

ENGLISH-LANGUAGE**ARTS**NETWORK

Comments
on the
Canada Media Fund's
English Regional Production Policies
by the
English-language Arts Network of Quebec

September 4, 2009

Executive Summary

The Canadian Television Fund (CTF) has made the English-language regions synonymous with the official-language minority in Quebec. While regional policies overlap with official-language policies in many ways, they are each distinct and need to be addressed differently.

The *Official Languages Act* gives the English-language minority in Quebec the same status as the French-language minority outside Quebec. However, the CTF has not recognized that the official-language minority community (OLMC) in Quebec has the same rights and legal status as the French-language minority outside Quebec. Thus, Montreal production is not given regional status for the BPE, nor is there a Quebec OLMC production fund similar to the production fund (FLPOQ) available to the French-language minority outside Quebec.

ELAN points out in this submission that the Canada Media Fund is directly subject to the “spirit and intent” of the *Official Languages Act* as stated in the Contribution Agreement the CMF signed with the Department of Canadian Heritage on August 18, 2009. The CMF is also indirectly subject to the OLA because CMF operates within the regulatory framework of the CRTC, and the CRTC is subject to the *Official Languages Act*.

ELAN proposes that:

- the CMF modify its definition of region to include the official-language minorities, thereby recognizing the regional status of English-language production in Montreal and French-language production in Toronto and Vancouver.
- a new OLMC regional definition be adopted to harmonize the current regional definitions of both the CMF and CRTC.
- the BPE regional factor be increased to 25%, and that at least half of the broadcaster regional credit be spent on future regional productions.
- an OLMC fund similar to FLPOQ be established for the official-language minority in Quebec.

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1) English-language Arts Network of Quebec

Better known as ELAN, the English-language Arts Network represents English-speaking artists in Quebec. We began in 2004 and now have over 1,700 members, including about 200 members in the film and television disciplines. For more information, see www.quebec-elan.org

2) Briefing Note 13: Comments on English Regional Production

a) Is there a need to review and modify the definition of “region” and “regional production” with a view to achieving consistency across CTF programs?

Yes, there must be a modification of the definition of region and regional production. CMF needs to apply the spirit and intent of the *Official Languages Act* and the Contribution Agreement with PCH to the status of the official-language minority in Quebec. ELAN believes that CMF needs to specifically change the regional status of Montreal so its producers are eligible for the BPE regional licensing factor.

The CMF regional definition should be harmonized with the CRTC regional definition. The CRTC published a proposal for a harmonized regional definition in its March 30, 2009, report on official-language minority broadcasting (2008-12) which is quoted in Appendix E. We would amend that proposed regional definition for English-language programs to mirror the French-language definition as follows:

English-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) a) which are produced by an independent producer whose head office is located in Quebec, and the majority of whose productions are in English, or b) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Toronto or Vancouver. Programs in which the principal photography occurred on Vancouver Island will also be considered regionally-produced programs.

French-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) a) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Montréal, or b) which are produced by an independent producer whose head office is located outside of Quebec and the majority of whose productions are in French, will be considered regionally-produced programs.

In addition, CMF should establish a production fund designed for the official-language minority in Quebec along the lines of FLPOQ.

b) Should Vancouver be considered to be a region or should BC production outside of Vancouver be considered regional?

Vancouver and Toronto should be considered regions for French-language production. In English, see our proposed definition for regional production in our answer to a) above.

c) Does the regional factor weight of 20% require review? Should the factor weight remain the same or should it be adjusted upwards or downwards?

ELAN believes that the regional factor should not be decreased. Considering the general decline in English-language regional production, we would suggest that the regional factor should be increased to 25%. We would also suggest that the English-language license fee factor should be increased to at least 15%, if not 20%. This would mean a decrease in the historical factor to 20%, or even to 15%.

d) Should there be a condition established whereby broadcasters eligible for the regional credit are required to spend these funds on future regional productions?

Again, considering the overall decline in regional production, we would suggest that at least half of the unspent regional credit should be spent on future regional productions.

e) Is the regional factor within the BPEs the most effective vehicle for encouraging regional production in the long term?

We think this is the most effective vehicle, but it would seem to need strengthening. Therefore we suggest increasing the regional factor to 25% and spending at least half of the regional credit in future regional productions.

f) Is the PI the most effective vehicle for encouraging regional production in the long term?

The Production Incentive (PI) has advantages, but it is essentially a backwards-looking policy which is solving problems after they have already happened. For this reason, we would put more emphasis on improving the BPE formulation while keeping the PI in place to compensate for extreme fluctuations.

However, the PI does not address the needs of the official-language minority in Quebec and we need a different mechanism, such as a fund similar to FLPOQ.

g) For the CMF convergent stream, should both components of a project - television and digital - be regional in order to qualify as a regional project?

We would not suggest changes in the current policy which defines a regional project by the location of the production company and principal photography. These policies should be monitored over time and adjustments made if required.

3) The Official Language Minority Mandate

a) CRTC Mandate

The CMF is, for the foreseeable future, largely dedicated to funding television production. Therefore, its policies should be consistent with the *Broadcasting Act* as regulated by the CRTC. The CRTC has the following mandate under the *Broadcasting Act*, 1991:

“5. (2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

(a) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;

(b) takes into account regional needs and concern;”

The CRTC is also subject to the *Official Languages Act*. The CRTC stated in its *Communications Monitoring Report*, August, 2009:

“Pursuant to section 41 of the *Official Languages Act* (OLA), the Commission has the responsibility to take positive measures to enhance the vitality of the Anglophone and Francophone linguistic minority communities in Canada and support and assist their development as well as foster the full recognition and use of both English and French in Canadian society. In addition, because the Commission is a designated agency under section 41 of the OLA, it files a three-year plan to implement section 41 of the OLA and an annual achievement report. The Commission intends to continue its efforts, within the limits of its mandate, in promoting linguistic duality and in strengthening the vitality and fostering the development of the English- and French-language minority communities in Canada.” (p.13)

In his July 29, 2009, intervention to the CRTC re: PN 2009-411, Commissioner of Official Languages Graham Fraser added his thoughts on the application of the OLA to CRTC policy:

“During my previous interventions, I mentioned that Part VII of the *Official Languages Act* (OLA) applies to all activities and decisions of the CRTC, and I am encouraged by your efforts to address the interests and needs of the OLMCs. I still think that the requirements of section 41 of the *Official Languages Act*, which concerns linguistic minorities, are much more explicit than the requirements of the *Broadcasting Act*, and that the former should therefore be taken into consideration during the CRTC’s policy – and decision-making process.”

b) CMF Mandate

The Office of the Commissioner of Official Languages (OCOL) pointed out in its report *Shadows Over the Canadian Television Landscape- The Place of French on the Air and Production in a Minority Context* (January, 2009) that the Department of Canadian Heritage was responsible for ensuring that the objectives of the *Official Languages Act* (OLA) were fulfilled by the CTF.

“The Contribution Agreement between the Department of Canadian Heritage and the CTF is an effective means of ensuring that government funding is used for the development of culturally significant Canadian programming and other special projects.” (p.15)

Is the Contribution Agreement an effective means of ensuring that Government funding is used to support official-language minority production by the CMF?

The Agreement, titled “Contribution by the Department of Canadian Heritage to the Canada Media Fund”, and signed on August 18, 2009, stipulates that:

“ ... the CTF Program should, among other things, ... encourage production by both majority and minority official-language sectors.” (p.1)

In addition, the Agreement requires that:

“The Corporation [CMF] shall ensure that its communications with and services to the public are provided in both official languages in accordance with the spirit and intent of the *Official Languages Act*.” (p.15)

It would seem that the Contribution Agreement, which applies to both official-language minorities and all the operations of the CMF, whether funded by PCH or not, is indeed clear. The Canada Media Fund is subject to the *Official Languages Act*, and should act accordingly.

See Appendix A for Sections 41 and 42 of the *Official Languages Act*.

4) To Be a Region, or Not To Be a Region

Under its current regulations, regional programming as defined by the CRTC in its Public Notices 1999-97 and 1999-205 does not take into consideration the special status of English-language production in Quebec under Section 41 of the *Official Languages Act*.

See Appendix B for the CRTC 1999-97 and 1999-205 decisions on regional programming.

In response to this regional definition, the Commissioner of Official Languages issued a major policy statement in his November 20, 2008, response to CRTC PN 2008-12 – *Review of English- and French-language broadcasting services in English and French linguistic minority communities in Canada*.

The Commissioner pointed out that the regional definition being used by the CRTC was “problematic” because it confused its obligation to support regions with its obligation to support official language minorities. Specifically, OCOL said:

22. The concept of “region” is fundamentally ambiguous. In fact, the CRTC identifies as regional those French-language programs in which the principal photography took place in Canada at a distance of more than 150 km from Montreal, as well as those English-language programs in which the principal photography took place in Canada at a distance of more than 150 km from Montreal, Toronto or Vancouver.

23. Thus, regional production in French may include programs filmed regionally in Quebec, while English-language programs filmed in Montreal do not count as regional. As for English-language television, there are only two stations in Quebec other than the CBC: one that broadcasts Global network programs, and another that broadcasts CTV network programs. Both stations are located in Montreal. Neither Global nor CTV has a license condition dealing with minority community television production. Because they are not regional programs, some programs from Montreal production houses may not be considered priority programming by the CRTC even though these are English-language production houses in a minority setting.
24. In order to ensure regional reflection, some CRTC decisions state that the Commission expects licensees to broadcast programs that reflect all regions of Canada. It also expects producers working outside major production centres to have an opportunity to produce programs for broadcast. However, it does not clearly state whether these regionally reflective programs must come from regionally-located production houses, or even whether a certain percentage of these programs must be made by producers from minority English- or French-language communities.

See Appendix D for complete excerpt.

The CTF regional definition also ignores language as a factor in defining regions. The CTF definition is in section 2.1.1. of the BPE Guidelines:

“For the purposes of the BPE Stream “regions” are defined as any part of Canada more than 150 km by shortest reasonable roadway route from Montréal or Toronto. The CTF defines a Regional Production as follows:

- *Principal photography occurs in the regions, with suitable exceptions for documentaries; and*
- *The Applicant is based in the regions (with its head office situated in the regions); and*

** * **

Where the control and central decision makers in a project are located outside of the regions, the project is not considered to be a Regional Production.”

See Appendix C for the complete CTF definition of regional production.

The CTF defines English-language production in Vancouver as having regional status, but not Montreal. Since the CTF does not define region by language, we believe this definition is not acceptable under section 41 of the *Official Languages Act*.

The CRTC has realized this is a problem. On March 30th, 2009, the CRTC released its report on PN 2008-12, *Report to the Governor in Council on English- and French-language broadcasting services in English and French linguistic minority communities in Canada*. The CRTC said:

“The Commission has taken note of the need to review its definition of English-language regional productions to distinguish between the production of regional programs in the majority official language and the production of regional programs in the minority official language. Given that the broadcast and funding of Canadian programs are closely linked, the Commission also

recognizes the need to harmonize its definition of regionally-produced programs with that of the CTF.

Now that the government has made a decision on the governance of the CTF, the Commission intends to address with the Canada Media Fund at the appropriate time the possibility of establishing a common definition of regionally-produced programs. However, the Commission notes that all proposals to modify its definition of regionally-produced programs will be subject to a public process.” (p.10, emphasis in original text)

See Appendix E on regional programming in CRTC 2008-12.

Following this current policy review by the Canada Media Fund, ELAN expects the CRTC will review its definition of English-language regional production and make the necessary changes to conform to the intent of the *OLA*. Therefore, the CMF definition of regional production must be consistent with the *OLA* or it will be unacceptable to the CRTC and a harmonized regional definition will be impossible.

5) CMF and the Official-language Minority in Quebec

Although the CTF is not a Federal institution which is directly subject to the *Official Languages Act*, CTF is subject to the “spirit and intent” of the *Official Languages Act* through the Contribution Agreement and its legal relationship with PCH. As we stated above, CTF is also indirectly subject to the *OLA* through the regulatory regime of the CRTC.

Secondly, under the Contribution Agreement, CTF should “encourage production” by “minority official-language sectors”. It is doing that for the French-language minority through a Special Initiatives stream for “French-language Production Outside Quebec” (FLPOQ). The FLPOQ fund was established under the authority of the Contribution Agreement and dedicates a minimum of 10% of the CTF allocation for all French-language projects to the official-language minority outside Quebec.

On the English-language side, CTF has established a Production Incentive (PI) program to support regional production which has declined from 42% of the English envelope in 2004-5 to 26% in 2008-9. The PI program is designed to support regional production that falls below an average baseline by more than 20% in one year. Thus, Atlantic and Quebec regions received special PI funding last year while Atlantic and B.C. regions are receiving PI funding this year. The PI program may help deal with regional discrepancies, but it is not designed to support official-language minority production.

English-language minority production in Quebec is especially vulnerable to fluctuations since it doesn’t have a dedicated fund along the lines of FLPOQ. For example, Quebec is not eligible for the regional PI fund this year though its percentage of CTF funding remains at roughly the same level. This demonstrates the inability of a regional support program to solve an OLMC problem.

Furthermore, CAVCO-certified English-language production in Quebec has seen an over-all decline of roughly 40% since the CRTC's 1999 *TV Policy* eliminated minimum expenditure requirements for the off-air broadcasters. For more information, see *Going...Going...Gone: The Decline of English-language Production in Quebec, 1996-7 to 2006-7*, June, 2008, Magnetic North Associates for ACTRA Montreal and DGC Quebec Council.

Although there is no distinction between the rights of the English and French official-language minorities in the *Official Languages Act*, we can see that the English-language minority in Quebec is not supported by CTF with specific programs such as FLPOQ. Other regional programs that exist to support English-language production in Quebec are inconsistent.

For example, on the one hand the English-language minority in Quebec is defined as a region for the Production Incentive, and CTF suggests this fulfills its obligations to this region. But on the other hand, English-language production in Montreal is defined as a centre and not a region for the BPE program, and Montreal producers are unable to benefit from the 20% regional licensing factor.

As we can see, CTF does not have a consistent or coherent policy for the official-language minority in Quebec. Thus, it is not fulfilling the Contribution Agreement to provide its services, e.g. production funding, to both minorities in programs designed to deal with their needs. Put simply, CTF is failing the English-language minority in Quebec through its neglect of the "spirit and intent" of the *OLA*.

The Commissioner of Official Languages (OCOL) identified this problem in its *Shadows Report*:

"The CTF has no permanent funding stream for English-language production in Quebec. English-language producers in the province received 8% of CTF funding in 2007-8. This represents a 31% decline over the previous five years (12%)." (p.15)

In this Report, OCOL made two recommendations that were directed to the Department of Canadian Heritage about the Canadian Television Fund. In Recommendation 1, OCOL said:

"The Commissioner of Official Languages recommends that the Department of Canadian Heritage, working with professional associations and federal departments and agencies that are responsible for television production, strengthen their coordinated strategy in order to better support the production and broadcasting of television products from official language minority communities and overcome the barriers that have been identified."

ELAN supports this recommendation, and hopes that the Department undertakes such a coordinated strategy with the relevant stakeholders to improve OLMC television production, especially in Quebec.

And in Recommendation 6, OCOL said:

“The Commissioner of Official Languages recommends that the Department of Canadian Heritage ensure there are members who understand the unique issues of production in a minority context on the Canadian Television Fund’s board of directors.”

It is not enough that Board members of the CMF understand these issues. CMF needs to accept the spirit and intent of the OLA under the Contribution Agreement, and that means establishing policies specifically designed for the official-language minority in Quebec.

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Appendix A

Official Languages Act

1985, c. 31 (4th Supp.)

O-3.01

An Act respecting the status and use of the official languages of Canada

NOTE [1988, c. 38, assented to 28th July, 1988]

PART VII

ADVANCEMENT OF ENGLISH AND FRENCH

[Government policy](#)

41. (1) The Government of Canada is committed to

- (a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and
- (b) fostering the full recognition and use of both English and French in Canadian society.

[Duty of federal institutions](#)

(2) Every federal institution has the duty to ensure that positive measures are taken for the implementation of the commitments under subsection (1). For greater certainty, this implementation shall be carried out while respecting the jurisdiction and powers of the provinces.

[Regulations](#)

(3) The Governor in Council may make regulations in respect of federal institutions, other than the Senate, House of Commons, Library of Parliament, office of the Senate Ethics Officer or office of the Conflict of Interest and Ethics Commissioner, prescribing the manner in which any duties of those institutions under this Part are to be carried out.

1985, c. 31 (4th Supp.), s. 41; 2005, c. 41, s. 1; 2006, c. 9, s. 23.

Coordination

42. The Minister of Canadian Heritage, in consultation with other ministers of the Crown, shall encourage and promote a coordinated approach to the implementation by federal institutions of the commitments set out in section 41.

R.S., 1985, c. 31 (4th Supp.), s. 42; 1995, c. 11, s. 27.

Appendix B

CRTC 1999-97

BUILDING ON SUCCESS - A POLICY FRAMEWORK FOR CANADIAN TELEVISION

Priority local and regional programming

62. Canadian local or regional productions in all categories other than News (Category 1), Analysis and interpretation (Category 2), Reporting and actualities (Category 3), and Sports (Category 6) will qualify as priority programs for the purpose of meeting regulatory requirements applicable to peak viewing periods for television stations that are part of the largest multi-station ownership groups.

63. All licensees will be required to demonstrate, at licensing, or in their licence renewal applications, how they propose to meet the demands and reflect the interests of their local audiences. As in the past, if the Commission determines that licensees have failed to respond to legitimate community needs, appropriate action including the imposition of specific conditions of licence may be taken on a case-by-case basis.

64. The Commission notes that the amount of non-news local programming has declined over the past ten years. There appear to be two major reasons for the reduction. First, as a result of the regulatory emphasis on expensive, peak time entertainment programs, the largest broadcasters have had fewer resources to devote to local programs. Second, the consolidation of the ownership of local stations in the hands of a few corporate groups has encouraged management to effect operational efficiencies that have reduced resources at the local station level. In the Commission's view, an increase in the quality and quantity of the programming that reflects legitimate community interests can best be achieved by establishing incentives to provide it during peak viewing periods.

CRTC 1999-205

In Public Notice CRTC 1999-205, the CRTC defined new types of priority programs to implement its TV Policy (CRTC 1999-97).

Regionally-produced programs

5. The Commission received several interventions that were critical of the proposed definition of a regionally produced program. Parties from British Columbia, as well as others, urged the Commission to expand the definition of Canadian regionally produced programs to include productions from Vancouver. It was argued that Vancouver is not a production centre equivalent to either Toronto or Montréal due to the relatively low level of domestic production in

Vancouver. Parties also pointed out that virtually all of Canada's broadcasting networks, specialty, pay and pay-per-view services are headquartered in Toronto and Montréal, a fact which places producers in other areas of the country, including Vancouver, at a distinct disadvantage.

6. The definition of regionally produced programs is required for the purpose of determining which programs will qualify in respect of a condition of licence relating to priority programs. The Commission notes that drama, music/dance, variety programs, long-form documentaries and Canadian entertainment magazine programs will qualify as priority regardless of where they are produced. The policy of granting priority status to regionally produced programs in other categories, such as religion, education, game shows and general entertainment and human interest, is intended as an incentive for smaller broadcasters and producers to stimulate production activity in parts of Canada where there is very little of any kind of television production.

7. Figures provided by the Government of British Columbia indicate that the value of domestic production in that province in 1997 totalled \$235.8 million. Even though this only represents 36% of total production in Vancouver in that year, it is still significantly greater than the total production levels in each of the other provinces or territories that year, except for Ontario and Quebec. In light of this, the Commission will maintain its policy of excluding Vancouver and the surrounding mainland, from the definition of an area of regional production.

8. Parties also argued that the 150-kilometre zone specified in the definition should be decreased so that more productions would qualify as regionally produced programs. Suggestions ranged from shortening the distance to 125 kilometres to that of simply including all areas outside the central metropolitan areas of Toronto, Montréal or Vancouver.

9. The 150-kilometre distance is based on the rationale that a regional production area should be beyond a reasonable drive from a metropolitan centre. The Commission considers that this distance should be maintained to ensure the authenticity of regional productions.

10. The Commission, however, agrees with parties who argued that the new definition should recognize as qualifying for regional status, programs produced on Vancouver Island and French-language programs produced in all areas outside of Montréal. In the former case, the Commission agrees, as one intervener pointed out, that this would be consistent with other CRTC policies that have recognized the cultural differences between Vancouver and Vancouver Island. In the latter case, the Commission recognizes the obstacles faced by French-language producers in getting programs produced outside of Quebec and considers that this incentive may encourage more French-language production in other parts of Canada.

Canadian regionally-produced programs

English-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Montréal, Toronto or Vancouver. Programs in which the

principal photography occurred on Vancouver Island will also be considered regionally produced programs.

French-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Montréal.

Programs of News (Category 1), Analysis & Interpretation (Category 2), Reporting & Actualities (Category 3) and Sports (Category 6) are excluded.

Where regionally-produced programs are logged, the program class must be "REG".

Appendix C

Canadian Television Fund

The definition of Regional Production is at section 2.1.1 of the BPE Guidelines, which can be found here: <http://www.ctf-fct.ca/assets/bpe0809.pdf>

The definition is as follows:

For the purposes of the BPE Stream “regions” are defined as any part of Canada more than 150 km by shortest reasonable roadway route from Montréal or Toronto. The CTF defines a Regional Production as follows:

- *Principal photography occurs in the regions, with suitable exceptions for documentaries; and*
- *The Applicant is based in the regions (with its head office situated in the regions); and*
 - *Exercises full control of the creative, artistic, technical and financial aspects of the project, or, in the case of a regional/non-regional co-production, the regional Applicant has such control in proportion to its copyright ownership;*
 - *In the case of a regional/non-regional co-production, the regional Applicant owns at least 51% of the copyright in the production;*
 - *In the case of a regional/non-regional co-production, the regional Applicant shares equitably in fees payable to producers and corporate overhead;*
 - *Initially owns and controls the distribution rights to the project and retains an on-going financial interest in the project or, in the case of a regional/non-regional co-production, the markets and potential revenues are shared equitably in proportion to the financial participation of each co-producer; and*
 - *Has meaningfully participated in the production’s development.*

Where the control and central decision makers in a project are located outside of the regions, the project is not considered to be a Regional Production.

Appendix D

Graham Fraser, Commissioner of Official Languages, made a major policy statement in his response to Broadcasting Public Notice CRTC 2008-12 – Review of English- and French-language broadcasting services in English and French linguistic minority communities in Canada, November 20, 2008

Television production and the definition of “regional reflection”

25. Regional television production takes place within an environment that is regulated and supervised by the CRTC with a view to implementing the *Broadcasting Policy for Canada*. However, the CRTC has no policy on production in minority communities; it prefers to operate on a case-by-case basis when the licenses in question are renewed. The obligations imposed by the CRTC are limited to the “reflection” of Canada’s regions in television programs. This approach is problematic in several ways.
26. The concept of “region” is fundamentally ambiguous. In fact, the CRTC identifies as regional those French-language programs in which the principal photography took place in Canada at a distance of more than 150 km from Montreal, as well as those English-language programs in which the principal photography took place in Canada at a distance of more than 150 km from Montreal, Toronto or Vancouver.
27. Thus, regional production in French may include programs filmed regionally in Quebec, while English-language programs filmed in Montreal do not count as regional. As for English-language television, there are only two stations in Quebec other than the CBC: one that broadcasts Global network programs, and another that broadcasts CTV network programs. Both stations are located in Montreal. Neither Global nor CTV has a license condition dealing with minority community television production. Because they are not regional programs, some programs from Montreal production houses may not be considered priority programming by the CRTC even though these are English-language production houses in a minority setting.
28. In order to ensure regional reflection, some CRTC decisions state that the Commission expects licensees to broadcast programs that reflect all regions of Canada. It also expects producers working outside major production centres to have an opportunity to produce programs for broadcast. However, it does not clearly state whether these regionally reflective programs must come from regionally-located production houses, or even whether a certain percentage of these programs must be made by producers from minority English- or French-language communities.
29. Finally, since the CRTC’s expectations are generally not included in broadcasting license conditions, broadcasters have no real obligation to comply, either financially or in terms of their broadcasting activity.
30. **The CRTC must therefore clarify the notion of “regional reflection” by developing a specific policy on this matter. The new policy should clearly distinguish between regional production in the majority official language and regional production in the minority official language.**

Moreover, when individual licenses are renewed, the CRTC should insist that license conditions are obligations rather than mere expectations.

Appendix E

CRTC 2008-12

The CRTC report on PN 2008-12, *Report to the Governor in Council on English- and French-language broadcasting services in English and French linguistic minority communities in Canada*, was released March 30, 2009. The section on regionally-produced programs by official language minorities appeared on p.9-10 and is quoted in full below.

“The definition of regionally-produced programs

Intervenors noted that the definitions of the term "regionally-produced program" used by the Commission and the Canadian Television Fund (CTF) are not the same. As set out by the Commission in Public Notice 1999-205, regionally-produced Canadian programs are both English-language programs in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Montréal, Toronto or Vancouver and French-language programs in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Montréal. However, the CTF defines regionally-produced programs as those produced in any part of Canada more than 150 kilometres by shortest reasonable route from Montréal or Toronto.

According to the Commission's definition, French-language programs from Toronto or Vancouver are regional productions, whereas English-language programs from Montréal are not considered to be regional productions. The CTF considers neither French-language programs from Toronto nor English-language programs from Montréal to be regionally-produced programs.

On the one hand, anglophone groups in Quebec would like the same definition to apply to their linguistic minority community so that English-language programs produced in Montréal may be considered regional productions. In *Shadows over the Canadian Television Landscape*, the Commissioner of Official Languages stated that the clarification of the definition of regionally-produced programs "should make a clear distinction between producing regional programs in the majority official language and producing regional programs in the minority official language." On the other hand, according to the intervenors, it is essential that changes to the Commission's definition of regionally-produced programs be made and be accompanied by changes to the CTF's definition so that regional producers can benefit fully from the fund, as the funding and broadcast of a program are closely linked.

At the hearing, the Commission asked the intervenors to propose a definition of regionally-produced programs. In their final interventions, the Commissioner of Official Languages, ELAN and the APFC jointly filed the following definition for adoption by the Commission and the CTF to account for productions in linguistic minority environments:

English-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) a) which are produced by an independent producer whose head office is located in Quebec, or b) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Toronto or Vancouver. Programs in which the principal photography occurred on Vancouver Island will also be considered regionally-produced programs.

French-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) a) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Montréal, or b) which are produced by an independent producer whose head office is located outside of Quebec and the majority of whose productions are in French, will be considered regionally-produced programs.

The Commission has taken note of the need to review its definition of English-language regional productions to distinguish between the production of regional programs in the majority official language and the production of regional programs in the minority official language. Given that the broadcast and funding of Canadian programs are closely linked, the Commission also recognizes the need to harmonize its definition of regionally-produced programs with that of the CTF.

Now that the government has made a decision on the governance of the CTF, the Commission intends to address with the Canada Media Fund at the appropriate time the possibility of establishing a common definition of regionally-produced programs. However, the Commission notes that all proposals to modify its definition of regionally-produced programs will be subject to a public process.”