
ENGLISH-LANGUAGE**ARTS**NETWORK

Notes for a Speech from ELAN to the CRTC
at Hearing 2009-113
May 7, 2009

Chairman von Finckenstein and members of the panel, I want to thank you for giving ELAN an opportunity to speak at this important hearing.

My name is Kirwan Cox, and I am here representing the English-language Arts Network of Quebec as a member of the board of directors. ELAN has over 1,700 members including nearly 200 in the film and television industry in Quebec.

We have heard these past ten days from the broadcasters that their business model is broken. They are right, it is broken, and they are largely responsible for breaking it.

Of course, they cannot be blamed for the fragmentation of their audience which was an inevitable result of technological transformation, just as television transformed the film industry half a century ago. Nor can they be blamed for the recession which has ravaged advertising-based businesses.

They probably shouldn't be blamed for the branch plant economy, colonial mentality, cultural inferiority complex, American spillover media, or whatever it is that causes advertisers to spend only \$100 per capita on TV ads in Canada versus \$211 in the U.S. (Canadian dollars in 2007).

However, the English-language broadcasters can be blamed for profligate spending in the Hollywood auction over the past ten years. Minimum Cancon expenditure rules once controlled over-spending, but the CRTC eliminated them in its 1999 TV policy. As a result of this decision, English off-air broadcaster spending on Cancon declined from about 53% of total program dollars to roughly 38% today. At this rate, they will soon be spending only 33% on Canadian programming even if the recession temporarily slows this upward trend in foreign purchases.

We estimate that this decline has meant a loss of \$800 million in Canadian license fees over the last decade representing about \$3.4 billion in lost programming. That is over \$500 million in lost production within Quebec. We have actually seen CAVCO certified English-Quebec production fall by one third during this decade.

How can these suddenly bankrupt broadcasters afford to increase spending on American programming by hundreds of millions of dollars, paying among the highest per-capita license fees in the world?

They are cross-subsidizing these costs from other sources of revenue. One source is the “simultaneous substitution” rule which provides broadcasters with a benefit of about \$200 million in ad revenues. Unfortunately, “simulcasting” has a pernicious and unintended side-effect. This regulation pushes Cancon to the fringes of peak viewing time on private English-language networks, and that reduces audiences for Canadian programs.

Another reason broadcasters can afford to spend wildly in Hollywood is the taxpayer support for their Canadian programming. Tax credits, CTF, and other public sources pay for about 40% of their independent production. They only have to pay 23% of the total budget, and that is the lowest average license fee among English-language broadcasters in the world. English-Canadian commercial broadcasters then spend these tax-subsidized dollars in Los Angeles, not in Canada.

As Chairman von Finckenstein said to the CFTPA on February 19th this year:

“The *Broadcasting Act* calls for no less than the predominant use of Canadian creative and other resources in the creation and presentation of programming, so this is a matter of concern for us. At first blush, we are inclined to introduce a condition of licence for English-language broadcasters requiring a 1-to-1 ratio between Canadian and non-Canadian programming expenditures.”

At first, second, or third blush, we couldn’t agree more. We support the 1:1 ratio condition of license which would help save the broadcasters from themselves and their broken business model. It would reduce their overall expenditure on American programs without reducing access to that programming. It would increase the profit these broadcasters derive from foreign programs by capping their cost. This would help the private broadcasters balance their books just as the salary cap on hockey players helps the NHL team owners survive their self-destructive tendency to over-pay top talent.

We also believe that an alternative to the current simultaneous substitution rule is needed. Perhaps a “non-simultaneous substitution” rule should be tried. This would substitute Canadian ads at any time the American program is broadcast within the copyright period owned by the Canadian broadcaster.

Some people seem to think the Local Programming Improvement Fund (LPIF) is the “broadcaster bailout fund”. If so, then the end result will be more money leaving Canada to buy the same American programs at even higher prices.

Instead, the LPIF needs to remain focused on local programming, but re-designed to also support official language minority production.

Let me start with the frequently forgotten quarter-million Anglophones who live “off-island” in small and isolated communities in an area half the size of Europe. These communities are so small that they cannot support off-air local broadcasters who would benefit from the LPIF as it is currently proposed.

We get our television from CBC rebroadcast transmitters, or satellite and cable services. We may be well served in American English, but under-served in local news or regional reflection. We know the local problems of Los Angeles and get the news from Burlington, Plattsburgh, and Montreal. These are cities which may be more than one day’s drive away providing the only local news available in English.

BDUs in Quebec spend \$46 million on community channels and \$25.6 million on local expression. Even with these expenditures, their profit margin is 30% PBIT. Yet, these community channels and regional expression do not exist in English. While ninety per cent of Quebec Anglophones are served by Videotron, Videotron has no English-language local services, not even in Montreal.

On the other hand, Francophones in communities outside of Quebec have TFO, the French-language Ontario educational channel. TFO has a programming budget of \$17 million and is part of TVOntario with a total budget of \$81 million. Télé-Québec has a total budget of \$76 million and programming costs of \$40 million. However, there is no English-language educational broadcaster in Quebec. It is unrealistic to think there ever will be an English Télé-Québec equivalent to TFO.

Yet, increasingly, a broadcast trigger is needed to arrange production funding, and an educational channel is extremely important for official language minority production. For example, Francophone producers outside Quebec have received 40% of their license fees for all their production over the last 5 years from TFO. SRC provided 36% and ARTV 11%.

Very few English-language productions are supported by English-language broadcasters in Quebec. At SODEC about half of French projects are supported by Télé-Québec and SRC.

The official language minority in Quebec needs an equivalent to Télé-Québec or TFO. We think the LPIF offers a solution to this problem.

First, the CBC should be eligible for LPIF funding. The public broadcaster is essential to official language minority communities, and we hope its budget will be increased so it can again serve these communities as it once did.

Second, Montreal broadcasters should be eligible for LPIF funding because its Anglophone population is much less than one million. According to the 2006 census, the English-speaking population of greater Montreal is 700,000 defined as “first official language spoken”. The CRTC’s own Brynaert report uses this definition. The Commissioner of Official Languages uses either “first official language spoken” or “language spoken at home” (337,000). The Quebec Government uses the definition “mother tongue” (212,000).

The Anglophone population of greater Montreal is well under one million by any of these standards. The only measurement where there might be a million English-speakers is “knowledge of” English which includes many thousands of Francophones. That is not a definition used by any other agency or Government, and it should not be used by CRTC.

The Commission may say it needs to consider the size of Montreal as a broadcast market, not a linguistic population. Using BBM data for TV viewing hours per week (in the expanded broadcast markets), we see that French Montreal is the second largest TV market with 96 million viewing hours/week. Next is Vancouver (62m), then Edmonton (30m), Calgary (28m), Quebec City (24m), Kitchener (19m), and Winnipeg (19m). English Montreal is the 9th largest market with 18 million hours, and English Ottawa/Gatineau is 10th largest (18m).

Your LPIF decision (CRTC 2008-100) makes Quebec City, Kitchener, and Winnipeg eligible for funding, and eliminates the smaller TV markets in English Montreal and English Ottawa/Gatineau. There seems to be a double standard used to eliminate these markets, and we ask that LPIF eligibility rules be corrected.

Third, we ask that the CRTC make documentaries a priority for LPIF along with news and public affairs. This means assuring the eligibility of independent production which would make it easier to reflect smaller communities outside the reach of an off-air broadcaster. While you are making

these changes, please revise your 15 genre categories so there is a documentary category that is clearly separate from reality TV and human interest programs.

Finally, we ask that the official language minority (OLMC) in Quebec be given a regional channel equivalent to TFO and funded largely by the LPIF.

We envision a Category 1 digital service costing about \$20 million and producing a significant amount of original local programming by independent producers. It would be available throughout the province via cable or satellite.

To fund it, we would suggest that the LPIF be increased to 2% of BDU revenues, raising about \$140 million per year. The CRTC should then include an “official language minority envelope” within the LPIF that would fund both English and French minority productions in TV, radio, or new media. Francophones outside Quebec might prefer funding for new independent productions on TFO rather than a new channel, and this OLMC envelope should be flexible enough to support that.

Anglophones inside Quebec are badly underserved in local programming. We need a regional Quebec TV channel with a program budget big enough to make a difference to all our underserved communities. It is time that we saw ourselves on television.

Thank you.

Kirwan Cox

ELAN board member