



INDEMNIFICATION

TO:	Board of Directors /Audit Committee
MEETING:	November 26, 2013
FROM:	Maryse Bertrand, Vice-President and General Counsel Real Estate Services and Legal Services
DECISION SOUGHT:	Authorize execution of indemnity agreements with CBC/Radio-Canada's President/CEO and each of its Vice-Presidents
NEXT STEPS:	Sign the agreements
DATE:	November 11, 2013



A1. BACKGROUND: INDEMNIFICATION

- This presentation will address:
 - principles behind indemnification generally
 - the legal liabilities of Officers of CBC/Radio-Canada and the legal liabilities of agents of the Board of Trustees as the administrator of CBC/Radio-Canada's Pension Plan
 - current levels of indemnification of Officers of CBC/Radio-Canada and of agents of the Board of Trustees
- This presentation will:
 - outline the potential liability of the agents of the Board of Trustees, and offer a suggestion
 - recommend that the Board of Directors authorize execution of indemnity agreements with the President/CEO and each of the Vice-Presidents



A2. BACKGROUND: LIABILITY OF OFFICERS

- Officers are agents of the corporation. They have the same fiduciary relationship to the corporation as Directors and have statutorily imposed personal liability as well.
- In order to attract and retain talented individuals as Officers, a corporation must be prepared to protect them from the liabilities to which they are exposed in serving the corporation.
- A corporation needs to ensure that its Officers are prepared to take appropriate risks despite the possibility of personal liability, but also that Officers refrain from unduly risky behaviour.
- Indemnification of Officers encourages prudent risk taking and sound corporate management.



A3. BACKGROUND: LIABILITY OF AGENTS

- The Board of Trustees is the administrator of the Pension Plan.
- Under the Trust Deed, the Trustees may employ agents to make and manage investments, and may employ advisors to advise the Trustees.
- To the extent that agents, employees or advisors of the Trustees have actual discretionary authority to make investment decisions, they may be considered agents of the administrator.
- As agents for the administrator, they will owe a fiduciary duty to the administrator, and may also owe a fiduciary duty to the pension fund and to its beneficiaries.
- In addition, as agents for the administrator, they can be held personally liable for actions taken on behalf of the pension.



A4. INDEMNIFICATION OF OFFICERS AT PRESENT

- In their capacity as Officers, Officers of CBC/Radio-Canada have several layers of indemnification:
 - *Financial Administration Act* (“FAA”)
 - By-Law s. 21
 - CBC/Radio-Canada Policy 2.4.2: Legal Proceedings
- However, this indemnification is not the most robust because:
 - *FAA* and its Regulations may be modified, and indemnification has to be sought from the Treasury Board as opposed to CBC/Radio-Canada
 - both By-Law s. 21 and Policy 2.4.2. are discretionary, and may be modified by the Board of Directors to limit the indemnification of Officers
 - Policy 2.4.2 does not meet the current standard for indemnification of Officers (*e.g.* no advance of costs and does not cover administrative proceedings)
 - unlike Directors, Officers of CBC/Radio-Canada have no contractual indemnification



A5. INDEMNIFICATION OF AGENTS AT PRESENT

- Under section 21 of the Trust Deed, the Trustees:
 - are not liable for any loss other than a loss due to his/her own gross negligence, willful misconduct or lack of good faith, and no Trustee shall be liable for any action or failure of another Trustee.
 - are not responsible for any misconduct on the part of persons appointed by them
 - are indemnified by CBC/Radio-Canada
- The Trustees also benefit from a contractual indemnification by CBC/Radio-Canada.
- Unlike the Trustees, the agents of the administrator do not have an exculpatory clause or an indemnity in either the Trust Deed or in their employee/service agreements with the administrator.



A6. CONTEXT

- CBC/Radio-Canada canvassed six other crown corporations/agents of the crown on their practice of indemnifying Directors and Officers:
 - One has an exclusion of liability clause for Directors, Officers and employees in its enabling legislation
 - Two have contractual indemnities of Vice-Presidents
 - One is considering contractual indemnities of Vice-Presidents
 - Two do not have contractual indemnities of Vice-Presidents, but one of them has Directors & Officers insurance

s.20(1)(b)



A7. KEY DECISION ELEMENTS

- Based on the rationale for indemnification and the industry practice, management recommends that the Corporation should enter into an indemnity agreement with the President/CEO and each of the Vice-Presidents.
- The proposed indemnity agreement would provide coverage as allowed under Section 21 of the By-Laws and would be identical to the indemnity agreement signed with the Corporation's Directors.



A8. SUGGESTION TO BOARD OF TRUSTEES

- Section 21 of the CBC/Radio-Canada By-Laws stipulates that the Corporation may indemnify a person who acts or acted at the Corporation's request as a director, trustee, administrator or officer of another entity.
- Unlike the Trustees, CBC/Radio-Canada has not requested the agents to act on behalf of the administrator of the pension plan and these individuals are not employees of CBC/Radio-Canada. Accordingly, CBC/Radio-Canada cannot indemnify the agents of the administrator.
- Given the potential for exposure and the rationale for indemnification, the Board of Trustees should consider indemnifying the agents of the administrator by either, or preferably by both:
 - Amending their employee/service agreements to include indemnification by the Trust plan
 - Amending the Trust Deed to broaden the powers of indemnification in section 21 as it currently apply only to Trustees.



A8. RESOLUTION

- That the Audit Committee recommends to the Board of Directors that:
 - The Vice-President of People & Culture and the Vice-President and General Counsel, Real Estate Service and Legal Services be authorized to sign an indemnity agreement with the President/CEO and the President/CEO be authorized to sign an indemnity agreement with each Vice-President of CBC/Radio-Canada under terms and conditions similar to those provided in the indemnity agreement with Corporation directors.



B. APPENDICES

Corporation	Contractual Indemnity	By-Law	Directors & Officers Insurance	Enabling Legislation
	Under discussions for directors and senior officers (VPs)	Yes	Yes	<i>Financial Administration Act ("FAA")</i>
s.20(1)(b)	Directors only Not Senior Executives	Yes	Yes	<i>FAA</i>
	Directors & all officers (VPs)	No	Yes	<i>FAA</i>
	No	No	Yes	<i>FAA</i>
	Directors & all senior executives (VPs)	Yes	No	_____
	_____	No	Yes	Enabling legislation
CBC/Radio-Canada	Directors only Under discussion for Senior Executives	Yes	No	<i>FAA</i>