THE SENATE OF CANADA

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THE CHALLENGES AHEAD FOR THE CANADIAN TELEVISION FUND

Standing Senate Committee
on
Transport and Communications

Chair
The Honourable Lise Bacon

Deputy Chair
The Honourable David Tkachuk

May 2007

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Extract from the *Journals of the Senate* of Thursday, February 8, 2007:

Resuming debate on the motion of the Honourable Senator Bacon, seconded by the Honourable Senator Milne:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report on the objectives, operation and governance of the Canadian Television Fund, and

That the Committee submit its final report no later than June 30, 2007.

The question being put on the motion, it was adopted.

Paul C. Bélisle
Clerk of the Senate

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INTRODUCTION

In the last five years, stakeholders have voiced concerns about the governance and operations of the Canadian Television Fund (CTF). According to some private contributors, the Board of the CTF did not much serious consideration to these concerns.

On 20 December 2006, Jim Shaw, the CEO of Shaw Communications, wrote to the Chair of the Canadian Television Fund (CTF) and announced that it would be withholding Shaw's contributions to the CTF. On 23 January 2007, Pierre Karl Péladeau, the President and CEO of Quebecor Inc., wrote to the CTF that Vidéotron, a wholly owned subsidiary of Quebecor Media Inc., was suspending its monthly contributions.

Shaw and Vidéotron cited problems with the CTF. In broad terms, Shaw was most concerned with the lack of accountability by the CTF, while Vidéotron was most concerned with the possible inability of the CTF to recognize or cope with the demands of new media. Both objected strongly to the 37% of CTF spending specifically earmarked for the CBC/Radio-Canada.

The Canadian Television Fund (CTF) provides payments to independent producers and is, after tax credits, the most important support measure for Canadian television production. The CTF estimated the monthly contributions by Shaw and Vidéotron at about $6 million, with their annual contributions amounting to about 30% of the CTF's budget. Because of the timing of the withdrawals of contributions to the CTF and the timetable for the financing of television production, the actions by Shaw and Vidéotron threatened to destabilize the industry.

Before examining the concerns associated with the recent actions, it is useful to provide some background on the CTF.

BACKGROUND ON THE CANADIAN TELEVISION FUND

In 1983, the federal government released the statement "Towards a New National Broadcasting Policy." The policy was aimed at making the Canadian broadcasting system more competitive in the face of new technologies, and included the establishment of the Broadcast Program Development Fund.

In 1994, the Cable Production Fund was established as a private, non-profit corporation, supported entirely by contributions from Broadcast Distribution Undertakings (BDUs). The contributions went to the television fund in return for regulatory concessions worth hundreds of millions of dollars.(1)(2) In 1996, the Minister of Canadian Heritage added approximately $100 million per year in additional funding and established a private/public partnership of the television fund and Telefilm Canada. At this time, oversight of the fund passed from the CRTC to the Department of Canadian Heritage. Since 1996, the fund has operated under a series of Contribution Agreements with the government, represented by the Department of Canadian Heritage.

The Contribution Agreement provides the overriding policy directions that govern CTF operations:

- support the creation of high quality, distinctively Canadian television programming in drama, documentary, children's and youth, variety and performing arts programming;
- allocate one-third of its resources to French language programming and two-thirds to English language programming;
- support the production of Aboriginal language programming;
- support the production of programming produced by francophone producers based outside Quebec;

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(1) CRTC, Public Notice 1993-74, 3 June 1993.

(2) In 1986, the CRTC approved a cable rate increase to finance capital expenditure (CAPEX) by the cable companies. In 1991, the Commission decided to phase out the CAPEX rate increase over a five-year period. Cable rates would fall and subscribers see lower monthly rates. Subsequently, as part of a Structural Review by the CRTC in 1993, the cable companies suggested (and the CRTC agreed) that the CAPEX increase would not be reversed. Half of the revenues from the non-reversed CAPEX increase would be contributed to the newly established cable production fund, which began in 1994, and the cable companies were permitted to retain the remainder of these revenues.

- allocate 37% of its annual resources to programs licensed by the CBC/SRC;
- spend a minimum percentage of its revenues on the development of television programming;
- ensure that the programming it supports is produced in regions across the country in an equitable manner;
- support language versioning; and
- develop a mechanism that enhances access to the CTF by programs supported by educational broadcasters.

There are two main criticisms of the Agreement. The first is that there are too many policy directions, so the policy pursued by the CTF can be confusing and ambiguous. The second is that the Agreement is between the CTF and the Department of Canadian Heritage, and does not involve the private-sector contributors to the fund who provide in total more than half of the CTF's funds.

In 2005, the Auditor General examined government support to cultural industries. The Report described the governance of the Canadian Television Fund as "complex" and the administration of its programs as "cumbersome." Officials from the CTF appeared before this committee and argued that the governance of the fund was in the process of change when examined, so her findings were based on a snapshot now out of date. The CTF Board is still large, with 20 directors.

In its appearance before this committee, executives of the Canadian Television Fund described its work:

> The Canadian Television Fund is the largest funder of television production in Canada after the tax credits. In 2005-2006, the CTF invested more than $249 million in Canadian production, creating 2,276 hours of quality new programming. In the past 10 years, the CTF has supported over 4,000 projects, contributed $2.2 billion in funding to the production of Canadian television, which has triggered $7.4 billion in production budgets.

The actions by Shaw and Vidéotron highlighted two concerns. The first was what some termed the "financial crisis" of the CTF. The second was the need to ensure the efficient functioning of the CTF.

THE "FINANCIAL CRISIS" OF THE CTF

The CTF disburses about $250 million, so the projected loss of 30% of its budget would have a large impact on the production of Canadian television shows. Some questioned the legality of the withdrawals. Section 29 of CRTC regulations (Broadcasting Distribution Regulations) requires cable companies to pay 5% of their gross revenues (less any contributions to community television of up to 2% of gross revenues). Section 44 of the regulations requires satellite distribution undertakings (DTHs) to make a contribution to qualifying production funds, in each broadcast year, of no less than 5% of their gross revenues derived from broadcasting activities during that same year. Eighty percent of these contributions must go to the CTF.

Distributors, by the conditions of licence, must comply with the regulations. But the regulations call for payments over the broadcasting fiscal year ending 31 August. It is CRTC Circular No. 426 that calls for monthly payments, and it is the monthly payments that have been stopped by the two distributors. The circular is not legally binding, so in fact the two distributors (and any others) could withhold their CTF contributions until the end of August before violating their conditions of licence.

During its appearance before this committee, Shaw's representatives stressed the legality of its actions, in withholding *monthly* CTF contributions. It was, however, flouting the spirit of the law. Lawyers and judges must follow the letter, not the spirit, of the law; but business executives have developed customary practices to make their work more efficient. It would certainly not improve business efficiency if customary or traditional practices were discontinued and replaced only by practices covered by legally binding contracts.

When interested parties understood that the actions of Shaw and Vidéotron were within the letter of the law, the CTF and several independent producers called on the CRTC to make the "customary" or "traditional" monthly payments a requirement in the regulations and thus legally binding. Changing regulations takes time,[(3)] and to date that has not been done. Nonetheless, the Chair of the CRTC announced that he was prepared to begin the process.

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(3) Marlisa Tiedemann, *Selected Issues Relating to the Requirement for Licensees to Contribute to "Local Expression, Canadian Programming and Community Television" in Accordance with the Broadcasting Distribution Regulations*, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 15 February 2007.

On 20 February 2007, the day that our committee began its hearings on the topic, the CRTC announced that it had created a Task Force to examine the Canadian Television Fund. The following is the announced mandate of the Task Force:

> To investigate issues related to the funding of Canadian programming and the governance of the CTF. Specific issues will include:
>
> - The most effective use of the required contributions from BDUs;
> - The most appropriate size and structure of the CTF Board; and
> - The most appropriate mechanisms to deal with real or perceived conflicts of interest at the CTF (CRTC, News Release, The CRTC creates a Task Force on the Canadian Television Fund, 20 February 2007).

By that time, both Vidéotron and Shaw had resumed their monthly contributions to the CTF.

CONCERNS OF SHAW AND VIDÉOTRON

The following lists the concerns raised by Shaw and Quebecor in their letters to the CTF, in press releases and during committee hearings:

1. board is too large (20 directors);
2. under-representation by distributors on Board;
3. private-sector contributors do not shape the Contribution Agreement;
4. possible inflexibilities (and paper burden);
5. possible conflicts of interest;
6. funds going to support programs with relatively small audiences;
7. funds going to the CBC/Radio-Canada; and
8. possible lack of support for new media and new technologies.

Although neither Shaw nor Vidéotron gave the CTF advanced warning about the withdrawal of their monthly contributions, the concerns cited are long-standing and have been raised numerous times in the past. As Mr. Ken Stein, Senior Vice-President, Corporate and Regulatory Affairs, Shaw Communications, Inc explained:

> We have been trying to get attention for five years. We looked at the rules and the law; we consulted all our lawyers and asked what we can do to shake this up a bit. The answer was you do not have to pay this monthly, so we withheld a payment and we got attention and focus on the issue. (28 March 2007)

A. CTF Board Issues

The first five concerns on the list deal with the governance and operation of the CTF Board, and raise issues of efficiency, fairness and transparency. These issues are certainly important, but evaluating them properly would involve time-consuming and detailed analysis that committee has not undertaken. The CRTC has the resources and expertise for the job, and its Task Force should address these concerns.

The fifth concern, possible conflicts of interest, also touches on the efficient running of a production fund and will also be studied by the CRTC Task Force. In 2005, the Report of the Auditor General of Canada noted that "… the composition of the CTF Board is a potential source of conflict of interest." Members of the CTF Board appeared before the committee and argued that measures have been put in place to address possible conflicts.

An official from Shaw who appeared before the committee disagreed, saying:

> … a board running a fund should not have beneficiaries on the board. A board running a fund that is building an industry should be investment focused. It should be focused on how to build this industry. As such, the representatives should be representative of the consumers and the distributors who make the contributions to the fund. It should not have beneficiaries on the board … . (28 March 2007)

The CBC/Radio-Canada seems to agree with this position, while, in general, supporting the CTF. Mr. Sylvain Lafrance emphasized the need for independence on the CTF Board:

> Another key aspect of the Canadian Television Fund is its independence. Since its creation, the CTF has been required to act

> independently of the overriding financial interests of any particular stakeholder, group or corporate interest. We believe this independence is vital to the continued success of the Fund. In fact **we believe the Fund could become even more effective if greater independence was established at the Board level**. (27 March 2007, emphasis added)

This is an example of problems that have arisen from the lack of transparency on the operations of the CTF. Mr. Lafrance noted that the issue was to be addressed by the CRTC review.

One important finding of this committee's study is that transparency is a big problem with the CTF. The CTF now spends annually a quarter of a billion dollars, of which the government provides over $100 million, and the CBC/Radio-Canada, by the Contribution Agreement, receives 37% of CTF spending. Canadians, as taxpayers and subscribers to cable and satellite services, should have a better idea about how their money is being used.

As a start, the government and the CTF should reconcile the goal of supporting high quality programming – using, presumably, a competitive process that picks the best possible shows from all applicants – with the system of fixed envelopes for some broadcasters, such as the 37% going to the CBC/Radio-Canada.

B. The Audience for CTF-financed Programs

Mr. Ken Stein from Shaw Communications appeared before this committee and termed the tens of millions of dollars going from Shaw to the CTF "a terrible waste of a Canadian asset." His colleague Cynthia Rathwell, Vice-President, Regulatory Affairs, also questioned the value of CTF spending:

> … We have heard repeatedly that funding has generated 23,000 hours of Canadian programming. Beyond repeating the statistics and noting four or five programs it supports, the fund does not explain how or even whether it measures its success in supporting high quality Canadian programming. Surely Canadians deserve to know whether $2.5 billion of their money has been spent a way that gives them value. (28 March 2007)

Arguments that CTF-funded programs are not successful should be considered with respect to the size and nature of the television market in Canada and with respect to the performance in the French market.

1. The Size and Nature of the Canadian Television Market

Canada, with a population of over 32 million, is a relatively small television market. Advertising revenue or subscriber revenue may be insufficient in this market to cover the cost of high quality television drama. This pessimistic conclusion is compounded by two factors. The first is that Canada has, in effect, two television systems, French and English, catering to its two official languages. According to the 2001 census, about 60% of Canadians have English as a mother tongue; about 23% have French; and the remaining 17% have as their mother tongue various other languages, including aboriginal languages.

A second important factor is that Canada is next to the largest television producer in the world, the United States. There, because of its huge market, advertising and subscriber revenue can readily cover the cost of expensive television programs. These programs can then be licensed in other countries such as Canada for fees well below cost. To give a rough idea of what Canadian television producers are up against: Canada has 12.3 million households; HBO, a pay channel known for its high quality drama, has 30 million subscribers. The budget for an hour of HBO drama may be three or more times the budget for a typical hour of Canadian drama.

Successes in television are rare. American television producers have a very high failure rate, and shows die at the pilot stage or are pulled after only a few episodes are broadcast. On the other hand, the rare successes make huge amounts of money and are shown around the world. Comparing CTF-funded programs to the American hits may be an unfair comparison.

High-cost, well-marketed U.S. television programs broadcast in prime time on Canadian channels do attract large audiences here. Economic considerations bias Canadian broadcasters toward U.S. programs. This does not mean there are not certain successful domestic programs, capturing an audience in Canada and internationally.

For example, an official with the CTF was able to point to some Canadian successes:

> … *Degrassi: The Next Generation*, is a cult hit in Canada and the U.S., amongst teens and is near syndication in the U.S. *Da Vinci's Inquest*, currently in syndication in the U.S., draws 3 to 4 million viewers per week often winning its time period, and has now aired in over 100 countries. (21 February 2007)

Although the representatives from Shaw downplayed the reported successes of Canadian television drama, they were proud of Shaw's Rocket Fund in children's programming.

Ms. Kathy Corcoran, Director of Research for the CTF, also noted successes in this area: "In the category of children and youth programming, nine of the top 50 programs for children two to eleven years of age, are funded by the CTF." (21 February 2007) Other witnesses pointed out that some of the successful shows supported by the Rocket Fund also receive CTF funding.

In addition to attracting large audiences, CTF-financed programs have also received critical acclaim. In 2005, 38 out of 75 Gemini awards for English-language shows went to productions funded by the CTF.

2. The French Television Market in Canada

Success in French television is more apparent. Of course, language is part of the equation. But, as noted, the French market in Canada is much smaller than the English market. Today, the vast majority of popular television shows in Quebec are domestic productions. In the Quebec Francophone market, 10 of the top 25 regularly scheduled programs received CTF funding.

An official from the CTF was able to point to successes in international markets of CTF-funded, French-language programs:

> … several successful CTF funded French language productions have won international acclaim, such as *Insectia* or *l'Odysée de l'espèce*. Others have been successfully sold nationally or internationally as formats, including *Le cœur a ses raisons*, *Rumeurs* and *Un gars, une fille*, which has been exported to more than 30 markets around the world and was the first Quebec television program to be adapted in the United States. (21 February 2007)

Jacques Blain with the board of the *Association des producteurs de films et de télévision du Québec* highlighted the success of television policy by comparing snapshots of the Quebec market today and in the early 1980s when the Broadcast Program Development Fund was being put in place:

> In the early 1980s, TVA, Radio-Canada and Télé-Québec were producing almost all their own Canadian content, and the programs that dominated the audience ratings were not being made here: they were called *Dallas* and *Dynasty*. And Quebec francophones deserted French-language television in great numbers to watch the English programs.

> Today, 27 of the 30 most-watched programs by Quebeckers, each season, are made in Quebec, and French-language television captures almost 95 per cent of the francophone audience. (27 February 2007)

In 2005, 48 out of 74 Gemini awards for French-language shows went to productions funded by the CTF. This is a higher success rate than for CTF-funded, English-language productions.

In the process of funding domestic television programs, the CTF and its predecessors going back to the 1980s helped develop a very strong independent production sector. This sector is capable of high quality work on both domestic productions and, what is of significant economic value, on foreign, mainly U.S., productions.

C. The Place of CBC/Radio-Canada

Both Shaw and Quebecor opposed to CBC/Radio-Canada envelope in CTF spending. According to the Contribution Agreement that shapes CTF policy, 37% of CTF spending is earmarked for the national public broadcaster. When the fund was first developed in 1983 as the Broadcast Program Development Fund, the CBC received 50% of the budget. The proportion may be less important to Shaw and Quebecor than the fact that CBC/Radio-Canada receives any money from a production fund the distributors support rather than directly from a parliamentary appropriation.

According to section 3 of the *Broadcasting Act*, the Canadian broadcasting system is a single system, and the national public broadcaster, with the private and community elements, is expected to contribute to the creation and presentation of Canadian programming. One can argue, on the basis of the Act, that a fund established to support Canadian programming should be available to each of the elements of the single broadcasting system.

There are practical reasons why the CBC/Radio-Canada should receive CTF funds. The CBC/Radio-Canada is more "efficient" in its use of CTF funds, especially with respect to drama. As Richard Stursberg, Executive Vice-President, English Television, for the CBC, pointed out:

> … We take approximately 50% of the drama money available in English inside the CTF but we have two thirds of the audiences for English Canadian drama programs. In that sense, it is a more efficient utilization of the money. (27 March 2007)

A possible reason for the higher audiences is that the “CBC is the only major English language broadcaster whose prime time schedule between 8 p.m. and 11 p.m. is available for Canadian programs.” (Richard Stursberg, 27 February 2007) The CBC can schedule Canadian programs when Canadians are watching television.

As noted above, both Shaw and Quebecor argued that the CBC should get its money directly from parliamentary appropriations and not the CTF. The CBC argued that it does not receive CTF money, that the money goes to independent television producers whose shows are broadcast by CBC/Radio-Canada. An official from Shaw disagreed, pointing out that the CBC had effective control of 37% of the CTF’s funds. This is another area in which more transparency is needed with respect to the use of CTF funds.

D. New Media

The eighth concern, the neglect of new media by the CTF, was raised most adamantly by Quebecor. An immediate objection by Quebecor was that the CTF did not support the production of Video-on-Demand. But the concerns go far beyond the current VOD system carried on cable.

Quebecor is definitely not looking in the rear-view mirror when it discusses broadcasting policy. It has embraced the multi-platform universe, perhaps more enthusiastically than others in Canada, and demands that the CTF respond to this forward view.

When asked about funding for new media, Douglas Barrett, Chairman of the Canadian Television Fund, argued that, as there was no successful business model yet for new media, such investment was risky and it would divert funds from established CTF recipients.

On 12 February 2007, Quebecor announced its proposal for an expanded and revamped Quebecor Fund, with investment in this fund totalling $109 million over three years. Quebecor Media would select three of the five board members:

> Quebecor Media also proposes a redefinition of eligibility for Canadian-content financing by the Quebecor Fund to include the new, multi-platform reality of the video production world. Financing would be available to productions for conventional television – ranging from video on demand to general and specialized channels – to movies and productions for broadcast on the Internet and mobile devices. The entire investment would be reserved for media productions to be

> used by properties within the Quebecor Media. (Quebecor Media, Press Release, 12 February 2007)

The independent producers in Quebec responded quickly and argued that the Quebecor proposal would serve only the interests of Quebecor and not those of the Industry. But Quebecor sees its proposal as an alternative to the CTF.

In a speech given at the time Quebecor announced its proposal for an expanded and revamped Quebecor Fund, Mr. Pierre Karl Péladeau, the President and CEO, pointed out that the original cable fund had become the CTF at a time when the digital age was in its infancy. He noted that today the "borders between television and the Internet are blurring with blinding speed." (Quebecor, Press Release, 12 February 2007) To him, the changing media landscape had left the CTF behind.

Mr. Richard Stursberg, Executive Vice-President, English Television, Canadian Broadcasting Corporation gave an example of the potential for new media to be linked with conventional television. He discussed how the producers of *Degrassi* produced two, integrated but different, streams of storytelling. One ran through the television show, while the other ran on the Internet and allowed people to sign up at school, get a student number and locker, and attend classes. The virtual students could take part in the secrets and gossip that they watched on television.

Mr. Stursberg noted that both pieces were financed by the Canadian Television Fund. But, while supporting the CTF, he recognized that more progress was needed:

> … it is very important for us to rethink our financing model to make sure these more advanced platform pieces can be taken into account when we finance things. If we do not do that, as I was saying earlier, I am very concerned that we will fall behind. That would be bad for us culturally. I think these things will be more and more important for us industrially, as well. There are potentially very valuable opportunities here. (27 March 2007)

This committee recognizes that the media landscape is changing rapidly and warns that those involved with the funding must become more forward looking.

CONCLUSIONS

It is a privilege to be part of the broadcasting system in Canada. This is a long-standing position that has shaped broadcasting policy and, through the CRTC, influenced the granting of broadcasting licences. The policy of subsidies to Canadian television production has been in place for almost a quarter century. The policy is not opposed to commercial interests, but it goes beyond them to meet social and cultural needs. The policy can be debated, although at present this policy is an established fact.

As the *Broadcasting Act* notes: "… each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming." The CTF plays an important role in supporting Canadian television programs developed by independent producers and broadcast on Canadian channels.

This television policy was recently put at risk. At the end of 2006 and early in 2007, the CTF faced a financial shortfall that threatened to throw the industry into disarray. This report has examined ways to prevent similar turmoil in the future.

A subsequent and more fundamental step will address the question: Can an alternative fund, with a different structure and different operating procedures, produce more and better Canadian television programs? This is another way of asking whether the CTF is as efficient in its spending as it could be. Whatever the answer, neither the CTF nor one or more alternative funds can or should operate with the financial uncertainty that recent events produced.

RECOMMENDATIONS

Recommendation One

The CRTC should immediately change the Broadcasting Distribution Regulations to make the monthly contributions to the Canadian Television Fund a legal requirement and, at the same time, the government should establish an arms length dispute resolution mechanism to deal expeditiously with questions and concerns raised by any contributor to the Canadian Television Fund.

Recommendation Two

The government should re-examine the spending envelopes used by the Canadian Television Fund, especially with respect to the proportion of funds earmarked for the CBC/Radio-Canada

Recommendation Three

The Canadian Television Fund should include in its spending envelopes funds to support new media projects.

Recommendation Four

The effectiveness of the Canadian Television Fund in fulfilling its mandate should be assessed annually using objective measures such as audience share and revenues generated by programs funded by the CTF.

Recommendation Five

The Annual Report of the CBC/Radio-Canada should be transparent concerning the sources of its funding, including as one of the separate items CTF funding and the manner in which the funds are used.