2 Legal, institutional and research perspectives on broadcast programme quality in Canada

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I. Introduction

Broadcasting generates a lot of discussion in Canada, most of it related to policy issues. Much of this discussion contains an embedded notion of quality: as the various actors position themselves with respect to a particular issue, they tend to imply that if the policy-makers listened to them, the result would be a system of quality.

Thus, we find the discussion of broadcasting in Canada to be laced with recurring arguments that equate quality to 'Canadian' (ie national) programming, 'popular' (ie mass-audience) programming, costly yet market-competitive programming, programming in the public interest, programming that is fair in its representation of various social groups, programming that is culturally distinctive, and so forth.

It is important to recognize that this discussion is inevitably rooted in social values. There can be no objective definition of quality, only definitions based on criteria established to meet the standards and objectives for broadcasting as they are set by the people writing the definitions.

Furthermore, while everyone talks about quality – or, more accurately, invokes its claim to legitimate a particular point of view – few have seriously tried to explain

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what would constitute a programme of quality. In the following pages, we will review the most significant Canadian efforts to address the question of quality in an explicit manner. Most of these are of a legal/regulatory or institutional nature. Only a handful are the result of concrete attempts to empirically determine what is broadcast programme quality.

As we shall see, the broadcasting policy discourse in Canada has been based on a range of value assumptions that can be classed in four general areas:

(1) market assumptions (where audience popularity is deemed to be a measure of quality);

(2) 'high policy' assumptions (where quality is equated to the national interest);

(3) professional assumptions (based on the standards of the sectors involved in broadcast production);

(4) public interest assumptions (based on the traditional values of public service broadcasting).[2]

The discussion of quality usually takes place in the context of debate over which of these values is to be enhanced or supported. At present, broadcasting is evolving as though this list represented some natural order of importance. In our own view, however, the emphasis should be reversed.

II. The legal and regulatory framework for broadcasting in Canada

All broadcasting in Canada stems from Article 3 of the federal Broadcasting Act, a simple and elegant document entitled 'Broadcasting Policy for Canada'. (Canada, *Revised Statutes*, 1970).[3] This policy statement enshrines in law the public nature of all broadcasting undertakings (op cit, 3.a), and charges them with a mission 'to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada'. (*op cit*, 3.b)

According to the Canadian legislator:

The programming provided by the Canadian broadcasting system should be varied and comprehensive and should provide reasonable, balanced opportunity for the expression of differing views on matters of public concern, and the programming provided by each broadcaster should be of high standard, using predominantly Canadian creative and other resources. (*op cit*, 3.d)

2 See Appendix to this article.

3 A revised Broadcasting Act was adopted by the Canadian Parliament in 1991. Except where otherwise stated, references in this article are to the previous Act, which was still in effect as this was being written.

The obligation of *each* broadcaster, whether public or commercial in ownership, to be *of* high standard, is at the centre of discussion on broadcast programme quality in Canada,[4] particularly as this legislation constitutes the main guideline for the activity of the broadcast regulator, the Canadian Radio-Television and Telecommunications Commission.

The 1968 Act was preceded by a government 'white paper' (Canada, 1966), which spelled out the justification for including such a standard in the legislation. General regulation of broadcast activity is not enough, it said; broadcasters, both public and private had 'a positive responsibility to contribute to a wide range of audience choice, to meet certain standards of public service, and to achieve the highest quality of programming they can reasonably afford'. The white paper went on to state that 'standards of quality and public service should not be formulated on a universally applicable basis'. For example, private broadcasters operating in larger, more profitable markets should be subjected to more stringent requirements.

High quality was recognized in the white paper as 'more a matter of general excellence than of mere content'. It would not necessarily be proportional to cost, nor could it be easily specified precisely enough to be made a condition of licence. 'However, judgments about quality can quite legitimately be made in retrospect on the basis of actual observed performance, and should carry a great deal of weight when an application for the renewal of a licence is being considered.' (*op cit*: 10)

Research shows, however, that the spirit of the white paper has rarely been heeded in the actual practice of the CRTC, which tends instead to assume a high standard of quality until a broadcaster's comportment is challenged by the public, usually in the form of a complaint. (Salter and Anderson, 1985; Canada, 1986; Trudel, 1988; Legros, 1990)

The various functions of the broadcast quality standard, as spelled out in the legislation, have been discussed at some length by Trudel (1988). According to this scholar, one of the leading experts in Canadian communications law, the notion of quality has three purposes: (1) a rhetorical function, (2) an enabling function for the regulator, (3) a standard by which to evaluate the behaviour of individual broadcasters. As Trudel notes, while this objective is inserted in an article dealing with the broadcasting system as a whole, it specifically addresses the programming offered by each individual broadcaster.

The problem, and the challenge to the regulatory authority, says Trudel, is to render this objective concrete, for 'the notion of 'programming of high standard' is not defined anywhere; it is almost always invoked implicitly and is at any rate poorly circumscribed: it appears to be undefinable'. (*op cit.*: 997)

4 It is to be noted that the equivalent wording in the French version of the Act refers to 'de haute qualité', which actually translates into English as 'of high quality'.

The purpose of the quality standard in the Canadian law is rather 'to provide an ideal measure of proper social conduct', in broadcast offerings: 'The standard of high quality prescribes 'what ought to be', or more precisely, the characteristics of 'what ought to be'. In using this standard, the legislator hopes to give precedence to that which he wishes to see become the norm one day'. (*op cit*: 998)

It is thus prescriptive, but only in a general and long-term sense. This view necessarily implies an openness to social change. The use of a 'quality standard' offers both advantages and disadvantages from a regulatory perspective: unlike measures that spell out what can and can not be done, it provides a good deal of flexibility; on the other hand it is so vague and general that no one can really tell what the authority will deem to be a programme of quality.

From a sociocultural perspective, the notion of quality usually sits at the heart of public debate – and even conflict – over the changing nature of social values. Very often the same programme will be considered of poor or of great quality, depending on how one is situated with respect to the programme's point of view. (This may in itself be a measure of quality, if one considers the role of broadcasting to include the raising of public debate on controversial issues. According to one pair of authors: 'controversy reflects an attentive audience, an audience who cares about the quality of programming ...' (Salter and Anderson, 1985: 7).) Furthermore, in Canada, quality has often been equated with national considerations, from the ideological (promotion of 'national unity') to the industrial (promotion of Canadian broadcast industries). We shall return to this later.

According to Trudel, as an 'undefinable' notion, the quality standard hands over unlimited power to the regulatory agency to set the parameters (and control the accelerator) of change. Whether on matters related to advertising, to the presentation of controversial material, or on journalistic matters, it inevitably befalls the regulatory agency to determine what constitutes quality. (Trudel, 1988: 999) Moreover, the regulator's judgement 'must necessarily vary from case to case. The notion of quality ... varies according to time and circumstance. What was determined (as quality) in one case can not necessarily serve as a pertinent precedent under different circumstances.' (*ibid.*)

Article 3 of the Broadcasting Act is in every respect a rhetorical statement. This comes as no surprise, in light of the historic role of broadcasting policy in Canadian politics and society over the past 60 years, where it has often seemed as though directing the broadcasting system was almost a residual purpose of that policy.[5]

Although Canada has had a broadcasting act since 1932, it is only since 1968 that the act includes an explicitly labelled statement of policy. As Trudel points out, the 'architecture' of any piece of legislation is important: thus, the various provisions of article 3 are not placed in any hierarchical order, but are rather aligned like a gro-

5 For the historic context, see Raboy (1990a).

cery list, in the hope that the CRTC will be able to balance the various goals and objectives. By prescribing the characteristics of the programming that ought to result from the quality standard, the Act legitimates regulatory control with respect to the argument that state intervention in such matters as broadcasting content could constitute a threat to freedom of expression. However, as the federal Task Force on Broadcasting Policy reported in 1986, 'While it is relatively easy to obtain general agreement that the programming offered by the Canadian broadcasting system should be of a high standard, there is a great deal of disagreement about what is meant by "high standard".' (Canada, 1986: 163)

The task force report noted that research carried out in the nearly 20 years since the passage of the Act had not developed any programme evaluation tools for determining whether the system as a whole was complying with the quality requirement. Instead, the quality standard had been invoked by the CRTC on a few occasions to justify particular decisions, 'sometimes with a number of strange twists'. The task force complained that the requirement 'sets an ideal standard somewhere in never-never land. Nowhere is the concept defined'. (*op cit*: 164) It authorizes the CRTC to make arbitrary value judgments. Instead, the task force proposed to hold broadcasters accountable to their 'firm commitments' made when licences are issued or renewed (a return to the spirit of the White Paper of 1966), and to base the concept of quality on 'recognized professional standards, depending on the category of the undertaking'. (*ibid.*) The problem is that someone still must define the standards.

The question of developing standards for broadcast content (as opposed to measuring programmes a posteriori against an abstract, ideal standard) was also raised by Salter and Anderson, in one of the rare studies of the actual effectiveness of the broadcast complaint mechanism. According to these authors, standards development would be the preferred way of dealing with problems of content without resorting to censorship. Salter and Anderson define standards as 'criteria applied in the judgment of quality' (1985: 25) – the key to the dilemma, in their view, for the issue of controlling broadcast programme quality has been cast in terms of an unresolvable opposition between censorship and civil liberties. When conceived this way, they state, 'any political or social response becomes impossible'. (*op cit*: 18)

The task force and its recommendations notwithstanding, scholars and commentators have been nearly universal in recognizing the limitations of CRTC interventions with respect to programme quality. The few detailed studies of CRTC decisions have shown that the CRTC, by design or out of impotence, has been unable or unwilling to enforce its own conditions of licence, l*et al*one broadcasters' promise of performance (see eg Legros, 1990). Salter (1985) has traced the evolution of CRTC decision-making through three stages from its inception in 1968 unto the present. According to her, The CRTC first went through an 'initiatory', or pro-active phase (1968–75), during which it manifested 'a willingness to deal directly with issues

concerning the quality of programming content' (op cit: 3). It did so, however, by issuing general regulations and policy statements aimed at developing services and infrastructures, rarely by decisions concerning the activities of specific broadcasters.[6]

The CRTC's fundamental stance during this period was that 'regulation should be designed to enact rights, to effect a redistribution of resources from the private sector to the public interest goals of the Canadian broadcasting system':

Public interest was defined not in terms of audience choice, but in terms of those aspects of programming and services that could not be realized even through the most efficient market system. Canadian content was an obligation of the broadcasters ... Access on a community channel on cable was an obligation that cable companies assumed ... Northern service was the responsibility of the CBC. (*op cit*: 4)

But beginning around 1975, the CRTC moved into a 'managerial', or reactive, phase, with emphasis shifting from concern over content to concern about market structures:

In the context of decisions focussed on the system as a whole, regulation of programme content – the quality of service – seemed somehow less appropriate ... the CRTC fumbled with the issue of quality in programming, fearing the complaint that it would be labelled as a censorship body. (*op cit*: 6)

The focus shifted again in 1982, when the CRTC entered its 'supervisory' phase, moving away from direct intervention altogether, and towards the view that the system would be best served by industry 'self-regulation'. Under this approach, 'Questions about programme content and quality of service are resolved mainly through mediation (codes, for example) under the supervision (but not direction) of the agency' (*op cit*: 10). This process relies on problems of quality being raised by groups in society, but as Salter asks, '... how can we be sure that all problems are being identified, especially if there is no funding for public interest groups?' (*ibid.*)

Salter thus proposes the need to set up mechanisms for establishing standards of quality for handling complaints about misrepresentation, for public participation in the drafting of industry codes. To this we might add the need to fund public interest groups wishing to intervene in the quality control process.

The CRTC itself described the new 'supervisory' approach as the key to a self-imposed reform completed in 1986–87, with the publication of new regulations for radio, television and cable undertakings. This approach was marked by a reduced involvement in detailed regulation 'particularly in areas that readily lend themselves to self-regulation by the industry concerned'. (CRTC, 1987d)

The new regulations regarding television, for example, contain only the following proscriptive measure with respect to content:

6 For a notable exception, see the CRTC decision renewing CBC licences in 1974 (CRTC, 1974).