace was not considered or critically examined, despite a staff member presenting management with yet another opportunity to do so.

In conclusion, we believe that had CBC management taken proper steps and seized the opportunities presented by its own employees in 2012 and 2014, it would have discovered the existence of allegations of inappropriate behaviour on the part of Mr. Ghomeshi, specifically as part of the Red Sky Document and subsequent discussions in 2012, and certainly in the summer of 2014, in response to the allegation of the investigative journalist and the email from one of its employees.

Had it taken proper steps, we believe that CBC management could have obtained a clearer picture of what was happening at Q. Moreover, Mr. Ghomeshi would have been presented with these allegations, had an opportunity to respond to them, and present his employer with his explanation and perspective, which could have included any mitigating personal factors that may have had an impact on his workplace behaviour, if they existed. He would have had an opportunity to be accountable and to ameliorate his behaviour, if possible. Indeed, in our view,

all of this could have occurred internal to the CBC, and could have occurred in a confidential fashion.

4. The Role of the Union

CBC management is primarily responsible for these failures as it is the employer. However, it is not exclusively responsible, and in this regard, mention must be made of the CMG, particularly with respect to _____ and her disclosure to _____ about her experience with Mr. Ghomeshi.

Whatever processes the CMG did or did not have in place at the time, and whatever role _____ actually played at the time, we wish to emphasize that the CMG's *own member*, _____ put the CMG on notice of an allegation of sexual harassment.

It is an agreed upon fact that there were no notes of the meeting between _____ and _____ and there is no convincing evidence that anything was done to communicate this information to other Union officials, and upwards to the appropriate CBC manager and Human Resources. We note that the Union's Member-to-Member Conflicts Policy (which has been in force since 1997) states that "The Guild's starting point is an absolute zero tolerance for sexual harassment". The Policy also speaks to the Union's role in supporting a person making a sexual harassment complaint, and its role in collecting "whatever information is necessary" to provide appropriate assistance to that person. It appears to us that the CMG did not act in accordance with this Policy.

5. Existence of “Host Culture”

We have also concluded that an idea commonly referred to as “Host Culture” by the witnesses, had an impact on the situation in terms of why Mr. Ghomeshi’s behaviour was tolerated.

Witnesses indicated that Host Culture has existed at the CBC for a long time.

Host Culture has been described to us as having a number of components. First, it consists of a belief that people who occupy the role of an on air host inevitably have big personalities, big egos, and big demands. Witnesses described hosts as “different beasts” given the public-facing nature of their role.

Secondly, because this personality type is considered necessary for the job, certain host behaviour was generally tolerated despite the feeling that their egos and behaviour were problematic as there is general fear to stand up to the talent. One senior manager said that “there tends to be a belief that bad behaviour is excused by results”. He recalled that when he started in his industry, he was told that hosts just act a certain way, whether or not that is correct. Another senior manager said that where the host is hardworking and successful, certain bad behaviour was tolerated. Even a [redacted] similarly confirmed that allowing poor host behaviour to persist does exist and is “definitely an issue.”

Another aspect to Host Culture is that shows are often built around hosts, are publicized around hosts, and as the witnesses described, are “host centric”. Therefore, as the witnesses described, the focus on some shows was to keep those hosts happy, even in the face of a conflict or difficulty.

Finally, because of their status within the organization, some hosts either do have, or appear to have, the ear of management or are seen as having to get their own way. This was confirmed in part by [redacted] who said that “hosts are demanding and want to feel like they have the ear of management.”

A number of witnesses observed that Mr. Ghomeshi’s behaviour and the response to it was consistent with Host Culture, though they said that Mr. Ghomeshi’s behaviour was on the extreme end of the spectrum.

We believe that the existence of Host Culture had a number of notable effects in the case at hand. It was the lens through which Mr. Ghomeshi's behaviour was viewed. At best, it prevented management from understanding the relationship between what they knew of Mr. Ghomeshi's workplace behaviour, or what they came to learn had been alleged about his workplace behaviour, and the Behavioural Standard. At worst, it meant that there was a belief that as a host, Mr. Ghomeshi was somehow exempt from the Behavioural Standard. As a host, and as a star, his behaviour would simply need to be tolerated.

In summary, while it was beyond our mandate to consider Host Culture as an overall phenomenon at the CBC, we do believe that it was at play in terms of Mr. Ghomeshi. It impacted on how he was treated by managers, and was, in our view, a contributing factor as to why the Behavioural Standard was not enforced. It also impacted on those with whom he worked, and likely made them less assertive in terms of pursuing formal complaints.

6. Who is the Boss?

We have also concluded that there was no one who had clear and consistent authority over Mr. Ghomeshi on a day-to-day basis in the workplace. This contributed to an environment in which breaches of the Behavioural Standard occurred.

There is a flaw in the manner in which the Q workplace was designed. Producers, the Executive Producer, and Mr. Ghomeshi were all in the same bargaining unit. While there was a line manager, she was in charge of many shows, and she was not embedded with the team. That left the Executive Producer in charge on a day-to-day basis, but he had limited authority, as he was a unionized member of staff and in the same bargaining unit as both the host and the staff. He was in charge of the show, but not the host. While this distinction may make sense on paper in a unionized environment, the evidence suggests that in this workplace it was deeply problematic. Employees needed someone who could effectively deal with their issues as they came up, and they needed someone who had clear control over the workplace. The limits of this role, and in this case, the limits of the person who occupied it, created a vacuum.

The evidence revealed a great deal of confusion around the issue of who was actually in charge of the show and the host. We repeatedly asked witnesses who was Mr. Ghomeshi's boss. The answers we received were inconsistent.

The Executive Producer as well as other staff members of Q felt that Mr. Ghomeshi's ability to "go up the food chain" successfully meant that at best the Executive Director was Mr. Ghomeshi's boss on paper, but insofar as Mr. Ghomeshi got his way, Mr. Ghomeshi was the *de facto* boss of the show.

In considering who was in charge, we note that an Executive Producer cannot discipline a host. Indeed, a number of witnesses noted that in general, the Executive Producer being a Union employee when the role involves apparent managerial responsibilities creates a confusing environment where the Executive Producer does not know the extent to which they can control and reprimand hosts. As such, the successful management of a host by an Executive Producer appears more to be a function of chemistry and personal skill than well designed position powers and responsibilities. In the case of a host who exhibits inappropriate workplace behaviour, this can lead to problematic results, as it did here.

In our view, there is truth in both perspectives. Based on the evidence, it appears that [redacted] was not effective at dealing with a host whose behaviour was deeply problematic. This meant that employees were often exposed and left to their own devices to manage a trying situation. On the other hand, [redacted] role was itself limited and he was dependent on [redacted] to intervene. In his own way, he too was left to his own devices to manage a trying situation. This conundrum demonstrates the inherent difficulty of having an Executive Producer in charge of a show, but not a host, and with some limited supervisory role over those with whom he works, but not substantive authority.

7. Weak Systems and Procedures

We have also concluded that the CBC has a number of systems and processes that are weak, and in some cases, inconsistently followed. While we cannot establish a direct link between the weaknesses of these processes and procedures and the existence of behaviour on the part of Mr. Ghomeshi that breached the Behavioural Standard, we do set them out as part of the overall context in which breaches of the Behavioural Standard were allowed to occur.

We have identified these as follows:

(i) Over-Reliance on Formal Complaints

We acknowledge that the CBC is a sophisticated employer with policies and procedures set up to respond to workplace complaints. From the evidence we reviewed, it appears that once a formal complaint is made under the relevant policies, an investigation is conducted, and some form of remedial or disciplinary action is taken if the complaint is substantiated.

We also acknowledge the importance of formal complaints. It is a means by which an employee can clearly communicate to the employer allegations of workplace misconduct and/or inappropriate behaviour. The investigation of such complaints provides those accused of misconduct and/or inappropriate behaviour, an opportunity to be advised of those allegations and respond to them, all within an overall process that is fair.

However, we are concerned that in an environment such as the CBC, relying exclusively on formal employee complaints to determine whether there is workplace conduct occurring that is contrary to the Behavioural Standard severely restricts the information it receives from employees about behaviour and conduct that may exist in the workplace that is contrary to the Behavioural Standard.

Throughout this investigation, we heard repeatedly from all manner of employees that they would never pursue a formal complaint for fear of reprisal from their co-workers or their managers. This was particularly the case when there was a power or status difference between the employee and the person whose behaviour was a concern. Again, in this regard, we noted the prevalence of younger employees who have temporary employment status on shows such as Q.

We also noted that managers heavily relied on a distinction between formal complaints and informal ones. It seemed that they understood what was expected of them in the face of a formal complaint. However, it is our observation that they did not fully appreciate the obligations put on them in the face of information that was suggestive of conduct in the workplace that was contrary to the Behavioural Standard, but that was in a form other than a formal complaint.

(ii) *Lack of Comprehensive Data*

Moreover, when such complaints are made, they are tracked in what some of the witnesses referred to as a “database”. To us it appears to be a basic spreadsheet. We have reviewed this spreadsheet, and on its face it contains the following problems:

- The information tracked is not chronological;
- The information does not adequately explain the nature of the complaint;
- The information does not adequately describe the outcome of the complaint;
- There is no explanation of what the disciplinary action is;
- There is no link or other identifier as to where the report of the matter is;
- It begins only in 2010;

- It contains no consistent information as to follow up; and

As a result, the collection of data is of only very limited use in terms of understanding trends in a particular work group, or the existence of repeated violations of the Behavioural Standard on the part of an individual. It is our view that data collection of this kind is insufficient for an employer the size and sophistication of the CBC.

(iii) Narrow Survey Information

We do note that the CBC has conducted employee surveys on a bi-annual basis. We were told these surveys measured employee engagement. While this is laudable, and more than what many employers do, through the narrow use of this tool, the CBC has limited itself to the type of information it has solicited about employees' experience at work. These surveys do not include questions about whether employees have experienced sexual harassment or discrimination, or disrespectful conduct at work that is contrary to the Behavioural Standard.

(iv) No System to Measure Behaviour

We were unable to find any system or mechanism that formally and consistently reviewed and considered the workplace behaviour of a host. The Performance Management and Staff Development (PMSD) process, which we were told was itself not consistently performed for unionized employees focused on staff development and goals rather than an assessment of workplace behaviour. We could find no compelling evidence of Mr. Ghomeshi's behaviour having been assessed through such a process. At best, it seemed that some issues were raised with him and with his agent when his contract was negotiated. Based on the evidence available to us, there appears to be no regimented process through which behavioural issues could be considered, beyond the initiative of a manager or Executive Producer. There appears to be no system that considers how a host has behaved towards the people with whom he or she works either at the end of a hosting assignment, when he or she is being considered for a role, or at the time when his or her contract is being negotiated. Based on what we heard, those skills (i.e. the

ability to behave in accordance with the Behavioural Standard) seem largely absent from the equation.

(v) Generic Training

We also acknowledge that training is provided to employees on Respect in the Workplace and Human Rights concepts. Having reviewed the material, we understand that it contains generic concepts that are applicable to all employees, regardless of position. We have not sat through any training sessions at the CBC, so we do not know what happens when the material is presented in a group. However, many of the witnesses told us that they found the training to be overly generic, and not relevant to the specific challenges they faced in the workplace. We also heard that those who did not wish to be trained could circumvent it.

In terms of training for those in managerial or supervisory roles, we were directed to the leadership training material utilized. We heard evidence that this training was not always available to people who wanted it. We noted some very obvious gaps in the training materials with respect to recognizing sexual or psychological harassment and obligations to report such behaviour. Among some managers we interviewed, we also detected a lack of basic fluency around concepts such as harassment and discrimination, and more particularly, the types of behaviour that are disrespectful, and are caught by the Code and the Respect in the Workplace article in the Collective Agreement.

8. Summary of Conclusions

The volume of evidence revealed a commonality of experience of many of those who worked with Mr. Ghomeshi as well as certain patterns of behaviour on the part of Mr. Ghomeshi. Based on the evidence available to us in this process, we have concluded that:

1. There was behaviour and conduct on the part of Mr. Ghomeshi that was contrary to the Behavioural Standard established by the CBC. Most prevalent was behaviour that was

disrespectful, including behaviour that is “considered to create an intimidating, humiliating, hostile or offensive work environment”. Less prevalent, but also present in a small number of cases, was behaviour that constituted sexual harassment.

2. Management knew or ought to have known of this behaviour and conduct and failed to take steps required of it in accordance with its own policies to ensure that the workplace was free from disrespectful and abusive conduct. It is our conclusion that CBC management condoned this behaviour.
3. More specifically, management failed to adequately respond to information it received from employees that behaviour and conduct contrary to the Behavioural Standard existed in the workplace. Indeed, we have identified in our Report at least three such opportunities for management to inquire and investigate allegations and concerns regarding problematic behaviour that it failed to adequately pursue and address. These opportunities were:
 - (a) The Red Sky Document presented to management in the summer of 2012. Management took some steps to respond to issues regarding workflow, volume of work, and characterization of roles, but it failed to address the key issue of Mr. Ghomeshi’s behaviour in the workplace;
 - (b) An allegation made known to management in the summer of 2014 that inappropriate behaviour on the part of Mr. Ghomeshi might have crossed over in the workplace. While steps were taken in response to this allegation, they were insufficiently probative, too narrow, misdirected and flawed. While a more comprehensive investigation was warranted under the circumstances, one did not occur; and
 - (c) Management’s receipt of communication from an employee who described the presence of various objectionable behaviours on the part of Mr. Ghomeshi.

4. We do not believe the allegation of sexual harassment made by an employee in 2010 came to the attention of management. In this regard, we have concluded that it did come to the attention of the CMG, and it failed to respond properly.

5. While the Behavioural Standard is articulated in various policies and articles in the Collective Agreement, in the case of Mr. Ghomeshi, little and insufficient regard was paid to this standard by those who managed him at the CBC, and those who made decisions about his employment at the CBC. In this regard, we have concluded that what is commonly referred to as “Host Culture” was a contributing factor. This failure to appropriately manage contributed to the existence and persistence of the behaviour and conduct identified above.

6. We have also concluded that there was no one who had clear and consistent authority over Mr. Ghomeshi on a day-to-day basis in the workplace. This contributed to an environment in which breaches of the Behavioural Standard occurred. There is a flaw in the manner in which the Q workplace was designed. Producers, the Executive Producer, and Mr. Ghomeshi were all in the same bargaining unit.

7. We noted the presence of weak systems and processes on the part of the CBC. This formed part of the overall context in which behavioural breaches on the part of Mr. Ghomeshi were allowed to occur.

PART THREE – RECOMMENDATIONS

Introduction

As part of our mandate, we were asked to make recommendations that would (among other things) “prevent similar issues arising in the future...” Our recommendations address this request, and are made as a direct result of the evidence we have reviewed and the conclusions we have reached.

It has been our intention since the outset to provide the CBC with recommendations that are practical, specifically address the issues outlined in this Report, and to the extent possible, utilize concepts and mechanisms with which it is already familiar. In our view, the CBC’s efforts to respond to the issues raised in this Report should be disciplined, highly focused and part of an overall strategy undertaken at the workplace. The CBC should advise its employees of its overall plan, and timeline for the implementation of the plan as soon as possible.

During the course of this process, we asked those interviewed for their thoughts on the recommendations we should make. We found many of their answers to be thoughtful and insightful. Some witnesses communicated a sincere interest in extracting meaningful lessons from what they had experienced as a painful and difficult situation. Many wanted to contribute to a healthier workplace. Certain themes emerged from the witnesses in terms of how the CBC workplace should run, how it runs currently, and the gap in between. Many of their insights and suggestions are reflected in the recommendations that are set out below.

Six specific objectives are reflected in our recommendations. They are:

1. Clarifying behavioural standards and accountabilities;
2. Raising awareness of those standards and accountabilities;
3. Creating uniform and fair enforcement of behavioural standards and workplace rules;
4. Enhancing existing mechanisms for reporting inappropriate workplace behaviour;
5. Enhancing channels of communication about employees’ workplace experiences and to obtain data; and
6. Creating an additional system to address overall fairness in the workplace.

In order to achieve these objectives, we make the following recommendations:

Recommendation One – Review and Clarify Policies which set out the Behavioural Standard and with the CMG review related Articles in the Collective Agreement

The CBC should undertake a broad review of its workplace related policies to provide greater clarity on the protections for and expectations of its employees. The CBC should ensure that concepts are clearly defined and that policies provide specific examples of the types of behaviour that are prohibited under each policy.

As part of this review, and with respect to its existing “Anti-Discrimination and Harassment Policy”, the CBC should consider including new provisions such as:

- A definition of the workplace – we note that many policies offer an expansive definition to include any location where the business of the employer is conducted, and may include social or other functions related to the workplace;
- Consensual relationships at work – when they are permissible, when employees must disclose their existence, and when they create a conflict of interest by virtue of a power and status imbalance between the parties;
- A definition of “poisoned work environment” that encompasses the effect of harassment and discrimination on employees working in a group;
- What managers are obliged to do when they are in receipt of information that suggests that provisions of this Policy have been breached;
- The circumstances under which the CBC would launch its own investigations and reviews in its workplace in the absence of a formal complaint. We note that there is an existing reference in this Policy, but we believe it could be made more clear and comprehensive.

We also believe that the CBC would benefit from creating a “stand alone” Respect at Work policy, which would complement the existing article in the Collective Agreement, and expand upon and clarify the provisions in the Code. Such a policy would provide consistent protection to all employees, including those represented by bargaining agents other than the CMG and also managerial employees who are not covered by the Respect in the Workplace article in the Collective Agreement between the CMG and the CBC.

Moreover, we believe that the CBC would benefit from revisiting and refreshing the articles contained in the Collective Agreement that deal with Harassment, Discrimination and Respect in the Workplace. Therefore, we recommend that the CBC management meet with members of the CMG to discuss with them how the provisions can be updated to best serve the interests of all parties, and in particular, as a result of lessons learned from this Report.

Recommendation Two – Training

The CBC should provide training on its revised policies to all employees within the organization. The training should be specifically geared to the challenges CBC employees face at their respective workplaces. It should be relevant and practical, and employees should be allowed the opportunity to ask questions or seek clarification relating to the topics covered. The training should be mandatory, both at the time of hire and at regular intervals for all existing employees.

The training should not be “off the shelf” given the issues that emerged in this Report. It should be customized for employees and managers for whom there are heightened expectations or who have responsibilities to administer a CBC policy. Managers should be trained on how to receive and respond to concerns and complaints. It is essential that all managers have a basic fluency in concepts such as harassment, discrimination and respect at work as well as when to involve Human Resources.

There should be customized and mandatory training for all Executive Producers upon the assumption of their roles or within a defined period immediately following their assignment to the role. Like managers, this training should include basic knowledge of human rights and respect at work principles, when to involve Human Resources, and how to identify and respond to problematic workplace behaviour prior to an employee making a complaint.

An aspect of the training should include specific instruction for bystanders – that is people who observe inappropriate workplace behaviour but who are themselves not the target of the behaviour. These people should understand the options available to them for reporting this behaviour.

Upon their assumption of host duties, or within a defined period immediately following their assignment to the role, hosts should also receive specific training to give them a basic fluency in

concepts such as harassment, discrimination, respect at work as well as how the role of host impacts on those who support them. This training should set out clear expectations of the standard of behaviour expected of them.

Finally, the training should clearly inform employees of the options they have in terms of dealing with inappropriate workplace behaviour, and the various avenues they have to report it, as well as the obligation various parties have on becoming aware of this information.

As part of this training, it is imperative to communicate that the policies apply to all CBC employees regardless of role and status.

Recommendation Three – Conduct Surveys and “Spot Audits”

The CBC should retain a third party organization to design and develop a comprehensive employee survey relating to workplace culture and respect in the workplace that is launched in a manner designed to maximize employee participation. More specifically, the survey should gather information about the extent of harassment, discrimination, violence, and disrespectful conduct in the workplace. Initially, the survey should allow the CBC to benchmark itself against other organizations. Through follow up surveys in the future, the CBC should be able to identify areas of improvement and areas that require additional training or support. The CBC should use the results of the surveys to develop and refine action plans to improve compliance with its policies. A second survey should be conducted in another year, to measure whether workplace initiatives have been successful, and then conducted periodically thereafter. The survey should allow employees to participate on an anonymous basis.

In addition, to supplement its knowledge of the workplace, and in particular, whether behaviour and conduct exists that is contrary to the Behavioural Standard, it is our view that the CBC should consider undertaking periodic “spot audit” reviews of various work units. The spot audit would be conducted by an external third party consultant, and would seek to obtain information from employees on a confidential basis. The auditor would then report back to Human Resources in terms of the outcome of the audit, and relay any general or thematic concerns or information arising from the audit.

Recommendation Four – Establish a Confidential Workplace Hotline

To ensure that the CBC maximizes its ability to receive information from employees who have experienced or are aware of workplace behaviour that is contrary to the CBC's policies, it should establish a fully bilingual telephone and on-line system (the "Hotline") to allow its employees to raise concerns and complaints. The Hotline would allow employees who are not comfortable using the existing complaint or grievance mechanism, or who are uncomfortable identifying themselves, nevertheless to pass on information of import to their employer.

The system should allow the third party receiver to engage in exchanges with the person reporting the issue in order to gain clarification or additional information. The system should maintain records of the nature of the complaints received and allow for reporting on trends or areas of concern. The administrator of the system would notify the appropriate individual within the CBC responsible for administering the related policy or policies, and maintain records of that individual's actions in response to the concerns raised.

We note that many large employers in Canada use such a channel of communication. While it is not intended to replace a formal complaint process, this Hotline can be used as a supplementary tool.

In making this recommendation, we are aware that the CBC has a Disclosure of Wrongdoing but it does not obviously relate to complaints that relate to the workplace, nor is it administered by a third party.

Recommendation Five – Refresh Workplace Investigation Competencies and Data Keeping

The CBC should ensure that all those entrusted with conducting and supervising workplace investigations are trained and, to the extent that that training is no longer current, retrained. This training should include specific examples of workplace situations arising in the CBC, how to deal with complaints or information suggestive of complaints, and how to deal with complaints that arise in the context of a status and/or power imbalance between the parties and how to deal with anonymous complaints. The training should also include a thorough exploration of the

dynamics of workplace harassment, and sexual harassment in particular. In addition, this training should include how to prepare a workplace investigation report.

The CBC should improve its record keeping relating to workplace investigations. A fully bilingual, searchable database should be created that can be used to identify trends and persistent problems within the workplace. The database should include detailed information about the roles of, and relationship between, the parties to the investigation. It should also contain detailed information about the nature of the complaint and of the results of the completed investigation. The database should be reviewed on a quarterly basis to ensure that investigations are being done in a timely manner and that the outcomes of the investigations are being determined in a fair and consistent manner, without variation depending on the workplace roles of the parties.

Recommendation Six – Establish a Respect at Work and Human Rights Ombudsperson

The CBC should establish a Respect at Work and Human Rights Ombudsperson. This position should be independent and neutral, and should report directly to the Chief Executive Officer of the CBC. The Ombudsperson should function as an informal and confidential resource for employees to raise concerns or to discuss issues relating to the workplace. The Ombudsperson's primary role should be as an advocate for fair, impartial and transparent processes relating to respect at work and human rights and to resolve issues as they arise. He or she would not act as substitute for the formal processes that exist to deal with workplace complaints. The Ombudsperson should prepare an annual report for the Chief Executive Officer.

The Terms of Reference for the Ombudsperson would be carefully crafted by the CBC. It might include a provision that employees who contact the Ombudsperson should not be deemed to have given notice of their concerns to the CBC and their confidentiality should be maintained by the Ombudsperson, who should direct them to the appropriate office should they wish to formally report their concerns. The primary function of the Ombudsperson should be to allow an employee to confidentially voice their concerns and to be made aware of the options available to them.

In making this recommendation, we note that the CBC is familiar with the Ombudsperson role, as it employs two, one for the English side of its operation, and one for the French side.

However, their terms of reference are limited to dealing with members of the public over media issues.

Recommendation Seven – Examination of the Role of Executive Producer

In concert with the CMG, the workplace parties may wish to address both (i) the role of the Executive Producer within the organization and (ii) the ability and accountability of the Executive Producer when faced with knowledge and/or allegations that behaviour and conduct may exist in the workplace that does not meet the Behavioural Standard. This examination may include a discussion as to whether the Executive Producer should remain in the same bargaining unit as other producers as well as on air talent, as well as circumstances in which Executive Producers are obliged to inform management and/or Human Resources of workplace issues.

Recommendation Eight – Respect at Work Competencies to be Included in Every Stage of the Employment Relationship

To solidify the expectation that all employees have the right to work in an environment free from harassment and discrimination and disrespectful conduct, an assessment of respect at work competencies should be included in every stage of the employment relationship. This should be done as part of a system. This could include reference to the Behavioural Standard in job descriptions and in written contracts. This would include an assessment of a person's demonstrable skills to work with others in accordance with the Behavioural Standard when applying for a position, and when being considered for a promotion.

Moreover, there should be a meaningful review of the content and application of the Behavioural Standard on an annual basis. This should be undertaken by managers of a unit, and this review should be recorded.

Finally, we encourage the CBC to maximize the information available to it from the consistent use of exit interviews, that are sufficiently probative to capture information that relates to the presence of behaviours and conduct in the workplace that are contrary to the Behavioural Standard.

Recommendation Nine – Task Force with the CMG to Address Young People in Organization

Our mandate did not include an examination of the status of young workers at the CBC. However, we were nevertheless presented with evidence that clearly spoke to the difficulties many younger employees have securing reliable work, and establishing a career at the CBC and their vulnerability to behaviour that is contrary to the Behavioural Standard in order to maintain their employment. They eloquently described the cost to them, financially, emotionally and otherwise, of being professionally insecure.

Therefore, we would encourage a joint committee to examine and address this issue be formed as soon as possible.

A Final Note to the Recommendations

We do not doubt that the workplace investigation process has been difficult for the CBC as an organization, as well as to its employees. It is our hope that our involvement in this process will prove helpful to the CBC as it moves forward.

Avoiding a situation such as the one that has been the subject of this investigation is not as simple as mechanically revising policies, offering better training, hiring an ombudsperson and creating a workplace hotline. In our opinion, which is based on the evidence we heard through this process, what is needed is a fundamental shift of the thinking, operation and importance of its own workplace rules for all of its employees. These standards cannot just live on a page. They must be paramount at every stage of the employment relationship. They must be referenced at the beginning of employment when an individual is being considered for a role. They must be respected during the course of the relationship, particularly when that individual's performance is measured, and they must be uniformly enforced if the individual engages in behaviour and conduct that is contrary to the Behavioural Standard. All of this must be done in a way that is fair to the individual and provides them with an opportunity to remediate.

Moreover, if providing a respectful workplace is truly important to the CBC, it must demonstrate this value to its employees through meaningful and consistent action every day, and throughout the organization.