

**ADDRESSING THE CRISIS IN CANADIAN
ENGLISH-LANGUAGE DRAMA**

**Submission of the Coalition of Canadian Audio-visual Unions (CCAU)
to the CRTC re Public Notice CRTC 2003-54
Support for Canadian Television Drama**

November 28, 2003

A. INTRODUCTION AND EXECUTIVE SUMMARY

1. This is the submission of the Coalition of Canadian Audio-visual Unions (CCAU) concerning the Commission's call for comments on the support for Canadian television drama set out in Public Notice CRTC 2003-54. The focus of this submission is on the issues involving English-language drama.
2. The CCAU is a coalition of ten Canadian audio-visual unions who share a common interest in a strong broadcasting system for Canada. The members of the CCAU include the following organizations that financed the preparation of this submission: the Alliance of Canadian Cinema Television and Radio Artists ("ACTRA"), the Directors Guild of Canada ("DGC"), the National Association of Broadcast Employees and Technicians, Local 700 CEP ("NABET"), and the Writers Guild of Canada ("WGC"). The other members of the CCAU are the American Federation of Musicians – Canada ("AFM-Canada"), Union des artistes ("Uda"), the Communications, Energy and Paperworkers Union of Canada ("CEP"), Association des réalisateurs et réalisatrices du Québec ("ARRQ"), Syndicat des techniciennes et techniciens du cinéma et de la vidéo du Québec ("STCVQ"), and Société des auteurs de radio, télévision et cinéma ("SARTEC").
3. Over the course of the past few years, members of Canada's production community have been increasingly concerned about changes that were taking place with respect to the quantity and quality of Canadian drama productions, as well as the diminishing number of high quality Canadian dramas broadcast on Canadian television. We were seeing fewer and fewer 10-point dramas being created, less funding available for Canadian dramatic productions, and increasingly fewer of the high-end Canadian dramas broadcast on English Canadian television. The members of the CCAU individually knew that there was a serious problem in the system. As a result of our growing concern about the future of Canadian drama, we decided to come together to explore the issues and ultimately make thoughtful and useful recommendations to the CRTC.
4. The joint involvement of Canada's audio-visual unions in this way is unprecedented in Canada. It reflects the importance of the issues and problems that now confront the audio-visual sector in Canada.
5. In the course of preparing this submission, the CCAU has benefited from meetings with a number of drama producers, and with Telefilm officials. In addition, the CCAU was contacted by the Canadian Association of Broadcasters and a useful exchange of views

between the CAB and the CCAU took place in Montreal on November 21, 2003. We welcome further discussions of this kind, to seek areas of agreement on matters affecting the Canadian broadcasting system.

6. The CCAU is pleased that the CRTC has launched this important public proceeding on the support for Canadian television drama. As the Commission notes in Public Notice 2003-54, “[i]t is through television drama that most Canadians participate in their national culture and share in the evolution of social values and stories of human passion... Canadian drama should be a cornerstone of the Canadian broadcasting system.” (Paragraph 3). We applaud the Commission for its recognition of the crucial role that dramatic programs play in our broadcasting system, and in our lives.
7. Dramatic programs made in Canada should be the cornerstone of our broadcasting system, but in order to accomplish this objective, it is important that a variety of genres of dramas be produced and broadcast in Canada. As the Commission properly notes in paragraph 10 of Public Notice CRTC 2003-54, dramatic programs consist of a number of different categories of programs, including dramatic series, sitcoms, feature films, animated television programs, made for TV movies and others. While there is a trend within our system to broadcast the more reality-based programs, it is also important that there be a strong presence and support for the high quality 10-point dramatic programs. Without the presence of these latter productions, Canadian dramas will not be able to provide the much-needed window on Canada’s national culture, stories, imagination and passions.
8. As mentioned, for some time the CCAU has been concerned about the state and future of Canadian drama programs within our television broadcast sector. In particular we are concerned about the level of investment in Canadian dramatic programs; we are concerned about the level of on-air exposure granted to Canadian dramatic programs; and we are concerned about the type of Canadian dramatic programs being made.
9. We are also particularly pleased that the Commission is seeking public comments on the role that both regulatory requirements and broadcaster incentives have to play with respect to the development and presentation of Canadian dramas. Both of these forms of support mechanisms need to be explored and considered in order to ensure the future success of Canadian dramatic programming on our television screens. Incentives are not enough to do the job. They must be accompanied with regulatory requirements.
10. Last fall, the Chair of the CRTC, Charles Dalfen, and the Executive Director of Telefilm Canada, Richard Stursberg, jointly commissioned studies on English and French-language dramatic programming in Canada. The CCAU had an opportunity to meet with Ms. McQueen, who was charged with the investigation of the English-language sector. The CCAU provided her with its comments, as well as a preliminary version of a report entitled *The Crisis in Canadian English-language Drama*. Attached as Appendix A is a copy of the final version of that report, dated March 2003, for the Commission’s review and consideration as part of this proceeding.

11. The March 2003 report analyzes the problems relating to English-language drama in Canada. It takes a close look at the exhibition, production, viewing and financing of Canadian drama. It also provides a number of concrete proposals for the future of Canadian drama. In particular, the CCAU's report makes proposals on enhancing the Canadian Television Fund (CTF), improving transparency of reporting, making new production requirements of conventional broadcasters, creating incentives for those broadcasters, enhancing the role of specialty services, and offers many other ideas.
12. The purpose of this submission is to update CCAU's March 2003 report in light of events that have occurred since the completion of that study, and to respond to the CRTC questions set out in Public Notice CRTC 2003-54.
13. The following is a summary of the CCAU's recommendations set out in this submission:
 - (a) Both regulatory requirements and incentives have a role to play in achieving the objective of increasing the amount of original, English-language drama on television, and attracting larger audiences to that programming. *Incentives alone are not sufficient.* They must be accompanied with regulatory requirements.
 - (b) The crucial ingredient to address the crisis in Canadian drama is that Canadian private conventional broadcasters increase their financial support to Canadian drama, to generate higher production volumes and increased levels of script and concept development.
 - (c) Additionally, it is very important that adequate promotion and scheduling support be provided by broadcasters. In order to create audience loyalty, it is necessary for broadcasters to fix a specific time-slot during which a particular Canadian drama will be broadcast, and then broadcasting the program in that time-slot.
 - (d) The Commission should adopt transparent broadcaster reporting requirements. Industry stakeholders should be able to review the aggregate drama expenditures of each conventional station group in order to adequately evaluate the effectiveness of program support mechanisms. Interested parties should also be able to access actual scheduling of priority programming by the major station groups.
 - (e) Funding from the Canadian Television Fund for the support of Canadian dramatic programming is crucial to the success of Canadian dramatic programming. There should therefore be no further dilution of the requirements by BDUs to contribute to the CTF under the *Broadcasting Distribution Regulations*.
 - (f) The Commission should no longer treat CTF licence fee top-up fees as expenditures by the pay and specialty programming services. The CRTC should issue a circular indicating that the licence-fee top-ups will no longer count as a credit towards spending by any broadcaster, effective on their next renewal, or on September 1, 2004, whichever comes first.

- (g) Effective September 1, 2006, the major conventional television broadcasters should be subject to a licence condition requiring them to expend at least 7% of their gross revenues on Canadian drama.
- (h) In the period prior to September 1, 2006, the Commission should set interim drama requirements, by way of regulation, in terms of hours of new drama production expected of the major station groups, with a weighting for projects with higher broadcast licence fees.
- (i) Only one of the incentives proposed by Ms. Trina McQueen in her May 2003 report to the CRTC should be adopted, namely, the one-minute exemption from the 12-minute limit on advertising for each original hour and one repeat, of ten point drama carried. However, this incentive should only be granted for productions where the broadcast licence fee is \$200,000 or more per hour.
- (j) English-language specialty licences should be permitted to include original Canadian drama in their schedules, although it is conventional television stations that play the crucial role for creating and presenting high-end drama.
- (k) The CCAU is not opposed to the CRTC using audience measurements to measure the success of a program. However, we believe that the use of ratings to penalize or reward broadcasters is flawed. The best approach to achieve higher audiences for Canadian drama is to focus on increasing the quantity of production as well as the diversity of types of drama produced.
- (l) Canadian conventional broadcasters have the financial ability to increase their commitments to expenditures on Canadian dramatic programs, and their commitments to the exhibition of those programs. Recently released information from major broadcasters in Canada indicate that Canadian broadcasters are becoming increasingly more profitable.

B. STATISTICS RELATING TO EXHIBITION, EXPENDITURES AND VIEWERSHIP OF CANADIAN DRAMA – PUBLIC NOTICE CRTC 2003-54

- 14. While the CCAU is pleased with the importance that the Commission has attributed to Canadian drama in Public Notice CRTC 2003-54, we wish to make a few remarks concerning the statistics provided by the CRTC in that Public Notice, as in our view, the numbers provided are overly optimistic.
- 15. First, at paragraph 25 of its Public Notice, the Commission states that “in the four years since 1998/99, the amount of drama broadcast by the English-language services CBC (CBLT-TV), CTV (CFTO-TV) and Global (CIII-TV) has declined by approximately 68 hours annually.” CCAU notes, however, that the total number of drama hours set out in Appendix 2 of Public Notice 2003-54 includes both original broadcasts and repeats of dramatic programs. These numbers, therefore, do not adequately reflect how the broadcast of original dramatic programs has declined within our system. If broadcasts of

original new drama episodes of drama are measured, the declines are even more pronounced.

16. Recent figures provided by the Writers Guild of Canada indicate that while the number of hours produced of new dramatic programs in the English-language slightly increased in 2003 compared with 2002, those numbers are still much lower than the levels in 1999, 2000 or 2001. The number of hours of live-action Canadian drama actually produced in WGC jurisdiction for each year (including both 10-point productions supported by the Canadian Television Fund and Canadian content productions that are 6 points or more but are not so supported) is as follows:

1999	753
2000	661.5
2001	587
2002	480
2003	501.5

17. Second, at paragraph 26 of Public Notice CRTC 2003-54, the Commission reports on broadcaster expenditures on dramatic programs. In that paragraph, the Commission states that, “[b]ased on the annual returns filed by licensees, Appendix 3 sets out the spending on Canadian drama for the period 1997 through 2002. This information shows that, while spending fluctuates year by year, English-language licensees have increased their spending on Canadian drama by 43% since 1997.” The CCAU notes, however, that the year chosen as a base line was 1997.
18. A more appropriate base line would be 1998, the year before the CRTC television policy decision was made, and just before the policy took effect. On that basis, far from having any increase in expenditures, English-language station expenditures have all been much lower than in 1998, as shown below:

1998	\$73.0M
1999	57.8
2000	60.4
2001	62.6
2002	58.6

19. If 1998 is used as a base year, instead of 1997, *annual expenditures on drama by the English Canadian TV stations have actually decreased by 20% between 1998 and 2002*. Yet during the same period, the revenues of the private TV stations outside Quebec have increased from \$1,433.1 million in 1998 to \$1,453.6 million in 2002, and are expected to increase even more in 2003 and 2004 (see further below at paragraphs 97-100).
20. Third, with respect to viewing of Canadian drama, the Commission states in paragraph 6 of Public Notice CRTC 2003-54 that viewing to Canadian drama, as a percentage of all viewing to drama on English-language television, has remained between 10 and 11%. The CCAU notes, however, that the Commission is using all English-language services as a denominator, not just conventional television. In order to have a better sense of the viewership of dramatic programs on conventional stations, this statistic should be provided with respect to viewing on each of those types of services separately. On that basis, we expect that viewing of Canadian drama would fare much less favourably, particularly since the conventional stations have lowered their use of original episodes of Canadian drama.

C. CRTC CALL FOR COMMENTS IN PUBLIC NOTICE CRTC 2003-54

21. In its call for comments, the Commission sought comments on a number of questions relating to the regulation of Canadian dramatic programs. The following sets out the CCAU's views on each of these questions.

(i) What are the most important elements necessary to ensure an appropriate quantity of original Canadian drama on English-language television, and to attract larger audiences to such programming?

22. As stated in our report attached at Appendix A, Canadian English-language drama is now in a state of crisis. Since the implementation of the CRTC's 1999 Television Policy (Public Notice CRTC 1999-97), there has been a decline in the expenditures and on the production of Canadian drama. Our research also shows that there are relatively few hours of Canadian dramatic programs broadcast in the peak viewing periods by Canada's major English-language private broadcasters. Given the direction that Canadian dramatic programming is taking within our system, it is clear that the current regulatory regime is unsatisfactory.
23. There are a number of elements that are necessary to ensure an appropriate quantity of original Canadian dramatic programs on English-language television, and to attract larger audiences to this type of programming. *The crucial ingredient, however, is that Canadian private conventional broadcasters increase their support to Canadian drama*. This support should be provided by way of increased licence fees to Canadian drama, increased hours in the broadcast of Canadian drama, increased production volumes, as well as an increase in script and concept development money and adequate promotion and scheduling support.

24. Under the current policy framework for Canadian conventional television services there are, however, no measures that expressly require broadcasters to support Canadian drama. There are no expenditure requirements for conventional broadcasters under the new 1999 Television Policy outside of the 10% transfer benefit. (This is particularly beneficial to Global compared with CTV, since Global's requirement to spend money on Canadian programming by virtue of transfer benefits relates only to a few of its stations, acquired in 2000, while CTV's transfer benefits apply to all its stations. We comment further below on the problems presented by this asymmetry.)
25. There are also no specific exhibition requirements for Canadian drama. While the 1999 Television Policy does require the larger station groups to broadcast priority programs, which include dramatic programs, there are no specific requirements that any of the priority programming carried consist of dramatic programs. Further, the 1999 Television Policy does not require that any of the priority programs broadcast consist of original programs. Thus, broadcasters may fulfil their Canadian programming exhibition requirements by airing repeat programming.
26. Given the economics of the Canadian broadcasting system, and the commercial mandate that broadcasters have, history has shown that they will only support the production and exhibition of Canadian dramatic programs when they are required to do so by regulation.
27. It is appropriate to note that Canadian television broadcasters benefit in many ways from the protected environment under the *Broadcasting Act*, compared with their counterparts in the U.S. These benefits include the following:
 - (a) limits to the licensing of new competing free-to-air TV broadcasters in Canada;
 - (b) the simultaneous substitution policy benefiting free-to-air TV broadcasters;
 - (c) Section 19.1 of the *Income Tax Act* (Bill C-58), which disallows advertising expenses placed by Canadian advertisers on U.S. border stations as a business expense;
 - (d) far higher degrees of consolidation and concentration in the free-to-air markets than are permitted in the United States;
 - (e) prohibition of competing U.S. pay and specialty services;
 - (f) prohibition of local advertising by cable systems, either directly on local community channels or through the use of local avails on specialty services, and prohibition of local advertising by almost all specialty services;
 - (g) common ownership of niche-protected Canadian specialty services and BDU must-carry provisions for those services; and
 - (h) financial support for priority programming from the Canadian Television Fund, tax incentives and other sources.

28. Given all these benefits, any suggestion that a drama expenditure requirement should not be imposed on broadcasters because “Canadian drama is not profitable” needs to be firmly rejected. Not every activity of a broadcaster that operates in the public interest can be expected to be profitable. A requirement to support Canadian drama is of fundamental importance. Such a requirement should be part of the obligations of all Canadian TV broadcasters who make money from the broadcast of foreign drama and benefit from the protection and assistance measures noted above. Canadian TV broadcasting is a valuable franchise and Canadian drama must be a significant part of the obligations of the holders of that franchise, even if it is not a profit centre and may never be one.
29. The success of Canadian drama with audiences also depends on broadcaster support for increased levels of script development and higher production volumes. In Canada, unlike most other jurisdictions, there is a small ratio of development at the script phase and drastically reduced production volumes, resulting in six and ten episode series taking the place of the traditional 22 episode series. Audiences can only be won if we develop, produce and air quality, cutting edge programming that becomes true “appointment television” for the viewer.
30. As mentioned above, it is also very important that adequate promotion and scheduling support be provided by broadcasters. In order to create audience loyalty it is necessary for broadcasters to fix a specific time-slot during which a particular Canadian drama will be broadcast, and then broadcast the Canadian drama in that time slot on a weekly basis. While Canadian productions will never enjoy the marketing and promotion budgets that their American counterparts enjoy, increased spending by Canadian broadcasters in this area is important to attract audiences to Canadian dramas.
31. With the appropriate regulatory mechanisms in place, and increased support from television broadcasters, English-language Canadian drama will have a chance to develop a strong and vibrant place on our television screens. The creative talent pool exists in Canada to achieve this objective. We have world class actors, writers, directors, producers, designers and technicians in our country who are available to make high quality, entertaining and innovative dramatic programming. Canada’s production community also has a proven track record. Where adequate support has been provided they have created programming that has been successful with audiences in Canada, and in many cases in markets abroad. Some of the great Canadian drama productions include *Degrassi*, *Road to Avonlea*, *Street Legal*, *Traders*, *North of 60* and *Trudeau*.

(ii) How effective are regulatory requirements, or regulatory incentives, in achieving the objectives of increasing the amount of original, English-language drama programming and attracting larger audiences to that programming?

32. As mentioned earlier, it is the CCAU’s submission that *both* regulatory requirements and incentives have a role to play in achieving the objective of increasing the amount of original, English-language drama on television, and attracting larger audiences to that programming. *Incentives alone are not enough*. In particular, regulatory requirements with respect to the exhibition of original dramatic programs, and with respect to the

expenditures on Canadian programming must be part of the solution. It is these mechanisms that will ensure that original dramatic content is made in Canada, and that it will be broadcast in peak viewing periods throughout the broadcast year.

33. The 1999 Television Policy does not set out express requirements on any conventional television broadcasters to support Canadian dramatic production through funding or broadcast hours. Since the implementation of that policy, we have seen a decline in the support for Canadian drama productions. In particular, the study attached at Appendix A indicates that Canadian English-language conventional broadcasters, and in particular CanWest Global, are not contributing enough money to the support of Canadian dramatic programs.
34. The CCAU study attached at Appendix A also demonstrates that since the implementation of the CRTC's 1999 Television Policy, there has been a significant decline in the production of Canadian dramatic programs.
35. The CRTC's 2002 Broadcasting Policy Monitoring Report tells the story. The exhibition of dramas qualifying for the 150% time credit -- 10 point productions typically supported by the CTF -- saw a significant decline between 1999/2000 and 2001/2002. The number of 10-point Canadian dramas aired on CFTO-TV decreased by 34% in 2000/2001 from the previous year, and by 49% in 2001/2002 compared to 2000/2001. The results were more catastrophic on Global: the number of 10 point dramas aired fell by 89% in 2000/2001 and by 75% in 2001/2002.
36. In preparing our study attached at Appendix A, the CCAU reviewed the schedules of CIII-TV (Global), CH (Global) and CFTO-TV (CTV) from September 1, 2002 to November 30, 2002. That research showed that:
 - there were very few hours of Canadian dramatic programs broadcast in the peak viewing period by Canada's major English-language private broadcasters;
 - there were even fewer hours of Canadian dramas broadcast during the month of November, which overlaps with the BBM sweep weeks;
 - an increasing portion of priority programming was made of programming other than drama;
 - the amount of priority programming broadcast by private conventional broadcasters from September to November fell well below the 8-hour weekly target. The shortfalls were presumably made up in the summer period when viewing levels are significantly lower.
37. The CCAU also reviewed the programming schedule of the CBC's English-language television service for the period of September 1, 2002 to November 30, 2002. That research indicated that the CBC aired significantly more priority programming, and far more Canadian dramatic programs than CIII-TV, CH and CFTO-TV.

38. The CCAU also took a close look at the ratings for Canadian drama. In the period from 1997 to 2002, the overall ratings in Anglophone households for Canadian drama, comedy and music & dance on all channels and services have ranged between 4% and 5% of viewing time. The most recent survey, announced by Statistics Canada on November 21, 2003, covered the Fall 2002 BBM sweep weeks and showed viewing of these categories to be 4.5%. As noted in the March 2003 report, however, it is likely that these levels understate the popularity of Canadian drama because of the bias towards U.S. simulcast programs on conventional television during sweep weeks. Canadian drama series also do not show up in the top 20, let alone the top 10 program series, watched in English-Canada.
39. As the Chair of the CRTC, Mr. Charles Dalfen, stated in an address at this year's Canadian Film and Television Production Association's annual conference,

“There is no doubt that the Canadian independent production association has recently been facing some harsh realities...The economic report Profile 2003 which the Association and its partners have just released tells a sobering story. Markets in Canada, the United States and around the world are tightening. After a long and steady period of growth, production figures in this country are flattening out...There's no doubt about it. The season of 2001/2002 was a tough year for the Canadian production industry.”
40. Thus, the model set out in the 1999 Television Policy is not working for drama in Canada. Some might argue that the policy has only been in place for three years, and that it is too early to change the regime. However, by 2004, it will have been 5 years since the policy was announced, more than enough time to justify a review. Moreover, the CCAU submits that drama is too important to our system to wait any longer for change. If the status quo continues, it will be too late to correct the problem at a later date. Our dramatic production sector will be lost; new talent will not develop; existing talent will either relocate in another jurisdiction where they can find work opportunities or change profession altogether to support themselves and their families. This will leave Canada lacking the experienced, professional talent pool to make television drama if the regulations change too far in the future.
41. While Canadian drama does indeed find itself in a crisis situation, regulation can be successful. Many countries around the world support the development and presentation of local drama. In Europe, and Australia where there are quotas in place for the broadcast of local dramatic programs, there has been an increase in the quantity of local drama on television. A report by the European Commission indicated that in 2000/2001, European broadcasters devoted an average of 62% of their fiction programming transmission time to European dramatic programs.
42. There has also been an increase in popularity of local drama as a result of quota systems. In countries like Germany, Italy and Spain, where U.S. television drama had formerly

dominated prime time, the emergence of attractive and well-produced local drama, produced in response to the quota, has reversed this position in the past few years. In Australia, the Australian Broadcasting Authority introduced a drama quota in that country for the first time in the late 1980's. Australian dramas now account for 5 of the top 10 rated primetime dramas in Australia.

43. There are three key lessons that Canada can learn from the overseas experience with local drama.
44. The first lesson is that support for high quality local drama series continues to come primarily from the free-to-air TV networks and stations, despite the introduction of dozens of specialty services in Europe and other regions. While it is true that the audience of the conventional TV stations has been fragmented by the new services, their advertising revenues have not declined but steadily increased, since advertisers are prepared to pay premium rates to get mass audience ratings. In Canada, while specialty services like Showcase and YTV are making a useful contribution towards original drama production, they are understandably focusing on lower-budget production given their limited revenues. Only the free-to-air large station groups in Canada have the revenue to support the higher-cost drama series that have the potential to deliver larger audiences in their first run (after which they can successfully deliver additional audiences when they are rerun on specialty services.)
45. The second lesson is that local television stations in overseas markets support local drama financially far more than is the case in Canada. In 2000, for example, according to the Australian Broadcasting Authority (ABA), commercial broadcasters in Australia spent 11.9% of their total program expenditure on local drama. In 2002, by contrast, Canadian private TV stations in English Canada spent only 6.1% of their program budget on local drama.
46. A third lesson is that TV stations in other countries also contribute a far higher proportion of the budget by way of licence fees for local drama productions than is the case for Canada. In a speech to the ACTRA Toronto Members' Conference on November 15, 2003, Laszlo Barna, the Chair of the CFTPA, provided the following numbers:

“At the moment, broadcasters pay licence fees for Canadian programming that amount to between 15 and 35% of actual production costs. In the U.K. and the United States, by contrast, broadcasters pay licence fees that add up to about 80% of production costs.”
47. Please refer to pages 4 to 6 of the report attached at Appendix A for more details about the regulation of local drama in other countries.

(iii) If regulatory requirements, or incentives, can be effective tools in fulfilling the Commission's objectives, what specific proposals should the Commission adopt? Such proposals should be as detailed as possible, and the reasons for their effectiveness set out

48. There are a number of mechanisms that the Commission can adopt to help address the problems currently faced by Canadian drama. These mechanisms include reporting requirements, regulatory requirements, incentives, and new policies.

(a) *Transparent Reporting Requirements*

49. First, in order for industry stake-holders to evaluate the manner in which broadcast regulatory requirements and incentives are being applied, and the extent to which broadcasters are contributing to the system, transparent reporting requirements should be adopted. This will allow for an on-going study of the effectiveness of program support mechanisms. This will also allow deficiencies in the system to be identified before a crisis is at hand. As it stands, there is very little up-to-date information available on the manner in which English-language conventional television stations are supporting Canadian programming. As broadcasters play a crucial role in the future success of Canadian dramatic productions, it is essential that open and transparent reporting requirements be implemented.

50. This proposal is consistent with current CRTC policy. As we discuss in the report attached at Appendix A at pages 35 and 36, the Commission has required conventional broadcasters to release financial information to the public in the past. In particular the Commission required CTV, Global and TVA to release their financial statements during their licence renewal hearings in 2001. The Commission also makes public the financial information of specialty programming services, which has not had a negative impact on the competitive position of those stations in the markets that they serve.

51. The advent of “station group” licensing means that the Commission can and should publish aggregated information about spending by conventional TV stations in Category 7 programming – broken out by Canadian and non-Canadian --for each station group each year. The same breakout for Category 7 programming should be required for each of the pay and specialty services.

52. Another important type of information that should be made available to interested parties is the actual scheduling of priority programming by the major station groups. This information would be extremely useful in assessing the exhibition levels of Canadian dramatic programs. The CCAU also recommends that the Commission permit interested parties to have access to the electronic logs filed by the stations, in order to carry out special studies.

(b) *Strengthen CTF - No Further Dilution of BDU Contributions*

53. The most recent federal budget extended funding to the Canadian Television Fund (CTF) for two years, but cut the funding by 25% (although the government subsequently added another \$12.5 million to this year’s budget which consists of an advance from next year’s monies.) CCAU has been informed that the amount able to be spent on English-language drama by CTF next year (combining the EIP and LFP programs) is likely to be only \$71 million. The numbers for future years cannot be projected with certainty.

54. CTF receives funding from two sources: the federal government and from BDUs. The government contribution will depend on policies determined by the new government, which takes office on December 12, 2003. CCAU is cautiously hopeful that the funding cuts will be restored. In that regard, the recent Decima poll published by the Canadian Association of Broadcasters and the Canadian Newspaper Association on November 11, 2003, provided encouraging support. Fully 71% of Canadians supported the statement that they “would be willing to accept that a greater proportion of tax dollars be used to ensure that Canadian content is available to Canadians for many years to come.”
55. The second source of funds for the CTF comes from a levy on cable and DTH BDUs. Upwards of 35% of the CTF’s funding budget is provided by BDUs. In order to strengthen the CTF, the CCAU is of the view that contributions by broadcasting distribution undertakings to the CTF must be maintained and enhanced.
56. In its decision on the BellExpressVu/Star Choice applications, Broadcasting Decision CRTC 2003-257, July 16, 2003, the CRTC declined to adopt a proposal that would have cut DTH contributions to the CTF. The CCAU applauds that part of the decision. If we want to have a meaningful drama policy, the CTF is essential. CCAU therefore recommends that there be no further dilution of the requirements by BDUs to the CTF under the *Broadcasting Distribution Regulations*.
- (c) *Rescind the CRTC’s Licence-Fee Top-Up Policy*
57. The Canadian Television Fund is important and indeed is indispensable. But the single most important element of any strategy to improve English-language Canadian drama is to require Canadian broadcasters to spend more financial resources on it. *It is a startling and appalling fact that Canadian English-language broadcasters spend less on their local drama than broadcasters do in other countries, either as a percentage of the cost of drama production, or as a percentage of their revenue.*
58. In the 1999 Television Policy, the CRTC kept the expenditure requirement for the pay and specialty licensees but eliminated it for the conventional TV stations. (The only exception in the case of conventional TV stations is where a “benchmark” has been established for the expenditures made before the addition of benefit packages.) The CCAU considers that the elimination of the expenditures requirement for conventional stations was a major misstep by the Commission.
59. But in the areas where it continues to be applied, namely, the pay and specialty licensees, the CCAU considers that the CRTC must address a key issue – namely, the continued application of the CRTC’s “licence fee top-up policy” which allows broadcasters to count CTF licence fee top-up contributions as if the broadcasters had expended those monies themselves. (The top-up policy, established in Public Notice CRTC 94-10, is not applied to “benefits” expenditures or to the CBC).

60. This policy was always questionable at best, but it is now increasingly harming the broadcasting system, by reducing the amount that pay and specialty broadcasters would otherwise have to contribute financially towards the creation of drama.
61. This point was made by members of the CCAU at the CRTC hearings into the renewal applications of those specialty services originally granted licences in the 1996 round of licensing. (See ACTRA, CEP, DGC and WGC oral presentation to CRTC, June 2, 2003.)
62. The point has become even more problematic, however, with the pay television licensees, The Movie Network (TMN) and Movie Central. These services have never before claimed the benefit of the licence fee top-up, although the policy has been in place since 1994. In the pay television renewal applications, gazetted in 2001, the licensees made no reference to it whatever in their financial projections, leading interveners to believe that they would not benefit from it. (Had they relied on it, their claimed Canadian content expenditures would have been higher but their projected profit lines would have stayed the same.) In the renewal decisions issued in 2001, the CRTC made no reference to top-up fees being counted.
63. The 2002 top-up numbers were not released by the CRTC until the spring of 2003. But they show for the first time that the two pay licensees have claimed \$7.0 million as Cancon expenditures by virtue of the licence fee top-up in 2002 (\$4.4M for TMN and \$2.6M for MC). In CCAU's submission, this is completely unacceptable. In effect, through this maneuver, the two pay licensees have reduced the amount they would have had to expend on Canadian drama (principally films) in 2002 by \$7 million. By doing so, they have also increased their profit line by \$7 million over the profits that would have been expected using the original projections filed with their renewal application.
64. CCAU can understand entirely why the pay licensees have taken this step, since the extra \$7 million drops to their bottom lines. But when we are looking for every possible dollar to go into Canadian drama, the policy of allowing broadcasters to count LFP dollars as if they had spent them is increasingly indefensible.
65. The problem is exacerbated by the fact that the LFP policy and process is not under the control of the CRTC. In the most recent announcement of CTF policy, in fact, the LFP and EIP funds are now administered by Telefilm in a joint process. Thus, conditions of licence that are carefully crafted by the CRTC can be entirely undermined by unexpected claims or changes relating to the LFP in respect of which the CRTC may have no knowledge or input.
66. Accordingly, the CCAU strongly urges the Commission to stop treating CTF licence fee top-up fees as expenditures by the pay or specialty programming services. The effect of this is to reduce the amount of money available in the system for programming by allowing double-counting.
67. In order to give the system more integrity, and to clarify what is actually being spent, CCAU recommends that the CRTC issue a circular indicating that the licence-fee top-up

will no longer count as a credit towards spending by any broadcaster, effective on their next renewal, or on September 1, 2004, whichever comes first. In order to treat broadcasters fairly, broadcasters should be permitted to apply for changes in their expenditure conditions of licence if they can demonstrate that the financial projections filed with the CRTC at their last renewals included reliance on LFP top-ups in order to achieve the Cancon levels and/or profit levels projected. However, this will not apply in most cases.

(d) *Conventional Broadcaster Expenditure Requirements*

68. As discussed above, in order to ensure that high quality Canadian dramatic programs are produced in our country, it is necessary that conventional TV broadcasters increase their expenditures in this area. However, this will not happen without CRTC regulation.
69. The CRTC had a chance to impose enhanced drama expenditure requirements on conventional TV broadcasters in 1999 but instead elected to dispense with such requirements entirely. We are now paying the price for this decision, particularly with Global which, unlike CTV, has no drama benchmark to meet. Put simply, Global has generally opted for the cheapest type of drama it can get away with, and even at that is showing far less Canadian drama on its network than is CTV or CBC, and garnering lower ratings as a result.¹ In that regard, CCAU wishes to emphasize that it realizes that there should be room in the broadcasting system for a broad range of Canadian drama in, including low cost, medium cost and high cost. However, the major station groups should not be allowed to focus their support only on low cost drama.
70. CCAU believes that ultimately the only way to address the problem is to impose an expenditure requirement that a percentage of the broadcasters' gross revenues be spent on drama. Such an amendment should be planned to take effect on September 1, 2006 for CTV and Global. Notice of the requirement should be given sufficiently in advance so that production can occur in 2004-2005. (Under the reporting rules in Public Notice CRTC 1993-93, the cost would not show up in the financial returns until the episodes are actually broadcast.) Smaller broadcast groups like CHUM and Craig would be affected a year later.
71. In that regard, the CCAU proposes that English-language TV broadcasters contribute 7% of gross revenues on drama. Currently those broadcasters spend only about 4% of revenue on drama on average and the ratio appears to be declining. With a level of 7% from each broadcaster group, the financial contribution of English-language broadcasters towards drama would rise from \$58.5 million in 2002 to over \$100 million in 2006, assuming constant revenues. This would make a significant difference in itself. If as

¹ In that regard, the Global experiment with *Train 48* – a very low-cost drama that is not fully scripted and which has minimal rehearsal and set costs -- has been a ratings disappointment. The average Greater Toronto Market Area audience (2+) for *Train 48* over the 6 week period from September 29 to November 7, 2003, has been only 23,000 viewers per episode. By contrast, *Degrassi: The Next Generation*, delivered an average Toronto audience of 176,000 viewers per episode over the same period. While the licence fee paid by CTV for *Degrassi* per episode was probably three times what Global paid per episode for *Train 48*, *Degrassi* attracted seven times the audience.

expected, advertising revenues actually rise, more money not less would go into Canadian drama.

72. It is important to note that one of the keys to success for American drama has been the volume of production, whether for new series or in ensuring that existing series have a sufficient number of episodes. Each year the U.S. networks commission dozens of new drama programs, in the full knowledge that most of them will not succeed. They do this, however, with the hope that at least a few will succeed. (See page 21 of the CCAU report attached at Appendix A for more details on the development of drama and the use of pilots in the U.S.)
73. If new money from Canadian broadcasters was added to the system, and if it were matched with higher CTF monies, through increases in BDU funding or through increased government support, or both, many more and different drama programs will be available for broadcast. This in turn will greatly improve the chances of audience success of Canadian drama.
74. If new money for drama from conventional broadcasters was added to the system, but it was not matched by CTF funding, these monies will still be able to make a significant contribution to the support of dramatic programs and to help build audiences. In particular, these monies could be used for script and concept development at the front end of a production, and at the back end of a production, topping up the number of episodes in a series from 10 or 13 to 22. While Canada cannot match the level of funding provided to script and concept development by the U.S. networks, it is nonetheless important that increased funding be provided at this early stage of development in order to increase the chances that a successful Canadian drama be produced.
75. With respect to the number of episodes ordered in a series, Canadian broadcasters do not generally order up enough episodes of a Canadian drama series to build audience loyalty each season. U.S. networks typically order 22 episodes of a new series. In Canada, broadcasters usually only order 10 to 13 episodes, unless the series is pre-sold to U.S. networks. Thus, additional funds could be used to expand the life of a series and provide more opportunities for viewers to tune-in.
76. Some may argue that a funding requirement would result in a step back in time, as the Commission attempted to get away from this form of support mechanism in 1999. It is the CCAU's view that although the Commission eliminated expenditure requirements in 1999, this should not mean that an important support mechanism, such as expenditure requirements, cannot be re-introduced. Expenditure requirements are a very effective element in the support of programming. In Australia, where indigenous drama productions are seeing a tremendous success, the three private broadcasters spend proportionately twice as much on local drama than was spent by Canadian English-language broadcasters. (For more details on this, see pages 4-6 of the CCAU brief attached at Appendix A).

(e) *Introduce Interim Drama Requirements*

77. CCAU acknowledges that the imposition of expenditure requirements may need to await renewal hearings for CTV and Global in early 2005, so as to be effective Sept.1, 2006. However, in order to address the crisis in Canadian drama, the Commission can act ahead of that time to set interim drama requirements in terms of hours of new production expected of the major station groups, CTV and Global. In particular, the Commission is free to enact regulations applicable to a particular class of licensee, which would come into effect upon their enactment.
78. The new regulations could set out a requirement with respect to a minimum number of original drama hours that each conventional station is required to broadcast during the peak viewing periods. Alternatively, the regulations could set out a minimum original drama program target that each broadcaster must reach, similar to the Australian model.
79. In Australia, a point system is in place whereby a broadcaster must reach a minimum number of points each year. The broadcaster gets points for the various types of dramatic programs that it airs, and more points are given for higher-cost drama than for lower cost drama productions. This model has proven to be very successful, with Australian dramas now accounting for five of the top ten rated primetime dramas in Australia.
80. The CCAU proposes that a modified version of the Australian system could be introduced for the major station groups in English Canada, to apply to broadcast years 2004-05 and 2005-06. As an illustration, the system could require each major station group to achieve at least 104 points in the broadcast year 2004-05 and 130 points in the broadcast year 2005-06. The points would be awarded for each original hour of Canadian drama broadcast in that year, with the weighting of the points dependent on the licence fee paid by the broadcaster for each hour of production.

<i>Broadcast Licence Fee</i>	<i>Points Per Hour</i>
\$300,000 or more	1.50
\$200,000-\$299,000	1.00
\$100,000-\$199,000	0.50
\$50,000-\$99,000	0.25

81. Under this scenario, a broadcaster could choose to air fewer drama productions if its financial contribution to each hour was greater. (The highest threshold, \$300,000, corresponds to the licence fee now required by CTF per hour in order to achieve maximum points under its English drama criteria.) Alternatively, if the broadcaster chose to air drama productions where its own financial support was far less, it would have to increase the volume of production.
82. The key point here is to ensure that each station group makes a meaningful contribution to addressing the drama problem over the next two years, following which new licence conditions could be imposed on CTV and CanWest Global beginning on September 1, 2006.

(f) *Regulatory Incentives*

83. The CCAU is supportive of the notion of regulatory incentives for broadcasters, provided it is part of a package that includes meaningful new requirements. If there is one criticism that can be leveled at the McQueen report, it is that her proposed solutions are all carrots and no sticks. As indicated above, the optimum approach to address the drama crisis must be to introduce a mixture of requirements and incentives.
84. The CCAU has reviewed the incentives proposed by Trina McQueen. In its view, only one of them should be considered by the Commission as an incentive, namely, the one-minute exemption from the 12-minute limit on advertising for each original hour and one repeat, of ten out of ten drama carried. Under the McQueen proposal, the credit would be available only when a broadcaster has paid a licence fee of 25% of budget.
85. CCAU believes that this proposal has merit, but only if it is limited to higher-cost productions, i.e. productions where the licence fee is \$200,000 or more per hour. The CCAU objects to the other incentives proposed because they reduce the overall level of Canadian content, which would be a step backwards.

(iv) While it is generally considered that the most pressing problems concern English-language drama, there are concerns that French-language drama may not remain as healthy in the future. How can the Commission help to ensure the continued production of popular, original, French-language drama? What specific requirements, or incentives, designed to support English-language drama may affect French-language drama? Should the Commission develop separate and distinct regulatory regimes, or incentive programs, for the two language markets?

86. CCAU has not commented on the French-language drama situation in Canada in this submission. However, CCAU supports the views expressed in the CRTC submission being made by SARTeC and Union des artistes. The drama problem is not limited to English Canada. Discussions with our colleagues in Quebec show that they also face their own particular challenges in ensuring that their voices are heard.
87. *(v) The CRTC Public Notice states that the CRTC will consider proposals to change the current definition of drama*
88. We have no comment on this matter at this time. However, it is our view that to count as priority programming, long-form documentaries should be limited to point-of-view (POV) documentaries.

(vi) The CRTC Public Notice states that the CRTC will consider proposals to encourage specialty services to play a greater role

89. In the CCAU's view, English-language specialty licensees should be permitted to include original Canadian drama in their schedules, although it is conventional TV stations that play the crucial role for creating and presenting high-end drama.

90. Nonetheless, many specialty services such as *TSN*, *The Discovery Channel* and *HGTV*, are completely prohibited from airing any Canadian drama. All of these services are, however, required to make expenditures on Canadian programming by condition of licence, but the programming cannot include Canadian drama. The implementation of this recommendation could result in up to \$11 million more in the system for the production of Canadian dramatic programs. (See also pages 33-35 of the CCAU study at Appendix A).
91. We do not agree with the suggestion made by Ms. McQueen that at-risk equity be treated as the same as licence fees and count towards broadcaster expenditures, even if it is recouped. Under the rules set forth in Public Notice 1993-93, at-risk equity does count towards such expenditures *if it is not recouped*. We agree with this approach. But if the CRTC were to permit such equity to count as real expenditures, *even if the equity was recouped*, it would encourage broadcasters to game the system by characterizing equity as “at-risk” even if the risk is minimal (e.g. the only risk is non-delivery of the product, or the receipt of revenue from other windows that are all but assured). The concept of “at-risk” has been a notorious source of controversy in schemes to avoid tax. If the CRTC allowed broadcasters to count such equity investment as expenditures, creative accountants would enter the picture and the result would be that broadcasters would end up spending less real money on drama production.
92. As noted earlier, the CCAU is also of the view that the Commission should stop treating CTF top-up fees as expenditures by the pay or specialty programming services. The effect of this is to reduce the amount of money available in the system for programming by allowing double-counting. In order to give the system more integrity, and to clarify what is actually being spent, CCAU recommends that the CRTC issue a circular indicating that the licence-fee top-up will no longer count as a credit towards spending by any broadcaster, effective September 1, 2004, or at the time of their next renewal, whichever comes first.
- (vii) The CRTC Public Notice states that the CRTC will consider proposals to reward licensees for achieving audience targets, subject to suggestions on what would be the “fairest and most effective audience measurement tools”***
93. The CCAU is not opposed to the CRTC using audience measurements to measure the success of a program. However, using an audience measurement to reward or penalize broadcaster behaviour would be quite difficult.
94. It may take years before the audience appetite for a show will fully develop. Broadcasters need to make investments on quality, cutting edge Canadian programming, but audiences are fickle and results are inherently unpredictable.
95. In the United States, millions of dollars are spent developing pilots and shows and they are routinely pulled from the air within weeks when they do not work. In Canada, by contrast, we do not have the luxury to discard unused episodes. Moreover, the Canadian

“season” all too often starts in January, because of the limited number of episodes shot in each dramatic series.

96. For all these reasons, the CCAU believes that the use of ratings to penalize or reward broadcasters is flawed. The best approach to achieve higher audiences for Canadian drama is to focus on increasing the quantity of production as well as the diversity of types of drama produced. This requires an increase in financial resources by broadcasters and that should be the ultimate test of whether their regulatory obligations are met.

(viii) The CRTC Public Notice states that the CRTC will welcome information on financial impact.

97. It is the CCAU’s view that the broadcasters have the financial ability to implement the proposals that we have made, in particular those relating to expenditure and exhibition. While it is true that the audience of the conventional stations has fragmented, those stations have been able to repatriate viewers by expanding their ownership group to specialty services. They have also been surprisingly successful in increasing their advertising revenues for conventional TV.
98. Canadian broadcasters are becoming increasingly more profitable. For instance, CanWest Global reported on November 4, 2003 a 254% increase in net earnings. The following is an excerpt from a CanWest News Release of that same date:

“CanWest Global Communications Corp. today reported financial results for its fourth quarter and the year ended August 31, 2003. Consolidated net earnings were \$46 million, or \$0.22 per share, for the year compared to \$13 million, or \$0.07 per share, for the prior year. The growth in net earnings reflects improvement in earnings before interest, taxes, depreciation and amortization (EBITDA) at all major broadcasting and publishing operations in Canada and overseas...

Revenues for the Company’s Canadian broadcasting operations for fiscal 2003 increased by 5% to \$728 million from \$692 million in fiscal 2002. EBITDA for the year was \$220 million, 15% higher than the \$191 million recorded in the prior year. A combination of increased revenues and cost containment accounted for the improved results...

Fourth quarter revenues from Canadian television operations grew by 6% to \$135 million compared to \$127 million last year. EBITDA increased by 66% for the quarter, to \$13 million, with the gains attributable to a combination of improved advertising markets, elimination of EBITDA losses at the Company’s start-up digital specialty channels, and effective control over costs...

Commenting on the results, Leonard Asper, CanWest's President and Chief Executive Officer said, "Our 2003 results are excellent, with the exception of Fireworks. EBITDA was up at all our major broadcasting and publishing operations in Canada and overseas..." (Emphasis added)

99. Bell Globemedia, which owns the CTV Network, also reported strong financial results in the fall of 2003 thanks to high ratings and strong advertising revenue at CTV. This was reported in *Variety*, October 30, 2003.
100. CHUM Limited also recently reported stellar financial results for 2002-03. A press release available at CHUM's web site dated October 27, 2003 indicated that the company's performance this year exceeded last year's results. The following is an excerpt from that press release:

"Consolidated revenue for the twelve months ended August 31, 2003 increased by 12.6% when compared with fiscal 2002. Revenues for the fourth quarter ended August 31, 2003 were ahead of those for the corresponding quarter in fiscal 2002 by 9.4%. Net earnings for fiscal 2003 amounted to \$25.4 million, or \$2.13 per share compared with \$1.21 per share for the corresponding period last year...

For fiscal 2003 the broadcasting industry's total television advertising sales increased by 8.4% according to the Time Sales Summary Report (TSS Report) from the Television Bureau. CHUM Television's total sales increased 15.1%. The Company's specialty television sales growth was almost identical to the industry average at 15.2%. Most dramatic, was the conventional television increase of 15.0% versus a national/local spot average of 7.4%. CHUM's increase in conventional sales was primarily due to the performance of Citytv Toronto. The improved performance of CHUM Television can also be attributed to improved account service and inventory yield management. Sales for the year remained strong in the fourth quarter for both conventional and specialty channel groups. Conventional gained 13.5% and specialty was up 15.9% in the quarter when compared with the fourth quarter of fiscal 2002. While all stations performed well, sales were particularly strong at Citytv Toronto. Excluding the revenues of Citytv Vancouver, CIVI-TV Victoria, and the new digital specialty channels (Diginets) that did not operate for a full twelve months in fiscal 2002, the Company's television revenues increased over 12.1% over fiscal 2002." (Emphasis added)

D. CONCLUSION

101. The CCAU is pleased that the Commission has undertaken this public proceeding. We are very concerned about the future of Canadian drama, and are of the view that time is of the essence to correct the situation. As we have discussed above, there are many mechanisms that the Commission may implement to help strengthen Canadian English-language drama. We would be pleased to discuss further these and any other proposals put forth.
102. The CCAU also urges the Commission to hold a public hearing concerning the drama question in the spring of 2004, at which these and other ideas can be considered in more depth. If such a hearing is held, the CCAU would very much wish to appear.

All of which is respectfully submitted.

THE COALITION OF CANADIAN AUDIO-VISUAL UNIONS