



René Bouchard
Director General
Department of Canadian Heritage
Broadcasting Policy and Innovation
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October 22, 2003

RE: WGC Comments on the Standing Committee on Canadian Heritage Report “Our Cultural Sovereignty: The Second Century of Canadian Broadcasting”

Dear Mr. Bouchard:

The Writers Guild of Canada (WGC) welcomes this opportunity to comment on the Standing Committee on Canadian Heritage’s review of the Broadcast Act: *Our Cultural Sovereignty*, referred to herewith as the Lincoln Report.

The WGC applauds the Heritage Committee in presenting an extremely well researched report containing sound recommendations for the way forward. The Lincoln Report’s timing is also perfect – it addresses the problems in our industry and charts a clear way forward. The WGC encourages the government to take this opportunity to make a bold commitment to support the Lincoln Report and forge strong policy that will save our declining indigenous production sector from disappearing all together.

Our industry has traditionally relied on foreign service production, created abroad but shot here, while doing some indigenous production as an afterthought. However the foreign service production sector is not as abundant as it once was. The fast-rising Canadian dollar, the perceived SARS “epidemic” and the newly elected Republican Governor of California whose platform included stopping “runaway productions” from heading north have all contributed to its slowing down. WGC production figures trace the decline: while in 1999 there were 474 hours of export shows (non-Canadian content programs) made here, by 2003 there were only 165 hours being shot in Canada.

This trend will continue in future. Looking ahead, if we want to continue to have a film and television industry in this country, we will have to build our own indigenous production industry. This has been the reality of screenwriters for some time. Canadian-resident screenwriters do not work on foreign service production but work almost exclusively on

indigenous production. The main reason is that American financiers insist on retaining creative control of the product, therefore they engage American writers. This reality has forced Canadian screenwriters to call for a greater government commitment, both political and financial, to Canadian indigenous dramatic programming since 1999. We are very pleased that the rest of the industry has now joined us to call for stronger public policy to increase the amount of quality, original Canadian programming aired on our screens.

The Lincoln Report is especially timely as it addresses the essential elements of the broadcast sector that must be rectified to ensure the survival of our film and television sector. It clearly supports the cultural objectives of the *Broadcasting Act* and the need for Canadian voices to tell Canadian stories. Its' recommendations are aimed at ensuring the longer-term health and vibrancy of our industry. This includes a clear commitment to making Canadian productions that make the maximum use of Canadian talent.

The reality is that our indigenous production sector is struggling due to unstable and reduced financing, minimal spending by broadcasters on Canadian content production and shrinking export markets. In order to reverse this trend, the balance must be restored between industrial and cultural objectives in film and television policy. The industry has united, bringing together writers, directors, performers, technicians and Canadian producers, to urge the government and its agencies to restructure the support mechanism and broadcasting system to encourage high-quality indigenous production.

While the WGC is generally supportive of the Heritage Committee's report, we would like to specifically comment on the issues that will impact the indigenous drama sector. The WGC had an opportunity to comment on the CTF's administrative and structural issues as a participant in the recent CTF Roundtable Discussion organized by the Department of Canadian Heritage in Ottawa. Therefore this paper will not reiterate these, but will address the CTF mandate and the need for stable, and multi-year funding. Our comments will focus on the following three main policy priorities discussed in the Lincoln Report that will have the most impact on the indigenous dramatic sector:

- (1) Revision of the CRTC's 1999 Television Policy to reinstate exhibition and expenditure requirements on broadcasters for Canadian dramatic programming.
- (2) Stable, multi-year direct and indirect funding to support and financially reward indigenous production made by Canadians,
- (3) The Canadian content system should provide audiences with programs written, directed and performed by Canadians,
- (4) Foreign ownership limits for broadcasting and telecommunications should be maintained at existing levels.

1. CRTC

1.1 Revising the 1999 Television Policy

The origins of the current crisis in indigenous programming can be directly attributed to the implementation of the CRTC's 1999 Television Policy. Although other factors, including reduced financing and shrunken export markets, contributed to the decline, our industry would not be on its knees if the 1999 TV policy did not drastically limit support for Canadian dramatic programming.

The policy sought to provide broadcasters with increased flexibility by removing expenditure and exhibition requirements for Canadian dramatic programming. The results were disastrous – the WGC saw a drastic decline in the number of original Canadian dramas that were developed, produced and aired in the Guild's jurisdiction from 1999 - 2003.

WGC numbers show that the hardest-hit production genre is one-hour adult dramas. A review of the number of broadcast hours of live-action drama in WGC jurisdiction shows that in 1999, there were eleven indigenous one-hour adult dramas (for a total of 147 broadcast hours). This number dropped to only five one-hour adult dramas (for a total of 65-70 broadcast hours) in each of the following three years (2000-2002). In 2003, there has been a slight improvement. Although we are far from reaching the 1999 peak, there are currently seven adult drama programs accounting for 77 broadcast hours. **This is a decrease of over 52% since 1999.**

The WGC has united with directors, performers and technicians to form the Coalition of Canadian Audiovisual Unions (CCAUI), to address the decline in indigenous programming. The CCAUI is advocating a revision of the CRTC's 1999 Television Policy to reinstate exhibition and expenditure requirements on major Canadian television broadcasters to broadcast a minimum number of hours of distinctive original Canadian drama. It calls for greater financial commitment from broadcasters for Canadian drama, more script and concept development, consistent and advantageous scheduling for Canadian shows and a star and show promotion system. These recommendations are designed to encourage production of quality shows that attract higher viewing audiences.

It seems that the government has also recognized that the decline in drama is real and momentum seems to be building to do something to save our indigenous sector. We are encouraged by both the Lincoln Report's recommendations and the recent CRTC call for public comments on Canadian drama, which are moving in the right direction to ensure that quality Canadian dramatic programming will continue to be developed, produced and aired in future.

The WGC urges the government to show its commitment to Canadian drama by supporting the Lincoln Report's recommendations regarding the role of the CRTC and the need to revise the 1999 Television Policy. First and foremost, the WGC urges the government to immediately implement Recommendation 5.13 to direct the CRTC by an order in council to review its 1999

Television Policy for the exhibition of priority programming in prime time. This is a crucial first step to reversing the decline in the indigenous programming sector.

1.2 CRTC: As a Regulator

The WGC also fully supports the Lincoln Report's recommendations, contained in Chapter 19, that the government reclaim the lead on developing policy, leaving the CRTC to focus on cultural objectives through supervision and regulation. This is a sound approach. While the CRTC has tried to fill the policy void by assuming policy-making powers, the results have been less than satisfactory. Only the government has the legislative resources, broad policy making authority and perspective to develop effective regulation.

The Lincoln Report's Chapter 19 recommendations seek to close the gaps in the governance system for broadcasting to reinstate authority for policy-making to the government. The report's analysis makes the valid point that while Parliament normally approves policy changes proposed by the lead government department, this is not the case for Canadian broadcasting. In this sector, there are two departments that have policy roles – Industry and Heritage – however the CRTC has seized the flexibility inherent in the Broadcasting Act to make policy regulating distribution, radio and television. In practice therefore, the Department of Canadian Heritage has been stripped of its policy-making authority by transferring this power to the CRTC as the regulator.

Perhaps the most blatant example of the imperfection of the current system is the results of the CRTC's 1999 Television Policy that effectively removed all broadcaster support for original Canadian dramatic programming leading to the current crisis in the sector.

1.3 The Government must be the Policy Leader

The imbalance must be rectified to restore a measure of accountability and democracy in the regulation of our broadcasting system. To this end, the WGC urges the government to begin implementing the Lincoln Report's recommendations contained in Chapter 19.

We support Recommendation 19.3 calling on the government to develop a revised policy statement on the broadcasting system to specify its objectives definitions. We urge the government to include a specific commitment to develop, produce and air original Canadian dramatic programming on television as the core objective of a revised broadcasting act. There should be adequate funding available for drama and the other disadvantaged categories of production.

The WGC also supports Recommendation 19.4 calling for a clarification of the mandates of the CBC, Telefilm, the NFB and the CTF. It is crucial that these agencies operate under more precise objectives in order to define their responsibilities and powers. The revised guidelines should ensure that quality, innovative and original dramatic programming is produced. It is also necessary that the creative talent pools be consulted when setting new guidelines.

Specifically, the CTF and Telefilm mandates and roles are unclear and overlapping. While both agencies mandates require that they finance high quality Canadian shows, projects seeking funding are left to contend with a confusing administrative labyrinth to obtain public support. It seems most appropriate that the Department of Heritage take responsibility to direct these agencies to most effectively and efficiently achieve the objectives of the Broadcast Act. The CBC mandate should also clearly and specifically require the public broadcaster to do original dramatic programming, and the CBC should be allocated the necessary resources to fulfill its mandate and the objectives of the Broadcasting Act.

Regarding the CRTC, we strongly support the Lincoln Report's Recommendation 19.5 that the government review the CRTC's mandate to focus on cultural objectives, and establish clear limits on its' power to supervise regulate, create and manage programs. We further urge the government to implement Recommendation 19.6 which would require that CRTC regulations are reviewed by the appropriate department and approved by the Governor in Council. This is imperative to establish a formal link between the policy development process within government and the development of regulations by the CRTC. It logically follows that the CRTC should have the power to enforce its regulations and terms of license on broadcasters and the resources to fulfill its mandate. The WGC fully supports Recommendation 19.11 to give the CRTC the power to impose a wider range of sanctions and more costly fines on those who fail to comply with regulations and in turn be directed to enforce these breaches of regulation, and Recommendation 19.12 that the CRTC be allocated the necessary resources and flexibility to carry out its redefined responsibilities.

Finally, we also encourage the government to act on recommendation 19.17 to create a Canadian broadcasting monitor, incorporated into the Office of the Auditor General, to report annually on how well the objectives of the Broadcasting Act are being met. It is important that there be a measure of the success or failure of policy initiatives for our sector. Only by realistically weighing the effects of legislation and policy can we continue to hone the system to produce the best results.

2. Direct and Indirect Funding Mechanisms

2.1 Why Direct Public Funding is crucial to our industry

The restricted Canadian market and small audience base means our indigenous productions are not financially viable because there is less of a chance of a return on investment. This reality makes government investment crucial if we want our indigenous dramatic production sector to relay our history and experience.

While American mega-budget simulcast programming becomes more prevalent each day, it threatens the survival of our ability to tell Canadian stories. The reality is that making dramatic programming is an expensive and risky business. This leads broadcasters to choose American sitcoms and dramas over indigenous Canadian dramas. While popular American shows cost about \$150,000 per episode for our broadcasters to purchase, typically an hour of Canadian drama costs about \$1 million to make. We are also up against a blockbuster American star

system that promotes all of the creative talent behind a show, including screenwriters and performers; in stark contrast, our domestic industry does virtually no promotion of its star creative talent. It is very difficult for our indigenous sector to compete without government assistance either in the form of tax credits or direct subsidies.

2.1.1 The Canadian Television Fund

The WGC supports the Lincoln Report's recommendations calling for stable and multi-year funding for independent production via the Canadian Television Fund. We refer specifically to Recommendation 5.10 "that the government recognize the Canadian Television Fund as an essential component of the Canadian broadcasting system. This recognition must include increased and stable long-term funding. The CRTC should be directed to oblige licensees, with the exception of small cable operators, to contribute to the CTF."

CTF funding is often the essential first step in the complex financing system for Canadian television programming. Typically, CTF financing provides between 20 –30% of the total production budget for Canadian dramas written, directed and performed by Canadians. This money "triggers" other funding sources including broadcasters license fees and distributors investments.

The CTF supports fully indigenous programming using the talent of Canadian writers, directors and lead performers. CTF-supported programming includes: fiction (drama, comedy), documentaries, children's, music, performing arts and variety programming. In 2001/2002, the CTF contributed \$241 million to Canadian productions -- the total budget for these productions was \$802 million. Industry estimates suggest that elimination of CTF funding would result in a loss of at least \$500 million, and 2,000 hours of independent Canadian production programming¹.

The 2003 budget cuts to the CTF could not have come at a worse time. Government support to the CTF was reduced by 25%, from \$100 million to \$75 million. The industry lost over \$83 million in production and several popular and critically acclaimed shows were dropped from the schedule for lack of financing.

The WGC urges the government to allocate a stable, multi-year \$100 million annual budget allotment for the CTF. By multi-year funding we mean at least a 5-year funding agenda for the CTF. These recommendations would go a long way towards ensuring the longer-term survival and economic viability of our industry.

2.1.2 The Canadian Broadcasting Corporation (CBC)

The success of our indigenous dramatic programming sector also depends on the public broadcaster to develop, produce and air quality, distinctly Canadian programs. However,

¹ Canadian Film and Television Production Association (CFTPA), *Profile 2003: An Economic Report on the Canadian Film and Television Production Industry*, February 2003, p. 5-6.

budgetary cuts have significantly reduced the CBC's ability to provide audiences with the high-quality dramatic programming that they expect. The WGC calls on the government to implement the Lincoln Report's Recommendation 6.1 to provide the CBC with increased and stable multi-year funding (3 to 5 years) to enable it to fulfill its mandate as expressed in the *Broadcasting Act*.

The *Broadcasting Act* requires the CBC to provide programming which is predominantly and distinctively Canadian, reflects Canada and its regions, actively contributes to the flow and exchange of cultural expression, provides quality programming in both French and English and contributes to the national consciousness and identity. This is a tall order. It is impossible to sustain a viable and vibrant public broadcaster without adequate and stable multi-year funding.

2.2 Indirect Funding: The Canadian Tax Credit must provide an incentive to make indigenous programming

It is imperative that the Canadian Film or Video Production Tax Credit (CFVPTC) continues to provide a real incentive to producers to make indigenous programming employing Canadian creative talent. Therefore the WGC urges the government to implement the Lincoln Report's Recommendation 5.5 that the appropriate department will evaluate the Federal Tax Credit system that supports Canadian television programming to find ways to improve how support is managed and delivered to Canadian independent producers.

The incentive provided by the CFVPTC to produce indigenous programming was greatly reduced by the 2003 Federal budget. The government raised the Production Services Tax Credit (which supports foreign service production filmed here but created abroad) from 11% to 16%, without making a comparable increase to the CFVPTC (currently set at 25%). This change effectively eroded the tax incentive to make indigenous productions created by Canadians. While the WGC recognizes the need to support the industrial sector, it urges the government to take action to ensure that our public purse supports homegrown talent.

The WGC also calls on the government to implement the Lincoln Report's Recommendation 5.6 advocating a graduated tax credit system for Canadian television production to provide increasing levels of support to productions with more involvement by Canadian creators. The WGC has long-advocated a graduated tax credit system to provide a real incentive to make product that uses the maximum level of Canadian talent, while providing less support for those productions employing foreign talent.

By implementing a graduated tax credit that would reward productions using increasing amounts of Canadian talent, the bar would be raised from the current minimal compliance standard. Under the current Canadian content point system, a production that does not qualify for direct funding, can access indirect funding via tax credits if they achieve a minimum of six points. An unintended consequence of the existing approach to defining Canadian content under the federal tax credit is that the current minimum benchmark for creative content has tended to become the ceiling.

When a minimum threshold is established to qualify a Canadian production without incentives to move to a higher standard, the reality is that the minimum tends to become the ceiling. So if six points is the requirement, that's what producers meet, and no more.

One approach for breaking this minimum compliance attitude is to restructure the tax credit so that its benefit to producers increases as they increase their use of Canadian creative talent. In other words, introduce a graduated tax credit.

With this goal, the current flat 25% credit could be restructured so that a project earning 6 or 7 points would be scaled back to a 20% credit, while projects attaining 8 points or higher would be accorded a 30% credit.

As this incentive would apply to all production achieving 8 points or more, including 10-out-of-10 distinctively Canadian productions accessing the Canadian Television Fund, it would have the further benefit of providing additional support to indigenous production.

3. The Canadian content system should support programming created by Canadians

The Canadian content point system is a crucial gatekeeper in promoting Canadian talent and ensuring that audiences have access to indigenous Canadian programming written, directed and performed by Canadians. We use the term "gatekeeper" here because the Canadian content system is essentially a yardstick. It is used to determine which productions qualify for (1) direct and indirect public funding support and (2) as Canadian content for broadcasting purposes. As a result, the Canadian content system is a key tool available to the government and its agencies to encourage the development, production and broadcast of indigenous dramatic programming.

However, the effectiveness of the Canadian content system in encouraging quality indigenous production depends on the scale of its yardstick. It is crucial that the system is not watered-down to allow non-Canadians to create shows certified as Canadian content. The system must be strengthened to certify only those productions written, directed and performed by Canadians, as Canadian content. This will ensure that only productions using a high degree of Canadian creative talent will benefit from public funding and have access to priority programming scheduling on the small screen.

The government has undertaken a review of the Canadian content system to ensure that it is still effective in fulfilling its mandate after almost 30 years. While the system should be strengthened to further support Canadian talent pools, we are concerned that the opposite may happen. It seems that there is a real push to provide flexibility in the business aspects of a production at the expense of the creative elements. For example, in a report commissioned by the Department of Heritage, former Telefilm head Francois Macerola, recommended a complex system of "options" that would allow producers to opt-out of using either a Canadian writer, director or lead performer while still qualifying as the highest level of Canadian content. Essentially, this would mean that a production not written, directed or performed by a Canadian could still qualify for the highest level of Canadian public funding and broadcast

support. This is unacceptable to Canadian screenwriters. Canadian content must be written by Canadians – foreign screenwriters cannot tell our stories.

Canadian screenwriters urge the government to act on the Lincoln Report's Recommendation 5.2 calling for a review of the current Canadian content points system to ensure "that the existing point system for the certification, funding and production of Canadian television programming be redesigned to...recognize the nationality of the authors, directors, performers and technicians; focus on the achievement of cultural objectives; ensure that Canadian content reaches its audiences."

In order to qualify as Canadian content, Canadian audio-visual works must be truly created by Canadians. Canadian content standards must be strengthened and the minimum compliance bar should be raised. The WGC has consistently argued that at a minimum, Canadian certified productions should be written by Canadians. The nationality of the creator of a work is of equal importance to the right holder's (producer) nationality. The government should not weaken the Canadian content system to allow foreigners a greater role in making our shows.

Canada has the depth of talent to write quality programs but the system has to provide more opportunities for its screenwriters. We should stop trying to find ways to allow foreigners to write, direct and star in our shows. This makes neither economic nor cultural sense. Our system must foster homegrown talent, to ensure that Canadian screenwriters will have the necessary opportunities to tell the stories that Canadians identify with.

4. Foreign ownership limits for broadcasting and telecommunications should be maintained at existing levels

Ownership equals control. This is true for all industries including film and television. We must ensure that this control is maintained in Canada for the broadcasting sector. Therefore the WGC fully supports the Lincoln Report's Recommendation 11.5 that existing foreign ownership limits be maintained at current levels.

While we understand the free-market arguments put forth by the Industry Committee in supporting freer access to foreign investment, this purely economic rationale ignores the cultural need to ensure that Canadians continue to have access to original, quality programming written, directed and performed by Canadian talent. Canadian screenwriters have experienced first hand what happens when foreign financiers make shows in Canada – they retain creative control by hiring only their national talent to write the shows and films that are filmed in Canada. This is the reason that Canadian screenwriters work almost exclusively on Canadian indigenous production, financed by Canadian broadcasters and other Canadian partners. By opening this sector up to foreign ownership, we are convinced that the same trend will prevail. Those foreign-owned broadcasters will seek to retain creative control by developing and creating shows elsewhere: this will close the entire film and television sector to Canadian talent.

The WGC would like to ensure that Canadian creative talent has a place to work and develop their skills. If the foreign ownership rules are changed, we cannot be sure that we and all other Canadian talent pools will continue to have access to the Canadian film and television market.

Conclusion

It is time that our broadcasting system matures to the point where audiences expect quality, original and innovative indigenous programming that will be rewarded by healthy audience ratings. Our industry has the talent and experience to make this a reality. The missing element is our government's clear commitment via consistent and supportive public policy.

While the Canadian film and television industry has traditionally relied on foreign service production as its bread and butter, this sector is under siege. The industry is in agreement that we must build our own indigenous production industry. This challenge has united all participants including writers, directors, producers, actors and technicians to call for bold policy to ensure the long-term health and growth of our indigenous sector.

The WGC urges the government to endorse the recommendations cited above and contained in the Lincoln Report. These chart a clear path forward to correct the imbalance in our broadcast sector to ensure that we continue to have a Canadian voice to tell Canadian stories that are truly created by Canadians.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gail Martiri', with a stylized flourish at the end.

Gail Martiri
Director of Policy

cc. Maureen Parker, Executive Director, Writers Guild of Canada
Pete White, President, Writers Guild of Canada
Jean-Francois Bernier, Heritage Canada