

Response to Broadcasting Public Notice 2003-54

**CRTC call for comments**  
**on support for Canadian television drama**

Submitted by the  
Canadian Film and Television Production Association

28 November 2003

## Introduction

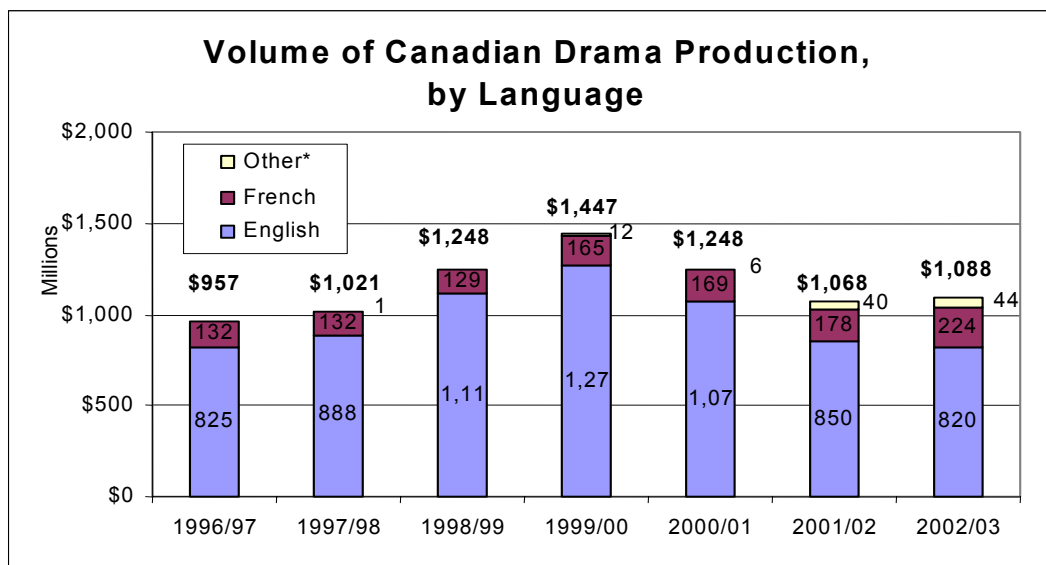
1. The Canadian Film and Television Production Association (CFTPA) is pleased to provide this submission in response to the Commission's request for input on "actions [the CRTC] might take to support the production and broadcast of more high quality, original, English-language Canadian drama and to attract larger audiences to such programming".
2. The Association represents more than 400 companies that finance, produce, distribute and market films, television programs and multi-media products in English. Our members are located in every region of Canada, from coast to coast to coast. In an ever-consolidating media world, it is the voices of independent creators who provide diversity to the Canadian broadcasting system, primarily through the drama, documentary, children's and performance programming they create. Our members obtain rights from authors and others with stories to tell, employ writers to prepare screenplays, hire directors, actors and craftspeople to make the stories into programs and conduct all the business dealings to finance the provision of these stories to Canadian and foreign audiences. As such, we have a vital interest in this proceeding, wherein the Commission is reflecting on how Canadian drama can ensure its proper place, as the cornerstone of the Canadian broadcasting system.
3. The CFTPA would like to state for the record that the position taken in this intervention was conceived without conflict of interest, in accordance with the CFTPA's Arm's-Length Governance Guidelines. The Broadcast Relations Committee, which considers regulatory filings, excludes members with cross-ownership in both broadcasting and production.
4. Public Notice CRTC 2003-54 has invited public comment on how to assure the presentation of a greater quantity of appealing original Canadian drama by Canadian broadcasters. The terms of reference for this proceeding are of vital interest to our membership and to our major customers – Canada's conventional television broadcasters, both private and public, and the pay and specialty programming services. CFTPA has provided a number of specific recommendations concerning actions that the Commission should take to realize the objective of ensuring a strong presence in the Canadian broadcasting system for popular indigenous drama programs.
5. CFTPA's submission addresses five main areas:
  - the context in which Canadian drama functions
  - the financing of Canadian drama programming
  - the CRTC's definitions of "drama" and "priority programming"
  - the elements necessary to ensure an appropriate quantity of original English-language Canadian drama, and
  - the effectiveness of regulatory requirements and incentives.Our comments speak to the English-language market.
6. Should the CRTC determine that it will hold a public hearing, CFTPA requests to appear. Alternatively, the Association requests the opportunity to respond in writing to the comments filed in the written phase of this proceeding.

## Context – Canadian drama

7. Canadian programming is important, both culturally and economically. Preliminary data for the CFTPA's 2004 "Economic profile of the Canadian film and television production industry" prepared by Nordicity Group Ltd., indicates that total production volume in 2002/03 was \$4.9 billion, with the largest portion (38%) is attributable to foreign location production. The sector generated 133,400 direct and indirect full-time equivalent jobs. CAVCO-certified production remained virtually unchanged at \$1.78 billion in 2002/03, about 12% below the peak of \$2 billion that was achieved in 1999/00. Fifty-three percent of CAVCO-certified production, \$946 million, was in the fiction (or drama) genre.
8. Federal and provincial governments have put in place various cultural support structures over the years to nurture and enhance television and film production. Chief among these has been the creation of the Canadian Television Fund (CTF), which administers approximately \$230 million annually in support for Canadian television programs and feature films, through the licence fee top up program (\$145 million) and Telefilm Canada's equity investment program (\$85 million).
9. The most popular types of programs are those in the entertainment genres of drama, comedy and variety/music/performance. In the year 1999/2000 these genres attracted 60% of viewing time overall and almost 75% of viewing between 7 and 11 pm (Source: Canadian Media Research Inc., August 2001). Recent audience viewing data for fall 2002 published by Statistics Canada (21 November 2003) indicates that 38.5% of viewing (all TV stations, all persons 2+) was to the categories of drama and comedy. Viewing to drama alone was 28.6% for Canadian conventional TV stations and 31.6 % for pay and specialty services.
10. Because drama is the most popular genre of entertainment programming, broadcasters tend to schedule it when audiences are at their peak, during the evening, particularly the period between 8 and 11 pm. Drama series, with ensemble casts of performers, are the anchor of program schedules. Popular television drama series become appointment viewing, with audiences making a point of tuning in to their favourite shows.
11. As Trina McQueen so eloquently pointed out in her May 2003 report on Canadian drama:

Our drama has filled every role that can be asked of a nation's story telling. It has created memorable characters....It has imagined our history with care.... It has taken us to the heart of our country's darkness.... It has inspired us, saddened us and delighted us with stories of our own heroes and villains.... It has invented communities where all human passions played for us each week... [and] it has produced stars.
12. Unfortunately, given the circumstances of our geography, the cost of high quality, original drama, the economics of conventional Canadian television, and the ready availability to Canadian broadcasters of foreign, mainly US, drama programming, it is not Canadian drama series that dominate our television screens. Let us review some of the facts about this situation.

- Of the drama we watch, 91% is American and 9% Canadian (McQueen, p.12)
  - In the four years since 1998/99, the amount of drama broadcast by the English-language services (CBC, CTV, and Global) has declined by approximately 68 hours annually. (CRTC PN 2003-54, paragraph #25)
  - CTF figures for 2002/03 show a decline of 19% in total drama hour supported and a 41% decline in series hours. CTF will have about \$17 million less for drama in the broadcast schedules for 2003/04. (McQueen, p. 8)
  - While there is a considerable amount of foreign, mostly US, drama on European and Australian TV screens, there is also a very substantial and growing domestic component, especially in prime viewing hours. In the UK, France and Germany, over 50% of prime time drama is now of domestic origin. (International TV Programming and Audience Trends, 1996-2001, a report prepared for the CRTC by Barry Kiefl, Executive Summary highlights)
  - France (75%) has the highest percentage of domestic fiction in prime time. Germany achieves 56%, UK and Spain 51%, Italy 43%. Australia's public and private stations schedule about 25% domestic fiction. (Kiefl report, p.20)
  - US and UK are, by far, the largest creators of English-language fiction (drama) programming in the world. In 2001, the five conventional (terrestrial) British channels produced or commissioned almost 1500 hours of original drama, and increase of 38% over 1996 (Kiefl report, p.29). While the production of reality/games shows increased from 3% to 12% in the US over the period 1996 to 2001, this came at the expense of comedy (sitcom) production rather than drama. In the 2001/02 television season, 42% of all US prime time programming was drama, while sitcoms represented 21% of the schedule, down from 32% (Kiefl report, pp. 52-53).
  - CTF-supported original Canadian drama totals about 240 hours of the total of 26,280 hours of prime time programming supplied by the 7 major English conventional television services and the 11 analog specialty services that provide drama programming. (McQueen, p.8)
13. Information about Canadian drama expenditures presents a mixed picture. Preliminary data compiled for the CFTPA by Nordicity Group Ltd., "Economic Profile of Canadian Drama Production" (which, as referenced in the cover letter, CFTPA will file with the Commission by December 18, 2003), indicates that the amount of Canadian drama expenditures (all broadcasters) peaked in 1999/00. Since then, English-language production has fallen by 35%, from \$1.27 billion to \$820 million. During the same period, French-language Canadian drama production rose by 36%, from \$165 million to \$224 million.



\* Other languages, including bilingual productions

Some totals may not sum due to rounding

Source: Nordicity estimates based on data collected from CAVCO, and CRTC.

Preliminary data contained in a report prepared for CFTPA by Nordicity Group Ltd.,  
"Economic Profile of Canadian Drama Production" (November 2003)

14. Paragraph #26 of the Public Notice indicates that, while levels fluctuate from year to year, English-language conventional television licensees have increased their spending on Canadian drama by 43% since 1997. However, if 1998 is used as the expenditure baseline, however, Canadian drama expenditures have decreased from \$73 million to \$58.6 million in 2002.
15. Further, the CRTC's statistical and financial summaries for the years 2000, 2001 and 2002 indicate that while Canadian drama expenditures by private conventional broadcasters are relatively flat, the proportion of foreign drama expenditures by conventional television broadcasters has increased by 8%. Proportionately, the foreign to domestic drama expenditure ratio is about 5:1.
16. The Public Notice states that "the Commission considers that a healthy and successful Canadian broadcasting system must include popular drama programs that reflect Canadian society and project Canada's stories onto the world stage." The CRTC is conducting this proceeding because it recognizes that Canadian drama is in a state of crisis. Drastic action must be taken if we wish to ensure that more than a tiny fraction of our prime time television schedules is devoted to original Canadian drama production.

#### Realities of the English-Canadian market

17. Effectively, the Canadian broadcasting system is an elaborate structure of checks and balances whereby the various stakeholders in the system – the CRTC, the broadcasters, the distribution undertakings and the program creators – all have a role to play in ensuring

that the policy goals of the Canadian broadcasting system are achieved. The blueprint for this is set out in the twenty statements that comprise Section 3 of the *Broadcasting Act*.

18. The regulatory system that has evolved over the years protects broadcasters in a number of ways (restricted market entry, genre protection, financial obligations tied to revenues). It also provides a number of incentives and stimulants, the most notable of which, from the perspective of the conventional television broadcaster, is the simultaneous simulcast provision.
19. This requires cable, MDS and other terrestrial distribution undertakings to substitute the Canadian program feed (complete with Canadian commercials) over the signal of the US network service, when the identical program is being broadcast at the same time. Effectively, Canadians viewing US network services are appropriated to Canadian advertising messages and the broadcaster is permitted to count viewers to both channels as the total audience to that program.
20. The simulcast provision is pegged by advertisers as a 30% bonus in viewers. No wonder it is difficult for Canadian English-language drama to crack the top 20 list. No other country in the world is subject to such a direct disadvantage, which is effectively authorized by regulatory sanction.
21. Yet, it can be argued that simultaneous substitution cross-subsidizes the funding of indigenous Canadian production by increasing broadcaster profits. The downside is that, by its very nature, the provision gives highest priority to scheduling US programming in prime time. Conventional broadcasters are reluctant to schedule Canadian dramas in time slots where they can maximize audiences by simulcasting hugely popular and well-promoted American hits. As a consequence, Canadian drama programs are often ghettoized, on Friday and Saturday evenings, and even when accorded a slot in the schedule, are subject to unceremonious displacement according to the dictates of programmers at ABC, NBC, CBS and FOX.
22. That is perhaps what CRTC chair Charles Dalfen meant by his comment last year in a speech to the annual convention of the Canadian Association of Broadcasters when he said that “in television drama, we don’t occupy our own prime time. As a Canadian, I ask myself: is this the mark of a cultural colony?”
23. Another compelling factor, from the broadcaster’s perspective, that mitigates against allocating more shelf space and more dollars to domestic drama production is that their financial interests are best served when their exhibition dollars, for acquired programming, are allocated to lower cost imports. Such programs provide a higher return than is possible with indigenous programming. Trina McQueen’s report states that a private network can anticipate losing about \$100,000 per hour on a Canadian drama.
24. In part, this is attributable to the aggressive marketing of US drama series, movies, and sitcoms throughout the world. The US is the largest television market in the world and its program costs are more than amortized over its domestic market. After-market sales constitute its profits. Canada is not only America’s closest neighbour; we are its biggest importer of programs. The sitcoms and drama series purchased each spring by

Canadian broadcasters for viewing the next fall on Canadian television screens are bought off-the-shelf at a fraction of the original cost. The \$365.7 million in licence fees that conventional broadcasters spent on non-Canadian drama programming in 2002 (up from \$350.5 million in 2001) represents a tiny portion of the multi-billion value of those productions.

25. Unlike softwood lumber, PEI potatoes, Alberta beef, Canadian car parts and a myriad of other goods that are subject to strict fair trade rules, there is no perception on the part of Americans that the export of film and television products at below-cost is a form of dumping. In addition, unlike most manufactured goods, the bulk of the production cost of a film or TV program goes into the first copy.
26. The only factor within the Canadian market that can compensate for this serious imbalance in public investment in domestic film and television production. In essence, then, government support initiatives, such as the CTF licence fee top-up and tax credits, are necessary supply-side incentives for original domestic production.
27. Despite the fact that audiences to specialty and pay services and the combined Canadian program expenditures of these licensees, now outnumber that of conventional broadcasters, it is clear that the prime time schedules of conventional private and public television still have the most appeal to general audiences. In part this is because conventional broadcasters generally allocate a significantly larger portion of their operating expenses to programming.
28. No single specialty service can attract the number of viewers that tune in to last Saturday's "Heritage Classic" hockey game, "The Grey Cup" or special presentations, such as last season's Juno awards ceremony hosted by Shania Twain.
29. And conventional broadcasters are the ones who air Canadian created drama. Canadians producers have a strong record of excellent, successful drama programs. Recent drama titles include *DaVinci's Inquest* (CBC), *Cold Squad* (CTV), *Shattered City* (CBC), *Last Chapter* (CBC), *Blue Murder* (Global), *DeGrassi: The Next Generation* (CTV), *Franklin* (CBC/Family Channel), *This Hour Has 22 Minutes* (CBC), *Eleventh Hour* (CTV), *An American in Canada* (CBC) and *The Associates* (CTV).
30. The miracle is that these productions were created at all. The odds against Canadian drama programming are staggering. The costs of quality drama programming, while large by Canadian standards [hour-long dramas cost about \$900,000 to \$1.1 million per episode; half-hour dramas are in the range of \$250,000 to \$350,000 per episode or, for works with higher production values, \$550,000 to \$650,000 per episode; mini-series of four to six hours cost \$9.5 to \$10 million], are just a fraction of the per-episode cost of the American series that dominate Canadian television screens.
31. Because Canadian broadcasters are the most important outlet for Canadian television programs, and because Canadian broadcasters need the types of production that independent producers create, the relationship between producers and broadcasters is symbiotic.

32. The CBC, in particular, plays a vital role as a domestic showcase for high quality, distinctively Canadian television programs. As the national public broadcaster, it is specifically mandated to strengthen Canadian identity by exhibiting programs that reflect Canada's diverse cultural experience. Virtually its entire prime time schedule is committed to Canadian programs, and the CBC has made a strong commitment to independent production. In 2000, more than 90% of the programs exhibited on the English-language television network in peak evening viewing hours were acquired from the independent production sector.
33. CFTPA recommends that CBC commit to maintain this level of involvement with the independent production sector, and that it commit not to decrease its level of drama expenditure below the historic high level of \$62 million per year.
34. The Association believes that Canada's conventional television broadcasters also have an important role to play in creating a marketplace for Canadian stories. Private broadcasters also make use of public radio frequencies and their programming is expected to, in the words of the *Broadcasting Act*, provide a public service that is essential to the maintenance and enhancement of national identity and cultural sovereignty. The CFTPA has set out a number of recommendations concerning the contribution that conventional television broadcasters should make to domestic drama programming. These are set out later in this submission and the table in the appendix provides a timeline for their implementation.
35. The CRTC recognizes in its Public Notice that conventional television broadcasters are today providing fewer hours of Canadian drama. The final bullet above (at paragraph 12) is sobering. **Less than 1% of English-language prime time schedules is devoted to original CTF-funded Canadian drama.** Surely, it is possible to achieve a doubling of this effort over the next few years.
36. The independent production community would also argue that broadcasters are not allocating sufficient expenditures to this key program genre. If we are to achieve the Commission's objective of ensuring that Canadians have the opportunity to view quality Canadian drama programming, it is essential that broadcasters make a stronger commitment to this goal. To be successful, Canadians must create a large enough supply of domestic drama to form a critical mass.
37. This means higher licence fees. It means serious commitments to develop, purchase, exhibit and promote Canadian drama. It means broadcasters and producers working in partnership rather than at cross-purposes. It means restoring funds to the CTF and committing to increase long-term financing of the Canadian Television Fund and of the national public broadcaster.
38. It means taking actions, such as those recently announced by the CTF, to ensure strong licence fee support for Canadian drama and to evaluate other important elements such as the track record of the creative team, the broadcaster's past performance in achieving audiences and their promotional plans to support new Canadian drama.

39. It means understanding the realities of production financing. It means eliminating the practice of counting CTF licence fee certificates as broadcast expenditures, in the case of conventional, pay and specialty broadcasters, and eliminating the practice of some broadcasters who demand that producers contribute all of their tax credits to the financing of the productions they license.
40. When the precursor to the CTF was created as a result of the March 1993 Structural Hearing, the CRTC put in place a number of guidelines intended to stimulate the production of high quality Canadian programming in the categories of drama, variety/performance, documentary and children's programming. The Commission determined that the most appropriate means of doing so was through increased licence fees and prescribed a minimum of 35% of budget as the appropriate threshold for drama productions. As an incentive to broadcasters, the CRTC ruled that private broadcasters would be permitted to count the fund's licence fee top-up as part of their Canadian expenditures (Public Notice CRTC 1994-10).
41. Despite the enormous stimulus that the fund has provided to Canadian drama over the past ten years, it is evident that the goal of a 35% licence fee has not been achieved. In fact, the industry norm for 10-point drama that is supported by CTF is now about 25%. The most recent directive (dated 17 November) from the CTF suggests that high budget dramas should be supported by licence fees of 30%.
42. It is also important to remember that the CRTC has relinquished administrative responsibility for the Fund. In other words, administrative changes announced by the funding body, can have implications for broadcast licensees whose Canadian programming expenditure commitments are established upon licensing and reviewed and re-established at renewal.
43. CFTPA concur with the recommendation of the Canadian Coalition of Audio-Visual Unions (CCAU) that the CRTC should discontinue the practice of permitting broadcasters to count CTF licence fee top-ups as part of their Canadian program expenditures, effective 1 September 2004. The Association also endorses the CCAU's suggested approach, which would permit broadcasters to apply for changes to their expenditure conditions of licence to take into account the elimination of this practice. CFTPA is convinced that such a revision to the policy will provide needed clarity as to actual broadcaster expenditures. It will mean that the CRTC's published financial summaries will provide accurate information on broadcast expenditures. At present, it is not possible to determine actual broadcaster expenditures without reviewing the annual financial returns of each broadcaster.
44. The new CTF guidelines for English-language drama stipulate that the minimum licence fee threshold will be 25% (for low-budget dramas) and at least \$240,000 for dramas with budgets over \$800,000 per hour. As indicated above, the budget for original Canadian dramas with high production values is generally 10 to 20% higher than this minimum.
45. We can anticipate that, taking a page from Ms McQueen's report, broadcasters will argue that funds should be set aside for marketing rather than for higher licence fees. We dispute this proposal. Higher licence fees will enable the creation of dramas with higher

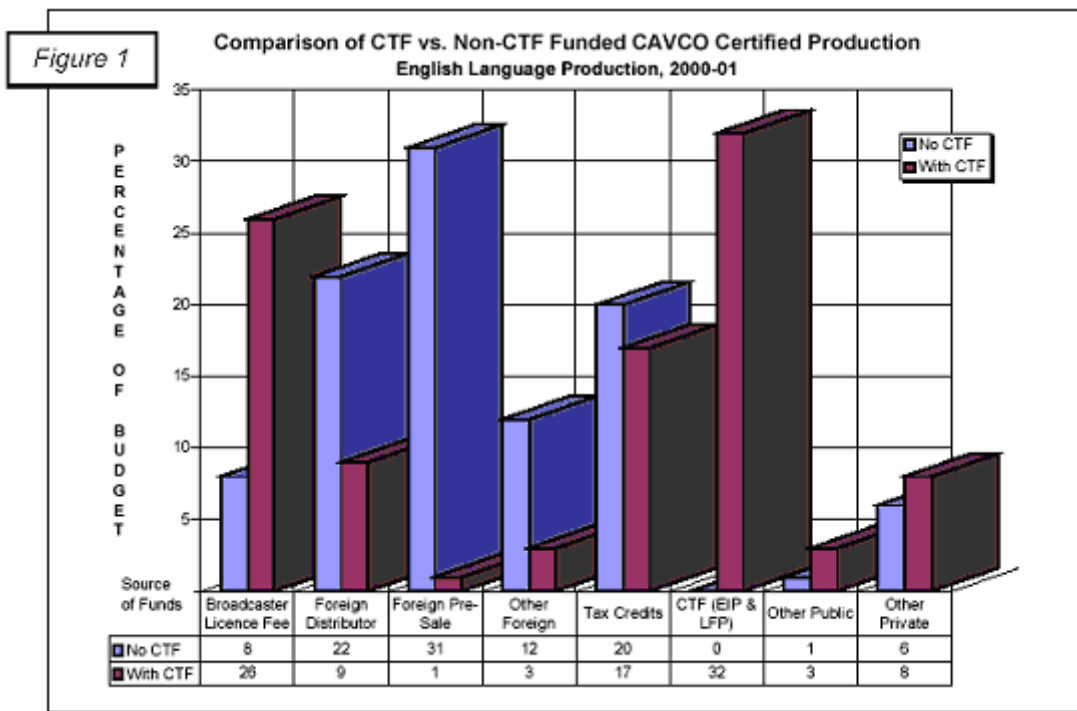
production values, increased levels of script development and the creation of more episodes of series drama. This will enable Canadian drama productions to compete, on a more equal footing, with the Hollywood product that our own broadcasters purchase to fill Canadian prime time schedules.

### **The financing of Canadian drama**

46. Program financing structures are complex and unique to each individual production. With each passing year, the producer bears more financial risk. First, they assume all the risk of bringing projects through development stage in hope of attracting a broadcaster willing to licence the project once it goes into production. Production budgets have increased, more than doubling over the past several years. There has been no corresponding increase in the public funding component of the financial structure. Effectively, this means that the producer's operating margin is being squeezed.
47. Administrative delays at funding agencies have created an additional unforeseen financial burden for the producer. It is now fairly standard practice that interim financing costs can consume up to 20% of the budget. Spread over the industry, this collective debt adds up to hundreds of millions of dollars. This growing gap in the financing, together with delays in commitment draw downs to meet new documentation requirements has put immense pressure on producers to assume responsibility for substantial portions of the production budget. Cash flow and budgeting are difficult to manage. Financial payments are increasingly out of synch with actual production schedules. The situation has reached near crisis proportions.
48. It is the broadcast letter, the commitment to air a program that triggers the financing of Canadian independent productions. For programs that participate in the financial support mechanisms provided by the CTF and Telefilm Canada, minimum licence fee criteria have been established, by program genre. In paying a licence fee, broadcasters obtain the right to air the production a certain number of times. In effect, the broadcaster "rents" the program, with the producer retaining copyright in the production and control over its exploitation.
49. Conventional privately owned television broadcasters, as well as the pay and most specialty services depend upon the independent production sector to fulfill their Canadian content exhibition requirements. It is the independent production sector that creates the high-cost drama, documentary and performance "priority" programming they are required to air. Preliminary data prepared for the CFTPA's 2004 economic profile indicates that spending by conventional broadcasters on independent drama productions has remained virtually flat.
50. Total broadcaster in-house production for the 2002/03 broadcast year was \$996 million, representing 20% of the total volume of film and television production. For the most part, private television broadcasters take responsibility for providing the news, weather, sports, public affairs and other information and general interest programming (talk shows, interview programs, magazine shows, reality TV, award shows and coverage of community events such as festivals and parades) for their viewers. This is borne out in the CRTC's Financial and Statistical Information summaries for television.

51. Data for the 2001/02 broadcast year indicates that, in aggregate, private conventional TV broadcasters allocated more than \$478 million to news, sports, information and general interest programming, of which approximately 80% was produced in-house, acquired from network affiliates or produced by affiliated production companies. In contrast, broadcasters spent \$101.527 million on Canadian drama, music and other entertainment programming, of which just under 80% was provided by independent producers.
52. Canadian broadcasters are extending the scope and scale of their activities. Smaller conventional broadcasters, such as CHUM and Craig, have actively pursued new broadcast licences. The largest ownership groups (CTV, CanWest Global, as well as those who focus on specialty and pay services, namely Astral, Corus Entertainment, and Alliance Atlantis) have expanded their stable of licences and, in several cases, their in-house production activities. ("Profile 2004" data indicates that in-house production has experienced a five-year average growth of 6%, higher than CAVCO and non-CAVCO production, both of which have 5-year average growth of 5%.)
53. In some cases, broadcasters have acquired a production company to facilitate in-house production. In other cases, it means commissioning producers to create programming to order. In yet other cases, it means purchasing sports franchises in order to have ready access to hours of program content. Their strategies, however, diverse, have one thing in common. Broadcasters want to own, not just acquire, the key strands of their program offering – news and information, sports and entertainment.
54. However, broadcasters are unable or unwilling to pay but a fraction of the cost of certain of the Canadian productions needed to meet their Canadian content obligations, notably in high-cost drama, documentary, children's and entertainment programming. Nor do Canadian programs generally benefit from the extensive promotional efforts – both print and broadcast – that are undertaken to attract viewers to the US components of Canadian broadcast schedules.
55. We note that in 2002, conventional TV broadcasters spent a whopping \$365.7 million on non-Canadian (US) drama programming. This compares to total Canadian drama expenditures of \$77.216 million.
56. English-language dramas that receive CTF support have an average cost of \$800,000 per hour. In 2001/02, CTF committed \$112 million to drama projects (two thirds of this to English-language production), with total project budgets of \$303 million. This provided 624 new hours of programming. Of the 47 English-language projects supported, more than half were series, 1/3 were MOWs and the rest mini-series, pilots and other one-offs.
57. While much of the statistical information about drama programming relates to CTF-supported programming, CFTPA wishes to emphasize that we see a need for, and broadcaster interest in many different drama types, at a wide range of cost points. The CRTC itself recognizes the distinction between distinctly and identifiably Canadian drama (the 10-point programs that are most likely to receive public funding support) and other drama productions that have fewer Canadian elements in key creative positions. The existing policy permits a 125% time credit for Canadian dramas exhibited in prime time that achieve fewer than 10 points. Ten-point dramas are accorded a 150% time credit.

58. Yet non-CTF funded drama accounted for more than 70% of all CAVCO-certified Canadian production in 2000/01. Non-CTF drama titles include such programs as PSI Factor, Nikita, Andromeda, Relic Hunter, and Bob & Margaret.
59. Traditionally, such programs have often benefited from substantial foreign investment, such as a distributor's advance (in anticipation of international sales), foreign licence fees and equity investments. In total, the foreign components of the budget can be as high as 70%. However, in most cases, the broadcast licence fee for non-CTF productions, which are not subject to the parameters established by the funding agencies, is very low, generally between 5% and 10% for drama productions.



Source: "The Economic Impact of non-CTF Certified Canadian Film and Television Production"  
 A report prepared for the CFTPA by PWC Consulting (August 2002) page 38.

60. In essence, a double standard has evolved. Broadcasters will meet the higher licence fee guidelines established by funding agencies when it suits them, particularly when they are permitted to count the CTF's licence fee contribution as their own spending for regulatory purposes. But when broadcasters cite licence fees of 20-25% for drama, they are neglecting to mention the productions they support at levels of between 5% and 10%. It is notable that only the variety/performing arts genre attracts higher broadcast licence fees for non-CTF productions (an average of 61.5% in 1999/2000).

## Definitions of Canadian Drama and of Priority Programming

61. At paragraph # 30 of Public Notice 2003-54, the CRTC states that it will consider proposals for changes to the current definition of drama, which includes a number of fiction genres. The current definition arises from changes implemented by the Commission in 1999. The new policy framework for Canadian television recognized multi-station ownership structures and established programming requirements, based on the “reach” of the stations within the ownership groups, regarding the exhibition of “priority” Canadian programming between 7 and 11 pm.
62. The policy established the concept of priority programming (an extension of the previous emphasis on drama, music/variety and performance programming) with a greatly expanded menu of recognized programming genres. It also offered time credits for drama that effectively diminish the priority programming requirement and broadened the time period in which the priority programming could be broadcast. Most significantly, at least from the producer perspective, it eliminated the requirement that broadcasters allocate a certain amount of resources to Canadian drama and entertainment programming.
63. Taken in isolation, any one of these factors would probably not have had a great impact on the quantity and quality of Canadian drama programming offered to the public by conventional television broadcasters. However, the combined effect of all of these changes, together with unforeseen circumstances such as a significant downturn in the export market for drama programs, has contributed significantly to the present malaise.
64. Revised definitions of the television content categories, including Canadian drama, and of Canadian priority programming were set out in Public Notice 1999-205. Among other matters, that Notice recognized regionally-produced programs, and formalized the criteria for time credits for Canadian drama that were announced earlier in the year, including a limit of three broadcasts within a two-year period.
65. In reviewing these definitions in the context of the current proceeding, CFTPA has noted a number of areas of concern. First, we believe that the definition of Canadian drama has become too broad. Drama programming legitimately, and traditionally, consists of on-going drama series, on-going comedy series (sitcoms), programs of comedy sketches, mini-series, made-for-TV movies, theatrical features that are aired on television, and animated television programs and films. Essentially, these are the program genres described in categories 7(a) through (e) plus programs consisting of comedy sketches and continuous action animation from category 7(f).
66. However, other programs types – specifically improv, unscripted works, stand-up comedy and the types of programming listed as “other drama”, consisting of readings, narratives, tapes of live theatre not developed specifically for television, experimental shorts, and video clips – should not be included. While such programs may share some characteristics with “drama” programming, by their very nature they lack several essential components, such as scripted storyline, characterization, dialogue and action, gesture, costume and scenery.

67. In our view, these hybrid program/entertainment productions should not be counted as drama. By including them, the Commission may have inadvertently encouraged broadcasters to believe that a larger quantity of low budget performances is an appropriate use of the drama allocation. This is not to say that the CFTPA objects to the inclusion of improv or stand-up comedy in the prime time television line-up. Like everyone else, we consider such content to be an entertaining diversion.
68. Accordingly, CFTPA recommends that the CRTC revise the definition of drama to ensure that only programs in the traditional fiction categories (drama series, sitcoms, mini-series, made-for-TV movies and theatrical features aired on television, prime-time animation and programs of comedy sketches) are accorded drama status, for the purpose of fulfilling the objectives being discussed in this proceeding.
69. The problem, as articulated by the Commission in the Notice for this proceeding, is to provide an appropriate quantity of drama programming that will be appealing to Canadian audiences. That means offering viewers Canadian dramas with adequate production values: larger production budgets with substantial and sufficient allocations for script and concept development and for testing story concepts through the creation of pilots; more money for performing talent, for sets, for off-set scenes and for the creation of more episodes. The goal, as we stated very early in this document, is to increase the abysmal level of Canadian drama that is available to Canadian audiences.
70. To achieve this, several factors must come into play. Domestic drama must be aired when audiences are available. To this end, CFTPA recommends that the CRTC reinstate the previous time frame for airing Canadian drama productions, namely the period from 8 to 11 pm from Monday through Saturday, and from 7 to 11 pm on Sunday. Canadian drama must have pride of place in Canadian program schedules. To be given any chance of reaching Canadian audiences in significant numbers, Canadian drama must not be relegated to the fringes of prime time or ghettoized on Friday and Saturday evenings, when audiences are traditionally much lower than they are on weeknights.
71. While recognizing that the intent of the present proceeding is to focus on drama programming, CFTPA recommends that the Commission also undertake a review of its current definitions of priority programming, in consultation with industry representatives and the various funding agencies. This should be done with a view to harmonizing definitions and assessing the impact on sources of funding and of shelf space for drama.
72. CFTPA has serious concerns that the time credit incentives associated with priority programs have led to a watering down of broadcaster obligations. It is counter-intuitive to seek more shelf space for Canadian drama and then diminish that principle with time-and-a-quarter, time-and-a-half or double time credits.

Figure 2: Canadian priority programming time credit bonuses

| Bonus function   | Existing CRTC provision  | Proposed bonus (McQueen)   |
|--|--|--|
| 10-point drama   | 1 hour counts as 1.5 hours against 8-hour requirement  | 1 hour counts as 1.5 hours against broadcasters overall daytime Cancon; CRTC should permit an additional 1 min. of adv./hr. for each hour of 10-point drama (1 original + 1 repeat), to be implemented the next year, in programming of the broadcaster's choice |
| 6-to-9 point drama   | 1 hour counts as 1.25 hours against 8-hour requirement   | not addressed  |
| live action children's drama   | no bonusing (previously counted as 150% time credit against overall Cancon, when aired at in an age-appropriate time slot) | 1 hour should count as 1.5 hours against daytime Cancon, capped at 1 hour/day  |
| "hit" drama (+1 million viewers conventional TV or 500,000 for specialty services) | not addressed  | 1 hour should count as 2 hours against overall Cancon, capped at 1 hr/wk, with minimum 25% licence fee   |
| daytime soaps and "edgier" post-midnight drama                                     | not addressed  | 1 hour should count as 1.5 hours against overall Cancon  |
| un-aired drama pilots  | not addressed  | should count as a 50% priority time credit, with 25% licence fee   |
| "star system" magazine programs aired outside prime time                           | not addressed  | count as 80% priority program credit OR as 125% credit against daytime Canon   |

Notes: Under the existing 1999 Television Policy regime, a conventional broadcaster could achieve its 8-hour priority programming obligation with as few as 6.5 or 7 hours, provided it exhibited some Canadian drama programming.

The "Dramatic Choices" report generally recommends that the CRTC offer many more time credits bonuses, but suggests that most of them be counted against the broadcaster's overall 60% Canadian content requirement.

73. CFTPA supports the recommendation in the “Dramatic Choices” report that time credits for 10-point drama programming should apply against overall Canadian content, rather than against the priority programming obligation. CFTPA considers this an appropriate incentive to broadcasters without diminishing the amount of peak evening shelf-space that would be made available for Canadian drama programming.
74. The Association is also intrigued by the notion that certain broadcaster incentives would only be effective where the broadcaster pays a set licence fee. CFTPA considers, however, that the 25% threshold suggested by Ms McQueen is too low, since it is the minimum level that broadcasters are expected to pay for CTF supported drama productions. CFTPA recommends that any incentive tied to broadcast licence fees should exceed the minimum requirements of CTF.
75. CFTPA also supports the recommendation that drama programming presented outside of peak viewing hours should be recognized. The Association endorses Ms McQueen’s suggestion that afternoon soaps and edgier drama scheduled post-midnight should be accorded a 150% time credit against daytime Cancon. Children’s live-action drama, aired at appropriate time periods should also be accorded a 150% time credit.

### **Elements necessary to ensure an appropriate quantity of original Canadian drama programming**

76. The CRTC has clearly identified the problems that pertain to the creation of original Canadian drama programming. Earlier in this document, the CFTPA has outlined some of the measures that are needed to ensure an appropriate quantity of original Canadian drama. These include:
  - a strong commitment from private and public sector broadcasters to collaborate with the production and creative sectors to effect a renewed emphasis on drama;
  - specific broadcaster commitments to drama programming, within the broader category of “priority” programming;
  - establishing as a goal the doubling of the amount of original Canadian drama productions that are exhibited in prime time;
  - restoration of the amount cut from CTF in spring 2003 and a commitment by the federal government to provide enhanced long-term funding support to the Fund and to the CBC;
  - better funding of all aspects of drama production, including higher licence fees, more investment in script and concept development and improved promotion and marketing;
  - a concerted effort to schedule Canadian drama programs appropriately – with consistency, forethought and prominence of place.

77. There is another aspect CFTPA would add to this list – a committed and vigilant regulator, who is willing to make available clear, concise and consistent financial information about the financial performance of its licensees. Since the CRTC has determined that it is appropriate to take into account the resources of the ownership group at renewal, CFTPA supports the recommendation put forward by the CCAU that the CRTC should publish information about Category 7 expenditures by conventional TV stations, aggregated on a station group basis. Such information should also be provided for the pay services and for those specialty services that exhibit drama programming.
78. As a means to this end, CFTPA recommends that the CRTC ask each conventional private broadcaster and each of the pay and specialty services to provide, together with its annual return, a detailed account of its expenditures on Canadian drama programming over the past three years, taking into account **only** drama programming from CRTC categories 7(a) through (e) and “programs of comedy sketches” from category 7 (f). Thus, expenditures for stand-up comedy, improv, dramatic readings, etc. should be **excluded**. This amount should be used as a minimum benchmark against which future broadcaster commitments to drama expenditures will be assessed.
79. CFTPA recommends that the CRTC revise its television policy to require conventional television broadcasters to commit a set percentage of revenues for Canadian drama, to be exhibited as part of the required 8 hours of Canadian priority programming per week. In keeping with our earlier comments, the expenditure commitment would **exclude** CTF licence fee top-ups. As per Public Notice CRTC 1999-205, there should be a limit of 3 broadcasts within a two-year time period.
80. CFTPA considers that 7% or 8% of revenues is an appropriate minimum level of commitment for conventional television broadcasters. Although the Association had recommended 10% of revenues at the 1999 Television Policy hearing, this included both drama and music/variety/performance programming and also took into account that broadcasters were permitted to count CTF licence fee top-ups as part of their Canadian program expenditures. Eight percent would represent a doubling of the existing broadcaster commitment to Canadian drama.
81. CFTPA further recommends that the CRTC impose a cap of 20% on in-house and related-party drama expenditures. [The combined level of in-house and affiliated production company expenditure constituted 9.25% and 16.5% of Canadian drama expenditure for the broadcast years ending August 2001 and 2002 respectively.]

### **The effectiveness of regulations and incentives**

82. The CRTC’s Notice outlines the various initiatives the Commission has taken over the years to assure an adequate level of Canadian drama programming. One approach is to create regulations that apply to all licensees of a particular class. The CRTC has used this to set minimum Canadian content exhibition requirements for conventional television broadcasters. The level is 60% overall and 50% in the evening broadcast period, defined as 6 pm to midnight.

83. It is well within the Commission's mandate and powers to establish minimum levels of Canadian drama for conventional television broadcasters. However, from the tone and content of the Notice of this proceeding, it appears that this is not the Commission's preferred option. Regulation is a broad-brush approach that affords little leeway for individual circumstances. A problem with such an approach is that the CRTC has only very recently (in 2001 and 2002) renewed the television licences of all of the major broadcast ownership groups. If a regulatory requirement is put in place that puts a more onerous obligation on a broadcaster than it is required to meet by condition of licence would likely be challenged in the courts.
84. While the CRTC could achieve its objective of ensuring a larger quantity of Canadian drama programming by regulatory fiat, it is unlikely that such an initiative would be successful without the willing collaboration of Canadian broadcasters. In the past, when required to do so, broadcasters have on occasion adhered grudgingly, to the letter rather than to the spirit, of their obligation to provide Canadian drama.
85. Another mechanism available to the CRTC, which has been used with greater and lesser degrees of success over the twenty-year period from 1979 to 1999, is to create conditions of licence tailored to the resources of each broadcast licensee. For example, in its 1994 renewal decision, the CTV network was required to broadcast a minimum of 3 hours per week (increasing to 3.5 hours) of regularly-scheduled Canadian drama programs in peak viewing hours (defined as 8 to 11 pm Monday to Friday and 7 to 11 pm Sat. and Sun.).
86. The CFTPA considers the condition of licence approach as the most effective means of ensuring an adequate quantity of Canadian drama. In this regard, CFTPA recommends that the CRTC establish appropriate expenditure benchmarks for drama programming, in the order of 7% to 8% of revenues, for conventional broadcasters, using the slightly limited definition outlined above. For those conventional broadcasters who are unwillingly to commit to such an initiative, CFTPA recommends that the CRTC require them to exhibit, commencing September 2004, 8 hours of priority programming (with no time credit bonuses). These broadcasters would be put on notice that they will be required to exhibit 12 hours per week of priority programming commencing in the fifth year of the present licence term. In the next licence term, they must exhibit 12 hours of priority programming, increasing to 15 hours. The existing requirement that 75% of priority programming must be provided by independent producers should continue to apply.
87. As the Notice makes clear, broadcasters are already meeting the 8 hour level, although presumably they achieve through the bonus time credits afforded them under the existing provisions. CFTPA recommends that the expanded priority programming requirement NOT be reduced by time credits.
88. The Association considers that this two-pronged approach has a number of merits. It respects the underlying principle of the 1999 policy that broadcasters should be afforded sufficient flexibility to "adapt their programming strategies to a highly competitive marketplace". It offers broadcasters the choice of making an expenditure commitment to drama programming as a means of ensuring the creation of more high quality domestic

programming that will win audience loyalty OR of providing a greater quantity of a broad range of Canadian entertainment programming.

89. We acknowledge that the Commission is not in a position to open up existing conditions of licence until a minimum of 5 years into the licence term (this would be for the 2006/07 broadcast year in the case of CTV and Global, and 2007/08 for CHUM and Craig). However, this does not preclude the CRTC from making and implementing minor changes to its existing television policy – definitional changes, the elimination of the time credit bonuses against priority programming, and reporting requirements on Canadian drama expenditures – to be announced in the spring and to take effect with the broadcast year commencing 1 September 2004. CFTPA is satisfied that several of its recommendations, particularly those related to time credit drama bonuses that would count against overall daytime Canadian content requirements, will be so compelling that broadcasters may ask to operate under these provisions prior to the expiry of the present licence term.
90. The Commission has asked for input on regulatory incentives that will kick-start its goal of achieving a greater quantity of Canadian drama with strong audience appeal. CFTPA has appended a table that outlines our recommendations and the appropriate timeframe in which they can be implemented.

#### Increased drama on Canadian specialty services

91. The Notice states that the CRTC is prepared to consider proposals that may encourage specialty services to play a greater role in the creation and presentation of Canadian drama. At present, about a dozen English-language specialty services – YTV, Teletoon, History, Treehouse, Showcase, Space, Bravo, Star, W, Comedy, CMT and Prime are active in the drama genre.
92. Canadian specialty programming services have evolved over the past decade into a major component of the Canadian broadcasting system. They are responsible for licensing and exhibiting thousands of hours of Canadian programming every year and attract hundreds of thousands of viewers to these programs. In 1996, specialty expenditures on independent production surpassed that of conventional television broadcasters for the first time (\$100.5 million versus \$75.5 million). The CFTPA's most recent published economic report on the Canadian film and television production industry, *Profile 2003*, indicates that spending by specialties on Canadian independent production increased to \$286 million in 2001.
93. Specialty broadcasters have become invaluable partners to the production industry. Their existence has meant a significant increase in the creation of original Canadian programming and has greatly expanded opportunities for the creative communities – producers, directors, actors and writers, and Canadian audiences value their program offering.

94. While, in aggregate, Canadian pay and specialty channels attract about 38% of the audience to Canadian drama, it is important to note that viewing data for specialty services is measured on a different basis than that of conventional broadcasters, in order to take into account the multiple viewing options for individual programs that are offered by these programming services.
95. At last spring's licence renewal hearing for the "class of 96" specialty services, several asked to be permitted to air drama programming. As creators of drama programming, CFTPA member companies generally support broadcaster commitments to add or increase the exhibition of Canadian drama on our television screens. We are also mindful of the CRTC's objective of genre protection in regard to specialty programming services. The nature of service definition, with clear indications of which program categories may be exhibited, is the Commission's most efficient tool for ensuring that this principle is maintained. Several of the services requesting to add drama are lifestyle services that were clearly licensed to air non-fiction, documentary, informal education and general interest programming. The Association's response to these various requests is intended to strike a balance between encouraging the exhibition of Canadian drama, particularly where this involves the creation of new original programming and maintaining consistency with the mandate of the service.
96. Realistically, few specialty services are in a position to fund the creation of original Canadian drama programs. Most are looking for "shelf material" to provide some variety to their program offering. Knowing the appeal of drama for viewers, the services are seeking to add complementary programming, usually on a limited basis. Some services have asked to share programs with other services within the same corporate structure (taking a second or third window). Only HGTV, which is part of the Alliance Atlantis stable of broadcast properties was intending to offer original drama programming. CFTPA supported this request, provided that 75% of such programming is commissioned from independent producers.
97. The Association, on behalf of its membership, expects that the CRTC will continue to provide for the opportunity for interested parties to comment on all aspects of a licensee's renewal, and that particular notice will be given of requested changes to a service's nature of service definition.

## **Conclusion**

98. The CFTPA has made 15 recommendations concerning the most appropriate regulatory means of encouraging Canadian broadcasters to make greater efforts to ensure that a reasonable quantity of quality Canadian drama programming that will attract large numbers of viewers is available to Canadian audiences. Our goal is to encourage the greatest possible exhibition of Canadian programming produced by Canadian independent producers. An underlying principle is that this can best be done in partnership with Canadian broadcasters. The present proceeding affords the Commission with the opportunity to put broadcasters on notice that more will be expected of them in the future.

99. A review of past licensing and regulatory obligations concerning Canadian drama, leads to the logical conclusion that it is only when the CRTC has required broadcasters to meet certain quantitative and expenditure obligations that this objective has been met. For the most part, conventional English-language broadcasters have been reluctant to make commitments to Canadian drama, above the minimum requirements of their respective licences, on the grounds that such programming does not recoup sufficient revenue.
100. This is a fallacious argument. Broadcasters do not make money with Canadian drama productions because they consider such programming to be an onerous regulatory obligation. A change of attitude is necessary. Broadcasters, in partnership with producers, can prove to the CRTC, to the Canadian viewing public and to the world beyond our borders that we can make the best drama in the world. It may not be as action-packed as US series, or in the period-costume tradition of many UK productions, but Canadian stories merit telling – to ourselves and to the world.
101. We may even end up repatriating some of our outstanding writing, directing, producing, acting and other talent that has immigrated to Los Angeles to be part of the American production scene.
102. The 1999 television policy, which sought to offer encouragement to broadcasters and to offer them the flexibility to achieve distinct corporate strategies as opposed to a broad-brush regulatory approach, has not worked. It is time to undertake a new approach.
103. As the Commission points out in its Notice, the CRTC cannot impose new licence obligations on the major ownership groups (CTV, CanWest Global, CHUM and Craig) whose television licences were recently renewed, until five years into the licence term. [2006/07 for CTV and Global and 2007/08 for CHUM and Craig]. Similarly, while the CRTC could enact a regulation requiring broadcasters to provide a certain amount of Canadian drama programming, such a measure would not likely be imposed during the current licence terms.
104. Thus, it is appropriate that the CRTC is reviewing these matters at this time. This proceeding affords all interested parties to put forward their views. The Commission's determination should afford broadcasters a sufficient period of notification in which they can ramp up their activities and expenditures in drama.
105. On balance, CFTPA considers that our concept of a partnership will work best if broadcasters are willing, rather than reluctant participants. That is why we have proposed a two-pronged (either/or) approach, which respects the key tenet of the Commission's 1999 policy – to afford broadcasters the opportunity to present individual approaches.
106. Conventional broadcasters can elect to be active participants in Canadian drama programming by committing to dedicate 7% to 8% of revenues to the licensing, promotion and exhibition of Canadian original drama programming, to be broadcast in the heart of prime time. The types of drama programming would be limited to the

“traditional” fiction definition – drama series, sitcoms, mini-series, feature films, made-for-TV movies, adult animation and programs of comedy sketches.

107. Alternatively, broadcasters can elect to provide an enhanced number of hours of “priority” programming (12 hours increasing to 15), using the present definitions. It is CFTPA’s position that any time credit bonuses should not be used to offset the amount of priority programming. Instead, as suggested by Trina McQueen, time credits should be permitted to count against the broadcaster’s overall Canadian content obligation.
108. The CFTPA’s either/or approach is qualified by the need for the Commission to undertake a review of the priority programming definition, in consultation with industry representatives and the various funding agencies with a view to harmonizing the definitions and assessing the impact on sources of funding and of shelf space for original Canadian drama.
109. The CBC should be encouraged to review its drama commitments prior to its licence renewal in 2007. CFTPA salutes CBC for its strong commitment to Canadian content throughout the evening program schedule. We also recognize that, as the national public broadcaster, the CBC has a precise mandate that it must fulfill. On the basis of the definitional issues set out in this submission, CFTPA would like to see a firm commitment by the CBC as to the amount of “pure drama” it is prepared to offer at its next licence renewal. At minimum, this level should not be less than the existing amount offered by the CBC in prime time.
110. Since the private conventional television stations are totally dependent on advertising for revenues, viewing data is an important determinant of which programs merit investment and airtime. CFTPA considers that there is merit to having any time credit provisions apply against the overall Canadian content obligation of conventional broadcasters. We take this position because we consider it essential that we enhance the shelf space devoted to Canadian drama in the heart of the evening viewing period.
111. In undertaking this proceeding, the CRTC has recognized the crisis facing English-language Canadian drama. Clearly, not enough is being created and insufficient resources are being dedicated to the task of creating, sustaining and improving upon the quantity and quality of Canadian drama production. Let us use this proceeding to change the “traditional” structure of Canadian broadcasting to put an emphasis on our own drama programming.

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