



Ministry of Skills Development and Labour Summary

REPORT OF THE INDUSTRIAL INQUIRY COMMISSION: BRITISH COLUMBIA'S FILM AND TELEVISION INDUSTRY

March 2004

Background:

Film and television production in British Columbia has grown tremendously in the past 15 years, having reached an estimated \$1 billion annually for the production of feature films and television series.

There are concerns whether British Columbia will be able to maintain production at this level and the figures from some sources are already showing some decline. For example, the British Columbia Film Commission reports that the budget totals for B.C. productions have declined from a high of \$1.18 billion in 2000, to \$994 million in 2002.

Factors that have affected the amount of production worldwide include competition in the television sector from cable stations and decreased advertising revenues. Reality television shows (which are not filmed in British Columbia) have become popular commodities because they can be produced at a substantially lower cost than dramatic series. Although there are many non-monetary factors, cost is a primary driver for film and television productions.

B.C. production has benefited from favourable U.S. exchange rates, a large talent pool, varied locations and extensive studio and post production facilities. However, with a rising Canadian dollar and increased competition from other parts of Canada, Europe, New Zealand and Australia, B.C. faces increased competition for a share of foreign productions.

Labour costs and a stable labour relations climate are critical factors in decisions about where to locate productions.

On November 18, 2003, Honourable Graham Bruce, Minister of Skills Development and Labour, appointed Mr. Justice David Tysoe to study how the film and television industry is structured and to consider labour issues that seem to be hindering the industry's competitiveness with other jurisdictions.

Tysoe held meetings and received written submissions from production companies, unions, associations and individuals working in the industry. He also reviewed labour relations structures in other jurisdictions, primarily Ontario and Los Angeles.

LABOUR RELATIONS ISSUES AFFECTING B.C.'s COMPETITIVENESS

Labour relations structure

There are seven unions involved in the industry in B.C.: the Directors Guild of Canada; the Union of B.C. Performers (UBCP); The International Alliance of Theatrical Stage Employees (IATSE) local 669 – International Photographers, and local 891 – Motion Picture Studio Production Technicians; Teamsters local 155, the Association of Canadian Film Craftspeople (ACFC) local 2020; and the Writers Guild of Canada.

The two IATSE locals and the Teamsters negotiate contracts under the British Columbia and Yukon Council of Film Unions, which was accredited under the Labour Relations Code as a bargaining association in 1995 for higher budget productions.

There are two employer organizations: the Alliance of Motion Picture and Television Producers (AMPTP) ; and the Canadian Film and Television Production Association (CFTPA).

The Council of Film Unions, DGC and UBCP have all negotiated master collective agreements with AMPTP and CFTPA. ACFC, which is primarily represented in Canadian productions, has a master agreement with CFTPA.

By comparison, one of the main structural differences between Ontario and B.C. is that the Teamsters union is not involved in the film industry in Ontario. Also, Ontario does not have a long-term or master agreement for feature films.

The county of Los Angeles has a set of unions in the film industry that is comparable to the group of unions in B.C.

Labour costs:

British Columbia has become known as an “over scale” location. That is, performers and other highly trained employees have generally negotiated individual pay rates in excess of those in the master collective agreement. In the past, this has been driven by market forces and the presence of high-budget U.S. productions.

Tysoe notes that the amount of domestic production in British Columbia declined from a high of \$400 million in 2000 to approximately \$164 million in 2002, with a further decline anticipated for 2003. Much of the domestic production appears to have stayed in Ontario and relocated to other provinces.

When it was originally conceived in 1995, the Council of Film Unions was expected to negotiate two separate master agreements, one for the “exclusive jurisdiction” and one for productions with lower budgets. This would have provided a stable cost structure for independent films and the domestic industry and would have recognized that Canadian productions generally operate with different budget constraints than “service productions.” –productions that originate in other countries but shoot in B.C.

During the bargaining that followed the creation of the Council a single master agreement was negotiated for productions that fell under the exclusive jurisdiction. In the absence of another agreement, lower budget productions were forced to request concessions on a contract that was never designed for them in the first place.

Tysoe is recommending that the Council and other unions negotiate separate master agreements for lower budget productions.

Grievances and Jurisdictional Disputes:

B.C. generates more grievances than other film jurisdictions in North America.

Tysoe found grievances to be a major factor affecting B.C.’s ability to attract productions – our competitiveness. Grievances result in added cost to a production as well as work disruption. In response to the cost of defending grievances, production companies will often just pay off the grievance because it is too inconvenient and costly to dispute it.

Specifically, Tysoe heard that:

- Grievances are often repetitious, raising disputes on matters where similar issues have been dealt with on a previous production.
- Arbitration awards are often ignored while legal challenges are being pursued.

- Grievances are often filed after the production is completed and personnel have dispersed.

Management and labour within the industry believe the current arbitration processes, including the expedited arbitration procedures set out under Section 104 of the *Labour Relations Code* does not provide an effective mechanism for resolving disputes, given the unique nature of the film and television industry.

In a similar vein, jurisdictional disputes – disputes over which union has a right to perform certain tasks – detrimentally affects the competitiveness of the industry. These disputes arise primarily between IATSE 891 and Teamsters 155, whose members may feel that there is sometimes an overlap in their jurisdiction.

Such jurisdictional disputes do not arise in Ontario, as drivers and other technical employees are all represented by IATSE, which tends to resolve such issues internally.

The commission also heard that one of the reasons for increased difficulties in dealing with labour relations issues is that production managers often do not have the required experience in order to resolve these matters before they escalate.

Tysoe makes a number of recommendations with regard to resolving grievances and jurisdiction disputes:

- The B.C. Council of Film Unions should act as a single union for the purposes of screening grievances and resolving jurisdictional disputes between its members.
- Grievances should be pursued via the following process:
 1. The Council should obtain an independent assessment of the grievance;
 2. The grievance should proceed only if the majority of the Council agree;
 3. The cost of pursuing a grievance should be borne by the Council;
 4. Each Council member should file a statutory declaration with the Labour Relations Board verifying the Council has paid all costs associated with its grievances in accordance with its cost sharing arrangement.
- For jurisdictional disputes, the employer would be entitled to assign the work to the workers of its choice and, if the Council disagrees with the assignment of the work after internally determining its position, the Council could file a grievance that would be resolved in the ordinary course.

Tysoe had no specific recommendations regarding improving how production managers address labour relations issues and acknowledges DGC is working on this issue. He urges DGC (whose members include production managers) to consider working with CFTPA in continuing the program of holding meetings of production managers to discuss, among other things, labour relations issues. This would promote more consistency in the manner in which production managers deal with administration of collective agreements. DGC should further consider forming a joint task force with IATSE 891 to consider a process to facilitate movement between the two organizations so that production coordinators (who may eventually work as production managers) and other personnel are not prevented from progressing within the industry by membership requirements.

Seniority and Dispatch issues

In most cases a production company is formed for a particular production and then disbanded when the production is complete. At that point the employment relationship ends. Employees from IATSE 891 and Teamsters 155 are generally dispatched to productions through their union.

For example, under the current collective agreement an employer can hire certain Teamster positions by name. After that, there is a “one-for-one system” where, for each individual hired by name, the next union member hired will be dispatched according to his or her seniority.

Many employers complain that they are unable to build up a crew of people they know and who they know will work well together. As they are guaranteed employment, workers have little incentive to work to the best of their ability.

In most other jurisdictions, and with unions other than IATSE 891 and Teamsters 155, all or most of the hiring is by name.

Tysoe recommends replacing the seniority dispatch systems for Teamsters 155 and IATSE 891 with a name request system that would let the production company choose workers from a list of available union members. Daily workers could be dispatched by seniority as could workers in cases where the production company does not know all the names of workers it wishes to hire.

Priority of Collective Agreements

Tysoe heard of instances where internal union rules have been given priority over the collective agreement. One such instance was in the application of seniority rules that resulted in union members name-hired by a production company being “bumped” by a more senior union member.

He recommends that parties to collective agreements specifically acknowledge that the provisions of the agreements are paramount and take priority over

internally-made rules. In addition, there should be disclosure in writing prior to the commencement of the production of internally-made rules that are not inconsistent with the applicable collective agreement.

Recommendations to the Government

Primary responsibility for implementing these recommendations is with the employers, unions, guilds and bargaining associations involved. Tysoe makes the following recommendations to government:

1. Encourage the affected parties to voluntarily implement the above recommendations before June 2004. The implementation would include:
 - Amendments to the constitution of the B.C. Council of Film Unions.
 - Approval of the amended constitution by the Labour Relations Board.
 - Amendments to the master collective agreement.

2. If the affected parties do not implement the recommendations by the end of May 2004, consider re-instituting the inquiry under section 41 of the *Labour Relations Code*.

This section would allow the Labour Relations Board to re-examine the structure and function of the Council of Film Unions and identify changes needed.

3. If a solution cannot be developed through 1 or 2 above, Tysoe recommends government consider legislating an interest arbitration to deal with the issues raised in the Report.

British Columbia Ministry of Skills Development and Labour
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