

**Broadcasting Notice of Consultation CRTC 2011-379 (“BNC 2011-379”)
Licence renewals for the Canadian Broadcasting Corporation’s
French- and English-language services**

**Intervention of the Canadian Media Production Association (“CMPA”)¹
Respecting the Renewal Application for
CBC Television (English-language network and stations)**

A. Introduction

1. The upcoming CBC licence renewal hearing will be the first time the Commission has comprehensively reviewed the CBC’s performance in well over a decade. While much has obviously changed in the Canadian broadcasting environment over that lengthy period, it is fundamentally important to recognize in this current process that CBC’s legislated mandate remains the same as it did when the Commission last renewed the CBC’s English-language television licences in 2000.²
2. The CBC is Canada’s primary delivery mechanism for high quality Canadian programming as well as being, arguably, the most used public service offered to Canadians by the federal government. The CBC should be commended for continuing, in difficult and challenging financial circumstances, to deliver numerous services that are meaningful to millions of Canadians.
3. Historically, the CMPA has been a strong supporter of the CBC and the role of the national public broadcaster in serving Canadians as a leading funder, purchaser and exhibitor of a wide variety of quality Canadian programming that appeals to different age groups, demographics and regional interests. In particular, the CMPA has strongly supported and appreciated the CBC’s past commitment to independently-produced programs, including independently-produced dramas, documentaries, children’s programs and feature films.
4. As is the case now, the CBC in 2000 was faced with the challenge of meeting its broad legislated mandate in the face of recent and significant budget cuts. In 2000,

¹ The CMPA represents the interests of screen-based media companies engaged in the production and distribution of English-language television programs, feature films, and new media content in all regions of Canada. The CMPA’s member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences.

² Decision CRTC 2000-1, <http://www.crtc.gc.ca/eng/archive/2000/DB2000-1.HTM>.

the Commission instructed the CBC to allocate its available resources on a priority basis to programming. *The Commission should send the same message now.*

5. Technological developments should allow the CBC to meet its legislated mandate going forward in new and innovative ways. The CBC should exploit the opportunities that new technologies offer in order to better meet its mandate and to increase its contributions to the Canadian broadcasting system. However, neither budget cuts nor new technologies should be used as an excuse for the CBC to abandon important parts of its mandate or be held less accountable to the Canadian public.
6. It is the CMPA wish that the CBC succeed in fulfilling its special role as Canada's national public broadcaster. To that end, we support the licence renewal application for the CBC's English-language television network and stations ("the English television application"); however, our support is conditional upon the CBC demonstrating that it remains committed to its mandate and to being a leader in the Canadian broadcasting system.
7. Unfortunately, there is insufficient evidence of these commitments to justify our confidence in the CBC or in its intention to continue to meet its mandate, given the approach it has taken in its English television application.
8. In terms of its programming plans as described in its English television application, the CBC's message of 'leave us alone and trust us to meet our mandate' rings hollow. This is particularly the case since it seeks to be relieved of its existing reporting obligations which represent a critical tool for Canadian taxpayers, the Commission and other stakeholders in the Canadian broadcasting system to monitor the CBC and hold it accountable.
9. Accordingly, the CMPA calls upon the CBC to demonstrate that it will indeed be a leader in the broadcasting system throughout its next licence term - by accepting real and measurable programming obligations fully consistent with its mandate and its role as the national public broadcaster, and by agreeing to a workable Terms of Trade Agreement governing its business relationship with independent producers.

B. What it will take for the CBC to be a Leader in the Canadian Broadcasting System

**(i) A Leader in its Working Relationship with Independent Producers:
Terms of Trade**

10. In BNC 2011-379-3, the Commission confirmed that one of the issues of importance for this proceeding is "terms of trade agreements".

11. As the CMPA advised the Commission on 1 October 2012, we continue to meet with the CBC in an effort to negotiate a mutually acceptable Terms of Trade Agreement. Accordingly, we asked the Commission to amend its procedures for this proceeding by permitting the CMPA and the CBC to update the Commission on the status of the Terms of Trade negotiations in either a joint submission or by way of individual submissions to be filed 14 November 2012.

(ii) A Leader in Canadian Programming

12. The CMPA appreciates that the CBC is willing to accept a **condition of licence** that would oblige CBC Television to continue to meet the overall Canadian content exhibition obligation which the CRTC encouraged it to meet in the CBC's 2000 licence renewal decision.

13. The CMPA also appreciates the CBC's request for a **condition of licence** that would require CBC Television to broadcast, during the 7 pm – 11 pm peak viewing time period, a minimum number of hours per week of programs of national interest (PNI), 75% of which would be allocated to independently-produced programs.

14. It is these kinds of clear and unequivocal commitments to Canadian programming - *backed by a willingness to make them binding by way of enforceable regulatory obligations* - which the CBC should embrace throughout its applications in order to be a leader in the Canadian broadcasting system.

15. Unfortunately, however, the CBC's willingness to be held to its Canadian programming commitments for its English-language network service abruptly stops with these two conditions of licence.³

16. Much bigger is the list of current obligations and commitments the CBC now seeks *to escape*. They include⁴:

- To acquire at least 50% of programming (other than news, public affairs and sports) from independent sources;
- To broadcast a minimum of 15 hours/week of Canadian programs directed to children 2 through 11;
- To broadcast a minimum of 5 hours per week of programs directed to youth (ages 12 -17);

³ The CMPA acknowledges the CBC's willingness to accept conditions of licence regarding local programming, adherence to industry codes and accessibility, but leaves it to other parties to address the adequacy of those proposals.

⁴ As established in Decision CRTC 2000-1, *ibid*, above note 2.

- To invest in the production, acquisition and promotion of Canadian feature films;
- To broadcast programming drawn from and reflective of the varied regions of the country.

17. The CBC also seeks to escape its annual reporting obligations, which include⁵:

- The number of hours of programming acquired from independent producers that were broadcast in peak time and throughout the broadcast day, specifying which of those were regionally produced;
- The number of hours of long-form documentary programming broadcast in peak time (7 p.m. to 11 p.m.);
- The average weekly number of hours of Canadian programming directed to children (2-11 years), as well as the number of those program hours that consisted of original Canadian programming, broadcast during the broadcast week;
- The average weekly number of hours of programming directed to youth (12-17 years), broadcast during the broadcast week;
- The number of Canadian feature films broadcast in the broadcast year under review;
- The number of hours of regionally-produced priority programming broadcast on the network in peak time; a list of the qualifying programs; the categories of the qualifying programs; the production location of the qualifying programs; and, the name of the production company;
- The number of hours of non-news programming that have been produced in the regions and that have been broadcast by a CBC owned and operated television station on non-network time and a separate list of those that have been broadcast on the network, during the broadcast day.

18. The CBC's general rationale for seeking to escape all these long-standing programming and reporting obligations is that "they are no longer necessary and are contrary to moving toward broader and more streamlined regulatory obligations."⁶ It argues that the CRTC's role with respect to the CBC should be "facilitative" rather than regulatory, thereby "establishing conditions which will

⁵ *Ibid.*

⁶ Application CBC-SCR - General - Part I - English-language Television - General, pages 12 and 13 of 19.

enable a public broadcaster to achieve its statutory mandate”.⁷ The CBC also argues that the CRTC should leave content issues primarily to the CBC “to decide in light of its statutory mandate.”⁸

19. In other words, the CBC seeks to effectively remove itself from CRTC regulation to operate more like an exempt undertaking: it wishes to be left alone and unconstrained to interpret its mandate as Canada’s national public broadcaster, and operate as it sees fit, with minimal regulatory obligations, oversight and accountability.
20. While the CBC calls for mandatory access to all distribution platforms, and prominent distribution on those platforms, it seeks to avoid the kind of programming obligations and accountability that could justify such special status.
21. The CMPA is very disappointed by this minimalist approach and urges the Commission to reject it. Contrary to the CBC’s arguments, it remains the Commission’s role to regulate the CBC to ensure the national public broadcaster indeed meets its mandate.
22. In looking ahead to the future, we would have expected the CBC not only to accept but strengthen its leadership role in the Canadian broadcasting system by making firm commitments to reach specified programming targets; to agree to be held to those commitments; and to be transparent as to its success in achieving them by embracing an on-going obligation to report annually to the Commission on its performance.
23. Given that the CBC is unwilling to embrace its leadership role in this way, however, it is clear the Commission must use the regulatory powers at its disposal to ensure that the CBC makes the contributions to the system required by the *Broadcasting Act*.
24. If the Commission does not establish a clear set of obligations for the CBC, Canadians will have no way of knowing what the CBC plans to do with their tax dollars for the next five years. And absent a continued requirement that the CBC report annually on how it has met those obligations, Canadians will have little if any opportunity to monitor the CBC’s year-to-year use of their money.

⁷ Application CBC-SCR - General - Part B – The Future, page 16 of 16.

⁸ *Ibid.*

(a) Independently-Produced Programming

25. Since 2000, the CRTC has expected the CBC to acquire at least 50% of its programming (other than news, public affairs and sports) from independent sources. The CBC states in its current application that:

“CBC Television’s success is in part due to robust partnerships with Canada’s independent production industry. As the Corporation seeks to decrease its reliance on foreign programming, and promote Canadian content both in and out of prime time, the network’s relationships with independent producers will grow in importance.”⁹

26. Unfortunately, the CBC’s actual performance in recent years is in sharp contrast to this statement. While, the CBC’s annual reports indicate that 87% of its Canadian programming in 2006 was independently-produced (measured over the full day), they also demonstrate that, for unexplained reasons, this level has declined steadily ever since, dropping to 64% in 2009, then to 61% in 2010, and then to 51% - the bare minimum required - last year.

27. This precipitous drop in the overall percentage of the CBC’s programming acquired from independent sources - particularly in the last year - strongly suggests the CBC is in fact abandoning its commitment to independently-produced programs in favour of more (but less diverse) in-house programming.

28. As noted, the CMPA appreciates the CBC’s willingness to accept a condition of licence that would require CBC Television to allocate 75% of its peak time PNI to independently-produced programs. However, this amounts to a commitment of only 5.3 hours of independently-produced programming per week.¹⁰

29. Moreover, the 5.3 hour figure for the peak period each week represents the only firm commitment the CBC is now making with respect to independently-produced programming hours. The CBC has made no proposal with respect to the rest of the day; instead, it seeks to be relieved of the 50% expectation established in 2000. This means that, based on a full (24-hour) day, the CBC is committing to allocate only 3% of its weekly programming hours to independently-produced programs.¹¹

30. Such a minimal commitment to independently-produced programming by the CBC is completely untenable for Canada’s national public broadcaster and runs directly counter to the *Broadcasting Act* objective that “the programming provided by the

⁹ Application CBC-SCR - General - Part I - English-language Television - General, page 3 of 19.

¹⁰ 75% of 7 hours of PNI = 5.3 hours.

¹¹ $(5.3/168) \times 100 = 3.2\%$

Canadian broadcasting system should [...] include a significant contribution from the Canadian independent production sector.”¹²

31. Furthermore, in a time of declining financial resources, such a minimal commitment to independently-produced programs - which are demonstrably less expensive and more efficient to acquire than to produce programming in-house - represents a questionable use of taxpayers’ dollars.

32. In updating its applications, the CBC acknowledged the cost-effectiveness of independently-produced *documentaries* in addressing its financial challenges:

“CBC will continue to do in-house documentaries but will rely on the independent community for a larger proportion of documentary programming than in the past.”¹³

33. The CBC should likewise acknowledge the cost-effectiveness of independently-produced programs in *other genres* by maintaining its obligation to dedicate at least half of its schedule to independently-produced programming.

34. In the CMPA’s view, the disturbing downward trend in the CBC’s use of independently-produced programming in recent years shows that the CBC should not be relieved of its regulatory obligation to acquire programming from independent sources. Instead, **the CMPA submits that the CRTC should now strengthen the existing expectation regarding independently-produced programming by converting it to a condition of licence that would require the CBC to acquire *at least 50%* of its programming (other than news, public affairs and sports) from independent sources.**

35. **In addition, the CMPA submits that the CRTC should ensure that the CBC is transparent with respect to the efficiency of its program spending practices by holding it accountable for meeting this obligation through continued annual reports detailing its peak and full-day hours of independently-produced programs.**

(b) Drama and Documentaries

36. The CBC is currently expected to broadcast 5.5 hours of Canadian drama programming each week during peak, and required to report annually on the number of hours of long-form documentaries broadcast during the same period. The CBC’s annual reports indicate that, over the last three years, it has broadcast, on average, more than 7 hours of drama/week in peak and over 2.5 hours of

¹² Section 3(1)(i)(v).

¹³ CBC Letter to the Commission dated 16 July 2012, at p. 6.

documentaries¹⁴, representing over 9.5 hours/week in peak of what is now categorized as PNI. Nevertheless, the CBC is committing to only 7 hours/week of PNI in peak going forward.

37. **The CRTC should require the CBC to maintain its historical levels of PNI in peak and require the CBC to report annually on the breakdown of each type of PNI (drama, documentaries and awards shows) broadcast.**

(c) Children's and Youth Programming

38. The Commission stated in its introduction to the CBC's 2000 licence renewal decisions that "[t]he Corporation has a special responsibility to offer entertaining and educational programming tailored to young people."¹⁵ It reinforced this statement in its 2000 renewal decisions:

"...because the CBC reaches almost all Canadians, it has a unique responsibility to provide informative, educational and entertaining programming directed toward Canadian children and youth, and to foster the development of the artists who represent the future of the television industry."¹⁶

39. To that end, as noted earlier, the Commission has expected the CBC over the last licence term to broadcast a minimum of 15 hours/week of Canadian programs directed to children 2 through 11 as well as to broadcast a minimum of 5 hours per week of programs directed to youth (ages 12 -17). In addition, the Commission has required the CBC to report annually regarding the average weekly number of hours of Canadian programming directed to children and youth, as well as the number of children's program hours that consisted of original Canadian programming, broadcast during the broadcast week.
40. The CMPA appreciates that, according to the CBC's annual reports, it has consistently exceeded the 15 hours/week expectation regarding Canadian programs directed to children 2 through 11, averaging 28.5 hours/week over the last three years.¹⁷ We note, however, that averaged over that same period, only one hour/week was *original* programming.¹⁸ This is evidence that the CBC is relying on program repeats to fulfill its children's programming obligation and is investing very little in new shows.

¹⁴ [129 hours (2009) + 125 hours (2010) + 164 hours (2011)]/3, divided by 52 = 2.7 hours/week.

¹⁵ Public Notice CRTC 2001-1, <http://www.crtc.gc.ca/eng/archive/2000/PB2000-1.htm>, at par. 33.

¹⁶ *Ibid*, above note 2, at par. 56.

¹⁷ [22.2 (2009) + 31.7 (2010) + 31.5 (2011)]/3 = 28.5

¹⁸ [0.6 (2009) + 1.3(2010) + 1.3 (2011)]/3 = 1.1.

41. We also note that, beginning in 2007, the CBC began to disregard its obligation respecting programming for youth¹⁹; in the last two years, the CBC has completely abandoned that obligation. According to its annual reports, the CBC averaged only 30 minutes/week of Canadian programming for youth in 2010²⁰, and *less than 8 minutes/week* last year.²¹
42. In its current application, the CBC does not explain or address in any way its failure to meet its youth programming obligation and its abandonment of the Canadian youth television audience. Instead, it seeks to be relieved of both its children's and youth programming obligations, stating only that it "will continue to provide a significant amount of programming for [pre-school] children and will keep the focus of that programming on learning development."²²
43. The CMPA submits that, given the CBC's unique responsibility as identified by the Commission above, this is a wholly inadequate commitment to programming for Canada's children and youth. Moreover, the CBC's arbitrary choice to ignore the Commission's expectation regarding youth programming demonstrates why the Commission should reject the CBC's "trust us" arguments.
44. **For these reasons, the CRTC needs to extract from the CBC a firmer, measurable commitment to programming directed toward *both* children and youth - particularly respecting original programming hours - and to maintain the associated reporting requirements.**

(d) Canadian Feature Films

45. According to the terms of its 2000 licence renewal decision, the CBC was expected to fulfill its commitment to invest \$30 million in the production, acquisition and promotion of Canadian feature films over the first five years of its licence term. Nevertheless, there is no reference to this obligation in any of the CBC's Annual Reports for that period.
46. Once again, the CBC's arbitrary choice to ignore the Commission's expectation demonstrates why the Commission should reject the CBC's "trust us" arguments.
47. According to Telefilm data, the CBC's support for Canadian feature films up to and including the 2005-06 broadcast year fell well below the amount it had committed to invest, totaling less than \$2.1 million. In fact, even by 2011, the CBC had not

¹⁹ In 2006, it broadcast 5.6 hours/week; this dropped to 3 hours/week in 2007 and then to 2.69 hours/week in 2008 and 2009.

²⁰ 0.5 hours/week in 2010.

²¹ 0.13 hours/week in 2011.

²² Application CBC-SCR - General - Part I - English-language Television - General, page 9 of 19.

come anywhere close to fulfilling its \$30 million commitment - falling short by over \$24 million!

<i>CBC's financial contribution to English-language theatrical films supported by Telefilm Canada</i>			
	INVESTMENT	LICENCE FEES	TOTAL
2000-01			
2001-02	\$75,000	\$5,000	\$80,000
2002-03		\$500,000	\$500,000
2003-04	\$125,000	\$450,000	\$575,000
2004-05	\$175,000	\$580,000	\$ 755,000
2005-06		\$150,000	\$150,000
2006-07	\$250,000	\$130,000	\$380,000
2007-08	\$50,000	\$150,000	\$200,000
2008-09	\$50,000		\$50,000
2009-10	\$500,000		\$500,000
2010-11		\$2,725,000	\$2,725,000
TOTAL	\$1,225,000	\$4,690,000	\$5,915,000

48. The CBC is also currently required to report each year on the number of Canadian feature films broadcast. Those reports indicate that the CBC broadcast a licence-term high of 86 individual titles in 2006, but that that number has declined dramatically since then, dropping to 39 titles in 2010 and to only 24 in 2011. It also broadcast a lower number of hours of Canadian feature films in 2011 than in any other year in its whole extended licence term:

Annual Number of Titles and Hours of Canadian Feature Films on CBC Television

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Titles	48	56	73	70	78	86	78	51	52	39	24
Hours	94.8	110	200.2	186	198	169.5	198	107	105.8	139.5	94

49. Moreover, the CBC has provided no information to indicate whether any of the films it broadcast were first airings – thus, they may very well have been repeats of older (or much older) Canadian films.

50. In various recent submissions, the CMPA has highlighted the fact that the Canadian feature film industry is facing a funding crisis because broadcasters in general no longer support Canadian feature films as they once did.
51. Nevertheless, the CBC has provided no commitment to support English-language Canadian feature films going forward; in fact, there is not even a single reference to, or acknowledgement of, Canadian feature films in the entire English television application!
52. Contrast the CBC's total disregard for Canadian feature films in its English television application with the following commitment in its SRC application:

"We will continue to contribute to the making of Canadian feature-length films, both drama and documentary. In 10 years, we have aired 167 Canadian features, about 15 per year. Dramatic feature films are assigned top time slots in our schedule, either in prime time or in slots devoted entirely to Canadian French-language cinema, and we find that our audiences greatly appreciate this offering. Moreover, as a financial partner, we have a special interest in feature-length documentaries."²³

- 53. The CMPA submits that the CBC should play a special role with respect to new Canadian feature films. Therefore, the Commission should obtain from the CBC a commitment to support new Canadian feature films both financially and through promotion, and by broadcasting them during high viewing periods. The Commission should also require the CBC to continue to report each year on the number of Canadian feature films broadcast, so stakeholders can track its contributions to this important genre of Canadian programming.**

(e) Regional Programming

54. The CBC's legislated mandate is clear with respect to its obligation to reflect Canada's regions in its programming:

s. 3(1)(m) the programming provided by the Corporation should...
(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions

55. As the Commission stated when it introduced its last renewal decisions for the CBC:

"Providing a true reflection of Canada, both regionally and nationally, is at the core of the CBC's mandate."²⁴

²³ Application CBC-SCR - General - Part H - French-language Television - General, page 2 of 24.

²⁴ *Ibid*, above note 15, at par. 22.

56. Consistent with this aspect of the CBC's mandate, the CRTC established a number of regional programming obligations for CBC in 2000, including a condition of licence requiring the CBC to broadcast 6 hours of priority programming/week where the principal photography occurs more than 150 kilometres away from Toronto, and various related expectations and encouragements.
57. Furthermore, the CBC has been required to report annually regarding the number of hours of regionally-produced priority programming broadcast on the network in peak time; how many of those hours were independently-produced; a list of the qualifying programs; the categories of the qualifying programs; the production location of the qualifying programs; and the name of the production company.
58. It has also been required to report on the number of hours of non-news programming produced in the regions and that have been broadcast by a CBC owned and operated television station on non-network time and a separate list of those that have been broadcast on the network, during the broadcast day.
59. The CBC seeks to have all these regional programming and reporting obligations removed going forward, arguing its mandate under the *Broadcasting Act* already requires it to reflect the regions. At the same time, however, the CBC argues that "[g]iven the Corporation's *national* mandate and the need for it to allocate its resources across platforms in the most efficient and effective manner possible, the Corporation does not believe it would be appropriate for the Commission to impose a more specific condition of licence focusing on regional production of Programs of National Interest."²⁵
60. This is another example of the CBC failing to demonstrate leadership by refusing to set firm targets for itself in meeting its mandated obligations and by its unwillingness to demonstrate accountability for its actions.
61. The CBC's mandate to reflect the regions in its programming is clear; it is totally unclear, however, how the CBC will do so through its next licence term. Once again, **the CMPA therefore calls on the Commission to require the CBC to be more specific about its plans, and to employ effective regulatory tools to hold the CBC to those plans, including associated annual reporting obligations.**

C. Conclusion

62. As we stated at the outset of this submission, it is the CMPA's wish that the CBC succeed in fulfilling its special role as Canada's national public broadcaster. In that respect, we acknowledge that, over the past extended licence term, the CBC has consistently exceeded many of its programming obligations. We also acknowledge

²⁵ CBC-SCR - General - Part I - English-language Television - General, page 10 of 19. Emphasis added.

the CBC's efforts to address the financial challenges it will face over its next licence term and to position itself in a competitive and increasingly digital broadcasting environment.

63. At the same time, however, we must reject the CBC's arguments that attempt to place it outside the regulated broadcasting system and beyond the Commission's regulatory jurisdiction and powers. The fact that the *Broadcasting Act* establishes a legislative mandate for the CBC does not grant the CBC the self-regulatory status it seeks to claim for itself. The Commission's legislative mandate is to regulate and supervise *all* aspects of the Canadian broadcasting system²⁶, and this includes the CBC. In fact, the *Broadcasting Act* specifically grants to the Commission the power, in the furtherance of its objects, to issue licences to the CBC subject to such conditions as the Commission deems consistent with the CBC's programming mandate.²⁷ Thus, contrary to the CBC's arguments, the Commission has both the power and the obligation to fully exercise a regulatory role vis a vis the CBC.

64. Therefore, if the CBC remains unwilling to commit to its leadership role in the broadcasting system by, amongst other things, embracing obligations which both promote and ensure its accountability, it is up to the Commission to impose those obligations. In other words, if the CBC won't lead willingly, the Commission can and should make it do so.

All of which is respectfully submitted.

²⁶ *Broadcasting Act*, s. 5(1). Emphasis added.

²⁷ *Broadcasting Act*, s. 9(1)(b)(ii).