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The Role of Public Consultation in Shaping the Canadian Broadcasting System*

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Introduction

One of the salient features of the Canadian broadcasting system is that so much of the politics surrounding it is played out in public. The regulatory process supervised by the Canadian Radio-Television and Telecommunications Commission (CRTC) provides for statutory public hearings in a wide range of situations. As far as the basic legislative and policy framework is concerned, a deep-rooted tradition stemming from the early days of radio in Canada ensures that no major change to the system can be instituted, or even seriously contemplated, without public consultation.

The transparency and extent of public debate regarding broadcasting policy making in Canada is unique in the world.¹ But just how meaningful is it, considering the array of private industry lobbying practices and political imperatives that also characterize the process? Just how well does this process, in principle accessible, reflect the real diversity of interests in Canada? These questions were addressed in a research project directed by the author that tracked the development of Canadian broadcasting policy through a five-year period, culminating in the adoption of a new Broadcasting Act in June 1991.

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Issues and Agendas

By its very nature, broadcasting is a social and cultural activity driven by political and economic imperatives. Canadian broadcasting history is a mine of rich experience that illustrates this axiom. The institutions of broadcasting in Canada have evolved with Canadian society, their systemic development marked by three constant themes: issues of national identity and national unity; tensions between public and private enterprise; broadcasting as an instrument of social and cultural development. Virtually every broadcasting policy issue since the 1920s can be related to one or another of these themes.

Economic concerns heavily influenced the broadcasting policy debate of 1985-1991. The federal Conservative government's ideological determination to reduce the role and responsibilities of the Canadian state, the ensuing financial crisis of the Canadian Broadcasting Corporation (CBC), the recession-based difficulties of private broadcasting, the increasing commodification of broadcasting services, were all major preoccupations. The period also saw the technological shift from over-the-air broadcasting to cable distribution and the resulting debate on the role of the cable industry. Technology, and its impact on the re-structuring of the broadcasting environment, has since become the dominant policy issue, and the cable industry has successfully marketed itself as the delivery system of choice for enhancing a so-called "consumer sovereignty" while increasing the availability of Canadian content.

The need to strengthen broadcasting as an institution of Canadian culture was omnipresent in the debates leading to adoption of the 1991 Act. Regardless of special interests, it was virtually impossible to speak out on any issue without stating one's position on the "Canadianness" of the Canadian broadcasting system. This was strategically critical, since the broadcasting policy review took place while the government was negotiating the Canada-US Free Trade Agreement (FTA), and the first version of the new broadcasting act passed through the House of Commons at the same time as the quest for a mandate to sign the FTA set in motion the 1988 federal election campaign. According to Flora MacDonald, the minister who presented the broadcasting bill:

It was no accident that in the months leading up to the election the Broadcasting Act moved up on the list of priorities. . . . In terms of a political strategy . . . we could hope that it would demonstrate that the charge that we had not acted to protect culture in the Free Trade negotiations was false. . . . I do not think there is any question that the Free Trade negotiations had a major, and in the end positive influence on the development and acceptance of the broadcasting policy. 3


Abstract. Canadian broadcasting is characterized by a tradition of public debate over policy issues that takes place through a range of formal and less formal consultation mechanisms. In a study of the broadcasting policy review process of 1985-1991, the transparency of public debate was seen to be essential in giving access to social groups who would otherwise have little influence on the process.

Résumé. La radiodiffusion canadienne se distingue par une tradition de débat public à propos des enjeux politiques, qui se déroule à travers une gamme de mécanismes formels et informels de consultation. Lors d’une étude du processus de révision de la politique fédérale de la radiodiffusion qui a eu lieu entre 1985 et 1991, il est apparu que la transparence du débat public fut un élément essentiel d’accès pour les groupes sociaux qui, en son absence, auraient eu peu d’influence sur ce processus.

The government’s other major objective, “national reconciliation,” was also reflected in broadcasting policy proposals, which recognized the distinctiveness of French-language broadcasting and softened the requirement that the CBC promote Canadian national unity. Ironically, during the constitutional calm of the 1985-1990 period, there was virtually no contention surrounding the proposals dealing with language and national purpose. In the hotter climate of 1990-1991, however, these issues re-emerged and even dominated the debate in the final stages leading to adoption of the Act, as opposition MPs accused Prime Minister Brian Mulroney’s government of “Meeching” the broadcasting system by acknowledging different conditions and requirements for French- and English-language broadcasting, and labelled then Minister of Communications Marcel Masse, a Quebec “separatist.” But the new policy makes broadcasting a virtual operational model for the “distinct society.”

The fact that the policy review took place during the latter half of the 1980s, following the adoption of the Canadian Charter of Rights and Freedoms in 1982, brought a range of social issues onto the agenda and, ultimately, into broadcasting legislation. The specific rights of women, ethnic groups, first nations and persons with disabilities were enshrined in the new Act after much discussion. In this area particularly, as we shall see, the process produced tangible results—at least in the formal policy texts of Canada’s broadcasting policy. In general, groups from the social sector made the case for considering broadcasting a basic public service, and this fundamental principle was written into the Act.

Finally, politics surrounded the question of who was to control the levers of policy development, the government or the CRTC. After 15 years and several failed legislative attempts at reining in this behemoth of its own creation, the government succeeded in including in the new Act a “power of direction” authorizing it to instruct the CRTC on matters of general policy orientation, a power first used four years later on policy respecting direct satellite-to-home broadcasting.

In certain respects, the outcome of the policy review process was a win-win situation, with all major players registering substantial gains. This was unquestionably the result of the mechanics of the pro-
cess—especially insofar as the public and the public interest were concerned.

The Process

In general, public policy refers to the broad framework of values and norms within which decisions are made regarding action or lack of action by public authorities with respect to particular issues or problems.4

According to a former deputy minister of communications, Bernard Ostry, "A policy is something you plan for purposes that you perceive for long-term results ... a policy requires to a degree some intellectual input and analysis. There's practically none of that in government."5 According to this former senior civil servant, it is increasingly rare to see governments adopt real policies in this sense today. Policy often emerges on an ad hoc basis, when "after a year or two somebody walks in the room and says 'Hey you've been saying this, that and the next thing. We'd better put this down in some form which is palatable.'" Ostry insists that it is through this prism that one must see the April 1985 decision by Minister of Communications Masse to create a Task Force on Broadcasting Policy.

The Task Force

According to Michael Helm, the Department of Communication's (DOC) senior expert on broadcasting policy, the task force's mandate was drafted at the DOC and refined by the minister's staff. It was the minister himself who insisted on having broadcasting studied by an outside body, according to Paul Audley, who served as executive director of the task force.

The first need was to constitute the task force. This involved an uneasy alliance of arbitrary factors, chance and deliberate choice. Names circulated among the DOC, the minister's office and the broadcasting community. Then CRTC president, André Bureau, for example, recalls "interminable conversations at two in the morning" with Masse regarding the pros and cons of prospective members of the task force.

"A lot of people said they named us because, at the time, they were being accused of a lot of patronage, and in our case, no one could say it was patronage," said Professor Florian Sauvageau, of Laval University, regarding his and Gerald Caplan's nomination as co-chairs. If not patronage, though, one could certainly speak of networks. Masse and Sauvageau were well acquainted from the days when Masse was the young-

5 Unless otherwise noted, citations are from interviews conducted by the author in June-July 1990 and, in some cases, translated from the original French.
est minister in Daniel Johnson’s Quebec government and Sauvageau was a reporter in the provincial press gallery. Sauvageau had also studied law at Laval University around the same time as several members of Brian Mulroney’s entourage, so when his name was raised, it was known in both Masse’s office and the Prime Minister’s Office.

A former federal secretary of the New Democratic party, Gerald Caplan links his nomination to a connection with Ottawa lobbyist Paul Curley, a close personal adviser to Masse. Curley had been one of the Conservatives’ top organizers in the 1984 federal campaign, and Masse regularly sought his advice on recruiting anglophone personnel:

Curley and I had become friends the way that some of us do in the tight world of politics... He loved to kibitz me about socialism or this or that and then in the ’84 election, in which I was the National Director for the NDP, he and I spent some time doing some politicking together. We kept in touch just in case, before it looked like they were going to sweep everything, we really wanted to keep around to do deals. And when Marcel decided that he wanted this task force on broadcasting, Curley recommended me as a possible member from Ontario, or at least from anglophone Canada.

The other five members of the task force came largely from commercial broadcasting circles.

The task force agenda was structured around two main components: an extensive research programme, and a series of public and private meetings around the country. The minister had clearly indicated he did not want public hearings, but, according to Gerald Caplan, “we violated the minister’s order at our very first meeting.” On their travels to 15 cities, the task force members met 165 groups and individuals in closed meetings, and heard 264 public interventions. Their report was, as the authors stated in a preface, a consensus. “The members of the task force all had their own ideas about the future of broadcasting,” said Sauvageau, “however they may have been influenced, at a certain point it was those seven people who wrote the report on the basis of their own ideas.” In the final analysis, according to Audley, “I think the minister got the report he wanted.” At the very least, the task force set the agenda of the process that culminated, five years later, in adoption of the new Act.

The Parliamentary Committee

The task force report was referred to the House of Commons Standing Committee on Communications and Culture, partly to buy time and partly to extend that process by involving members of parliament. According to Helm, the government hoped that certain recommendations would not be softened in the process:
There were some fairly dramatic recommendations in Caplan-Sauvageau. I'm thinking particularly of the recommendations vis-à-vis the cable industry, which fundamentally would have, if implemented, had the effect of basically turning cable companies into common carriers... That was a tough one, because you've got a big, powerful lobby and group of people and segment of the industry which would just fight you to the death, because they viewed that as the death of their industry. So you've gotta say "Wow, is there a constituency that can be built to do that, or is that going to be a deal breaker?"

Sending a report to the parliamentary committee, then, "takes the rough edges off... it makes the really controversial recommendations such as that one a little more palatable, and it, you could say, weakens or modifies somewhat those kinds of recommendations and that's what it did."

This part of the process was somewhat more formal, because parliamentary committees follow rules that do not necessarily apply to a ministerial task force. A committee is also constrained by the fact that its members, coming from the political parties represented in parliament, may be inclined to study the issue before them through partisan eyes. Despite a number of well-publicized incidents, this does not seem to have been generally the case with the committee that studied the recommendations of the Caplan-Sauvageau Report.6 By all accounts, opposition members Sheila Finestone (Liberal) and Lynn McDonald (NDP) were particularly influential members of the committee.

The committee also undertook a relatively modest research programme (under the direction of Paul Audley), but was determined to hear the widest possible range of public testimony. Its procedure did not allow it to meet privately with anyone so, at least officially, everything was on the public record. It eventually heard 246 witnesses, several of them appearing twice or more.

The DOC and Bill C-136

While the parliamentary committee was working, DOC staff were already preparing the minister's policy statement on broadcasting as well as the new legislation. This was at once a source of irritation and frustration for those who were taking the public consultations seriously, a source of confusion to many intervenors, but of satisfaction to those who were used to working the system with its multiple parallel pressure points.7

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6 Jim Edwards, a member of parliament from Alberta, himself a former commercial broadcaster, resigned the committee chair in 1987 in order to support an appeal by one of his constituents, Allarcom Ltd., against the CRTC's decision to award an "all-news" cable television service to the CBC.

Various exchanges between the committee and the minister brought out this aspect of bureaucratic-political competition. According to the then assistant deputy minister, Jeremy Kinsman, to whom the DOC group reported: “The preparation of the broadcasting act became very marred by an apparent conflict (between the government and the parliamentary committee).” But, according to Sheila Finestone, the conflict was more than merely apparent. In her view, Flora MacDonald was actually encouraged by the DOC to maintain an antagonistic relationship with the parliamentary committee, which it perceived as a spoiler.

As a government department, the DOC operated entirely outside the public view. Department-commissioned research, for example, generally remains *intra muros*. A department consults, but no one actually knows with whom. It is not nearly as accessible to public interest organizations as it is to industry groups. In short, while for some the parliamentary committee was an inconvenience and for others one of a number of resources, for many it was the only point of contact with the process at the legislative stage.

**The Legislative Committee on Bill C-136**

The bill tabled on June 23, 1988, was referred for study to a legislative committee composed essentially of the same members who had just reported as the standing committee. This led to a third round of public consultations, at once more specific and more urgent, focused now on the wording of the bill.

The legislative committee proceeded by invitation, unlike the standing committee which had issued a general call to prospective intervenors. However, the invitation list was sufficiently broad to include representatives of the major currents of opinion, and in fact it was modified several times to include groups who insisted on appearing although they had at first not been invited. Several important amendments were introduced at this stage, often as a direct result of this input.

Bill C-136 was passed by the House of Commons on September 28, 1988, but was blocked in the Senate by a Liberal filibuster on the Free Trade Agreement, which lasted until Parliament was dissolved two days later for an election call.

**Bill C-40**

The broadcasting bill was retabled on October 12, 1989, essentially intact. A number of small but important changes, however, were directly attributable to lobbying efforts on the part of non-industry actors. While the structure of the bill remained unchanged, the tenor of debate now shifted. With the return of the constitutional question to the national
agenda, the government delayed the House debate on the bill, as a number of clauses perceived as conciliatory to Quebec would raise the hackles of opposition members. Nonetheless, the Broadcasting Act passed on December 5, 1990, received assent on February 1, 1991 and was proclaimed on June 1, 1991.\footnote{8}

**Specific Issues**

In order to study the mechanics of the process in closer detail, we first identified 21 major issues in seven general areas that had strongly marked the public debate. We then analyzed the public interventions of 165 prominent collective "actors" with respect to these issues. Finally, we conducted 25 interviews, averaging two hours apiece, with key participants and observers.\footnote{9}

**Canadianization**

Domestic concerns invariably play an important role in Canadian broadcasting policy. The debate mainly centres on whether, and how, to stimulate the production and distribution of Canadian programme content. While there tends to be a consensus on the general objective of "Canadianization," there is not one on the means for attaining it.

Sixty-two groups in our sample took a position on the question of Canadian content. Of these, more than 95 per cent (59) were in favour of a greater contribution to Canadian programming by private broadcasters. However, less than half of these (25) expressed support for a task force proposal to increase Canadian content requirements between 7:00-11:00 p.m. to 45 per cent. Those opposed were essentially representatives of the private broadcasting and cable industries (along with others opposed either because they doubted the effectiveness of content requirements or because, on principle, they felt that Canadianization should be the policy objective of public broadcasting).

Thus, on this issue, there was both a consensus on principle (Canadianization), and a cleavage over means, separating commercial broadcasters and cable operators from all others. Clearly, the industry representatives recognized the need for a prudent public discourse on the question of Canadian content, as they supported the principle of greater contribution to Canadian programming, while criticizing the concrete proposals put forward for its implementation.

\footnote{8}{For a detailed and exhaustive commentary on the new Act, see Peter S. Grant, *The Annotated 1991 Broadcasting Act* (Vancouver: McCarthy Tétrault, 1991).}

\footnote{9}{Full methodological details concerning our selection of issues and actors are available in Marc Raboy, "Le rôle des acteurs dans l’élaboration de la politique canadienne de la radiodiffusion," *Communication/Information* 11 (1990), 251-71.}
More refined analysis of this issue provided further insight into the interest-basis of intervention. Thus, for example, among the strongest supporters of increased Canadian content were the independent producers and artistic groups, all of whom stood to gain from higher content quotas. Public interest organizations, on the other hand, while constituting the strongest support for the principle of Canadianization, tended towards more coercive, financially based measures to obtain greater contribution from the private sector. One sees, then, among the supporters of Canadianization, a convergence of interests, rather than a range of similar ones. Moreover, this convergence of interests is only apparent, and masks a fundamental rift separating the commercial broadcasting sector from all the others.

The new Broadcasting Act, however, was more in line with the industry’s view. Bill C-136 restricted itself to indicating that private broadcasters should, “to an extent consistent with the financial and other resources available to them, (i) contribute significantly to the creation and presentation of Canadian programming, and (ii) be responsive to the evolving demands of the public.” In spite of the minister’s publicly stated view that industry’s contribution should be increased, this initial version passed every stage and is now in the Act.

More than two thirds of intervenors (39) supported increased CRTC control of quality to ensure, by condition of license or otherwise, that private broadcasters invested more resources in Canadian programming. Again, those opposed were primarily broadcasters and cable operators. The cleavage was even more severe in this case. Yet during the period leading up to adoption of the Act, the minister took an ambiguous position in her public pronouncements, distancing herself from the task force proposals and floating a controversial proposal for a “performance incentive”—until strong industry opposition buried the scheme.

According to Assistant Deputy Minister Jeremy Kinsman, Flora MacDonald believed English-language private broadcasters could do a lot more for Canadian programming, but underestimated the strength and efficiency of their lobby. Bill Roberts, at the time vice-president of the Canadian Association of Broadcasters (CAB), states that the question of a performance incentive was the object of numerous meetings between broadcasters and Kinsman, as well as Deputy Minister Alain Gourd. Although it was not mentioned explicitly in Bill C-136, the broadcasters feared that the Act could open the door for the CRTC to bring in similar measures. According to David Bond, CAB executive director in 1985-1987, anything that aimed to increase content quotas was high on the industry’s list of fears. Several CAB members, he

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states, simply believed the government had no right to tell them what to do once their licence had been issued. The proposed performance incentive kept them mobilized and in touch with the minister’s office throughout this period. Finally, private broadcasters maintained their opposition to Bill C-136 and, according to some, were a main cause of its downfall.\textsuperscript{11} A performance incentive has not been suggested since, and there have been no new mechanisms proposed for implementing the vague principle mentioned in the Act.

\textit{Public Service}

Of all the aspects we studied, the role of the Canadian Broadcasting Corporation was the one that interested the largest number of intervenors. It is important to recall that the task force took a contrary view to the general policy trend of the period, as reflected in the report of the Federal Cultural Policy Review Committee (Applebaum-Hébert),\textsuperscript{12} Liberal policies of the early 1980s\textsuperscript{13} and early ad hoc measures of the successor Conservative government.\textsuperscript{14} In its view, which was more in line with the historic policy position, the CBC “is not a complementary broadcasting agency; it is the central one.”\textsuperscript{15} The CBC, reported the task force, must “continue playing a central role in assuring that Canadians have a truly Canadian broadcasting system. . . . It must be the main Canadian presence on television.”\textsuperscript{16}

Flora MacDonald supported this general view before the parliamentary committee, and her 1988 policy statement declared: “The government agrees that the CBC must continue to be the centrepiece of Canadian broadcasting.”\textsuperscript{17} This position reflected the consensus expressed by nearly all those who intervened on the question of the CBC. In fact, it is not exaggerating to say that the centrality of the CBC in the

\textsuperscript{11} For example, Meisel, “Near Hit.”
\textsuperscript{13} For example, Canada, Department of Communications, \textit{Towards a New National Broadcasting Policy} (Ottawa: Supply and Services Canada, 1983); Department of Communications, \textit{Building for the Future: Towards a Distinctive CBC} (Ottawa: Supply and Services Canada, 1983); and Department of Communications, \textit{The National Film and Video Policy} (Ottawa: Supply and Services Canada, 1984).
\textsuperscript{16} Ibid.
system is taken for granted. However, when we refine the question to see who favours "reinforcing" or "maintaining" the CBC's position, the private sector separates from the rest.

Eighty-four intervenors (50%) expressed a view concerning the CBC. Of this number, more than two thirds (69%) favoured reinforcing the CBC's position, and only 14 per cent proposed either the status quo or reducing the CBC's role in some way.

The latter were found almost exclusively among the private broadcasters and cable distributors, whose interventions tended to encompass their own interests while recognizing the importance of the CBC. For example, several broadcasters and their associations opposed the task force proposal, included in the bill, giving priority to the CBC's interests in case of conflict with the private sector. Broadcasters also argued for maintaining the specific aspects of the CBC's mandate—a way of preparing the way for reducing their own mandated responsibilities. The CBC's "cultural" mission should be strengthened, they argued, and it should be relieved of the need to go after large audiences. In short, it should cease to be a competitor.

The private sector steered clear of taking too radical a view, in light of the general consensus regarding the CBC. Its interventions tended to be on two levels: one of principle, where it echoed the consensus, and the other of concrete proposals, where its own interests could be seen. A similar syndrome was evident among professional and arts groups, who often supply personnel to the CBC. They, for example, insisted on increased financing to enable the CBC to play its central role. Unions tended to divide according to the workplace allegiances of their members, with CBC unions supporting a strengthened role for the public sector, and private-sector unions generally echoing the positions of their industry leaders.

The most sophisticated positions were taken by groups representing the general public, such as the Institut canadien d'éducation des adultes, or specific social groups such as the Canadian Ethnocultural Council. In these interventions, the CBC was viewed as the only national broadcaster able to fulfil a social, cultural and educational mandate. These groups were highly critical of the government policy of budget cuts and reliance on increased advertising revenue.

Despite the general consensus, the issue of the role of public service broadcasting enables us to perceive a geography of interests, situating the actors according to the connection between their fortunes and those of the CBC.

This was also possibly the single issue which most clearly exposed the gap between formal policy and executive measures. Despite the consensus and the expanded mandate included in the new Act, the CBC's
concrete support—its level of public funding—actually diminished continuously throughout the policy review period.

Former CBC President Pierre Juneau believes the question of financing was the fundamental determinant of the CBC’s contribution, and that the real issues were hence played out in negotiations between the Corporation and the Treasury Board. The government’s rallying of the social consensus, he said, was mere “lip service.” As an example, he cites the injection of $35 million a year for Canadian programming, announced in the policy statement of June 1988, as an attempt to make short-range political capital: indeed, the subsequent budget clawed back $140 million over four years.

But while, according to Juneau, the policy review process had little effect on actual policy, it still had an impact: likening supporters of the CBC to the Dutch, building dikes year after year to prevent the sea from flooding the Netherlands, he said the process at least had the result that “no politician would dare undo the Dutch structure of the Canadian Broadcasting Act.”

Regional Broadcasting

Another major issue during the review period (and since) concerned the CBC’s regional services. The task force foresaw “[a] scheme whereby the CBC’s television resources across the country would be reorganized into a three-tier structure around the concepts of local, regional and national service.” It recommended creation of nine regional television production centres (five in English and four in French), with the remaining stations continuing to present local news. Of all the task force proposals, this one generated the most opposition from organized public groups.

Bill C-136 required the CBC to “reflect Canada and its regions to national and regional audiences.” The wording was more vague than in the 1968 Act, which obliged the CBC to serve “the special needs of geographic regions, and actively contribut[e] to the flow and exchange of cultural and regional information and entertainment.” Defending the bill at the legislative committee, MacDonald insisted that the new mandate could not be met without the CBC’s doing regional as well as national production. An amendment in third reading reinserted the concept of “serving the special needs of the regions.” Ultimately, Bill C-136 was more affirmative than its successor, Bill C-40, which no

18 Task Force on Broadcasting Policy, Report, 305.
19 Bill C-136, June 23, 1988, art. 3.1.n.ii.
20 Revised Statutes of Canada (1970, c.B-11), Broadcasting Act (1967-68, c.25), art. 3.g.iii.
21 Bill C-136, third reading, September 28, 1988, art. 3.1.k.ii.
longer spoke of audiences and in which the word "local" does not appear.\textsuperscript{22}

In any case, it was an academic debate. The very day the House of Commons adopted Bill C-40, December 5, 1990, the CBC announced the closure of 11 local stations. The measures went much further than anything suggested during the policy review, and raised unprecedented protests around the country, and before the CRTC, which eventually endorsed the CBC's move.\textsuperscript{23}

However, more than three quarters of the intervenors in our sample who expressed themselves on this question (29 of 37, or 78\%) were in favour of more decentralization of regional CBC services.\textsuperscript{24} Only one intervenor fully supported the task force proposal.

An interesting aspect of this debate was the relative silence of the private sector. This seems to have been strategic, as the CBC's withdrawal from local broadcasting would be unpopular with the public, but in the interests of private broadcasters, who would benefit from the removal of a strong competitor for local advertising. This was a case where interested parties preferred to remain silent rather than take an unpopular public position.

\textit{The CRTC}

The autonomy of the CRTC has been an important issue virtually throughout its history. While the 1968 Act provided for the governor-in-council to "issue directions" to the CRTC under certain conditions, successive governments throughout the 1970s and 1980s sought unsuccessfully to amend the Act to broaden their powers.

The issue, according to Florian Sauvageau, provoked the longest, most arduous discussions within the task force. The task force finally recommended that the law recognize the government's capacity to either give directives to the CRTC or reverse or annul a CRTC decision on appeal, but not both. The parliamentary committee proposed a "limited" power of direction on broad policy matters and review of CRTC decisions, and outlined an elaborate process, including public hearings, which would apply in case of a directive.\textsuperscript{25} The logic behind the com-

\textsuperscript{22} The final version of the Act reads: "The programming provided by the Corporation should: . . . reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions" (Canada, Statutes, Broadcasting Act [38-39 Elizabeth II, 1991, chap. 11], art. 5.1.m.ii).


\textsuperscript{24} This is all the more impressive in view of the fact that our sample was limited to national actors, and that we deliberately excluded regional components of organizations such as ACTRA, or the CBC itself.

\textsuperscript{25} Canada, House of Commons, Standing Committee on Communications and Culture, Interim Report on the Recommendations of the Task Force on Broadcasting
mittee’s proposal was reflected in the Bill C-136 provision for dual powers, both to direct the CBC and to overturn its decisions on appeal.

During public consultations, the issue of CRTC autonomy was marked by both controversy and ambivalence. Controversy surrounded tampering with the principle of an “arms-length relationship” of cultural institutions vis-à-vis the government, while at the same time, this was tempered by the feeling that ultimate responsibility for the system should remain with elected officials; hence the ambivalence.

The issue became the heart of a power struggle between two of the most powerful actors in Canadian broadcasting: the CRTC and the Department of Communications. At stake was, essentially, the future leadership of the system’s day-to-day orientation.

The 51 intervenors who took a position (31%) were split over the government proposal. Half felt the government should have only one of the two powers, but more than two thirds approved of the power of direction, either by itself or in combination with an appeal procedure. Debate focused mostly on questions of principle, and positions generally crossed interest categories.

In short, the absence of a social consensus left the government in this case with far more room to manoeuvre than on other issues. It was thus able to assert its leadership and settle accounts with the CRTC. However, analysis of the evolution of the wording of the Act through various versions shows, nonetheless, that the government softened its position to take account of scepticism expressed during the interventions.

“Une radiodiffusion distincte”

In May 1985, just before the Caplan-Sauvageau task force began sitting, a joint committee of the federal and Quebec ministries of communications published a report on the future of French-language television, recommending “that the special nature of the French-language television system be recognized within the Canadian broadcasting system, and that government policies and regulations be adapted accordingly.”²⁶ This proposal—which a Quebec official described to the author in June 1990 as “Meech before its time”—made it through the process virtually intact, and was included in Bill C-136 as follows: “English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements.”²⁷

²⁷ Bill C-136, first reading, June 23, 1988, art. 3.1.b.
The proposal was of historic significance, in light of the history of Canadian broadcasting and the constitutional role of Canadian cultural politics.\textsuperscript{28} It generated almost no discussion during the debate on Bill C-136, but became a point of contention later, when Bill C-40 was presented at the height of the maelstrom surrounding the Meech Lake Accord. The wording remained the same in the final version of the Act.

Analysis of the interventions is revealing not only in itself, but for what it says about the nature of Canada's "two solitudes." Only 30 members of our sample (18\%) intervened, almost all of them francophone or Québécois groups, with the exception of federal agencies whose "clientele" includes francophone Canadians. We see from this that actors limit their interventions to issues that touch them directly, and that policy debate takes place in specific historical circumstances. When the legislation returned as Bill C-40 in 1989-1990, dozens of pages of Hansard laced with fiery exchanges attest to this.

The positions taken indicated, once again, a broad consensus on a question of principle—the distinctive character of French-language broadcasting—and an interest-based divergence as to the means for achieving it.

The task force had added to the federal and Quebec ministries' recommendation recognition of "the special character of Quebec broadcasting, both in itself and as the nucleus of French-language broadcasting throughout Canada."\textsuperscript{29} This divided the intervenors. While not a single one opposed the principle of distinctive character, important differences appeared over whether the distinctiveness was "francophone" or "Québécois." The cleavages were strictly constitutional, rather than sociocultural or economic. Thus, the task force proposal was endorsed by Québécois intervenors, including the broadcaster/cable distributor CFCC (which couched its intervention in terms of distinctive markets). Several groups sensitive to the concerns of non-Quebec francophones, such as TVOntario, sought assurances of these groups' inclusion in any measures to recognize francophone distinctiveness. Three important national organizations, the Fédération des francophones hors-Québec,\textsuperscript{30} the Canadian Association of Broadcasters and the CBC, explicitly opposed linking francophone distinctiveness with Quebec, and this position was reflected in the wording of the Act.


\textsuperscript{29} Task Force on Broadcasting Policy, Report, 156.

\textsuperscript{30} The organization changed its name in the course of the constitutional reform debate, and is now known as the Fédération des communautés francophones et acadienne du Canada.
The question of linguistic and cultural dualism was also broached in connection with another issue, the “equivalent quality” of CBC services in English and in French. The issue concerned the gap in CBC budgets for French- and English-language services. The task force had shown that the CBC’s nightly flagship current affairs program, The Journal, was produced in 1984-1985 with a budget of $111,000 per hour, while the Radio-Canada equivalent Le Point got by on $61,500. In drama, according to the parliamentary committee, hourly television production costs in 1985-1986 were $374,000 in English programming and $120,000 in French.

The task force recommended “that CBC French network budgets be reviewed to establish hourly production costs that reflect the role assigned to the French network in the new television environment.” 31 The parliamentary committee added: “so that the quality of the Canadian programs of the English and French networks would be comparable.” 32

The government maintained silence on the question until it was brought before the legislative committee in the summer of 1988 by the Coalition pour la défense des services français de Radio-Canada. An amendment to Bill C-136 was then added, to the effect that CBC programming should “strive to be of equivalent quality in English and French.” 33

Only 19 parties (11%) addressed this issue, nearly all of them coming from the well-organized Quebec cultural lobby of union and public interest groups. While their position was strongly supported by both the task force and the parliamentary committee, it was only at the legislative committee stage that the item was added to the bill. According to Coalition spokesperson Michel Parenteau, its success was attributable to the judicious use of a range of tactics, including, but not limited to, participation in the public consultations. No single factor alone, not the support of the recommending bodies, public opinion or direct pressure, was enough.

Technology

Technological issues have always been among the catalysts of change in the Canadian broadcasting system, but policy has tended to lag behind the possibilities presented by ever-advancing communication technologies.

Cable distribution, for example, is not even mentioned in the Broadcasting Act of 1968, and yet cable-related issues later dominated broadcasting policy debate much of the time. Defined by the CRTC as

32 Canada, House of Commons, Standing Committee on Communications and Culture, A Broadcasting Policy for Canada (Ottawa: Queen’s Printer, 1988), 128.
33 Bill C-136, third reading, September 28, 1988, art. 3.1.k.iv.
“broadcasting receiving undertakings” (and thus covered by the Act), the cable industry became the main player in Canadian broadcasting during the 1970s and 1980s. Both the task force and the parliamentary committee sought to include it in the legislation explicitly, but the government wanted to free new technologies from the constraints of policy. The June 1988 policy statement thus proclaims a state of “neutrality” with respect to technology. The 1991 Act, which states that “the Canadian broadcasting system should . . . be readily adaptable to scientific and technological change”34 closely reflects the view of the Canadian Cable Television Association.

A key issue with respect to cable that surfaced during the policy review concerned programming. The task force insisted that cable should evolve within a tightly regulated framework, and that it be excluded from direct involvement in programming: “The activities of creation, assembly and marketing of programming, other than that which is simply retransmitted, or of providing non-programming services, should be entrusted to separate organizations.”35 The parliamentary committee was less precise, limiting itself to stating that cable regulation should take account of its distinctive character.

But the government, in its policy statement, and then in the Act, confirms cable’s hybrid status as distributor and programmer. Under the 1991 Act, cable undertakings may, with the approval of the CRTC, “originate programming, including local programming.”36 While aimed at the provision of community cable channels, the clause opened the door to a role for cable in general programming as well. This role was confirmed by the CRTC’s 1987 decision on specialty television services,37 when the license for the YTV youth channel was awarded to a consortium whose majority shareholders were cable companies.

Of the 37 intervenors (22%) who expressed a view on this question, 89 per cent supported the separation of distribution and programming functions. Only four, all from the cable industry, rejected separation. The convergence of interests opposing an expanded role for cable crossed all categories, and included representatives of the federal opposition parties, provincial governments (Ontario, Manitoba), important national cultural institutions (CBC, National Film Board), independent producers, trade unions, community broadcasters, public interest groups and, not least, private over-the-air broadcasters.

How then to explain the government’s remarkable agreement with the interests of the cable industry? The cable industry’s success can be

34 Broadcasting Act, 1991, art. 3.1.d.iv.
35 Task Force on Broadcasting Policy, Report, 575.
36 Broadcasting Act, 1991, art. 3.1.t.iv.
partly attributed to its consistently taking the high moral ground in any discussion of its role. The industry has essentially succeeded in convincing policy makers of the equivalence of its own narrow interests with the general public interest, expressed as the ideology of "consumer choice."

Opposition broadcasting critic Sheila Finestone, then vice-chair of the parliamentary committee, provided some further insight when she said: "They worked diligently to ensure I thought the same thing they did." Ultimately, the cable industry was sufficiently satisfied with the broadcasting legislation to offer formal support—while its cousins, the private broadcasters, felt compelled to fight the legislation tooth and nail.

In sum, this issue illustrates the importance of maintaining a consistent and coherent position in one's public interventions, and backing it up by direct lobbying of decision makers. The cable industry kept the lobbying machine oiled, and successfully equated its own interests with those of the public. In this context, the interests of industry were able to prevail over a clear and articulate opposing consensus.

Social Issues

A central aspect of the policy review, according to Michael Helm, was the need to adapt the broadcasting system to the new social realities of Canada. Indeed, a number of specific social issues recurred regularly as the process evolved: community broadcasting, gender and ethnic equality and native broadcasting.

Community Broadcasting

Looking at community broadcasting with a view to public accessibility, the task force considered it in the public interest for community broadcasting "to be accorded formal status alongside the public and private sectors in the Broadcasting Act." Primarily symbolic, such recognition would provide leverage for community broadcasters seeking a role in the system. Meanwhile the government, while underscoring the merits of community broadcasting, did not enshrine it in legislation.

During the public consultations, these two opinions collided. Of 36 intervenors (22%), 26 (72%) were in favour of upgrading the status of community broadcasting. Half of these were from public interest organizations. Representatives of the private sector measured their words carefully, but basically they opposed making the status of the community sector official.

Following testimony in the legislative committee on Bill C-136, the article dealing with educational broadcasting was amended to add a

reference to community broadcasting as well. But it was only after committee hearings on Bill C-40 that recognition of community broadcasting as an integral part of the system, on the same scale as public and private broadcasting, was written into law.\textsuperscript{39} By persistently maintaining the issue on the public agenda, community broadcasting achieved official status.

Gender and ethnic equality

Also at issue was the position of women and ethnic minorities in Canadian broadcasting. Gender and ethnic stereotypes, as well as employment equity, were the subject of much discussion throughout the process.

For the task force, the issue was "whether radio and television programs should promote equality or reflect the various groups in an equitable manner."\textsuperscript{40} The question was problematic as it could open the way for third-party interference in broadcasting content. The parliamentary committee was more precise:

The Act should provide that the Canadian broadcasting system should serve the needs and interests of both sexes. . . . The programming carried by the system should provide a balanced representation of Canadian society, reflecting its multicultural and bilingual realities, its aboriginal peoples and the composition of its population with respect to sex, age, race, national or ethnic origin, colour, religion, and mental or physical handicaps.\textsuperscript{41}

According to the government’s policy statement, broadcasters had to demonstrate greater equity in their hiring practices in order to ensure adequate representation of the diversity of opinion as well as the differences found in Canadian society. "Stereotyping will diminish when women and minority groups are represented at all levels of broadcasting."\textsuperscript{42}

The early version of Bill C-136 was limited to stating that the Canadian broadcasting system should "strive, through its operations and programming, to reflect the circumstances and aspirations of Canadian men and women, including the linguistic duality and multicultural nature of Canadian society and the special place of aboriginal peoples within that society."\textsuperscript{43} Only on third reading was this article modified to read:

\textsuperscript{39} Broadcasting Act, 1991, art. 3.1.b.
\textsuperscript{40} Task Force on Broadcasting Policy, Report, 139.
\textsuperscript{41} Canada, House of Commons, Standing Committee on Communications and Culture, Recommendations for a New Broadcasting Act: A Review of the Legislative Recommendations Made by the Task Force on Broadcasting Policy (Ottawa, May 1987), 38.
\textsuperscript{42} Communications Canada, Canadian Voices Canadian Choices, 46.
\textsuperscript{43} Bill C-136, first reading, June 23, 1988, art. 3.1.c.iii.
The Canadian broadcasting system should . . . through its programming and the employment opportunities arising in its operations, serve the needs and interests, and reflect the circumstances and aspirations of Canadian men, women, and children, including equal rights, the linguistic duality and multicultural nature of Canadian society and the special place of aboriginal peoples within that society. 44

This version was eventually adopted, with a further addition referring to the “multiracial” character of Canadian society. 45

It is important to note the role played by the Vancouver-based national organization, MediaWatch, on this question. Seeking recognition of the principle of sexual equality in the law, MediaWatch argued that the Canadian broadcasting system did not reflect Canadian reality in its representation of women. “We were against the whole self-regulation process,” said lawyer Linda King, then vice-president of MediaWatch, “we didn’t hold much hope for the industry regulating itself.” Similarly, the Canadian Ethnocultural Council was a catalyst for focusing the debate on the question of ethnic minorities.

 Particularly with respect to employment, the concerted effort of the groups strengthened Bill C-136 on third reading. The Canadian Association of Broadcasters was the only representative of the private sector to intervene on employment. Its opposition elicited a sharp rejoinder from the Centre for Research/Action on Race Relations, which had lobbied through Sheila Finestone for an invitation to testify.

 This was a case where a debate between opposing positions took place in a public forum, and where the government ceded to the arguments of social groups despite fierce opposition from a major industry representative. The opposition of the CAB was one of the main reasons for the delay of Bill C-136 prior to dissolution and the 1988 federal election, and the resulting two-and-a-half year delay in adoption of revised legislation. But all representatives of social groups we spoke to insisted that the inclusion of this article in the Act would eventually cause a major change to Canadian broadcasting.

Native Broadcasting

The task force had recommended that “the broadcasting act should affirm the right of native people to broadcasting services in aboriginal languages considered to be representative where numbers warrant and to the extent public funds permit.” 46 Bill C-136 proposed that the broadcasting system reflect “the special place of aboriginal peoples” 47 in

44 Bill C-136, third reading, September 28, 1988, art. 3.1.c.iv.
45 Broadcasting Act, 1991, art. 3.1.d.iii.
46 Task Force on Broadcasting Policy, Report, 519.
47 Bill C-136, first reading, June 23, 1988, art. 3.1.c.iii.
Canadian society, and that "programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose." These initial legislative proposals proceeded through the process unchanged, and are now part of the law.

It is not surprising that the 30 intervenors (18%) on this topic agreed that Canadian broadcasting should be more responsive to the needs of native people. However, native groups were critical of the absence of any mention of Aboriginal languages, which they considered fundamental, and of vague escape clauses such as "where numbers warrant" and "as resources become available."

As in many other areas, however, the final verdict was positive, since native broadcasting was henceforth to be recognized as a right, and as an integral part of the overall system.

Thus, it was possible for social groups to make important gains thanks, in large measure, to the opportunity to take their case to an open forum. Representatives of ethnic minorities, women, native people and community broadcasters were able to work into the law policies that should enable them to promote their interests in specific areas. The lukewarm attitude of the private sector, the critical role of supporters within the bureaucracy, the accommodating social climate (including the fact that the main debate on the broadcasting act came just before a general election) and the tenacity of the advocacy groups were all influential.

Conclusion

In this study, Canadian broadcasting policy making was seen to be an important site of public action. Broadcasting policy making is thus one of the central components of the public sphere of communication in Canada.

Public consultation in broadcasting policy formation is especially important, in that private industry continues to be the most powerful player in this area. Without provision for a strong public presence in policy making, non-industry groups would have little or no influence. Public access to the policy making process is thus a crucial element in the democratization of broadcasting.

While unevenly distributed, influence is not one-sided. It was found that well-organized social groups could gain inclusion of their interests in the formal policy texts governing Canadian broadcasting. This attests to the importance of transparency in policy formation. On the other hand, thanks to the direct access they enjoy, industry groups are in a far better position to influence the shaping of the system. In a formal

48 Bill C-136, first reading, June 23, 1988, art. 3.1.k.
sense, everyone has access to the policy-making process, up to a point. It is, however, unequal access.

Our study clearly showed the importance of public intervention in policy making. However, this intervention takes place largely on an ad hoc basis, and often under difficult conditions. While, at moments of official policy inquiry, access occurs on a relatively equitable basis, day-to-day policy mechanisms are less accessible to groups that do not enjoy an industrial base.

Public opinion is nonetheless important. In the public arena, we observed a broad consensus on general policy issues, but differences appeared as soon as particular interests came into play. Public discourse on broadcasting is marked by a "dominant ideology," in which different groups must situate themselves in order to legitimate their positions.

Thanks to public debate, certain ideals relating to broadcasting remain alive: for example, the principle that broadcasting is a public service. In fact, if the CBC survived the Conservative government from 1984 to 1993, it may be largely due to the broad social consensus that found expression in the public consultations surrounding the broadcasting policy review.

The opportunity provided to interested parties to promote their own interests benefited the representatives of various social groups, which succeeded in inscribing certain points in the law regarding women, ethnic communities, Aboriginal people and persons with disabilities. Similarly, the community and educational broadcasting sectors gained recognition as integral parts of the system. The result should be a more balanced broadcasting system, more sensitive to the interests and needs of Canadian society.

Despite opposition, industrial interests, especially those of the cable industry, managed to dominate many crucial areas. Thus, for example, the desire to improve the contribution of private television to Canadian programming was not accompanied by concrete measures, while cable was the main beneficiary of the government's policy view that communication technology is "neutral." An extreme case of the tenacity of the cable industry concerned cable companies doing both programming and distribution. The cable industry was the only sector to reject a task force proposal to distinguish between distribution and programming undertakings, but far from restricting cable programming activities, the new legislation actually paves the way for it.

Debate sometimes focused simultaneously on general objectives and on the means for attaining them. In such cases (for example, Canadianization of television programming) consensus disintegrated over means. As with programming and distribution, industry interests overcame consensually based proposals, directly influencing government policy.
The Broadcasting Act’s attention to the principle of public service, as well as the extended mandate of the CBC, are clearly tied to the interest and views expressed by the public. As with Canadianization, the CBC and its place in the system received virtual unanimous support. Almost all who commented on it thought that the CBC should remain the pivotal institution of Canadian broadcasting. In light of this, one can justifiably conclude that support for the idea of public-service broadcasting, like support for Canadian broadcasting, is deeply rooted in Canadian society.

Industry support for the CBC was couched in nuanced terms, taking account of its economic interests. For example, private broadcasters would speak of the CBC’s cultural mandate as an argument in favour of their demand that CBC withdraw from the television advertising market.

Our study also showed the importance of the political climate in determining broadcasting policy, particularly concerning the role of institutions. Thus, the government of Quebec was particularly influential in view of the federal government’s attempts at “national reconciliation.” At another level, faced with a lack of public consensus on the question, the government was able to assert its authority over the CRTC.

Having said all this, it is important to recognize that the execution of formal policy reflects industry interests and political agendas far more than it does the broad principles and consensus of public debate. It is only within this framework that one can understand such developments as the persistent cutbacks in CBC funding which led to the closing down of most local and much regional television in December 1990. In short, the important gap between official policy and the way it is executed constitutes a basic contradiction which questions the very basis of the process that we studied. For even if policy making is relatively sensitive to public pressure, policy execution is carried out only after private negotiation with the actors concerned. This leads us to question even more deeply the nature of different actors’ influence because, evidently, the outcome of most important issues is decided behind closed doors.

In terms of democracy, therefore, the broadcasting policy-making process presents some important gains, not least of which is the tradition of public consultation. But some important flaws remain. Correcting these would require mechanisms to ensure more equitable access to decision making in addition to public forums, for example, public financial support of social groups, and a closer regulation of lobbying activities.