



## Broadcasting Decision CRTC 2007-201

Ottawa, 22 June 2007

**Canadian Broadcasting Corporation (the general partner),  
3366341 Canada Inc., Barna-Alper Productions Inc.,  
CineNova Productions Inc., National Film Board of Canada  
and Omni Film Productions Ltd. (the limited partners), carrying on  
business as The Canadian Documentary Channel Limited Partnership  
Across Canada**

*Application 2006-1118-8, received 6 September 2006  
Public Hearing in the National Capital Region  
27 March 2007*

### **Change in the effective control of The Canadian Documentary Channel (Assets)**

*The Commission **approves** an application that will result in the Canadian Broadcasting Corporation (CBC) obtaining an 82% controlling interest in The Canadian Documentary Channel and a change in the effective control of the undertaking from Corus Entertainment Inc., the parent corporation of YTV Canada, Inc., to the CBC, requiring the issuance of a new broadcasting licence.*

*The Commission directs the applicant to file, within 30 days of the date of this decision, the following documents:*

- *a copy of the amended limited partnership registration; and*
- *a copy of the new limited partnership agreement.*

*Upon surrender of the current licence, the Commission will issue a new broadcasting licence to the remaining partners of the Canadian Documentary Channel Limited Partnership: Canadian Broadcasting Corporation (the general partner), 3366341 Canada Inc., Barna-Alper Productions Inc., CineNova Productions Inc., National Film Board of Canada and Omni Film Productions Ltd. (the limited partners), carrying on business as The Canadian Documentary Channel Limited Partnership, to continue the operation of The Canadian Documentary Channel under its current terms and **conditions of licence**. The licence will expire 31 August 2009, the current expiry date.*

## Introduction

1. The national, English-language Category 1 specialty programming undertaking known as The Canadian Documentary Channel is currently owned by YTV Canada, Inc. (general partner; 53%), Canadian Broadcasting Corporation (general partner; 29%), 3366341 Canada Inc. (limited partner; 1%), Barna-Alper Productions Inc. (limited partner; 1%), CineNova Productions Inc. (limited partner; 1%), National Film Board of Canada (limited partner; 14%), and Omni Film Productions Ltd. (limited partner; 1%), carrying on business as The Canadian Documentary Channel Limited Partnership (CDC LP).
2. The Commission received an application by CDLP, on behalf of the partners of CDC LP, (collectively, the applicant) for authority to effect a change in the effective control of, and for a new broadcasting licence for, The Canadian Documentary Channel. This transaction would be effected through the acquisition by the Canadian Broadcasting Corporation (CBC) of the 53% voting interest in CDC LP held by YTV Canada, Inc. (YTV). As a result, the CBC's voting interest in CDC LP would increase from 29% to 82%. The effective control of The Canadian Documentary Channel would change from Corus Entertainment Inc., the parent corporation of YTV, to the CBC. The applicant indicated that each of the partners of CDC LP has signed a Special Resolution agreeing to the transfer of the voting interest and to the change in the effective control of the undertaking.
3. The applicant requested that, following the transaction and upon surrender of the current broadcasting licence for The Canadian Documentary Channel, the Commission issue a new broadcasting licence to CDC LP's remaining partners: CBC (the general partner; 82%), 3366341 Canada Inc. (limited partner; 1%), Barna-Alper Productions Inc. (limited partner; 1%), CineNova Productions Inc. (limited partner; 1%), National Film Board of Canada (limited partner; 14%), and Omni Film Productions Ltd. (limited partner; 1%). The applicant indicated that it would continue the operation of The Canadian Documentary Channel under the same terms and conditions as those set out in Decision 2000-455 and as amended in Broadcasting Decision 2004-422.
4. The applicant stated that the value of the transaction would be \$1 million. Pursuant to the benefits policy set out in Public Notice 1999-97, the applicant proposed tangible benefits of \$100,000, or 10% of the \$1 million that the applicant had set as representing the value of the transaction. The applicant indicated that the tangible benefits would be disbursed over five years in a series of awards, valued at \$20,000 each, to emerging filmmakers creating their first professional documentary.
5. The Commission received twelve interventions in connection with this application by members of the Canadian independent production sector including documentary producers: six in support, one in opposition and five comments.

6. The Commission considers that the primary issues arising from this application are:
- whether the CBC's acquisition of the controlling interest in The Canadian Documentary Channel would reduce diversity in the ownership of documentary services and of programming opportunities for documentary producers within the Canadian broadcasting system;
  - whether the proposed value of the transaction would be reasonable; and
  - whether the proposed tangible benefits package would be appropriate and commensurate with the size and nature of the transaction.

**Would approval of this application reduce diversity in the ownership of documentary services and programming opportunities for documentary producers?**

7. The CBC currently provides documentary programming on its national, English-language television network. It also controls two national, English-language specialty services: Newsworld, which offers news and information, and Country Canada, which offers information, interaction and entertainment programming from a rural perspective. Both of these services broadcast a significant amount of documentary programming.
8. In the view of the supporting interveners, the CBC's record demonstrates its commitment to the documentary genre and to independent producers. These interveners maintained that the proposed transaction would provide more opportunities for independent producers. They also submitted that the CBC would be better able to cross-promote documentary programming on all of its platforms and consequently reach more Canadians.
9. Other interveners commented that the proposed transaction would give the CBC a monopoly in the Canadian documentary genre and consequently reduce opportunities for independent producers. These interveners also raised concerns about The Canadian Documentary Channel's editorial independence if the CBC controlled the undertaking. They questioned whether the CBC's main television network would make all the decisions regarding The Canadian Documentary Channel, resulting in a rationalization of the commissioning and licensing of documentaries and a diminished range of styles and voices for documentary productions. In addition, these interveners expressed concern that the CBC would increase in-house productions offered by The Canadian Documentary Channel. They added that the CBC might expect documentary programs to be shared among CBC services, which, according to the interveners, could result in producers being forced to sign over broadcast rights across multiple platforms instead of negotiating separate licence fees for each service.

10. The Commission is of the view that the commitments made by CBC to maintain The Canadian Documentary Channel as an undertaking that is distinct from other CBC television services and to protect the position of independent producers address the concerns raised by these interveners. Specifically, the CBC committed to:
- continue to operate The Canadian Documentary Channel under its current conditions of licence;
  - abide by all of The Canadian Documentary Channel's current commitments, including the commitment to spend at least 50% of its acquisition budget on Canadian independent productions;
  - maintain a separate programming strand for The Canadian Documentary Channel with the emphasis on long-form feature documentaries in order to distinguish this service from the other CBC television services; and
  - negotiate separate licence fees for acquisitions from independent producers for The Canadian Documentary Channel.
11. The Commission is also satisfied with the CBC's clarification of the editorial relationship between The Canadian Documentary Channel and the CBC's main television network. The CBC specified that, while the head of The Canadian Documentary Channel would report to the CBC's main network, that person would be responsible for managing the undertaking, acquiring and scheduling programming, and commissioning independent documentaries from independent filmmakers.
12. In light of the above, the Commission finds that the CBC's acquisition of controlling interest in The Canadian Documentary Channel would not reduce diversity in the ownership of documentary services or programming opportunities for independent documentary producers within the Canadian broadcasting system.

**Would the proposed value of the transaction be reasonable?**

13. Some interveners questioned the proposed value of the transaction. In their view, the \$1 million ascribed to this transaction would not represent the fair market value for the voting interest transferred.
14. The Commission's general practice is to base the value of a transaction on the cash price agreed upon by parties negotiating at arm's length. In the present case, given that the parties negotiated at arm's length and the purchaser is not assuming any debt, the Commission accepts the proposed value of the transaction to be \$1 million.

## **Would the proposed tangible benefit package be appropriate and commensurate with the size and nature of the transaction?**

15. Some interveners noted that CDC LP has not yet fulfilled its commitment to donate, beginning in the fourth year of operation, a minimum of \$100,000 in scholarships yearly, with the intention of increasing that amount to \$200,000 annually, beginning in the sixth year of operation, as described in Decision 2000-455. These interveners questioned whether the series of awards that constituted the benefits package proposed in the present application were incremental to the unfulfilled commitment to the scholarships.
16. At the hearing, the CBC confirmed that, once The Canadian Documentary Channel is profitable, it would honour the unfulfilled commitment to annual expenditures on scholarships, as set out in Decision 2000-455. The CBC also clarified that its contributions to the series of awards, as proposed in the tangible benefits package of the present application, would be incremental to the commitment to make annual donations to scholarships.
17. The Commission is satisfied that the applicant has addressed the concerns raised by the interveners and that the proposed benefits package is clear, unequivocal and commensurate with the size and nature of the transaction.

## **Conclusion**

18. The Commission **approves** the application for authority to effect a change in the effective control of, and for a new broadcasting licence for, The Canadian Documentary Channel through the acquisition by the Canadian Broadcasting Corporation of the 53% voting interest in Canadian Documentary Channel Limited Partnership currently held by YTV Canada, Inc. The Commission directs the applicant to file, within 30 days of the date of this decision, the following documents:
  - a copy of the amended limited partnership registration; and
  - a copy of the new limited partnership agreement.
19. Upon surrender of the current licence, the Commission will issue a new broadcasting licence to CDC LP's remaining partners: Canadian Broadcasting Corporation (the general partner), 3366341 Canada Inc., Barna-Alper Productions Inc., CineNova Productions Inc., National Film Board of Canada and Omni Film Productions Ltd. (the limited partners), carrying on business as The Canadian Documentary Channel Limited Partnership, to continue the operation of The Canadian Documentary Channel. The terms and **conditions of licence** are set out in the appendix of this decision.

Secretary General

**Related documents**

- *Administrative licence renewals*, Broadcasting Decision CRTC 2006-319, 28 July 2006
- *The Canadian Documentary Channel – Licence amendment*, Broadcasting Decision CRTC 2004-422, 27 September 2004
- *Change in ownership*, Decision CRTC 2001-589, 14 September 2001
- *The Canadian Documentary Channel – a new specialty channel*, Decision CRTC 2000-455, 14 December 2000
- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999

*This decision is to be appended to the licence. It is available in alternative format upon request and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*

# Appendix to Broadcasting Decision CRTC 2007-201

## Terms and conditions of licence for The Canadian Documentary Channel

### Terms

The licence will expire 31 August 2009.

### Conditions of licence

1. The licence shall be subject to the conditions set out in *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000.
2. The licensee shall provide a national, English-language Category 1 specialty programming undertaking to broadcast documentary programs on a 24-hour per day basis. Programming shall cover the full range of documentary experience but shall not include live coverage of news or sports events.
3. The programming shall be drawn exclusively from the following categories set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
  - 2 (a) Analysis and interpretation
  - (b) Long-form documentary
  - 3 Reporting and actualities
  - 7 (c) Specials, mini-series or made-for-TV feature films
  - (d) Theatrical feature films aired on TV
  - (g) Other drama
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials, promotional and corporate videos
4. No more than 6 hours during each broadcast week shall be devoted to material from category 7.
5. In each broadcast year or portion thereof, the licensee shall devote 75% of the broadcast day and 75% of the evening broadcast period to the distribution of Canadian programs.

6. In accordance with the Commission's position on Canadian programming expenditures as set out in *New Flexibility With Regard to Canadian Program Expenditures by Canadian Television Stations*, Public Notice CRTC 1992-28, 8 April 1992, in *The Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-93, 22 June 1993, in *Additional clarification regarding the reporting of Canadian programming expenditures*, Public Notice CRTC 1993-174, 10 December 1993, and in *Incentives for English-language Canadian television drama*, Broadcasting Public Notice CRTC 2004-93, 29 November 2004, as may be amended from time to time:
- (a) In each broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 47% of the subscription revenues derived from the operation of this service during the previous broadcast year.
  - (b) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programs that is up to ten percent (10%) less than the minimum required expenditure for that year calculated in accordance with this condition; in such case, the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure.
  - (c) In each broadcast year of the licence term, where the licensee expends an amount on Canadian programs that is greater than the minimum required expenditure for that year calculated in accordance with this condition, the licensee may deduct:
    - (i) from the minimum required expenditure for the following year of the licence term, an amount not exceeding the amount of the previous year's over-expenditure; and
    - (ii) from the minimum required expenditure for any subsequent broadcast year of the licence term, an amount not exceeding the difference between the over-expenditure and any amount deducted under (i) above.
  - (d) Notwithstanding paragraphs (b) and (c) above, during the licence term, the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures calculated in accordance with this condition of licence.

#### **Definition**

The term "broadcast day" shall have the same meaning as that set out in the *Television Broadcasting Regulations, 1987*.