

February 27, 2004

TO: The Honourable Graham P. Bruce,  
Minister of Skills Development and Labour

This is the Report of the Industrial Inquiry Commission appointed by you on November 17, 2003 pursuant to section 79 of the *Labour Relations Code* (the "*Code*"). A copy of section 79 is attached as Appendix 1 to this Report. A copy of the Terms of Reference related to the appointment of the Commission is attached as Appendix 2.

You appointed me as the sole member of the Commission. I was provided by your office with the services of an assistant, Mr. Andrew Williamson, who is the Director, Industrial & External Relations of the Canadian Film and Television Production Association, and who previously worked for the Directors Guild of Canada. I thank Mr. Williamson for the valuable assistance he provided to me and the neutrality he brought to his role as my assistant. All of the people who spoke with me were co-operative and were of great assistance in providing me with the information which I required for the preparation of this Report, and I wish to thank them as well.

I gathered information during the Inquiry by interviewing people involved in the B.C. film industry. I did not hold formal hearings because I formed the opinion that they would be too confrontational and positional, and would not facilitate my task of determining what is in the best interests of the B.C. film industry as a whole. Appendix 3 to this Report lists the organizations and the individuals I interviewed during the Inquiry, together with the written submissions I received. The arrangement for all interviews was that while I would rely on information provided by each person I interviewed, I would not attribute the sources of any information in the Report. I also agreed not to repeat any statement which, by its very nature, would identify the source of the statement unless the statement represented the official position of an organization.

I am independent of the B.C. film industry and I have no interest in the outcome of the Inquiry. I was given a free hand in formulating the recommendations contained in the Report and I did not receive suggestions from you or your office as to any preferred recommendations.

Before I specifically address the issues raised by the Terms of Reference, I will first summarize the current state of the B.C. film industry and give a general background of the labour structure within the industry. The Terms of Reference requested that I consider the topics of (i) Administration of Collective Agreements, (ii) Competitiveness and (iii) Council of Film Unions. As I have concluded that the administration of collective agreements has a direct impact on competitiveness, I will deal with the topic of Competitiveness before I address the other topics. In addition, I will deal with a comparison of labour structures in two other jurisdictions under a separate heading. The Report will conclude with my recommendations.

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## CURRENT STATE OF THE B.C. FILM INDUSTRY

The B.C. film industry<sup>1</sup> has grown tremendously in the past 20 years, and has become a very important industry for British Columbia. Figures within the industry are not always consistent, but it is clear that the dollar amount of B.C. feature film and television production has grown to the \$1 billion level.<sup>2</sup> This represents approximately 13,000 direct jobs and 17,000 indirect jobs – for a total of approximately 30,000 full-time jobs.<sup>3</sup>

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 \$1,180,000 in 2000, to \$1,109,000 in 2001 and to \$994,000 in 2002.

One of the factors which has affected the amount of production worldwide is the fact that the television market has been negatively impacted through competition caused by 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 and they have continued to maintain an audience share. Movies of the week have fallen out of favour with the major networks. Generally speaking, decisions relating to the production of television shows have become very cost sensitive.

British Columbia has become increasingly dependent on foreign feature films. The amount of domestic production done in British Columbia has declined in the neighbourhood of 40% for each of 2001 and 2002 (to a level of approximately \$164 million, from a high of more than \$400 million), and it is feared that the 2003 figures may show another decline.

The overall 2003 budget figures for film and television production in British Columbia are still expected to be in the range of \$1 billion, but this is largely attributable to the fact that 6 high-budget feature films were shot in the Vancouver area in the past year. No one in the industry is optimistic that this will be repeated in 2004, and some people in the industry are pessimistically predicting that the amount of production will drop significantly.

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<sup>1</sup> I will use the term “B.C. film industry” in this Report to connote all types of work in the industry, including feature films, movies of the week, television shows, whether done as foreign service work or as domestic or indigenous work.

<sup>2</sup> It is the practice in the industry to refer to the total amount of the budget for a production. The amounts spent in British Columbia are less than the total budget because some of the producers, directors, actors and other personnel do not live in the Province.

<sup>3</sup> These figures are averages of figures used by British Columbia Film (based on Statistics Canada information) and the Canadian Film and Television Production Association’s publication called *Profile*.

## LABOUR STRUCTURE WITHIN THE B.C. FILM INDUSTRY

### (a) Traditional Labour Organizations

There are a total of seven unions involved in the B.C. film industry. The six primary unions are as follows:

- (a) the Directors Guild of Canada (“DGC”);
- (b) the Union of B.C. Performers, the B.C. branch of ACTRA (the Alliance of Canadian Cinema, Television and Radio Artists) (“UBCP”);
- (c) International Photographers, Local 669 of the International Alliance of Theatrical Stage Employees, Motion Picture Technicians, Artists and Allied Crafts of the United States and Canada (“IATSE 669”);
- (d) Motion Picture Studio Production Technicians, Local 891 of the International Alliance of Theatrical Stage Employees, Motion Picture Technicians, Artists and Allied Crafts of the United States and Canada (“IATSE 891”);
- (e) Teamsters Union, Local No. 155, (“Teamsters 155”); and
- (f) ACFC West, the Association of Canadian Film Craftspeople, Local 2020 of the Communications, Energy and Paperworkers Union of Canada (“ACFC West”).

The seventh union is the Writers Guild of Canada. It was previously part of ACTRA but separated to form its own organization. No one commented on the Writers Guild during the course of the Inquiry and I will not be making any further reference to it.

In British Columbia, DGC represents production managers, first, second and third assistant directors, production assistants, location managers and assistant location managers. It has approximately 800 members in British Columbia.

The members of UBCP include actors and background extras, but the employer associations do not recognize UBCP as the bargaining agent for all background extras. UBCP has approximately 3,000 members.

IATSE 669 represents approximately 450 workers who are involved in operating cameras (it also represents approximately 100 members working in Alberta). The job classifications include the director of photography, operator, first and second assistant, motion picture video coordinator and assistants, and stills photographer.

IATSE 891 has over 100 job classifications and close to 5,000 members. Its departments include construction, paint, grip, lighting, greens, art, set decorating, props, sound, video, lighting/electronics, special effects, costume, hair, make-up, first aid/craft service, accounting, editors, script supervisors and publicity.

As is widely known, the Teamsters Union represents drivers. However,

there are a total of 35 job classifications within Teamsters 155 and, in addition to drivers of different types of vehicles, Teamsters 155 has members involved in catering, security and animal handling. It has approximately 850 members.

ACFC West represents the same types of workers as are members of IATSE 891 and Teamsters 155. It has approximately 600 members, many of whom are also members of IATSE 891 or Teamsters 155. One of the parameters contained in the Terms of Reference was that ACFC West is to be recognized as a viable alternative in the B.C. film industry. As ACFC West does not represent camera operators, members of IATSE 669 work in conjunction with ACFC West's members as well as working together with members of IATSE 891 and Teamsters 155 on other productions. This is a source of friction between IATSE 669 and IATSE 891/Teamsters 155, but members of IATSE 669 must be allowed to work with ACFC West's members in order to maintain ACFC West as a viable alternative in the B.C. industry.

(b) Employer Organizations

There are two employer organizations involved in the B.C. film industry. The first is the Alliance of Motion Picture and Television Producers ("AMPTP"), which include the major U.S. studios. The second is the Canadian Film and Television Production Association ("CFTPA"), which represents Canadian producers.

(c) B.C. Council of Film Unions

The final labour related organization involved in the B.C film industry requires some explanation. It is generally referred to in the industry as the B.C. & Yukon Council of Film Unions or the B.C. Council of Film Unions, although its constitution states that the organization is to be known as the Bargaining Council of British Columbia Film Unions. I will refer to it as the "Council of Film Unions" or the "Council".

It is typical for a feature film or television show to be produced by a newly incorporated or shell company, which has the single purpose of creating the feature film or television movie or series. The result of this structure is that there is usually a different employer for each production. Up until 1995, a collective agreement was negotiated between the corporate employer and the relevant unions in respect of each production. This did not cause difficulties in the 1980s when the amount of film work in B.C. was beginning to grow. But it had become a substantial burden by the mid-1990s when the amount of work in the B.C. film industry had grown into the 100s of million dollars annually. Some of the unions had to negotiate approximately 75 collective agreements a year. In some cases, the negotiations over the collective agreement were not concluded by the time the production work in B.C. had finished.

In April 1995, four of the five members of an informal organization known as the British Columbia and Yukon Council of Film Unions made an application to

the Minister of Labour. These four members were IATSE 891, IATSE 669, Teamsters 155 and UBCP (the fifth member which did not join in the application was DGC). The application was made pursuant to section 41 of the *Code* (a copy of which is reproduced as Appendix 4), which allows the Labour Relations Board to determine that a council of trade unions is the appropriate bargaining agent for a group of employees.

After conducting investigations and a formal hearing, the Labour Relations Board issued its decision in December 1995. It concluded that a council of trade unions was an appropriate bargaining agent based on the need for a long-term master agreement and the elimination of the proliferation of collective bargaining that had developed with the growth of the B.C. film industry.

The Labour Relations Board decided that at the outset the Council of Film Unions should consist of IATSE 891, IATSE 669 and Teamsters 155. It reserved for second and third stages of its inquiry the question of whether UBCP and DGC should be part of the Council. It also stipulated that the Council's structure would be subject to review in two years.

The Labour Relations Board acceded to the request of the applicants that the Council should have exclusive jurisdiction in respect of higher budget productions. It gave the Council exclusive jurisdiction in respect of (i) feature films with a labour cost of the three members of the Council of at least \$4 million and (ii) one hour dramatic productions for NBC, ABC and CBS. In establishing the exclusive jurisdiction, the Board noted that ACFC West had not demonstrated a presence in productions of this magnitude.

One of the other aspects mandated by the Labour Relations Board was the concept of "enabling". As required by the Board, the master collective agreement contains an enabling clause permitting each member of the Council to agree to amend the terms of the master agreement as it pertains to a specific production.

The Labour Relations Board concluded the second and third stages of the section 41 inquiry in May 1997. It decided that the interests of industrial stability were best served by not including UBCP or DGC in the Council at that time. The Board believed that UBCP and DGC had differences in community of interest compared to the members of the Council because they represent significantly different interests in terms and conditions of employment.

A further review of the Council's structure has not taken place. With the concurrence of the parties, the Labour Relations Board terminated the section 41 inquiry in the fall of 2003, but it continues to have a supervisory role in respect of the Council.

(d) Status of Collective Bargaining

The consensus in the industry, with the exception of Teamsters 155, is that collective bargaining for productions within the exclusive jurisdiction of the Council has gone very well since 1995. The establishment of the Council was integral to the improvement in collective bargaining, but equally important was the fact that AMPTP and CFTPA were willing to negotiate a master collective agreement with the Council. This meant that it was no longer necessary to negotiate a collective agreement in respect of each production. A master agreement was negotiated between the Council and AMPTP/CFTPA, although these two employer organizations were not the employer. The master collective agreement is structured so that a person or corporation wishing to produce a feature film or television show in British Columbia may sign a letter of adherence and thereby become bound by the agreement.

Teamsters 155 believes that it is unfair that it can be forced to accept a collective agreement by the majority vote of the two IATSE locals in the Council. As an example, Teamsters 155 points to the instance where a collective agreement was ratified by an aggregate vote of less than 50% of all of the members of the three unions when the votes within the two IATSE locals (both being higher than 50%) carried the vote. However, Teamsters 155 did not advocate the disbandment of the Council.

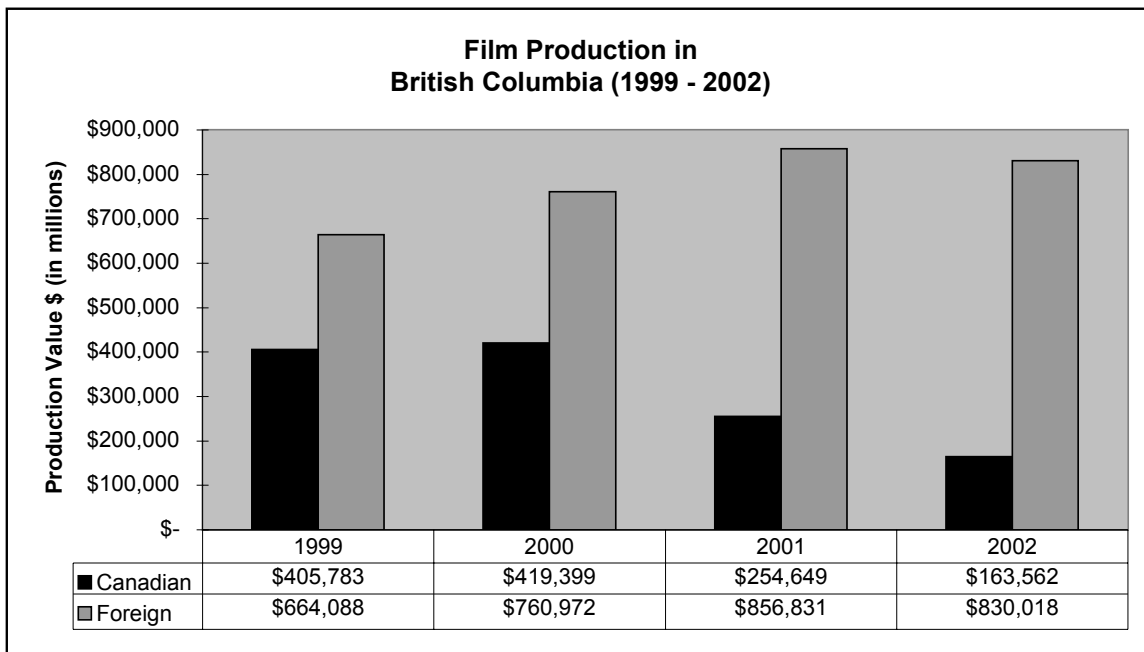
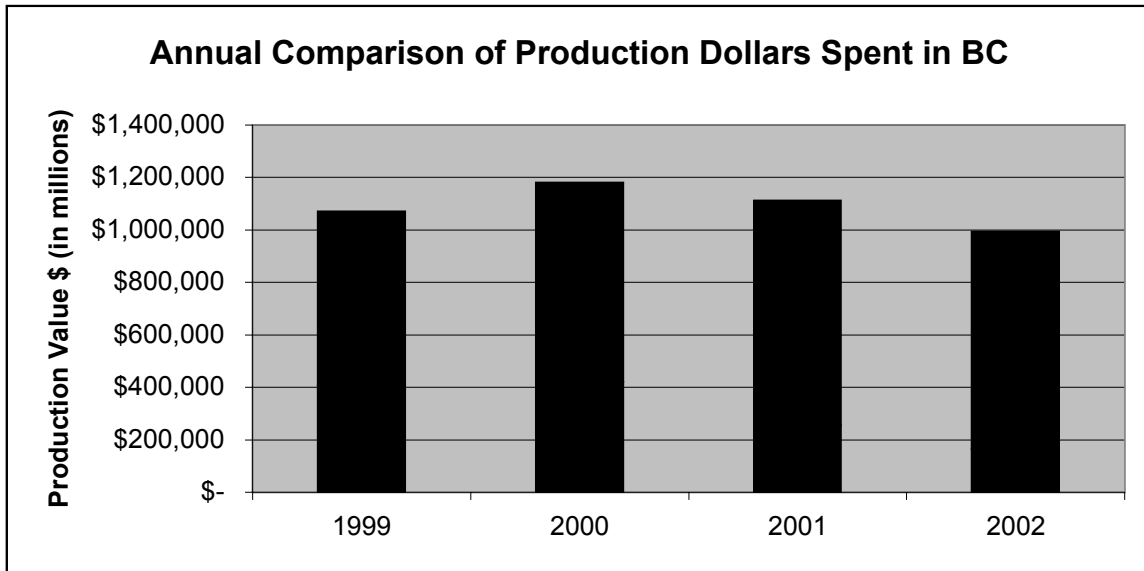
The current master agreement has a term of three years from March 30, 2003 to April 1, 2006. The main body of the master agreement applies to each of the three members of the Council. Through the use of side table bargaining, each member of the Council has negotiated an appendix to the master agreement which applies only to it. Appendix A applies to IATSE 891, Appendix B applies to Teamsters 155 and Appendix C applies to IATSE 669. These Appendices deal with the hourly wage rates for the various job classifications of the union members for productions within the exclusive jurisdiction of the Council. The Appendices also deal with such things as dispatch, layoff and turnaround times. The topic of dispatch became a central focus of this Inquiry and I will return to it in more detail when dealing with the Terms of Reference.

The master agreement also contains an Appendix D, which contains special provisions in relation to movies of the week with total budgets of approximately \$4 million (U.S.) or less. It deals with such things as overtime and meal penalties but, most importantly, it provides that the wages will be 13.5% lower than the scale television series rates set forth in Appendices A, B and C to the agreement.

Although they are not part of the Council, UBCP and the DGC have also negotiated master agreements. Each of their current master agreements has a three year term from April 1, 2003 to March 31, 2006. The employers bound by these master agreements are approximately 20 firms listed in an appendix to each agreement and anyone else who agrees to become bound by the

agreement for the purpose of a production made in British Columbia. The agreements apply to all types of feature films and television productions, although the wage rates under the agreement with DGC are different for motion pictures having a budget greater than \$15 million than the wage rates for films with lower budgets and all television productions.

Finally, ACFC West also has a master collective agreement which it negotiates with CFTPA. The most recent agreement has a two year term from January 1, 2004 to December 31, 2005.





## COMPETITIVENESS

### (a) Introduction

The film industry is a unique industry. Although comparisons are made to other industries (such as the construction industry), there is no other industry which is the same. The single most important aspect of the film industry is its high degree of mobility. Other important characteristics of the industry are that it is project-based and that it contains a wide mix of unionized workers ranging from creative artists to employees performing traditional labour crafts.

The film industry is extremely mobile because the producer has the choice of many different locations throughout the world where the production can be made. Many people in the industry make reference to this mobility by giving the description that the making of a feature film or television production is akin to the producer leaving Los Angeles with a suitcase of money and coming back with a feature film or television product. The producer will have a certain amount of money in the suitcase (i.e., the budget for the production) and will want to return with as good a product as that amount of money can buy. If a potential location becomes less desirable for whatever reason, the producer has the ability to decide very easily that the production will be made in another location.

The mobility of the industry is underscored by the fact that the production community does not have a vested interest in any particular location (other than Los Angeles) because producers do not generally make a capital investment in any particular location. As an example, the seven main Los Angeles studios (Disney, Fox, MGM, Paramount, Sony, Universal and Warner Bros.) do not own any of the sound stages in British Columbia and, with the exception of Paramount, do not own any of the equipment involved in the making of their productions in the Province. The infrastructure which British Columbia has built up for the film industry is generally owned by British Columbians who are not the people making the decision with respect to the location at which productions will be made.

The principal result of the mobile nature of the film industry is that various jurisdictions compete with one another for the ability to become the site of a production. It is possible for a project to move locations part way through the production (e.g., a television series may change between two seasons) and some productions are shot in more than one jurisdiction, but, generally speaking, the producer chooses between competing jurisdictions and the entire production is made in the preferable jurisdiction. British Columbia has become a target of the "runaway productions" campaign undertaken by interest groups in California but the industry is now worldwide. In addition to other locations in the United States and in Canada (principally Toronto and Montreal), the U.S. studios are having feature films made in such locations as New Zealand, Australia, South Africa, Romania and the Czech Republic.

As I mentioned when discussing the current state of the B.C. film industry,

there are factors applicable to the entire industry which are adversely affecting the amount of production in British Columbia, as well as all of its competitors. Competition from cable stations has led to decreased advertising revenues available to the major U.S. television networks. The success of reality television shows has decreased the number of television series being produced in Canada. There has been a significant decline in the number of movies of the week produced in both Canada and the United States. These factors are not reflective of the competitiveness of British Columbia or any other jurisdiction, but they should be borne in mind when considering the reasons for a downturn in the amount of production done in the Province.

The single most important factor in determining the location for a production is cost. Some producers say that the only consideration in choosing the location is cost and that the cheapest location will be selected. Other people say that there will be an acceptable range for the budget and that the choice between locations falling within the acceptable range will depend on other factors. In my opinion, the decision on the location for a production is based on a combination of cost, certainty and other factors, which I have come to refer to as the intangible factors. Cost is the predominant consideration but the choice between two locations representing similar costs may depend on intangible factors. For example, if the difference in the cost of shooting in two different locations is less than a threshold range, the choice between the two locations may depend on the preference of the director or the star actor.

In considering the cost of a production, it should be noted that the film industry has created terms to distinguish between two types of costs. These terms are "above-the-line costs" and "below-the-line costs". Common above-the-line costs include the expenses related to the writer, producer, director and star actors. Common below-the-line costs include the expenses related to assistant directors, production accountants, production assistants, camera operators, people working in the construction, set dressing, prop, grip, art, wardrobe, makeup, special effects, catering, transportation and security departments, location managers and equipment rentals. In a production originating in the United States, most of the above-the-line costs are paid to Americans and it is mostly the below-the-line costs which are expended in the location where the production is made. In assessing the comparative cost of two locations, it is common to examine the below-the-line costs associated with each location.

Before I deal with the labour aspects of competitiveness, I wish to identify other items that have an impact on the cost and convenience of shooting productions in British Columbia. It is important to recognize that while the cost of labour and the intangible aspect of labour discord are important considerations when a producer is deciding whether to make a production in British Columbia, they are not the only factors. All of the factors, both labour and non-labour, are taken into account when the location decision is made. It is not intended that my listing of non-labour factors should be considered to be an exhaustive listing – they are the more important ones which were raised during my interviews.

(b) Non-Labour Factors

One of the most important non-labour components of the cost of productions is the cost-saving mechanism of tax credits. British Columbia has a Production Services Tax Credit which provides an incentive for production work done in the Province. The basic credit against provincial income taxes is 11% of accredited qualified labour costs (there is an additional 6% regional tax credit for productions shot outside the Vancouver area and a further 15% credit for digital images and visual effects). The Federal Government also has a Production Services Tax Credit equal to 16% of eligible labour costs. In addition, there are a series of tax credits, subsidies, grants or sponsorships available for domestic film and television productions.

I consider the system of tax credits to be a neutral factor from British Columbia's perspective, although it has certainly been successful in enticing productions to move outside the United States. The system has been called a "race to the bottom" as various governments compete with each other to provide an incentive for productions to be made in their jurisdiction. For example, the basic tax credit available in Vancouver's two main competing locations in Canada, Toronto and Montreal, is also 11% of labour costs.

British Columbia's positive factors affecting its competitiveness include the following (with no order of priority):

1. B.C. has large pools of experienced crews and actors. Other locations may represent a lower net production cost (for instance, through the use of tax credits) but they may not have sufficient crews qualified to handle the production. This is both a cost factor and an intangible factor. If a location does not have a sufficient supply of experienced crews and actors, personnel will have to be brought in from other places and the production company will have to pay for accommodation and a per diem for meals. If the crew is not experienced, the pace of shooting scenes will become slower and an element of aggravation will be introduced.
2. Vancouver has good studio facilities. There are three sets of first class sound stages (Bridge Studios, Lion's Gate Studios and Vancouver Studios), as well as a number of other sound stages and converted warehouses. This gives Vancouver the capability to make numerous high quality productions at the same time.
3. There are local post-production facilities in the Vancouver area. The film does not need to be sent to Los Angeles or to eastern Canada for processing. All of the processing can be done in British Columbia. Although it is an attraction for feature films to have local post-production facilities, the infrastructure of these facilities requires the regularity of television work in order to survive at a commercial level.

4. British Columbia has a wide variety of locations to simulate other cities and locales. It is not possible for British Columbia locations to easily replicate U.S. cities on the eastern seaboard but locations within the Province can be made to appear like most other North American cities and areas.
5. British Columbia is in the same time zone as California. It is easier for executives from the Los Angeles studios to communicate with productions shot in British Columbia than productions in other time zones.
6. Vancouver is relatively close to Los Angeles. A meeting in Vancouver may represent a one day trip for a studio executive but a meeting in the eastern U.S. or eastern Canada may represent a two or three day trip. Actors, producers and directors can easily return to Los Angeles for weekends when they are working in the Vancouver area.
7. Vancouver offers more shooting time than a lot of other locations. The climate of the Vancouver area is relatively mild with little snow in the winter, and location shoots can take place year round. There is longer daylight in the summer evenings than occurs in southern locations.

I will now list the factors which currently impact negatively on British Columbia's competitiveness, again with no order of priority:

1. The value of the Canadian dollar has increased significantly in the past year in comparison to the U.S. dollar. This applies, of course, to productions made in all parts of Canada. The rise of the Canadian dollar diminishes the cost advantage of Canadian productions over U.S. productions. Other currencies, such as those in Australia and South Africa, have also increased in relation to the U.S. dollar. Indeed, the Australian dollar has increased in value more than the Canadian dollar, which enhances Canada's competitiveness in relation to Australia. A number of people within the industry believe that if the Canadian dollar rises much above \$0.80 U.S., Canada will lose a significant amount of foreign service work because it will no longer be less expensive to manufacture feature films and television shows than in the United States. Other people point to the fact that British Columbia was doing foreign service work (i.e., the making of productions originating in another country) in the past when the Canadian dollar was as high as \$0.90 U.S.
2. I am told that British Columbia is the only jurisdiction in North America which charges sales tax in connection with the manufacture of feature films and television shows. All other jurisdictions either have no sales tax or have made it inapplicable to the creation of feature films and television shows. This is a significant competitive disadvantage for British Columbia. For example, in sample budgets prepared to

compare the costs of shooting a movie of the week in Vancouver and Toronto, approximately \$35,000 of the \$100,000 difference (out of total of \$2,500,000) is attributable to B.C. provincial sales tax. A report prepared by Line Consulting Inc. for the Ontario Government concluded that the B.C. provincial sales tax represents 1.94% additional cost (or \$470,000) for a \$24.2 million feature film and 1.86% additional cost (or \$301,000) for a \$16.2 million television series.

3. British Columbia is facing increasing competition worldwide in respect of feature film service work. As a result of the positive experience with British Columbia, the Los Angeles studios began looking to other locations in Canada and around the world. Toronto now rivals Vancouver as the largest service provider outside of the United States. Australia and New Zealand have become popular, and high budget feature films are now being made in eastern Europe. These other locations give the Los Angeles studios more variety, and the increased competition has had an effect on the amount of foreign service work done in British Columbia.
4. While the variety of locations within British Columbia is generally a positive factor for B.C.'s competitiveness, there are two aspects relating to locations which have a negative impact. First, location fees in the Vancouver area have increased dramatically over the years. Property owners are no longer flattered that the film industry wishes to use their property for a scene and they now want a bigger share of the money they see within the industry. Inexperienced location managers and production managers do not seem to be able or willing to negotiate more reasonable fees. Property owners do not distinguish between the high-budget feature films, which can afford to pay higher location fees, and low-budget productions, which have less money to spend. Second, some locations become burnt out, which makes it harder to find appropriate locations. The first sense of a location being burnt out is that a place may have been used in numerous previous feature films or television shows and is no longer as attractive. The second sense of a location being burnt out is that a neighbourhood may become tired of constant filming in its area and may no longer be prepared to accommodate location shoots.
5. There are some non-labour costs which are higher in British Columbia than other jurisdictions. For example, the costs required to have police supervise a location shoot is significantly higher in Vancouver than in Toronto. Some people argue that police should not be needed because a location shoot is similar to the disruption caused by the construction industry, where police are not required. The police decide how many officers are needed and they are paid double-time wages.
6. One of the topics of particular interest to the Los Angeles studios is immigration permitting. The studios believe that the B.C. unions abuse

their privilege when consulted by the Human Resources Department of Canada ("HRDC") in connection with a request by the producer for a permit in respect of an American actor or other worker. The belief is that HRDC does not make its own independent decision and relies too heavily on the unions. I consider this to be more of an immigration issue than a labour relations issue and I do not propose to make any recommendations in connection with immigration permitting.

(c) Labour Factors

As mentioned above, it is my view that the competitiveness of a jurisdiction for the purposes of the film industry is determined by a combination of cost, certainty and intangible factors. All three of these aspects come into play when considering the impact of labour in British Columbia.

It is the below-the-line costs which are important in considering the competitiveness of a jurisdiction. The majority of the below-the-line costs are expenses paid for labour. It is not surprising that the relative wage rates of workers will be an important consideration when comparing the costs associated with two competing jurisdictions. During the Inquiry, I did hear comments about low wage rates in eastern Europe but, generally speaking, I did not hear that the level of wages contained in the B.C. collective agreements is inordinately high.

One aspect of wages which gives Canadian provinces a competitive advantage over locations in the United States is fringe benefits. As Canada has a national health system, it is not necessary for the production companies to pay as high fringe benefits to Canadian workers. I did not attempt to quantify the amount of this advantage but I believe that lower fringe benefits is an important factor in attracting American productions to Canada.

The wage rates contained in the collective agreements within the B.C. film industry are different from wage rates in collective agreements in other industries. Rather than representing the hourly, daily or weekly amount which is to be paid by the employer to an employee of a particular description, they represent the *minimum* amount to be paid. The film industry uses the terms "scale" and "over-scale". Scale wages mean the wages set out in the collective agreement. Over-scale wages mean wages higher than the amounts contained in the collective agreement. Vancouver has become known as an "over-scale" location because most of the actors and some of the other workers are paid at over-scale rates they individually negotiate with the production companies. This is done both directly and indirectly. The indirect method is to pay a "box rental" to employees in addition to their wages. This term refers to the situation where the production company pays a rental fee for equipment which the employee uses in the course of their work.

The reason that Vancouver has become an over-scale location is that it has had the luxury of being the location for numerous high-budget feature films and television series. The budgets for these productions were sufficiently large

that they could accommodate higher wage rates and the volume of productions meant that experienced crews were in demand. There is nothing inherently wrong with over-scale wages because they represent the economic reality of supply and demand at work. However, the difficulty with over-scale wages is that they have created heightened expectations. As long as there is high-budget service work to be done, the employees will want to be paid over-scale wages and it then becomes too expensive for lower budget productions to be done in the Vancouver area. In my view, this is one of the contributing factors causing the decline in domestic production over the past few years.

In contrast to Vancouver, Toronto is known as a scale location. The beginnings of Ontario's film industry were rooted in domestic production and the budgets did not allow for payment of over-scale wages. A heightened expectation was not created and it is more common in Toronto to pay scale wages for foreign service work.

Another difference between the labour costs in Toronto and Vancouver arises from the size of the crews working on sets. The size of the crews in Vancouver tends to be larger for two reasons. First, the number of transportation workers is higher in Vancouver because there is less flexibility in the work done by drivers. Second, there are more job classifications within IATSE 891 than its Toronto counterpart (Local 873) and workers in one job classification do not usually perform the work of any other job classification.

In discussing the impact of sales tax, I made reference to the sample budgets prepared for a movie of the week production. The B.C. sales tax accounted for approximately \$35,000 of the \$100,000 difference and the rest of the difference was attributable to labour costs. The majority of the additional labour costs related to transportation workers. In referring to these budgets, I should mention that they contemplated using workers from IATSE 891 and Teamsters 155 (and not workers from ACFC West).

I was also provided with sample budgets for a mid-level budget television show to be shot in either Vancouver or Toronto. The budget for the Vancouver locations was \$850,869 and the budget for the Toronto location was \$803,170. Approximately 75% of the \$47,500 difference was attributable to labour costs (with both of the budgets being prepared on the basis of scale wages).

Although I have identified these cost differences, they were not a major focus of concern during the Inquiry. They certainly affect the competitiveness of British Columbia with respect to the domestic market and other low-budget productions. The members of Teamsters 155 and IATSE 891 may have to significantly change their approaches in order to make British Columbia more competitive in the low to mid-budget market, and this will be difficult as long as a certain level of high-budget service work is being maintained in the Province. The existence of ACFC West has allowed British Columbia to retain a portion of this important market and, for this reason, I agree with the parameter stated in the Terms of Reference that ACFC West is to be recognized as a viable

alternative in the industry. I should add that representatives of IATSE 891 indicated during the Inquiry that its members are prepared to be flexible in order to secure the low and mid-budget work.

The reason that the identified cost differences did not become a major focus of the Inquiry is that they can be offset by other advantages of British Columbia as a production location. However, if there are other cost disadvantages, uncertainties and negative intangibles associated with B.C. labour, then British Columbia will lose its competitive edge, and mid to high-budget productions will look to other locations in Canada and other parts of the world. The conclusion I have reached during the Inquiry is that British Columbia is on the verge of losing its competitive edge (if it has not already done so) and it risks a significant decline in the amount of mid to high-budget productions being made in the Province unless changes are made. I will now detail these other factors.

(i) Grievances

Grievances were the primary topic of this Inquiry. There are the following four elements of grievances:

- (a) the high number of grievances;
- (b) the repetitious nature of grievances;
- (c) arbitral awards being ignored while legal challenges are being pursued;  
and
- (d) the timing of grievances.

There are presently 49 grievances in the B.C. film industry which have been filed and have not been withdrawn. Attached as Appendix 5 is a summary of the outstanding grievances.

Teamsters 155 appears to be reluctant to accept the outcome of arbitrated grievances and files new grievances on the same issue after it has lost an arbitration. The primary example in this regard is an arbitration which has become known as the "polling and bumping" arbitration. In the second master agreement (covering the period from April 1997 to March 2000), the parties agreed to a dispatch system for members of Teamsters 155 called a "one for one dispatch". The same provision was carried forward into the third master agreement (covering the period from April 2000 to March 2003). The exact wording of the provision is contained in Appendix 6 but, in essence, it provides that, after the employer has picked the transportation coordinator and captains, Teamsters 155 will dispatch one driver according to seniority for each driver name requested by the employer.

Teamsters 155 has three lists, which are all based on seniority. There is the "A" Main list, the "B" Supplementary list and the "C" Permittee list. A



member's place on a list is fixed and, unlike other union dispatch lists where the member goes to the bottom of their list upon returning from a job, a Teamsters 155 member returns to his or her fixed position on the list upon returning from a production. This means that the senior members returning from one job will be dispatched on the next production even though more junior members may not have worked in some time.

The polling and bumping arbitration came about because Teamsters 155 implemented its own internal dispatch rules. The internal polling rule provided that if a driver on the "B" list was requested by an employer, the Union would poll all members of the "A" list and, if one of them wanted the job, the Union would not honour the name request (if the name request was a worker on the "C" list, all members of the "A" and "B" lists would be polled). The bumping rule provided that when a worker on a superior list returned from a job, they were entitled to replace a worker on a subordinate list who was on another production (with the exception of transportation coordinators, captains and operators of specialized equipment).

Teamsters 155 took the position that its internal dispatch rules prevailed over the provision in the master agreement, and a grievance was filed when an employer disagreed. The grievance went to arbitration and Arbitrator Foley issued a decision on January 3, 2003 holding that the master agreement took precedence over the Union's internal dispatch rules.

Teamsters 155 did not fully accept Arbitrator Foley's decision and took the position that the decision only applied to drivers dispatched for a period of a week (or more) and did not apply to drivers who were dispatched on a daily basis. Another grievance was filed in April 2003 and it became necessary to have a new arbitration over the same issue. On December 15, 2003, Arbitrator Foley unsurprisingly issued a second decision in which he reiterated his conclusion from the first arbitration.

An example of Teamsters 155 ignoring an arbitral award while pursuing legal challenges is a situation involving an arbitration which has become known as the "cast driving" arbitration. In 2000, Teamsters 155 filed four grievances in relation to productions where actors or directors were driving themselves and were not using members of Teamsters 155 to drive them. On January 30, 2003, Arbitrator Ready issued a decision in which he held that Teamsters 155 did not have exclusive jurisdiction to drive cast/directors and that the producer had a discretion in assigning cast/director transportation.

Teamsters 155 did not agree with the cast driving decision and made an application to the Labour Relations Board to review the decision. The review application was dismissed on August 19, 2003 but Teamsters 155, still unwilling to accept it, applied for leave to have the Board reconsider its decision. Leave was refused by the Board on January 16, 2004.

In the meantime, however, Teamsters 155 was not prepared to abide by

the cast driving arbitral award. An incident arose during the course of this Inquiry in connection with the production of a television show called Jake 2.0. The four principal actors were being driven by members of Teamsters 155 but when one of the actors became concerned that she was being stalked, the producer decided to have the four principal actors driven by bonded security guards. Teamsters 155 threatened to shut the production down, although it had no legal right to do so (the master agreement with the Council specifically provides that there is to be no strikes, work stoppages or disruptive activity during the term of the agreement). The production company was forced to agree to a compromise. Incidents such as the one at the Jake 2.0 production introduce an uncertainty into the production process (as well as an additional cost). As the right to continue productions without illegal work stoppages is extremely important to all producers, such incidents, together with other intimidation tactics, may well cause producers to look to locations other than British Columbia.

In addition to being mobile in nature, the production of feature films and movies of the week is project-based (as are television series, but they have the prospect of returning for one or more seasons). When the production is finished, the producer and crew disperse and move on to the next production. In the case of the producer, he or she will usually go to a new location outside of British Columbia and may be extremely busy with a new production. The records for the production are usually put into storage. When a grievance is filed during the course of the production, all of the relevant people are still on location and the grievance can be dealt with, at least in terms of marshalling the relevant information and documents. On the other hand, if a grievance is not filed until after the production has been completed, the relevant people will have dispersed and be busy with new productions, and the records will have been put into storage, with the result that it is more difficult to deal with the grievance. Often, the production company will just pay off the grievance because it is too inconvenient and costly to dispute it.

The collective agreements have time limits for the filing of grievances. The master agreement with the Council provides that a grievance must be filed within 30 days of the occurrence of the event or 30 days after the underlying facts become known or should have reasonably become known. In the collective agreement with UBCP, the period is 10 days rather than 30 days. However, section 89 of the *Code* gives the power to arbitrators to relieve against breaches of time limits set out in collective agreements. Management within the B.C. film industry believe that arbitrators do not appreciate the unique nature of the industry and are too lenient in relieving against time limit breaches.

The final aspect relating to the timing of grievances which irritates management is expedited arbitrations. Section 104 of the *Code* contains a procedure permitting a grieving party to refer a matter to the director of the arbitration bureau for resolution of the grievance by expedited arbitration. Management is of the view that this provision has been abused by UBCP through the mechanism of referring ordinary grievances to expedited arbitration after the production has been completed, when the relevant management representatives

are busy on new productions and do not have the time to deal with an arbitration on an expedited basis.

During the Inquiry, I heard three other common complaints against UBCP and its members. The first is that background extras are constantly attempting to be upgraded to the status of actor or principal actor. This is an irritation factor during the course of the production and it can lead to a significant extra cost (I was given an example of a background extra who would normally earn \$20,000 for a five month production, but could earn as much as \$160,000 if upgraded retroactively for the entire production).

The second additional complaint is that UBCP conducts an accounting at the end of each production (some people call it a forensic audit) and often claims additional monies on behalf of its members. No one disputes that UBCP has the legal right to conduct this type of accounting but one person rhetorically asked why it is the only union in the film business in North America which does it. It is considered to be a major irritant by production companies.

The third additional complaint against UBCP relates to bonds which are required under its collective agreement to secure the performance of the obligations under the agreement by the production company. I heard complaints that UBCP will hold a sizeable bond and use it as leverage to settle a small grievance by refusing to release the bond or accept a smaller replacement bond until the grievance is settled. I also heard this complaint against the Council of Film Unions, but to a lesser extent.

The complaints against UBCP were underscored by a production decision made during the course of this Inquiry. I was informed that a production company made a decision in January 2004 to shoot an \$80 million feature film in Toronto rather than Vancouver because the producer was still dealing with UBCP grievances from a previous production and did not want to repeat the experience.

The four elements of grievances which I have identified have an adverse impact on the competitiveness of the B.C. film industry. Grievances add to the cost of a production in British Columbia. I heard from various sources that some production companies are including an extra amount of \$50,000 in the budget for a production to cover the costs of dealing with grievances. This amount could tip the scales against shooting a production in British Columbia. Grievances also contribute to uncertainty for the producers, who do not know whether their production will be plagued with grievances and whether arbitral awards will be honoured. Finally, grievances can be an important intangible factor because they represent aggravation and irritation for management.

In my opinion, grievances are a major negative factor affecting the competitiveness of the B.C. film industry, and they will be the major focus of my recommendations.

(ii) Jurisdictional Disputes

Arbitrations involving jurisdictional disputes are to be distinguished from grievance arbitrations. Jurisdictional disputes arise when there is a disagreement as to which employee of two different unions should perform a particular task. The jurisdictional disputes in the B.C. film industry which are currently outstanding are summarized in Appendix 5.

When the Labour Relations Board decided in 1995 that the Council of Film Unions was an appropriate bargaining agent in the film industry, it contemplated that a film industry umpire would be developed for the purpose of dealing with disputes in the industry, including jurisdictional disputes. The Council of Film Unions and its three members entered into a jurisdictional resolution agreement under which an umpire was appointed to resolve jurisdiction disputes among them.

The most infamous jurisdictional dispute has become known as the "golf cart" arbitration. The proceeding arose from two dispute notices involving the claim of Teamsters 155 to have exclusive jurisdiction to operate forklifts and golf carts. Teamsters 155 filed the dispute notice in respect of the forklifts and IATSE 891 filed the dispute notice in respect of the golf carts. AMPTP participated in the arbitration because it was concerned that the outcome of the arbitration could affect its members for the purposes of future productions.

The first part of the proceeding, which began in June 2000 and lasted an aggregate of 9 days over the following year, involved an investigation/mediation. In addition, there was a two day hearing regarding the interpretation of the principal provision of the jurisdictional dispute agreement dealing with the criteria to be considered by the umpire in making a jurisdictional assignment. On September 24, 2001, Umpire Lanyon issued his decision regarding the interpretation of the agreement and, on October 10, 2001, he issued an interim report setting out his preliminary analysis and comment.

The next hearing lasted 18 days and dealt with the introduction of the evidence relating to the disputes. The evidence widened in scope to deal with equipment other than forklifts and golf carts. On July 31, 2002, Umpire Lanyon issued his decision dismissing the two claims of Teamsters 155. Umpire Lanyon made the following point in his decision:

The Employer states that the jurisdictional disputes are beginning to hurt the industry in British Columbia. Labour stability was essential in attracting productions to this province and the Council of Trade Unions provided that stability. At the inception of the Council production in British Columbia in 1995 was approximately 432 million dollars and by 2000 has grown to 1.1 billion dollars. Over this period of time the 63 cent dollar has remained fairly constant. What has attracted work has been the stability of this new collective bargaining scheme. The resolution of jurisdictional disputes was an important ingredient of that stability.

British Columbia no longer has the benefit of a 63 cent dollar and, in my view, there are legitimate concerns about the labour stability in British Columbia. Jurisdictional disputes add to the cost of production, create uncertainty and are aggravating to management.

Teamsters 155 was not prepared to accept Umpire Lanyon's decision and applied to the Labour Relations Board for a review of the award. The Board dismissed the application on July 31, 2003. IATSE 891 also applied to the Board for review of the award and, on August 18, 2003, the Board remitted certain issues back to the Umpire for clarification. On December 10, 2003, Umpire Lanyon issued an award clarifying his decision. Whether this jurisdictional dispute has finally been resolved after 3 ½ years and over 30 days of hearings remains to be seen.

The second noteworthy matter involving jurisdictional disputes resulted in a decision of the Labour Relations Board in *Re Sugar Mountain Productions Ltd.*, BCLRB No. B268/2002. Two disputes arose in connection with a production being made by Sugar Mountain. One related to the use of bus services to transport extras, and the other related to a contract made by Sugar Mountain for the supply of crane equipment and operators of the equipment. Teamsters 155 applied to the Board for a determination of whether the disputes were properly before an arbitrator or whether they should be determined by the umpire under the jurisdictional resolution agreement.

The Board declined to get involved and referred the issues back to the arbitrator. However, in doing so, Chair Mullin expressed serious misgivings about the system of resolving jurisdictional disputes in the film industry. He made the following observation:

... the jurisdictional system undercuts what should be the practical, as well as legal, reality that the Film Council is the union. The stabilization and securing of production work that has been accomplished in the industry was furthered by the establishment of the Film Council in 1995. Yet, here on the collective agreement administration side, the benefits of having one union in the form of the Council are being undercut by the jurisdictional resolution structure. The result appears to be that the maturing and progress which has been accomplished on the collective bargaining side, is not being matched on the collective agreement administration side.

Chair Mullin commented that a jurisdictional dispute system of this nature may have previously been acceptable in monopoly or pass-on industries, but that, "in the contemporary context, labour relations exists within an environment requiring productivity, competitiveness and efficiency". He concluded that the present structure appeared too convoluted and difficult, and that there is a "need to have a self-governing system which is efficient, cost-effective and supports the interests of the parties and the province in presenting a competitive, marketable venue for the film industry".

Following the *Sugar Mountain* decision, the five unions<sup>4</sup>, AMPTP and CFTPA undertook negotiations for a new jurisdictional resolution agreement. The new agreement has not yet been finalized. Several parties expressed reservations to me in respect of the concept embodied by the draft agreement.

It is my view that the current structure for resolving jurisdictional disputes detrimentally affects the competitiveness of the B.C. film industry, and I will be addressing the topic in my recommendations.

(iii) Inexperienced Production Managers

One of the reasons that there have been increased difficulties in dealing with labour relations issues is that production managers often do not have the required experience in order to resolve the issues before they escalate. Prior to the formation of the Council of Film Unions in 1995, production managers were frequently involved in the negotiations for collective agreements. They were familiar with the terms of the agreements and labour relations issues generally. The master agreement is now negotiated by the Council and AMPTP/CFTPA, and only a few of the production managers choose to participate in the process.

In addition, the rapid expansion of the film industry in the second half of the 1990s necessitated the appointment of new production managers. Some of them were appointed as production managers before they had been adequately trained. Part of the problem in this regard flows from the fact that production coordinators are members of IATSE 891 while production managers are members of the DGC. There are pre-conditions to membership in the DGC, which present an impediment to production coordinators being promoted to production managers. As a result, many of the new production managers came from the ranks of locations managers (being members of DGC), who some believe are not as qualified for the position as are production coordinators. In addition, I received a written submission which detailed other aspects of the methods of membership in IATSE 891 and DGC which impede a worker's ability to move up within the industry.

A related complaint voiced by Teamsters 155 is that the Los Angeles studios do not have a sufficient local presence in British Columbia and that this makes it more difficult for union and management representatives to sit down at a table and quickly resolve disputes. None of the other unions shared this concern. AMPTP does have a Vancouver representative who is very experienced in labour relations and the producers/production managers have telephone access to the labour relations personnel of the studios.

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<sup>4</sup> For the sake of simplicity, the term "unions" includes guilds. In giving the term this expanded meaning, I am not reaching any legal conclusion that a guild is a union, a point which was specifically left open by the Labour Relations Board in its 1997 decision that DGC and UBCP should not be made members of the Council of Film Unions.

(iv) Attitudes

There has been a gradual change in the attitudes of people working in the B.C. film industry over the past 20 years. This applies to all aspects of the industry, and is not limited to the labour component only. Generally speaking, the people who first became involved in the industry were motivated by an attraction to film making. They tended to be enthusiastic, hard working and cooperative. People owning property were flattered that the film industry wanted to shoot on their property, and were very accommodating. These attitudes helped establish British Columbia's early reputation of being a "user-friendly" location.

There has been a change in the attitudes as the film industry has matured in the Province. New people entering into the industry were motivated as much by money as by any interest in film making. A sense of entitlement developed and people became less cooperative. Some people did not work as hard. British Columbia is no longer considered to be a "user-friendly" location.

One concrete example of the change in attitude is the relatively high level of loss and damage experienced by productions in British Columbia. No one disputed the assertion that there are a high number of accident claims and incidents of theft in the industry. These are often a result of a lackadaisical work ethic. Even if insurance coverage may mean that these events do not increase the cost of the production, they add to the level of aggravation experienced by the producer and they may increase the amount of insurance premiums for future productions.

This type of change in attitude is not unexpected as an industry matures. It is part of human nature. No recommendation made by me can directly alter people's attitudes. However, I hope that my recommendations may have an indirect impact on attitudes within the industry.



*Snow Walker*

## COMPARISON OF LABOUR STRUCTURES

### (a) Introduction

I examined the labour relations structures in two other jurisdictions, Ontario and the county of Los Angeles. I will review the basic structures in these jurisdictions, and I will also compare their dispatch systems to the dispatch systems in existence in British Columbia.

I chose not to examine the structure in Quebec because the makeup of its film work is fundamentally different from British Columbia. For example, 75% of the total productions in Quebec are domestic, while only 20% of the productions made in British Columbia are domestic. In many ways, Quebec is in an envious position because its film industry has a solid foundation based on domestic productions, which is largely attributable to the distinct market for French language films and television shows. The Quebec industry has been built up as a result of domestic productions, and the foreign service work represents a minority of the work. It is the opposite in British Columbia.

It could also be said that the Ontario film industry grew up with domestic productions but it does approximately twice the amount of foreign service work as is done in Quebec. Within the Canadian film industry, Ontario and British Columbia are certainly the main competitors for the foreign service work.

### (b) Union Structures

#### (i) British Columbia

I reviewed the union structure in British Columbia at the beginning of this Report. In brief, there are six main unions: DGC, IATSE 669, IATSE 891, Teamsters 155, UBCP and ACFC West. As a result of the inquiry under section 41 of the *Labour Relations Act*, a Council of Film Unions was determined to be an appropriate bargaining agent, and its members are IATSE 669, IATSE 891 and Teamsters 155.

#### (ii) Ontario

The main structural difference between Ontario and British Columbia is that the Teamsters Union is not involved in the film industry in Ontario. The Ontario industry has ACTRA, DGC and three IATSE locals, as well as an alternate union called NABET (National Association of Broadcast Employees and Technicians), which, like ACFC West, is a local of the Communications, Energy and Paperworkers Union of Canada.

DGC represents the same categories of employees in Ontario as it does in British Columbia but it also represents employees in the art and editing departments, who are represented by IATSE 891 in British Columbia.

IATSE has three locals in Ontario. Local 667 is the counterpart of IATSE



669 in representing camera operators. Local 411 represents production coordinators and workers involved in providing craft services. Local 873 is roughly the equivalent of IATSE 891 except that it also represents drivers.

NABET has a somewhat larger share of the Ontario market than ACFC West's share of the British Columbia market. It does lower budget productions, movies of the week, some television series and feature films with budgets up to approximately \$25 million.

The Teamsters Union, Local No. 847, has been unsuccessfully attempting to organize the drivers and security workers in the Ontario film industry. The Teamsters are currently challenging an arbitral decision in which it was decided that DGC is the bargaining agent for security workers. The Teamsters were not involved in the arbitration and have applied to the Ontario Labour Relations Board to set the decision aside.

Unlike British Columbia, Ontario does not have a long-term or master agreement for feature films. Each year, the IATSE locals issue promulgated agreements containing the wage rates, fringe benefits, and terms and conditions they consider to be fair. There are tiers of wage rates and fringe benefits within the promulgated agreements to correspond to different levels of budgets for the productions. Each feature film production has a separate collective agreement with each IATSE local, and it is based on the promulgated agreement with such variances as the parties may negotiate. The IATSE locals have entered into a three year contract in respect of U.S. television shows.

Like ACFC West, NABET has negotiated a master agreement with CFTPA. It is tiered according to the size of the budget. Agreements are individually negotiated for low budget feature films (less than \$2.5 million) and television series (less than \$300,000).

There are not a high number of grievances filed in the Ontario film industry. Very few require an arbitrated resolution. There are no jurisdictional disputes in Ontario as a result of the fact that IATSE 873 represents the drivers and any differences between its departments are resolved internally.

### (iii) Los Angeles

The county of Los Angeles has a set of unions in the film industry which is comparable to the group of unions in the B.C. industry, except that Los Angeles does not have an alternate union similar to ACFC West.

The counterparts to DGC and UBCP are the Directors Guild of America and the Screen Actors Guild/AFTRA. The counterpart to Teamsters 155 is Studio Transportation Drivers, Local No. 399 of the International Brotherhood of Teamsters (the "L.A. Teamsters").

Each of the departments within IATSE 891 roughly corresponds to a separate local in Los Angeles. Including the camera local, there are 18 IATSE

locals in Los Angeles.

These unions have all negotiated master agreements with the major studios and other producers. Each union negotiates separately and there is no council of unions similar to B.C.'s Council of Film Unions.

Los Angeles does have one labour related structure which is not found in Canada. It is called Contract Services Administration Trust Fund ("Contract Services"). It is funded by the employers and serves the following functions:

- (a) the administration of the rosters of available workers;
- (b) the administration of grievance procedures; and
- (c) overseeing safety and training programs.

As part of its function of administering the rosters of available workers, Contract Services is responsible for overseeing the "three strike" rule. This rule provides that an employee is removed from the rosters and is no longer eligible for employment in the industry if he or she is discharged for cause from three productions. An employee has a right to grieve a discharge for cause and also has the right to protest his or her removal from the rosters within 15 days of being notified of the removal.

The L.A. Teamsters made a point of telling me that it files a lot of grievances on behalf of its members. However, I formed the view from all of my interviews that grievances in Los Angeles do not represent the same relative cost and level of aggravation as is the case in British Columbia. There are few jurisdictional issues as a result of the maturity of the industry in Los Angeles (i.e., most issues regarding jurisdiction have already been determined).

### (c) Dispatch Systems in the Three Jurisdictions

There is a commonality among British Columbia, Ontario and Los Angeles with respect to the choice of actors and members of the directors guilds who are to work on a production. The producer is entitled to select the personnel from among the membership of each of the relevant unions, and these unions do not have any requirement that members are taken on the basis of any system of seniority. There are differences in respect of the dispatching of members by the other unions, and I will describe the dispatch systems for each of the three jurisdictions.

#### (i) British Columbia

I described the dispatch system applicable to members of Teamsters 155 when discussing the polling and bumping arbitration under the heading of "Grievances", and the relevant dispatch provision of the master agreement is set out in full in Appendix 6. In summary, the employer is entitled to select the transportation coordinator and captains from the union membership. Thereafter, there is a one-for-one dispatch where, for each union member selected by the employer, Teamsters 155 dispatches a worker according to fixed seniority

positions on three lists called the “A” Main list, the “B” Supplementary list and the “C” Permittee list.

The master agreement also contains a dispatch system in respect of members of IATSE 891. The employer is entitled to select the head of each of the 20 departments within IATSE 891, and the head of each department is entitled to select a 1<sup>st</sup> assistant and a 2<sup>nd</sup> assistant, together with any further assistants reasonably required. In the five main departments (Construction, Paint, Grip, Lighting and Greens), IATSE 891 dispatches the remaining workers according to seniority. The production company is entitled to name request the workers in the other departments. I was told by numerous people that producers get around IATSE 891’s dispatch system by having the department head request more than two assistants. The additional assistants will actually do the work of a lower classification but will be paid at the higher rate for the assistant category. The result is that these producers do achieve name selection but at a higher wage cost.

There is no seniority dispatch system for either of IATSE 669 or ACFC West. The employer may select any of the personnel from the union memberships, and IATSE 669 and ACFC West do not have the right to specify which of its members are utilized for a production.

(ii) Ontario

IATSE 873 previously had a dispatch system which was based entirely on seniority but it has evolved over the years. At present, the production company is entitled to name pick the head of each of IATSE 873’s 14 departments and a total of 42 additional positions. These additional positions are spread out over the 14 departments. Further name requests are allowed if there are two units shooting on the production. The remainder of the positions are dispatched by IATSE 873 on the basis of seniority. This seniority dispatch system only comes into play to a significant extent on feature films because, for example, the producer is entitled to name pick 56 of the approximate 70 workers required for a television series.

Each of IATSE 411, IATSE 667 and NABET allows full name selection of its workers by the production company, and does not have a seniority dispatch system.

(iii) Los Angeles

None of the IATSE locals in Los Angeles has a seniority dispatch system, and a producer is entitled to request any of the relevant workers from their respective memberships.

The L.A. Teamsters has a modified form of seniority dispatch. It has three lists, called the Group 1, Group 2 and Group 3 lists, which are based on seniority (for example, a person on the Group 2 list is entitled to be transferred to the

Group 1 list after 10 years on the Group 2 and 3 lists). The producer is first entitled to name request workers from the Group 1 list and may only request workers from the Group 2 list when 2% or fewer of the persons on the Group 1 list are available for work. Similarly, the producer may only request workers from the Group 3 list when 2% or fewer of the persons on each of the Group 1 and Group 2 lists are available for work.



*Da Vinci's Inquest*

## ADMINISTRATION OF COLLECTIVE AGREEMENTS

In my opinion, there are legitimate concerns about the proliferation of disputes, in the form of grievances and jurisdictional disputes, within the B.C. film industry. The outstanding grievances and jurisdictional disputes are listed in Appendix 5, and I have discussed them above when considering the labour relations factors which are adversely affecting the competitiveness of the B.C. film industry.

There is no principled reason why the numbers of grievances and arbitrations in British Columbia should be so much higher than the corresponding numbers in Ontario. This aspect is giving Ontario a competitive advantage over British Columbia. I formed the impression that if the major studios decide to make a production outside of Los Angeles, they would genuinely like to bring the production to British Columbia if the Province has the capacity to handle the production and if it is not materially more expensive to make the production in the Province than in another jurisdiction. However, the extra cost, uncertainty and aggravation caused by grievances and jurisdictional disputes in British Columbia are making the studios hesitant to come to this Province.

Based on all of my interviews, it is my conclusion that the most significant factors contributing to the high level of grievances and jurisdictional disputes are the following:

- (a) the seniority dispatch systems of Teamsters 155 and IATSE 891;
- (b) the failure of the Council of Film Unions to act as a single union; and
- (c) the past practices of UBCP.

I will be making recommendations which address these factors.

Some people said that it is Teamsters 155 alone which contributes to the large number of disputes. Some people in Ontario said that the biggest competitive advantage that Province has over British Columbia is the absence of Teamsters in its film industry. I will return to this aspect under the heading of "Council of Film Unions".

The Terms of Reference requested that I consider alternate practices for the improvement of "enabling" on different types of productions. The real problem is that enabling does not occur. The purpose of enabling is to allow a union to make concessions on the rates and terms of its collective agreement so as to enable a project to be undertaken. The Council of Film Unions believes that it has an enabling process in place but I do not agree.

The Council of Film Unions has negotiated a master agreement in respect of its exclusive jurisdiction, which consists of productions having labour costs of the members of the Council in excess of \$4 million and one hour dramatic productions for ABC, CBS and NBC. The Council does not make concessions on these types of productions.

What the Council calls enabling is the process it undertakes when a

production outside of the Council's exclusive jurisdiction wants to negotiate the wage rates, fringe benefits and terms and conditions applicable to its production. The way in which the Council negotiates with the producer is to offer concessions off the master agreement. This is not enabling. Rather, it is the negotiation of a new collective agreement based on a master agreement which was intended for a different level of production.

The principal reason it is done in this fashion is that the Council has never negotiated a supplemental master agreement with AMPTP and CFTPA to cover the non-exclusive jurisdiction. It was requested to do so by the Labour Relations Board at the time of the initial section 41 decision but the only agreement covering non-exclusive jurisdiction is Appendix "D" of the master agreement dealing with movies of the week. The absence of a comprehensive agreement for the non-exclusive jurisdiction means that there is uncertainty in the marketplace for medium and low budget productions because the producers do not know what wage rates will be charged unless they visit the Council and enter into negotiations. By contrast, Ontario has tiered agreements covering different budget levels (albeit they are promulgated agreements and require some negotiation as well). I intend to deal with this matter in my recommendations.



*Miracle*

## COUNCIL OF TRADE UNIONS

In general terms, the existence of the Council of Trade Unions has been beneficial to the B.C. film industry. It has reduced the need for a contract negotiation in respect of each and every production done in the Province and this has assisted in increasing labour stability with respect to collective bargaining. Unfortunately, the existence of the Council has not had the same effect with respect to the administration of the collective agreement. I am hopeful that my recommendations, if implemented, will assist in this regard and that it will not be necessary to change the structure of the Council.

I have given consideration to the issue of whether DGC and UBCP should be added to the Council. It is my conclusion that they should not be included in the Council at this time because, as decided by the Labour Relations Board in May 1997, DGC and UBCP have a different community of interest in comparison to Teamsters 155 and the two IATSE locals. In addition, a degree of collective bargaining stability has been achieved with the current structure and it is preferable not to risk disturbing it by making a change to the structure.

I also gave consideration to the issue of whether DGC and UBCP should be involved in a screening process in respect of grievances involving members of the Council. I concluded that it would not be appropriate to have DGC and UBCP involved in the administration of a collective agreement to which they are not a party. In addition to the inherent anomaly of such a situation, it is my view that this would create increased friction between DGC/UBCP and the members of the Council, especially between UBCP and IATSE 891/Teamsters 155.

Although I do not believe that DGC and UBCP should become part of the Council or be involved in the administration of the Council's collective agreements, it is my view that there should be a better level of communication between the Council members and DGC/UBCP. All five of these unions met together when they were part of the informal British Columbia and Yukon Council of Film Unions but the meetings became less frequent (or even non-existent) after the Council was formally constituted in 1995. The lack of communication has created a feeling of resentment by the Council towards DGC and, especially, UBCP. I do not propose to make a specific recommendation in this regard because it is futile to make organizations meet with each other if they do not want to meet. However, it is my hope that these unions will see the benefit of an increased level of communication among themselves and organize regular meetings to discuss common issues.

I next gave consideration to the issue of whether there should be a merger of one or more of the Council members, DGC and UBCP. No one seriously suggested that all five of these unions should be amalgamated together but various people did believe that Teamsters 155 should be merged into IATSE 891. It is my view that the current problems relating to the administration of the Council's master agreement can be addressed by other, less severe, recommendations. A forced merger of Teamsters 155 into IATSE 891 has the

following drawbacks:

- (a) the disruption caused by it could have more of a detrimental effect on the B.C. film industry than the current problems;
- (b) it could simply transfer the group of challenging workers within Teamsters 155 into another union without addressing the more fundamental issues; and
- (c) although NABET has survived in Ontario in competition with IATSE 873 (which represents drivers), concerns have been expressed that IATSE 891 may try to force ACFC West out of the market if it were to take over representation of the drivers.

However, if Teamsters 155 refuses to agree to my recommendations or if the current problems persist after the implementation of my recommendations, this alternative should be given fresh consideration.

Similarly, I decided against making a recommendation that the Council's exclusive jurisdiction should be taken away from it. I believe that the current problems can be addressed by other recommendations and it may be perceived to be unfair to take away a benefit which was given to the Council by the Labour Relations Board in exchange for requiring the formation of the Council. Again, however, this alternative should be left open for consideration if the current problems persist.





## RECOMMENDATIONS

### (a) Introduction

The Terms of Reference directed that I consider the issues raised by it within the parameters of, among other things, section 2 of the *Code*. I have attached the wording of section 2 as Appendix 7. I have borne the principles set out in section 2 in mind when formulating my recommendations.

My recommendations fall into two categories. The first category contains recommendations directed to the industry for the purpose of addressing the issues which I have discussed in this Report. Generally speaking, these recommendations are of a type that are capable of mutual agreement among the relevant parties. However, it is possible that the parties will not reach a mutual agreement with respect to my recommendations. The second category of recommendations is directed to the Government in the event that the parties do not reach agreement within a reasonable period of time.

### (b) Recommendations to the Industry

#### (i) Seniority Dispatch

Based on my discussions with people in the film industry in British Columbia, Ontario and California, the most important recommendation is that the seniority dispatch systems applicable to Teamsters 155 and IATSE 891 be abolished. It is believed that this change will reduce the number of grievances by 50 to 75%. The change should foster the employment of workers in an economically viable business consistent with section 2 of the *Code*. It should also increase the commitment of many individual workers to the industry.

The concept of a seniority dispatch system impedes productivity in the workplace, a principle articulated in section 2 of the *Code*. Workers have little incentive (other than pride) to work to the best of their ability because productivity is unrelated to future job opportunities. If they are sufficiently senior, unproductive workers are virtually guaranteed work under the current seniority dispatch systems applicable to Teamsters 155 and IATSE 891. Conversely, productive workers may have difficulty in securing employment if they are not sufficiently senior. Although B.C.'s current system has some similarities to dispatch systems in other jurisdictions, it is unique in North America.

A change from the current seniority dispatch system to a name request system will make the B.C. film industry more economically viable and this will promote the employment of members of the unions under their collective agreements. As a result of the mobile and project-based nature of the film industry, production companies can simply decide to make feature films or television shows outside of British Columbia if they have concerns about the B.C. work force. The abolition of the seniority dispatch systems will make British Columbia a more attractive location, and this should lead to more job

opportunities for the members of the unions.

The majority of members of Teamsters 155 and IATSE 891 are good workers. What management really desires is the ability to reject workers who it considers to be poor or disruptive workers. However, it is my view that it is preferable to frame the revised system as a "name request" system rather than a "name rejection" system. A "name rejection" system would force the production company to specifically identify workers it does not want and this could lead to confrontational situations, including intimidation tactics.

I empathize with senior workers. Younger people have more energy and may be more likely to be chosen by an employer. On the other hand, a senior person will presumably have more experience, and the additional experience may outweigh a decreased level of energy. I believe that a limited form of seniority dispatch can be retained. In practical terms, a producer/production manager may not know all of the names of available workers and may be prepared to accept dispatches from the unions. In addition, I believe that producers/production managers may be prepared to accept day workers according to a form of seniority dispatch. Therefore, it is my recommendation that the present system of dispatch be replaced with a name request system except where the production company is prepared to accept workers dispatched on a seniority basis.

Three principal concerns were raised with respect to the abolition of seniority dispatch systems. The first is that a name request system would lead to wide-scale corruption. This does not occur within DGC, UBCP and IATSE 669, which already have name request systems. In addition, no one mentioned it as a problem in Los Angeles, which has a modified name request system. In addition, dishonesty is a ground for termination and, with the implementation of the "three strike" rule, dishonest workers will be risking their careers in the industry.

One area where a heightened risk of corruption exists is equipment rentals. At least one studio has a policy which prohibits the renting of equipment from transportation coordinators, and the other studios should consider implementing a similar policy.

The second concern is that workers will be forced to perform unsafe tasks because they will be afraid that if they refuse, they will not be selected for future work. This is a concern which can potentially exist in many other industries and I am not aware that it is a major problem. If a task is unsafe, an employee has justification to refuse to perform it. The Workers' Compensation Board supervises work practices in the Province, and the B.C. film industry has its own safety organization (Safety & Health in Arts Production & Entertainment). I am not persuaded that a name request system will lead to significant unsafe work practices.

The third concern involves training. If there is a name request system, there will be a tendency for set crews to form, and these set crews will move from

show to show together. This will impede training because inexperienced workers will not be part of a set crew and will not have the opportunity to learn. In my view, this concern can be addressed by re-instituting a trainee category in the master agreement at a reduced wage rate so that a set crew can include a trainee on larger productions. The need for training can also be addressed in other ways.

Some concern was expressed about allowing the unions to have control of the lists of available workers in a name request system. In Los Angeles, Contract Services administers the rosters of available workers. I agree that this is a potential source of abuse but at the present time there is no organization in British Columbia which is the equivalent to Contract Services. One of my later recommendations is that the formation of such an organization should be considered and, if created, it could administer the lists.

Another concern expressed was that a name request system would cause Teamsters 155 and IATSE 891 to close their memberships so that only present members will be entitled to receive requests to work. Their memberships are already closed to a certain extent, and a name request system could cause the unions to make it even more difficult for workers to become members. I have decided against making a recommendation in this regard but the situation should be monitored and the issue should be reconsidered if the closed nature of union membership proves to impede the employment of workers in the B.C. film industry.

(ii) Council as One Union

I considered various alternatives to improve the grievance process in the B.C. film industry. Some of the alternatives I considered are as follows:

- (a) implementing a summary determination process so that grievances of little merit can be disposed of in a summary fashion without the necessity of a full arbitration;
- (b) giving arbitrators the power to award costs against the unsuccessful party for repetitious or frivolous grievances; and
- (c) introducing grievance time limits which would provide for expedited grievances and which could not be extended or waived except by agreement or in extraordinary circumstances.

Upon reflection, I decided that, while these may be good theoretical solutions, they may not work as well in practical terms. In addition, if the number of grievances is reduced by the introduction of a name request system and if the number can be further reduced by a proper screening process, the volume of grievances should become manageable and these additional solutions should not be needed.

There is a screening process for grievances in existence at the present time. Article 11.01 of the Council's master agreement provides that the Council

is to make a careful and thorough investigation of an employee complaint in order to ascertain whether the complaint is true and reasonably justified under the master agreement. The members of the Council should assess an employee complaint on its merits and the grievance should only go forward if a majority of the Council members are in favour of proceeding with it.

There is a general consensus that the present screening process does not work well because the Council does not act as a single union and the constituent members of the Council appear to be reluctant to block the grievance which another constituent member wishes to pursue. A union will often pursue a grievance of one of its members because it is afraid that the member will complain to the Labour Relations Board under sections 12 and 13 of the *Code* (a copy of sections 12 and 13 is attached as Appendix 8) that the union has breached its duty of fair representation<sup>5</sup>. In addition, there are probably internal political considerations which motivate the executive of a union to pursue a grievance even though the executive may not believe that the grievance is justified.

In my opinion, the source of the difficulty is that grievances are treated as grievances of a particular member of the Council and are not considered to be grievances of the Council. It is my recommendation that grievances which a member or the executive of one of the Council's constituent unions wishes to pursue should be handled as follows:

- (a) the Council should obtain an independent assessment of the grievance – this can be accomplished by an informal umpire or a lawyer who does not regularly perform legal services for the union which wishes to pursue the grievance (it could be the lawyer who acts for the Council or some other lawyer);
- (b) the grievance should only be allowed to proceed if a majority of the Council's members, following the independent assessment, are in favour of it going forward towards arbitration;
- (c) the cost of prosecuting a grievance should be a cost of the Council, not the union which wishes to pursue it; and
- (d) a representative of the Council and each of its members should be required to file a statutory declaration with the Labour Relations Board on an annual basis verifying that the Council has paid all of the costs associated with its grievances and that there has been no different sharing of costs among the union members by any form of side arrangement.

This procedure should alleviate the concern of the unions with respect to section 12 applications by its members. Section 12 does permit applications to be made with respect to the actions of a council of trade unions but the independent assessment will protect the Council from accusations that it has not fulfilled its

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<sup>5</sup> In *Judd v. Communications, Energy and Paperworkers Union of Canada, Local 2000*, BCLRB No. B63/2003, the Labour Relations Board endeavoured to explain the relatively narrow parameters of section 12, but the unions within the B.C. film industry are still fearful of section 12 applications.

duty of fair representation to the member of the constituent union who wanted to pursue a grievance.

The failure of the Council to act as a single union has also caused problems with respect to the resolution of jurisdictional disputes. At the present time, whenever an issue arises as to which worker should perform a particular function, all of the relevant unions and employer organizations get involved, and a lengthy and expensive process ensues. The employer organizations feel compelled to become involved at an early stage because they are concerned that the result of the dispute will set a precedent which will affect future productions.

In my view, a jurisdictional dispute can be quite similar to an ordinary grievance. For example, the cast driving arbitration was, in essence, a jurisdictional dispute. The issue was whether Teamsters 155 had exclusive jurisdiction to drive actors and directors. It was not called a jurisdictional dispute because it did not involve two unions.

It is my recommendation that the Council should resolve jurisdictional disputes among its members in the same way that a single union resolves disputes as to which of its departments or members should perform a particular function. Once the Council has reached its decision internally, it can file a grievance if an employer assigns work to an employee which is inconsistent with the Council's internal decision. The internal decision is not binding on the employer, which will only get involved if a grievance is filed.

The difference between the Council and a truly single union relates to the internal decision making process. In the case of a single union, if the persons directly involved in a jurisdictional dispute or their immediate superiors cannot resolve the disagreement, the decision on the dispute will ultimately be made by the head of the union or the person to whom the head of the union has delegated the responsibility of making such decisions. The Council is not a homogeneous union and its executive director is usually selected from the ranks of one of the constituent unions. It would not be appropriate to have the Council's executive director make the ultimate decision on a jurisdictional dispute.

Accordingly, it is my view that the Council requires independent assistance in the form of an umpire to assist it in making decisions on issues of jurisdiction. The umpire may first wish to attempt mediation of the dispute but, if the two unions are not able to agree, the umpire will have to ultimately make a decision which is binding on the constituent members of the Council (but not binding on the employer). If the issue becomes the subject matter of an arbitrated grievance, the umpire could not act as the arbitrator and the umpire's decision would be given no precedential value by the arbitrator. Until the arbitrator gives his or her decision, there could be no work stoppage over the dispute (which is already expressly prohibited in the Council's master agreement) and the employer would continue to have the right to assign the work.

It could be argued that this recommendation would create two duplicative

processes and would not simplify the resolution of jurisdictional disputes. However, approximately one-half of the disputes should be resolved at the level of the Council and will not result in a grievance. In addition, the Council's internal process should be more expeditious and less costly than an arbitration. In my opinion, the overall effort and cost involved in resolving jurisdictional disputes will be reduced.

(iii) "Three Strike" Rule

Section 10.06 of the Council's master agreement does provide that an employer is not required to re-employ an employee who was previously discharged by the employer. The problem is that it is the usual practice in the film industry for a production company to be incorporated for each production. The employer is the production company, not the producer. This means that a producer who has discharged an employee for cause on one production cannot refuse to employ the employee on his or her next production because the employer will be different. Appendix "B" to the master agreement, which applies to Teamsters 155, contains a somewhat broader right for an employer to refuse to accept an employee (e.g., if the employee was discharged by another movie industry employer within the previous four months).

Most producers/production managers do not bother to discharge troublesome employees because there is minimal consequence to the employees. The production of a feature film or television show requires enormous amounts of effort and is usually subject to time constraints. The producer/production manager has better things to do with their time, especially in view of the fact that they will not be entitled to refuse to employ the worker on the next production.

There is a difference of opinion within the industry as to whether management or the union bears the responsibility to discipline employees/union members. Management thinks that the unions should discipline union members, while the unions believe that it is the responsibility of the employer to discipline employees. On the one hand, there is an inherent conflict of interest in unions disciplining members who they are designed to represent. On the other hand, it is difficult for employers in the industry to effectively discipline employees because the workers frequently move around from employer to employer.

This matter will become less important if my recommendation regarding a name request dispatch system is implemented. The troublesome workers will presumably not be requested unless they improve their work habits. They may be sent on day dispatches but that may not provide a sufficient amount of work and they may have to move to other industries if they do not improve their work habits. Nevertheless, it is my recommendation that a "three strike" rule be implemented in the industry. If nothing else, such a rule should assist in discouraging dishonest behavior. Each of the three discharges would have to comply with the requirement that there must be just and reasonable cause for the discharge. CFTPA could be the repository of discharge information so that there

would be a central source of such information.

(iv) Supplemental Master Agreement

As I stated above, when the Labour Relations Board certified the Council of Film Unions as an appropriate bargaining agent in its initial section 41 decision, it requested the Council to negotiate a supplemental master agreement with CFTPA and AMPTP to cover the non-exclusive jurisdiction. I recommend that the Council comply with this request. A supplemental master agreement will provide more certainty for potential productions and it will allow the Council to undertake true enabling in appropriate cases. I would expect that the supplemental master agreement would have tiered levels of wage rates and fringe benefits depending on the level of the budget for the production.

Although I make this recommendation, I should make it clear that the existence of a supplemental master agreement would not mean that the constituent members of the Council are bound to participate in the production within the non-exclusive jurisdiction only as a member of the Council. IATSE 669 currently participates in productions with ACFC West and it should continue to be permitted to do so. Similarly, each of IATSE 891 and Teamsters 155 should be allowed to participate in productions outside the Council's exclusive jurisdiction in its own right. A union may wish to do so if it believes that one or more of the other members of the Council are not being sufficiently flexible in order to attract the production to British Columbia.

IATSE 891 requested that I recommend amendments to the *Code* to shorten the time frames for certification in order to enable it to be certified as the bargaining agent for productions within the non-exclusive jurisdiction. IATSE 891's point is that the length of a production is often so short that it is not feasible for it to be certified as the bargaining agent before the production comes to an end. There is merit to this suggestion but I believe that it falls outside the Terms of Reference. It may be appropriate to have this point reviewed pursuant to section 3 of the *Code*.

(v) Priority of Collective Agreements

There are two problems with respect to the obvious proposition that collective agreements are paramount. The first is the belief by each of management and labour that the other side attempts to ignore what has been agreed in the collective agreement between them.

The second difficulty is that the unions promulgate rules which are variously called internal rules, departmental rules or working rules. Employers also create rules. As demonstrated by the polling and bumping arbitration, some unions (at least Teamsters 155) believe that these types of rules are more important than the provisions of the collective agreement.

The only exception permitted by the Council's master agreement is

contained in section 1.03, which provides that nothing in the agreement interferes with prior obligations of a union to its national or international organization as long as the union gives written notice of the obligations to an employer before the employer signs a letter adhering itself to the agreement. I have seen a letter of Teamsters 155 in which it purports to maintain that its internal dispatch rules are obligations owing to the International Brotherhood of Teamsters (which cannot be the case in view of the fact that the L.A. Teamsters has different dispatch rules).

It is my recommendation that each party to a collective agreement in the B.C. film industry should acknowledge that the provisions of the agreement are paramount and take priority over internal rules and policies unless, in the case of the unions, they properly qualify under section 1.03 of the master agreement as prior obligations to their national or international organizations.

(vi) UBCP and DGC

As I detailed above, the matters of concern in connection with UBCP were (i) the number and timing of grievances, (ii) the constant attempts of background extras to be upgraded, (iii) the accounting conducted by UBCP at the end of each production, and (iv) the holding of bonds as leverage to settle grievances. No criticism was made against DGC but many people believe that production managers are often inexperienced and insufficiently trained.

There have been changes in the executive and management of UBCP during the course of this Inquiry. The new executive has acknowledged the problems and has met with the major studios to assure them that the approach of UBCP will change. UBCP has put its expedited grievances on hold and has formed a new committee to screen grievances. I believe that UBCP now appreciates that it is in its best interests to address these problems because, if it does not, fewer productions will come to British Columbia and its members will get less work.

DGC has similarly acknowledged that the training of production managers should be improved. I believe that it may be considering a mentorship program, with the intent that inexperienced production managers will have the opportunity to consult with more experienced production managers/line producers. DGC should also 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 the issues. 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 and other personnel are not prevented from progressing within the industry by membership requirements.

As UBCP and DGC have acknowledged the existence of the problems and are in the process of addressing them, I have concluded that it is not necessary to make specific recommendations with respect to these problems.



The Government may wish to monitor the progress of the improvements to ensure that UBCP and DGC are continuing to address the issues.

(vii) Contract Services Administration Trust Fund

It is my view that Contract Services provides useful functions in the Los Angeles market and that a similar organization could be beneficial to the B.C. film industry. However, I do not have a true sense of whether the B.C. industry is sufficiently mature and stable in order to support such an organization. Also, I believe that there would be issues regarding the funding of such an organization in British Columbia. Hence, I do not believe that it would be appropriate for me to make a recommendation in this regard. I do suggest that the parties give this topic consideration and address it in the next round of collective bargaining.

(c) Recommendations to the Government

It is my view that the above recommendations are in the best interests of the B.C. film industry and will promote the amount of production done in the Province. Although the recommendations may appear to represent concessions being sought from the unions, it is my belief that the recommendations are in the best interests of the unions because, if they are implemented, there should be more jobs for the members of the unions. As a result of the mobile and project-based nature of the film industry, the unions play an important role in attracting business to the Province.

Some of my recommendations deal with topics which are normally the subject matter of collective bargaining. For example, the topic of a full name request dispatch system was put on the table by AMPTP and CFTPA in the last round of collective bargaining with the Council. The Council responded with the position that it was a non-negotiable point.

It is my hope that all of the affected organizations in the B.C. film industry will agree that my recommendations are in the best interests of the industry as a whole and, as a result, in the best interests of each organization. It would be preferable if all of the affected organizations voluntarily agree to implement the recommendations. However, for internal political reasons, some unions may be unwilling or unable to act in the best interests of the industry even when it may ultimately benefit their memberships as a whole. As a result, some unions may not voluntarily agree to implement the recommendations and government intervention may be necessary.

In my view, it is reasonable to expect the industry to be able to voluntarily implement my recommendations before June 2004. The implementation of my first three recommendations will require the following:

- (a) amendments to the constitution of the Council of Film Unions;
- (b) approval of the amended constitution by the Labour Relations Board in its continuing supervisory role; and
- (c) amendments to the master collective agreement.

If necessary, the Government should give encouragement to the parties to deal with these matters before June 2004.

If the parties have not voluntarily implemented my recommendations by the end of May 2004, it is my recommendation that the Government should consider methods by which the changes can be brought about. In my view, there are two feasible methods to cause the recommendations to be implemented.

The first method is for you, as the responsible Minister under the *Code*, to re-institute an inquiry under section 41 of the *Code*. Although the Labour Relations Board may be influenced by my views, it would not be bound by my recommendations. It would have to conduct its own investigations and come to its own conclusions. It would be open to the Board, in my opinion, to impose conditions on the Council in the same fashion as it did with its initial section 41 decision.

The alternative method would be for the Legislature to legislate that the issues identified by this Report be resolved by way of binding arbitration. It would be a form of interest arbitration, similar to arbitrations determining the terms of collective agreements. The arbitrator would consider the representations of all interested parties and would make a final decision which would be binding on all parties.

## CONCLUSION

The film industry has become a vibrant and important industry in British Columbia. Labour organizations played a vital role in developing the industry. I look to those organizations to take the necessary steps to keep British Columbia competitive so that the level of productions in the Province can be retained in the short term and increased in the long term.

Many of the organizations I interviewed were appreciative of the interest which the Government has taken in the B.C. film industry. It is invaluable that the Government continues to take a proactive role in the industry.

Respectfully submitted.

“D. Tysoe, J.”

The Honourable Mr. Justice Tysoe

APPENDIX 1

SECTION 79 OF LABOUR RELATIONS CODE

79 (1) The minister may, on application or on his or her own motion, make or cause to be made inquiries considered advisable respecting labour relations matters, and subject to this Code and regulations, may do the things he or she considers necessary to maintain or secure labour relations stability and promote conditions favourable to settlement of disputes.

(2) For any of the purposes of subsection (1), or if in an industry a dispute between employers and employees exists or is likely to arise, the minister may refer the matter to an industrial inquiry commission for investigation and report.

(3) An industrial inquiry commission consists of one or more members appointed by the minister.

(4) The minister must furnish the industrial inquiry commission with a statement of the matters to be inquired into, and if an inquiry involves particular persons or parties, must advise them of the appointment of the industrial inquiry commission.

(5) An industrial inquiry commission must inquire into the matters referred to it by the minister and endeavour to carry out its terms of reference, and if a settlement is not effected in the meantime, must report the result of its inquiries and its recommendations to the minister within 14 days after its appointment or within a further time the minister specifies.

(6) On receipt of a report of an industrial inquiry commission relating to a dispute between employers and employees, the minister must furnish a copy to each of the parties affected and must publish it in the manner considered advisable.

(7) The members of an industrial inquiry commission have the power and authority of a commissioner under sections 12, 15 and 16 of the Inquiry Act.

(8) If either before or after the report is made the parties agree in writing to accept the report in respect of the matters referred to the industrial inquiry commission, the parties are bound by the report in respect of those matters.

## APPENDIX 2

### TERMS OF REFERENCE FOR THE INDUSTRIAL INQUIRY COMMISSION INTO THE B.C. FILM AND TELEVISION INDUSTRY

Since 2002, the Minister of Skill Development and Labour, the Hon. Graham Bruce, and Ministry staff have met with members of the B.C. Film and Television Industry (the "Industry") to discuss on-going labour relations challenges in the B.C. Industry. In response to those discussions, and our own investigations, the Minister is appointing Mr. Justice Dave F. Tysoe as the Industrial Inquiry Commission (the "Commission") pursuant to section 79 of the B.C. Labour Relations Code on the following terms of reference.

The Minister has asked Justice Tysoe that his Report be complete by February 27, 2004.

#### **I. ADMINISTRATION OF COLLECTIVE AGREEMENTS**

Review the administration of dispute resolution mechanisms in the Industry and assess their effectiveness for timely and cost resolution of jurisdictional disputes, and grievances, including:

- a. Determining whether concerns about grievances, jurisdictional disputes and proliferation of disputes are valid; and if so, the reasons;
- b. Identifying whether the current organizational or labour relations structures inhibit resolving workplace disputes; and

Consider:

- (i) Alternative processes for the practical, timely and conclusive resolution of disputes during the terms of Collective Agreements;
- (ii) Alternative ways of workers to enter and be selected to work in the Industry; and
- (iii) Alternative practices that improve "enabling" on different types of productions (episodic television, movies of the week, feature films, lower budget productions, and independent productions).

## **II. COMPETITIVENESS**

- a. Determine whether the positive historic impact of labour relations in developing the B.C. film industry needs to be readdressed and, if so, how?
- b. Identify labour relations factors, in comparison to other factors, that affect BC's national and international competitiveness;
- c. Compare organizational or labour relations structures with other jurisdictions and their respective impact on resolving workplace issues, adapting to changes in the global film and television economy and promoting productivity; and
- d. Consider changes in labour relations that will enhance the Province's national and international position.

## **III. COUNCIL OF TRADE UNIONS**

- a. Examine the existing structure of the B.C. Council of Film Unions and make recommendations on how the existing structure can be improved to ensure more efficient administration of Industry Collective Agreements for all parties;
- b. Review and compare collective bargaining structures in other jurisdictions, including the successes and failures with the administration of Collective Agreements in other jurisdictions with those in B.C.; and
- c. Consider whether amending the number of unions and guilds in the Industry, or how those unions and guilds inter-relate in carrying out their obligations under the Labour Relations Code would improve the administration of their collective agreements.

## **IV. GUIDELINES**

The Commission is requested to consider the above within the following parameters:

- a. The Code, s. 2, "Duties under [the] Code";
- b. The views of the trade unions, guilds and producers;
- c. Economic factors impacting labour relations;
- d. The preference of members to choose which trade union they wish to belong to.

- e. The need for a well-functioning system that promotes competitiveness with other jurisdictions in all areas of the Film and Television business;
- f. Initiatives by other Governments in Canada and the USA to maintain and attract different genres of work to their jurisdiction;
- g. Recognition of ACFC West as a viable alternative in the Industry;
- h. The impact of the constitution and bylaws of the trade unions on the administration of the collective agreements;
- i. The concerns of the public interest; and
- j. Labour relations challenges expected to impact the Industry in the short and long term futures.

APPENDIX 3

INTERVIEWS AND WRITTEN SUBMISSIONS

Part A – Organizations

Following is a list, in alphabetical order, of the organizations I met with during the Inquiry.

ACFC West, The Association of Canadian Film Craftspeople, Local 2020 of the Communications, Energy and Paperworkers Union of Canada

Alliance of Canadian Cinema, Television and Radio Artists

Alliance of Motion Picture and Television Producers

British Columbia Film

B.C. Film Commission

B.C. Council of Film Unions

Canadian Film and Television Production Association, B.C. Branch

Canadian Film and Television Production Association, Toronto Office

Directors Guild of Canada, B.C. Branch

Directors Guild of Canada, National Office

International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, Local 411

International Photographers, Local 667 of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, Local 667 (International Cinematographers)

International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, Local 669 (International Photographers)

International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, Local 873 (Motion Picture Studio Production Technicians)

International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, Local 891 (Motion Picture Studio Production Technicians)

MGM

National Association of Broadcast Employees and Technicians, Local 700 of the Communications, Energy and Paperworkers Union of Canada

Paramount Pictures

Safety and Health in Arts Production & Entertainment (SHAPE)

Sony Pictures

Teamsters Union, Local 155

Teamsters Union, Local 399

Teamsters Union, Local 847

Twentieth Century Fox

Union of B.C. Performers, the B.C. branch of the Alliance of Canadian Cinema, Television and Radio Artists

Universal Studios

Victoria Film Commission

Walt Disney Pictures and Television

Warner Bros.



## Part B - Individuals

Following is a list, in alphabetical order, of the individuals who I interviewed during the Inquiry and who did not request anonymity. When I met with a person as a representative of an organization, the name of the organization will be included in brackets following the name of the person. Some of the people I interviewed belong to an organization but were not speaking on behalf of the organization, and I will not include the name of the organization. I met with some of the people alone and I met others of them in groups of two or more persons. I met with some of the people on more than one occasion. In larger groups, I missed the names of one or two people and I may have also incorrect spellings of some names, for which I apologize.

Adair, Tom (Council of Film Unions)	Cowan, Russell (Victoria Film Commission)
Angus, Mark	Craig, Gavin
Antler, Helayne (AMPTP)	Croome, Susan (B.C. Film Commission)
Barna, Lazlo (CFTPA)	Crowley, Mark (MGM)
Barnett, Jay (Paramount)	Davis, Gil (Teamsters, Local 847)
Barrack, John (CFTPA, Toronto Office)	Davis, Richard
Bazian, Leah (DGC, National Office)	Dennett, Bob
Bercovici, David (IATSE, Local 669)	DiGiovanni, Pam (Fox)
Bonini, Jean (Sony)	Doak, Robert (IATSE, Local 669)
Brady, Leslie (UBCP)	Dong, Barry (Counsel for AMPTP)
Brand, Pamela (DGC, National Office)	Egan, Rob (B.C. Film)
Brennan, Krysten (Disney)	Escovedo, Steve (Fox)
Brummitt, John (IATSE, Local 891)	Evans, Michael (Teamsters, Local 155)
Butler-Gray, Susan (IATSE, Local 891)	Evrensel, Arthur
Cadeau, Tim (Teamsters, Local 847)	Ferguson, Brendan
Cady, Fitch	Fishbein, Bernard (Counsel for IATSE Canada)
Caprielain, Stephanie (Universal Studios)	Gilroy, Grace
Carr, Warren	Glick, Mark (Fox)
Carroll, Stephen (Sony)	Goluboff, Alan (DGC, National Office)
Chambers, Greg (ACFC West)	Goode, Gretchen (Council of Film Unions)
Chapman, George	Gorham, Keith (Universal Studios)
Chilton, Richard (ACFC West)	Grant, Casey
Clackson, Brent	Greene, Justis
Clarance, Neal	Gregory, Colin
Clarke, Daniel	Grieve, George
Clauson, Paul (Lion's Gate Studios)	Haddad, Frank (IATSE, Local 891)
Counter, Nick (AMPTP)	Haggquist, Neil (CFTPA, B.C. Producers Branch)
Cousimano, Tony (Teamsters, Local 399)	Hawkins, Crawford (DGC, B.C.)
Cott, Don (AMPTP)	

Hendrickson, Michael (Fox)  
Hickman, Hudson (MGM)  
Higashio, Susan (ACFC West)  
Horie, George  
Honey, Muriel (City of Vancouver)  
Hrynuik, Ron (Bridge Studios)  
Johnson, Robert (Disney)  
Kasperczyk, Christina (IATSE, Local 669)  
Keatley, Julia  
Kelly, Dusty (IATSE, Local 891)  
Ketcham, Jerry (Disney)  
Kilmury, Diana (Teamsters, Local 155)  
Kinney, Linda (SHAPE)  
Lace, Cathy (DGC, National Office)  
Lam, Rose  
Lanyon, Stan  
Laughton, Bruce (Counsel for the Council of Film Unions)  
Leitch, Peter (Lion's Gate Studios)  
Leslie, Ross (NABET)  
Lewis, John (IATSE Canada)  
Levin, Richard (Warner Bros.)  
Lightbown, Laura  
Liimatainen, Arvi  
Litke, Darryl  
Margellos, George (William F. White)  
Marsden, Ken (Teamsters, Local 155)  
Massey, Ted (ACFC West)  
Meehan, Heather  
Milne, Tom (Teamsters, Local 155)  
Mitchell, Pete (Vancouver Studios)  
Morton, Rob (UBCP)  
Moon, Kelly (IATSE, Local 891)  
Mullin, Brent (Labour Relations Board)<sup>6</sup>  
Murphy, Mike (Teamsters, Local 155)  
Murphy, Red (Teamsters, Local 155)  
Nex, Cheryl  
Newton, Terry (Teamsters, Local 155)  
Nothnagel, Ian (ACFC West)  
O'Connor, Brent  
O'Connor, Eleanor  
O'Connor, Mathew  
O'Leary, Kevin (IATSE, Local 891)  
Paglaro, Chooch (IATSE, Local 669)  
Perotto, Richard (IATSE, Local 667)  
Pettit, Paula (CFTPA, Toronto Office)  
Precious, Ron (IATSE, Local 669)  
Prior, Peter (IATSE, Local 891)  
Ramsden, Don (IATSE, Local 891)  
Reed, Leo (Teamsters, Local 399)  
Richardson, Lisa  
Robbins, Kate (UBCP)  
Rowe, Tom (CFTPA, B.C. Producers Branch)  
Rutherford, Gerry (IATSE, Local 669)  
Ryshpan, Arden (DGC, National Office)  
Scarabelli, Bob  
Scott, Bruce (Teamsters, Local 155)  
Shavick, James  
Shore, Lou (Paramount)  
Shorten, Liz (B.C. Film)  
Storey, Howard (UBCP)  
Storey, Timothy (IATSE, Local 411)  
Taylor, Alex (UBCP)  
Thalheimer, Jarrod (ACFC West)  
Thomas, Trent (Teamsters, Local 155)  
Todd, Robert (Paramount)  
Topp, Brian (ACTRA)  
Vernon, Roger (IATSE, Local 669)  
Virtue, Danny  
Vlahovic, Jack (Teamsters, Local 155)  
Waddell, Stephen (ACTRA)  
Wallack, Rina (Paramount)  
Westwell, Jim  
Williams, Marcel (IATSE, Local 669)  
Williamson, Shawn  
Whitley, Patrick  
Whittred, Brian (IATSE, Local 669)  
Wolch, Mimi (IATSE, Local 873)  
Wolfson, Sam (Warner Bros.)  
Wood, Tracey (UBCP)

<sup>6</sup> I met with Mr. Mullin during the phase of the Inquiry in which I was gathering information. Mr. Mullin was involved in the initial s. 41 inquiry and he has written other decisions involving the B.C. film industry, and I considered him to be a good resource to learn about the issues in the industry. I did not meet again with Mr. Mullin to discuss my recommendations.

Part C – Written Submissions

Following is a list, in alphabetical order, of the persons who made written submissions during the Inquiry and who did not request anonymity.

Buckley, Christopher  
Calder, Stewart  
Floyd, A. Gerald  
Gauvreau, Zoe  
Goldfeder, Harold  
Gregory, Colin  
Kelly, Dusty (IATSE, Local 891)  
Litke, Darryl  
Morrison, Ken (Ocean Studios)  
Rutherford, Gerry (IATSE, Local 669)  
Sinclair, John  
Watt, Laurie  
Wilding, Gavin

APPENDIX 4

SECTION 41 OF LABOUR RELATIONS CODE

41 (1) To secure and maintain industrial peace and promote conditions favourable to settlement of disputes, the minister may, on application by one or more trade unions or on his or her own motion, and after the investigation considered necessary or advisable, direct the board to consider, despite section 18, 19 or 21, whether in a particular case a council of trade unions would be an appropriate bargaining agent for a unit.

(2) If a direction is made under subsection (1), the board must determine whether

- (a) the proposed bargaining unit is appropriate for collective bargaining, and
- (b) the proposed council of trade unions is representative of the employees in that unit

and must make any other examination of records, inquiry or findings including the holding of hearings it considers necessary to determine the matter.

(3) After a determination under subsection (2) and if the board considers it necessary or advisable the board may

- (a) certify a council of trade unions as the bargaining agent, or
- (b) vary a certification by substituting for the trade union or trade unions named in it a council of trade unions as bargaining agent for that unit.

(4) The provisions of this Code relating to an application for certification of and to the certification of a trade union apply to an application for certification of and to certification of a council of trade unions.

(5) The board may make orders and issue directions it considers necessary or advisable respecting the formation of councils of trade unions and the fair representation of the trade unions comprising the council of trade unions.

(6) If the board certifies a council of trade unions under this section, it may

- (a) determine that no collective agreement is in effect or binding on all or any of the employees in the unit,
- (b) determine whether a provision of a collective agreement is binding on all or any of the employees in the unit,
- (c) determine that a provision in a collective agreement that is in effect and binding on all or any of the employees should continue to be in effect and binding on those employees for a term the board determines,
- (d) extend the provisions of one or more collective agreements that

are in effect to all or any of the employees,

- (e) settle the terms and conditions of a new collective agreement based in whole or in part on one or more of the collective agreements in effect and binding on all or any of the employees, and
- (f) make other orders or determinations that may be necessary or advisable to carry out the purposes of this section.

APPENDIX 5

OUTSTANDING GRIEVANCES  
AND JURISDICTIONAL DISPUTES

<b>Year</b>	<b>Company</b>	<b>Production Name</b>	<b>Issue</b>
<b>B.C. Council of Film Unions</b>			
2000	Sugar Mountain Productions Ltd.	<i>OUT COLD</i>	Juris Dispute
2000	Sugar Mountain Productions Ltd.	<i>OUT COLD</i>	Juris Dispute
2002	Galway Bay Productions Inc.	<i>TRAFFIC</i>	Replacement / Termination Meals
2003	Alaska Productions	<i>ALASKA</i>	
2003	Argosy Productions Ltd.	<i>10.5</i>	Juris Dispute
2003	Argosy Productions Ltd.	<i>10.5</i>	Refusal of Dispatch
2003	Argosy Productions Ltd.	<i>10.5</i>	Driver/On Set
2003	Unfinished Films Ltd.	<i>AN UNFINISHED LIFE</i>	Juris Dispute
2003	Shawn Danielle Prod Services Ltd.	<i>BLADE TRINITY (III)</i>	Refusal of Dispatch
2003	Shawn Danielle Prod Services Ltd.	<i>BLADE TRINITY (III)</i>	Replacement
2003	Primal Foe Productions Inc.	<i>CHRONICLES OF RIDDICK</i>	Juris Dispute
2003	CCLA Productions Ltd.	<i>CONNIE &amp; CARLA DO LA</i>	PNW Hrs./ Travel Time
2003	Da Vinci's Productions (VI) Inc.	<i>DA VINCI'S INQUEST (VI)</i>	Replacement
2003	Dead Zone Production Corp II	<i>DEAD ZONE (SEASON II)</i>	Transportation 6th & 7th Day
2003	Dead Zone Production Corp II	<i>DEAD ZONE (SEASON II)</i>	Replacement
2003	Cub Seven Productions Inc.	<i>GOOD BOY</i>	Non-Union Animal Handler
2003	Jake Productions Inc.	<i>JAKE 2.0 (SEASON I)</i>	Replacement
2003	Jake Productions Inc.	<i>JAKE 2.0 (SEASON I)</i>	Refusal of Dispatch
2003	Pico Productions Ltd.	<i>KINGDOM HOSPITAL</i>	Refusal of Dispatch
2003	Pico Productions Ltd.	<i>KINGDOM HOSPITAL</i>	Juris Dispute
2003	Season 3 (III) Chris Isaak Productions	<i>THE CHRIS ISAAK SHOW (III)</i>	Refusal of Dispatch
2003	Stealing Sinatra Productions Inc.	<i>STEALING SINATRA</i>	Juris Dispute
2003	Galway Bay Productions Inc.	<i>TRAFFIC</i>	Juris Dispute

2003	Cub 8 Productions	<i>WALKING TALL</i>	Discharge / Termination
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**Teamsters 155**

2002	GEP Productions	<i>FIRST TO DIE</i>	Replacement
2002	Shawn Danielle Prod Services Ltd.	<i>FREDDY VS. JASON</i>	Meal Break
2002	Long Branch Productions Inc.	<i>THE OTHER WOMAN</i>	Security
2002	Joshmax Production Services Ltd.	<i>TWILIGHT ZONE</i>	Hiring - catering
2003	Dead Zone Production Corp II	<i>DEAD ZONE (SEASON II)</i>	Security
2003	Various (17 grievances <sup>7</sup> )	<i>VARIOUS</i>	Transportation Cast/Director

**UBCP**

	Cannell	<i>VARIOUS</i>	Residuals
2001	BG2 Productions Ltd. <i>(pending confirmation of resolution)</i>	<i>BABY GENIUSES 2</i>	PNW Hrs.
2002	JHCTV Canada II, Ltd. <i>(pending confirmation of resolution)</i>	<i>A VERY MUPPET CHRISTMAS</i>	PNW Hrs.
2003	Unfinished Films Ltd. <i>(pending confirmation of resolution)</i>	<i>AN UNFINISHED LIFE</i>	PNW Hrs.
2003	Aces & Eights Productions Inc. <i>(pending confirmation of resolution)</i>	<i>BATTLESTAR GALACTICA</i>	PNW Hrs.
2003	Primal Foe Productions Inc.	<i>CHRONICLES OF RIDDICK</i>	Use Fees / Stunts
2003	CCLA Productions Ltd.	<i>CONNIE &amp; CARLA DO LA</i>	Replacement
2003	Dead Zone Production Corp II	<i>DEAD ZONE (SEASON II)</i>	Payroll Review
2003	Dead Zone Production Corp II <i>(pending confirmation of resolution)</i>	<i>DEAD ZONE (SEASON II)</i>	PNW Hrs.
2003	Canlaws Productions Ltd.	<i>I, ROBOT</i>	Use Fees / Stunts
2003	Scooby Two Productions <i>(pending confirmation of resolution)</i>	<i>SCOOBY DOO TOO</i>	PNW Hrs.
2003	Smallville 1 Films Inc.	<i>SMALLVILLE (SEASON II)</i>	Use Fees / Stunts

<sup>7</sup> Although the application for review by Teamsters 155 to the Labour Relations Board has been denied, Teamsters 155 has indicated that it still does not accept the arbitral award involving transportation of cast and directors and it is open to Teamsters 155 to seek judicial review of the award.

APPENDIX 6

TEAMSTERS 155 DISPATCH PROVISION

B1.11(a)

The Employer agrees that the Union shall dispatch members of the Union, subject to the Dispatch and Seniority rules of the Union set forth below, taking into consideration qualifications and ability to perform the work available, as determined by the Employer and the Department Head. The order of lay-off for Employees dispatched in accordance with subparagraph (c)(i)(B) and (c)(i)(C) below, shall be in reverse order of dispatch, subject to qualifications and ability to perform the work available, as determined by the Employer and the Department Head.

B1.11(c)

Employees shall be dispatched by the Union on the following basis:

- (A) The Employer shall select the Transportation Coordinator and Captain(s) from among the Union's membership regardless of seniority or length of membership ("name request");
- (B) Additional drivers shall be dispatched "One-for-One". The Employer has the discretion to select such additional drivers first by either name request or by seniority from the qualified and available drivers on the Drivers' Dispatch List maintained by the Union ("by seniority");
- (C) If the first additional driver is chosen by name request, the next shall be dispatched by seniority, and alternation by seniority and by name request shall continue thereafter.



APPENDIX 7

SECTION 2 OF LABOUR RELATIONS CODE

2 The board and other persons who exercise powers and perform duties under this Code must exercise the powers and perform the duties in a manner that

- (a) recognizes the rights and obligations of employees, employers and trade unions under this Code,
- (b) fosters the employment of workers in economically viable businesses,
- (c) encourages the practice and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees,
- (d) encourages cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity,
- (e) promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes,
- (f) minimizes the effects of labour disputes on persons who are not involved in those disputes,
- (g) ensures that the public interest is protected during labour disputes, and
- (h) encourages the use of mediation as a dispute resolution mechanism.

APPENDIX 8

SECTIONS 12 AND 13 OF LABOUR RELATIONS CODE

12 (1) A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory or in bad faith

- (a) in representing any of the employees in an appropriate bargaining unit, or
- (b) in the referral of persons to employment

whether or not the employees or persons are members of the trade union or a constituent union of the council of trade unions.

(2) It is not a violation of subsection (1) for a trade union to enter into an agreement under which

- (a) an employer is permitted to hire by name certain trade union members,
- (b) a hiring preference is provided to trade union members resident in a particular geographic area, or
- (c) an employer is permitted to hire by name persons to be engaged to perform supervisory duties.

(3) An employers' organization must not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employees in the group appropriate for collective bargaining.

13 (1) If a written complaint is made to the board that a trade union, council of trade unions or employers' organization has contravened section 12, the following procedure must be followed:

- (a) a panel of the board must determine whether or not it considers that the complaint discloses a case that the contravention has apparently occurred;

(b) if the panel considers that the complaint discloses sufficient evidence that the contravention has apparently occurred, it must

(i) serve a notice of the complaint on the trade union, council of trade unions or employers' organization against which the complaint is made and invite a reply to the complaint from the trade union, council of trade unions or employers' organization, and

(ii) dismiss the complaint or refer it to the board for a hearing.

(2) If the board is satisfied that the trade union, council of trade unions or employers' organization contravened section 12, the board may make an order or direction referred to in section 14 (4) (a), (b) or (d).