

Transparency and accountability in Canadian media policy

MARC RABOY and DAVID TARAS

Abstract

Transparency and accountability are key elements of media policy in Canada. A long tradition of public consultation is embedded in the various processes that have shaped Canadian media, especially broadcasting. Public consultation is complemented, however, by other aspects of the policy process: federal-provincial negotiations, Supreme Court rulings, and direct lobbying of policy-makers by industry and civil society organizations. This article reviews some of the highlights of the process, with special emphasis on a landmark study of Canadian broadcasting by the parliamentary Standing Committee on Canadian Heritage, which reported in 2003. This study and the government's subsequent response underlines the importance of transparency and accountability for actors who are otherwise once removed from the centres of decision-making: artists, creators, journalists and ordinary citizens.

Keywords: broadcasting, media policy, media accountability, transparency, Canada, Lincoln Report

Introduction

The standard literature on media policy tends, for good reason, to situate media policy in the broader sphere of political power relations (see, for a range of examples, Melody, 1990; Malm and Wallis, 1992; McQuail, 1992; Golding and van Snippenburg, 1995; Price, 1995; Graham and Davies, 1997; Hutchison, 1999; Baker, 2002). Media policy is generally seen – where it is looked at at all – as a relatively obscure field of activity that concerns politicians, industry lobbyists and regulators. The public is largely absent. To the extent that mechanisms for media accountability exist, these are kept separate from efforts to influence the broad orientation of national media systems.

For a variety of complex historical reasons (Raboy, 1990; Taras, 2001), Canada provides an interesting counter-example to this general tendency. Media policy – particularly with respect to broadcasting – has been created largely in the public spotlight. The 1928 Royal Commission on Radio Broadcasting (the Aird Commission) held public hearings around the country before issuing the first of a long series of landmark documents that have shaped the Canadian media system. Parliamentarians (in both the elected House of Commons and the appointed Senate) regularly study media-related issues. A plethora of annual reports from various public institutions dot the Canadian media landscape.

The real impact of all this activity should not be idealized. As McQuail and Siune (1986) have shown in respect to European media, the degree of influence of various actors is directly related to their proximity to political decision makers. This is certainly true in Canada as well. But Canadian media policy making is also marked by a remarkable and possibly unmatched degree of transparency, resulting in a rich public discourse on media which inevitably makes the system more accountable to the people it is supposed to serve (Raboy, 1994; Taras et al., 2003).

The role that citizens play *vis-à-vis* the mass media is a vital measure of the democratic health of a society. The mass media are to a large degree the public squares, the meeting places of modern life. There is a fear, however, that the views and wishes of ordinary citizens will be pushed aside by ever larger media conglomerates that dominate the horizon in every possible way. Driven by what seems to be a kind of law of media physics, media organizations in Canada at least seem to be gaining more and greater mass. Although their power is checked by the need to attract rating points and advertising dollars, in Canada that has meant providing citizens with a flood of American films, low-brow TV programs and *Ersatz* cultural products. There is always the question of how vast and powerful media organizations can be held accountable to the larger society and to the citizens that they need to serve. Regulation is part of the answer, but an unchecked government can not do the job. Admittedly what is needed is a delicate balance. While freedom of expression is sacred, there is also the need to ensure that power never becomes arbitrary and that the public interest is recognized and served.

In Canada – as elsewhere – the media system is a reflecting mirror that allows citizens to see and communicate with each other. But, for a number of particular reasons, the media system is especially crucial here. Canada has the second largest land mass in the world with a population that is largely nestled in patches spread out literally thousands of miles along the U.S. border. It has sharp and sometimes threatening linguistic and regional divisions, it has taken in more new immigrants per capital than any country in recent history and its people are exposed to a con-

tinuous flood of media messages from the United States. Maintaining and sustaining a distinct culture and identity is arguably the main task of the Canadian media system.

The Canadian media system is complex and multidimensional. In fact, the system has so many contingent parts working on so many different levels that keeping track of its many interactions can be a dizzying experience. At the center of this wheel is the publicly funded Canadian Broadcasting Corporation (CBC) which operates two main TV networks (in English and French), two cable all-news channels, four radio networks, a northern service that reaches into the vast expanse of the Canadian North and broadcasts in a myriad of Aboriginal languages and an international service, Radio-Canada International. The national public broadcaster receives 60 per cent of its funding in the form of an annual grant from Parliament with the remainder coming from sales and advertising. The CBC is the largest journalistic organization in the country and is also the main showcase for original Canadian radio and television production.

Much of the media horizon is dominated, however, by a clutch of privately owned media conglomerates whose stables of properties include newspapers, radio and TV stations, satellite services, magazines, cable operations and sports franchises. Taken together, they tower over the CBC in terms of both revenue and audience reach. The largest of these corporations is Bell Canada Enterprises, which owns the CTV network, Canada's most prestigious newspaper, *The Globe and Mail*, a bevy of cable channels, as well as telephone and satellite services. CanWest Global, founded by the late Israel Asper, owns Canada's third TV network, Global Television, and the Southam newspaper chain which includes the *National Post*, as well as a picket fence of important regional newspapers. In the large Vancouver/Victoria market, for instance, CanWest Global owns all of the major newspapers as well as the dominant TV stations.

In Quebec, the landscape is dominated by Quebecor. It controls TVA, Quebec's most watched TV network, Vidéotron, which has a firm grip on the cable market in Quebec, important newspapers such as *Le Journal de Montréal* as well as the Sun newspaper chain which owns tabloid papers in Toronto, Ottawa, Winnipeg, Calgary and Edmonton among other properties. Quebecor also produces a host of magazines, owns book and music stores and runs concert tours. It is also the largest printing company in the world. Yet another major player, Rogers Communications, owns most of the country's magazines, is Canada's largest cable provider, has a share in a number of cable and digital channels, operates dozens of radio stations, and recently purchased the Toronto Blue Jays baseball team.

Although the Canadian media system is dominated by a handful of corporations, audiences are fragmented to a degree not found in many other countries. This is especially the case with television. There are over 200 cable and digital TV services including ones aimed at children, the business community, Aboriginal people, older citizens, gays and religious viewers. There is also a blizzard of news, sports, ethnic and pay-per view channels. Included in the mix are international broadcasters such as TV5, a consortium run by broadcasters from francophone countries, and BBC Canada. Canadians are also exposed to a torrent of American programming coming directly from the major U.S. networks, super-stations and cable channels almost all of which are readily available in Canada. One of the mainstays of the Canadian broadcasting system is a policy of simultaneous substitution of signals that blocks out American advertising when both American and Canadian broadcasters are airing the same U.S. program. It also needs to be pointed out that a large number of Canadians, as many as 750,000 according to one estimate, receive unauthorized satellite services from U.S. providers.

The Canadian broadcasting montage also includes educational broadcasters that are funded by provincial governments. The largest of these, TV Ontario and Télé-Québec, reach sizable audiences and produce original programming. There is also a cohort of community TV and radio stations run by cable operators, educational institutions and independent associations. At the base of the pyramid are hundreds of local TV and radio stations, many of them with loyal audience followings, that produce most of the news programming that Canadians watch and listen to.

Although newspapers and magazines are unregulated, broadcasting comes under the aegis of the Broadcasting Act of 1991. Section 3, which is the main lever of the Act, stipulates that Canadian broadcasting is a public service, comprised of public, private and community elements, and that broadcasters must air programming that reflects “Canadian attitudes, opinions, ideas, values and artistic creativity”. The most controversial parts of the Act are the sections that deal with Canadian unity and identity. The Act states that broadcasting must “serve the needs and interests, and reflect the circumstances and aspirations of Canadian men, women and children, including equal rights, linguistic duality, the multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples (...)”. Broadcasting is also seen as being “essential to the maintenance and enhancement of national identity and cultural sovereignty”. The previous 1968 Act, which had directed the CBC to “contribute to the development of national unity”, had created a swirl of controversy. The 1991 Act, which was the product of years of often painful negotiations and compromises, backed away from making na-

tional unity a goal of the system. The CBC is now expected only to “contribute to shared national consciousness and identity”. Another core provision of the Act ensures that broadcasting outlets will be owned and controlled by Canadians.

This article will describe and assess the various ways in which Canadian media organizations are held accountable to the public. We will examine the mandate and operations of the Canadian Radio-Television and Telecommunications Commission (CRTC), which regulates broadcasting in Canada, the industry and consumer groups that wage an almost continuous battle to influence government policy and public opinion, the operations of press councils and the CBC’s Ombudsman’s Office and most crucially the work of the House of Commons Standing Committee on Canadian Heritage which has recently recommended new methods to ensure more effective checks and balances and greater transparency in the Canadian media system (the Lincoln Report) (Canada, House of Commons, 2003). We will argue that the work of parliamentary committees is among the most effective means of holding media organizations accountable to the public. Made up of members from all parties represented in Parliament, these committees can hold hearings at which top bureaucrats, industry titans and ordinary citizens from around the country have a chance to present their views but must also endure rounds of tough questioning. They can also call for submissions, conduct site visits and commission research studies. Their reports can garner media coverage and stir scholarly as well as public debate. Most importantly, the government must respond to the recommendations made in a parliamentary committee report within 150 days.

Influences on Canadian broadcasting

It is important to note that broadcasting and telecommunications are among only a few areas that fall completely within federal jurisdiction in Canada. In most policy areas such as health care, the environment, natural resources, transportation and even post-secondary education, the federal and provincial governments share power. Canada is among the most decentralized federations in the world, with provincial governments commanding a lion’s share of tax revenues. Much of Canadian public policy is determined by an amorphous third level of government that consists of federal-provincial meetings and negotiations and by ever-shifting coalitions of provincial and federal governments and politicians. In the areas of broadcasting and telecommunications, however, Canadian courts have ruled over the years that the federal government should have exclusive jurisdiction.

The courts

Another crucial element is the power of the Supreme Court and the provisions of the Canadian Charter of Rights and Freedoms which came into effect in 1982. Over the last 20 years, the courts rather than Parliament have set many of the rules in Canadian public life. Judges have been required through judicial interpretation to put flesh on the bones of the Charter and political leaders have been more than eager to hand contentious “hot button” issues such as abortion, the rules governing Quebec secession, a person’s right to die, Aboriginal and gay rights, pornography and police powers to the courts. The Charter is a rights giving document whose ultimate objective is to tie Canadians to Ottawa rather than to their provincial governments and to create a shared community based on loyalty to certain values. The Charter has created a sea-change in Canadian life, and its letter and spirit provide the essential backdrop against which the Canadian media operate.

The Charter enshrines a wide range of personal freedoms including “freedom of thought, belief, opinion and expression including freedom of the press and other media of communication”. But it also stipulates that these wide ranging freedoms are subject to “such reasonable limits (...) as can be demonstrably justified in a free and democratic society”. Rights can be curtailed if Parliament, provincial governments, interest groups or individuals can provide the courts with legitimate reasons – can make the case – that unrestrained use of these rights may be harmful to society. Judgments usually hinge on whether a harm of some kind is being done.

The Supreme Court has decided a number of cases involving the rights and power of the mass media. These have included judgments on whether TV advertising could be aimed at children, on the right of tobacco companies to advertise, on the legality of government restrictions on the publication of poll results 48 hours before an election, on the legitimacy of libel and hate laws and on whether pornography legislation places unacceptable limits on a person’s right to privacy and expression.

The CRTC

The CRTC, whose members are appointed by the federal government, regulates all aspects of electronic media in Canada and enforces the Broadcasting Act as well as the Telecommunications Act. There are currently 13 full time CRTC commissioners including 6 regional commissioners who reside in different regions of the country. They are appointed to 5 year terms with the possibility of renewal. Decision-making panels are ever-changing and often cumbersome because of the need to include

regional voices. Appointments to the CRTC are made by the government and prospective members do not have to appear before or be approved by a parliamentary committee or by Parliament.

Amongst the principal powers that the CRTC exercises is the power to grant, renew and set the conditions for broadcasting licenses. At least theoretically, it is at license hearings that democratic accountability is exercised. Network executives appear in front of the Commission to answer questions about their past performance and map out their plans for the future. Members of the public are invited to write to the Commission if they have concerns or wish to express their views. When new licenses are at stake, broadcasters wage campaigns to mobilize civic and community groups to their side by endorsing their applications.

The CRTC has managed in recent years to wrestle policy making responsibilities away from government departments. Part of the problem is that jurisdiction over communication policy is divided between two often feuding government departments: Industry and Heritage. One department presides over the industrial aspects of communications policy while the other focuses on cultural policies. Boundaries are sometimes unclear and the departments often seem to be working at cross-purposes. The CRTC has no such problem. In the absence of strong directives from the government, the regulator has been allowed to conduct sweeping policy reviews, initiate new policies and shape the broadcasting system through the incremental and cumulative effect of its decisions. For instance, it has over time, redefined Canadian content in ways that have helped to reduce the amount of drama that is being produced, denied the CBC the cable licenses for specialized television services that it has applied for and thus stymied the growth of the public broadcaster and allowed cross-media ownership to harden into place.

Although CRTC decisions can be appealed to Cabinet, appeals are inevitably about the granting of licenses to one company rather than another and not about the broad policy decisions that the regulator is making. In effect, the CRTC commands everything that it surveys. There are those who argue, however, that the agency has been largely captured by industry and that it has failed to promote cultural policy objectives with any real stringency. There are at least three concerns. One argument is that members of the Commission are often drawn from industry and often go back to industry after they have served their terms although it should be noted that former commissioners may not handle industry business files for a year after they have left the Commission. A second argument is that the CRTC rarely uses the punishment or compliance mechanisms at its disposal. It has never revoked a broadcast license and the issuing of fines are few and far between. The agency's preferred method for registering its displeasure is to issue broadcasters with short-

term license renewals thus forcing them to go through the expensive and time consuming renewal process another time. But this too is rare. Critics contend that the CRTC has set the bar of compliance so low that literally any broadcaster can jump over it with a minimum of effort.

A third concern is that the CRTC recently loosened programming requirements so that broadcasters could fulfill their Canadian content obligations by producing less expensive programming such as comedies and documentaries rather than more costly dramatic shows. The ‘crisis’ in Canadian drama highlighted by the Lincoln Report is at least in part the result of the CRTC’s policies.

Interest groups

There is also an array of public interest groups and associations representing the creative sector, some of which have considerable influence. The Friends of Canadian Broadcasting (created in 1985), for example, speaks for a paid membership of some 60,000 Canadians (mostly from English-speaking Canada). It has been an outspoken supporter of public broadcasting, Canadian content, local and regional broadcasting and a responsible role for the private sector. The Friends regularly commission independent research studies as well as public opinion surveys which are consistently reported in the press and cited as authoritative sources. Other constituency-based organizations such as MediaWatch and the Centre for Research Action on Race Relations (CRARR) are regular interveners in public consultations.

Artists and creators are represented by groups such as the Canadian Conference of the Arts, ACTRA (Alliance of Canadian Cinema, Television and Radio Artists), the Canadian Independent Film Caucus, and the Canadian Film and Television Producers Association. On the French-speaking side, a coalition of seven creators’ groups including the Union des artistes presented one of the most substantial and effective briefs to the Lincoln Committee (Association Canadienne des distributeurs et exportateurs de films, 2003). Through organizations like the Coalition on Cultural Diversity, the creative community has also been active in influencing Canadian government efforts to work towards a “new international instrument on cultural diversity” at the international level¹.

Despite the direct access to decision-makers that they enjoy, industry leaders direct much of their lobbying efforts to making strong presentations to public bodies such as the CRTC or parliamentary committees. The most important occasion is when the CRTC holds hearings on whether licenses will be renewed. Broadcast executives come armed with charts and graphs, speak movingly about their commitment to Canadian

content and put the best possible face on their accomplishments. The Canadian Association of Broadcasters, the Canadian Cable Television Association and increasingly, associations representing satellite distributors and Internet service providers maintain permanent offices in Ottawa and intervene systematically at public hearings. The most important of these, the CAB, had observers present at all of the Lincoln Committee's public meetings in Ottawa.

Finally, the Canadian Broadcasting Corporation, Canada's national public broadcaster, also invests heavily in getting its corporate position across at every possible occasion. During the Lincoln Committee hearings, the CBC took the opportunity to defend unpopular decisions such as its retreat from local television, to appeal for more public funding, and to underscore the ways in which CRTC micro-management of its affairs had been hampering its move into new services. One of the CBC's main arguments has been that it is time for policy makers to put muscle behind the official rhetoric which still proclaims the public broadcaster's 'special place' in the Canadian broadcasting system.

There is also an informal CBC caucus among parliamentarians. The CBC President, Robert Rabinovitch, meets periodically with this group of CBC supporters to present the case for more funding, keep MPs abreast of the CBC's successes and to ask for advice. A host of other smaller but important players are also regularly heard from: the multi-faith broadcaster Vision TV, the Aboriginal Peoples Television Network, and associations representing community radio and television broadcasters. These constitute an increasingly significant public service sector over and beyond what the CBC is able and willing to provide.

Industry self-regulation

The television and newspaper industry have created their own mechanisms for dealing with complaints from the public. One can argue that the ultimate constraint on the actions of media owners is the public's refusal to watch the TV programs or read newspapers that they dislike. Clicking to another channel or web site takes little effort. This is more difficult with newspapers, especially in cities where there are only one or two local papers. But in broadcasting, programs that do not capture the interest or imagination of the public or that do not have pleasing or compelling formulas, can die a quick death. It should also be noted that as personal video recorders have begun to make inroads, more Canadians are viewing TV programs 'by appointment'. A variety of audience measurement devices are used to track program success. The Bureau of Broadcast Measurement uses the traditional diary system although it is experimenting with a portable people meter that can detect inaudible

codes embedded in the audio portion of TV programs. Neilson Media Research uses an older version of electronic people meters. The Canadian Newspaper Association publishes data on newspaper circulation as do other organizations.

Canadians have not been silent witnesses to what they see on television. In 1990, a petition containing 157,000 signatures was sent to the federal government protesting the amount of violence on TV. In 1992, another petition this time with over 1.3 million signatures called for a boycott of violent programming and asked the government to play an active role in reducing the amount of TV violence. It was not long before Prime Minister Brian Mulroney was drawn into the debate. He referred the issue to a Standing Committee of the House of Commons which held hearings in 1993. Feeling the heat of public anger and increased government scrutiny private broadcasters bolstered their efforts to deal with public complaints. The Canadian Broadcast Standards Council (CBSC), which is supported by the CAB, strengthened its voluntary code of conduct on TV violence in 1994.

The CBSC has also developed a code of ethics and a code of conduct with regard to sex-role stereotyping. People who wish to complain about programming can write to the CBSC or merely click the complaints button on their internet site. Complainants are first directed to the broadcaster involved to see if the complaint might be resolved at a lower level. If there is no resolution then the complaint is sent to a regional panel for adjudication. If the council finds in favor of the complainant then the broadcaster must make a public announcement of the decision during its prime time programming. It must be pointed out, however, that the existence of the CBSC's complaint policies is not widely advertised or known.

The CBC also maintains two Ombudsman's Offices which are the public broadcasting equivalent of the CBSC. These offices – operating separately for services in English and in French – are completely independent from CBC journalists and media managers, reporting directly to the President and to the Board of Directors. The Ombudsman receives complaints from the public and determines whether a journalist or program has violated the CBC's journalistic policies and standards. The Ombudsman then notifies the program staff of the complaints that have been filed and asks them to respond directly to the complainants. The office also has the power to carry out its own investigation. Reports go directly to the President and both the complainant and in some cases the wider public is made aware of the findings. The English-language Office of the CBC Ombudsman alone received 1,024 complaints in 2001-02. In that year the Ombudsman conducted 54 reviews finding that complaints were valid in roughly half a dozen cases. In addition, CBC jour-

nalists admitted making errors or exercising poor judgment in another 15 cases.

The newspaper industry has its own means of dealing with disgruntled readers. Every newspaper has a letters to the editor section where readers can criticize or disagree with stories or editorials. The *Toronto Star*, Canada's largest circulation newspaper, also has an Ombudsman who writes a weekly column describing and responding to criticisms from readers.

Another mechanism for dealing with complaints is through provincially-based press councils of which there are approximately half a dozen. Press councils in Ontario and Quebec date back to the 1970s, and have developed an extensive jurisprudence in dealing with public complaints against newspapers (and, in Quebec, electronic media as well). Other provincial press councils emerged in the 1980s, in response to the Royal Commission on Newspapers (1981) which proposed a number of legislative and regulatory measures to ensure healthy newspaper competition and editorial independence. Newspaper owners strongly resisted these efforts and saw provincial press councils as one way of demonstrating their accountability to the public. While the Quebec Press Council is funded in part by a foundation which raises money by public subscription and includes public interest groups in its membership, press councils in the rest of Canada are funded entirely by the newspapers that participate in the councils. In all cases, membership by newspapers is not mandatory and councils do not have the power to impose fines or ask for retractions. Although some observers see them as toothless tigers, they do provide a mechanism for bringing complainants together with media organizations, and have a certain moral authority. The Ontario Press Council, for example, received 100 complaints in 2002. Approximately 15 cases were adjudicated.

The House of Commons Standing Committee on Canadian Heritage study of Canadian broadcasting (Lincoln Report)

All-party standing committees of the House of Commons and the Senate have the power to conduct wide-ranging reviews of government policies as well as inquiries into specific issues. A committee of the Canadian Senate is currently investigating the impact of media concentration and the House of Commons Standing Committee on Canadian Heritage has conducted a study of the Canadian publishing industry. Usually such inquiries are narrow and limited in nature. They focus on a particular problem and report back in a relatively short period of time. But in 2001 the House of Commons Standing Committee on Canadian Heritage, chaired by Liberal MP Clifford Lincoln, decided to conduct what amounted to the most comprehensive review of Canadian broadcasting

policy to take place in a generation. The rationale was that it had been 10 years since the passage of the Broadcasting Act of 1991 and that it was time to reexamine the relevancy and effectiveness of the Act in light of the dramatic changes that had taken place in media technology, ownership patterns and in the production of Canadian drama. The study would take two years and involve the receiving of hundreds of submissions, testimony from top bureaucrats, corporate leaders, interest group representatives and ordinary citizens, site visits to every province, the commissioning of research studies and the consulting of expert advisors².

Virtually every aspect of Canadian broadcasting policy was examined by the Lincoln Committee; the future of public broadcasting, levels of cross-media and foreign media ownership, the state of local, community and regional broadcasting, the operations of government departments, funding programs, the CRTC and the effects of new media such as the Internet and Personal Video Recorders on copyright legislation and on the future of the industry in general. Members of Parliament were particularly concerned with the need for greater transparency and accountability in the making of appointments to the CRTC and the CBC and in the making and carrying out of policy in general. The Committee's main conclusion was that the Broadcasting Act was an effective instrument for setting the goals and objectives of Canadian broadcasting, but that there was a lack of implementation and especially assessment mechanisms for gauging how well those objectives were being met.

While the parliamentary study enjoyed great advantages, it also had a number of limitations. The greatest advantage was that the very act of conducting such an investigation brought with it a measure of accountability and transparency. Presidents and CEOs of media giants hosted site visits and often had to answer tough questions from MPs. Parliamentarians were exposed to the views of ordinary citizens and to the perspectives of people in regions other than their own. Indeed, listening to the concerns of small cable operators and producers in the Maritimes, the Raging Grannies (a group of senior citizens) in Vancouver or representatives of the Francophone minority on the prairies often moved MPs in ways that were quite surprising. Many of the questions that they asked of government officials and industry moguls mirrored the concerns of these ordinary citizens. The fact that the Lincoln Committee was an all-party committee added to its authority.

Interest groups used the opportunity to lobby for changes or defend the status quo and both the CRTC and government departments were placed under an uncomfortable searchlight. The major players realized that the report was likely to be a major blueprint for policy-making for some time to come and that it was crucial to have their views and interests strongly represented. Moreover, because the government is required

by law to respond to the recommendations made in parliamentary reports within 150 days, the study was unlikely to gather dust for too long. In short, the committee had the capacity to force issues onto the government and public agendas that officials had been reluctant to deal with and that had been simmering for quite some time.

The report sent strong messages about the need for reform, indeed for an almost entire revamping of the broadcasting system. It called for a refocusing of the CBC's mandate and more funding for the public broadcaster. The Lincoln Committee drew the line on increased foreign ownership and asked for a moratorium on the awarding of new broadcasting licenses until a policy on cross-media ownership was formulated by the government. Its report recommended the creation of a Local Broadcasting Initiative Program to galvanize local and regional production, suggested ways in which government support programs for Canadian television and radio production could be made more coherent and effective and declared that a 'crisis' existed in the production of Canadian drama. The report also warned about the challenges brought by new technologies and the need for the government and broadcasters to prepare for the digital transition.

The parliamentary committee process had a number of drawbacks, however. Given the size and scope of the undertaking, the Lincoln Committee had only a limited staff and few resources. Unlike other countries, Canada does not have a parliamentary public service. The Lincoln Committee was able to draw a handful of staff from the Library of Parliament and hire part-time consultants. The expert advisors were available only on a part-time basis. Moreover, unlike a Royal Commission or a government task force, the Lincoln Committee was captive to the vagaries of the parliamentary schedule and to the many demands placed on MPs. Members of Parliament have to attend daily Question Period and be present for votes in the House, participate in party caucus meetings and committees and travel frequently to their constituencies which can be thousands of miles away for ceremonial functions or to deal with constituency business. They are often required to travel overseas and they have to deal with a host of political issues. In addition, most MPs are members of more than one committee. Committee business often took place amid bells clanging (signaling that a vote was about to take place), cell phones ringing and MPs conferring with aides and going in and out of the committee room. But however disjointed the proceedings, over time quite a number of MPs became shrewd observers of the broadcasting system.

The Lincoln Report recommended a number of new departures in terms of bringing checks and balances and greater transparency into the system. The committee heard a great deal of testimony about what wit-

nesses saw as the shrouded, closed and highly political process that seemed to characterize appointments to both the CRTC and the CBC's Board of Directors. One witness accused both the current Liberal and the former Conservative governments of using the CBC Board of Directors for patronage purposes, suggesting that virtually all board members had been strongly affiliated with the governing parties. Others were more concerned with the possibility that CRTC commissioners had become too cozy with the industries that they were required to regulate. In asking the government to spell out explicit criteria and guidelines for the nominations of both CRTC commissioners and members of the CBC's Board of Directors, the report emphasized in some detail the appointments processes that had been adopted in Australia and the United Kingdom. In Australia, there is an independent selection panel that shortlists candidates and makes their names public. While the minister can reject the panel's suggestions, those selected must have gone through the independent panel's vetting process. The process in the UK also involves independent assessors, while the BBC's director-general is named by the public broadcaster's board (rather than by the prime minister, as is the case in Canada).

The Lincoln Report also recommended that there be a two year period after the time that commissioners step down before they can be employed by or have clients from industry again. It was thought that by lengthening the cooling off period from one to two years, service on the Commission would be less attractive to those deeply entrenched in industry and that the government would have to seek commissioners from a more diverse pool of potential candidates.

One of the most dramatic proposals made in the Lincoln Report was its call for a Broadcasting Monitor. The position is explicitly modeled after the Commissioner on the Environment and Sustainable Development and would be housed in the Auditor General's Office. The Broadcasting Monitor would report annually to Parliament on how well the objectives of the Broadcasting Act were being met. In effect, the Broadcasting Monitor would introduce a new system of checks and balances into the Canadian media system. Although the office would only have a small staff and budget, it would have the power to question decisions made by the CRTC, alert Parliament to potential problems and be the guardian of the Act. The Lincoln Committee argued that the creation of this new office would "go a long way to resolving many of the problems of governance and accountability ... identified in this report".

The creation of a Broadcasting Monitor would be part of a broader pattern whereby the federal government has established a series of offices – a privacy commissioner, a bilingualism commissioner, the Auditor General, the Environment and Sustainable Development Commis-

sioner among others – that act either as protectors of particular pieces of legislation or as checks on government spending. Interestingly, the Office of the Auditor General in particular enjoys great public trust and is seen as among the most scrupulous and reliable positions in the Canadian government constellation. By recommending that the Broadcasting Monitor be placed within the Auditor General's Office, the Lincoln Committee wished to ensure that the monitor would benefit from the high esteem that Canadians have given to the Auditor General.

One very interesting aspect of the handing down of the Lincoln Report was the reaction of the news media. While the media often portray themselves as playing a crucial watchdog role, monitoring and assessing the claims and actions of political leaders and warning the public about abuses of power, they were largely unwilling to report on themselves. The irony is that the Lincoln Report received only sporadic coverage when it was first released and had all but faded from screens and open pages within a relatively short time. The problem, of course, is that democratic accountability and involvement depends to some degree on the public being informed of the key issues that the society has to address. But the news organizations seemed reluctant to discuss the ways in which they themselves could become more accountable to their viewers and readers. The watchdogs suddenly seemed to lose their bark.

The Government's response to the Lincoln Report

The government issued its Response to the Lincoln Report on November 6, 2003. Coming only a week before the Liberal party leadership convention that would see Paul Martin anointed as party leader and Prime Minister, the response inevitably skirted many of the key issues raised by the parliamentary committee³. But it did give some indication of thinking within the government on many of the key issues.

It was significant that in accepting the Committee's conclusion that the objectives of the 1991 *Broadcasting Act* were still valid, the government was selective in its summary of the main focal points of the *Act*. It failed, for example, to recall the *Act's* specification that broadcasting *as a whole* was a public service, comprised of public, private and community elements. As we have seen, the *Act* clearly intends that Canadian broadcasting policy flow from this basic starting point.

While reiterating and endorsing some of the Lincoln Report's key points, the government backed off on commenting on any recommendations with financial implications, stating that these would be dealt with in the course of the normal "priority-setting exercises which occur in the lead-up to federal budgets" (Canada, House of Commons, 2003: 1). It also noted that on many points, "further analysis, examination and pol-

icy development” would be necessary before decisions could be taken. These areas included such key issues as increased, stable multi-year funding for the CBC and creation of the proposed Local Broadcasting Initiative Program.

On the sticky questions of cross-media and foreign ownership, the government backtracked from the Committee’s strong stance, recognizing only that these were controversial questions requiring further study.

The government response agreed with the Committee’s call for a need to clarify, align and integrate the mandates of the public agencies and programs that the government supports (such as the CBC, the CRTC, the Canadian Television Fund, Telefilm Canada, and the National Film Board), but it was stunningly silent on most of the Committee’s key proposals regarding the governance of these mechanisms, except for those regarding its own relations with the CRTC. The government seemed to recognize that the CRTC had been making policy in an unencumbered fashion for far too long. The response said:

“While recognizing the independence of the CRTC, the Government agrees that the CRTC, as regulator, should function in close alignment with other agents of public policy in pursuit of the objectives of Canada’s broadcasting policy (...). Given the rapid evolution of the broadcasting system, the Government recognizes that it may be necessary to give policy direction to the CRTC more often to create and sustain coherence within the system” (Canada, Department of Canadian Heritage, 2003: 6).

Virtually all of the recommendations that dealt with governance and particularly with the need for greater transparency and accountability were ignored. For instance, the government response had nothing to say about the Committee’s recommendations to combine all responsibilities for broadcasting under the authority of a single Department of Communication (as had been the case up to 1993) or to combine the various pieces of existing legislation in a single Communications Act in light of technological convergence. There was nothing on the need to redirect the CRTC to give priority to cultural objectives, to review CRTC regulations on a statutory basis, and to give the agency broader powers to impose sanctions. It was also silent about the need to recognize not-for-profit broadcasters as an integral part of the system, to provide intervenor expenses in CRTC proceedings, and establish a Broadcasting Monitor to oversee that the objectives of the *Act* are being met.

The most glaring omission perhaps was that the response had nothing to say about the need to establish criteria and guidelines for the appointment of CRTC commissioners and CBC board members, nor to

delink the naming of the CBC president from the Prime Minister's Office, except to acknowledge that in the area of conflict of interest it recognized the Committee's concerns and would examine the issue. Given that increasing the levels of transparency and accountability were the primary goals for quite a number of MPs, the failure to address these questions seemed strangely out of tune.

It should be noted that the government response was drafted by officials in the Department of Heritage whose own institutional interests were challenged by many of these recommendations. It is not surprising that the Department ignored recommendations that dealt with its own reorganization and entrenched interests. Bureaucrats, of course, are unlikely to initiate or respond favorably to changes that would lessen their own grip on power. The fact that the Government's Response was prepared by bureaucrats who were in the committee's direct line of fire is a basic flaw in the system. Committee reports might be sent to cabinet committees or a neutral committee of officials in order to ensure that needed changes are not blocked by those who are the most threatened by change.

The selective adoption of *some* of the Committee's recommendations on governance while ignoring related ones, has thus created a potentially dangerous situation. The hand of government could well be more present in broadcasting governance without ensuring the necessary checks and balances that were at the heart of the Committee's recommendations.

This was perhaps to be expected, but it underscored that the struggle for transparency and accountability in Canadian broadcasting still has a long way to go.

Notes

1. These efforts resulted in a UNESCO decision on October 14, 2003, to work towards an international convention on cultural diversity. (See Canada, Department of Canadian Heritage, *News Release*, 14 October 2003).
2. The authors of this article served as expert advisors to the Standing Committee on Canadian Heritage for its broadcasting study conducted between 2001–2003.
3. The timing of the government response was further complicated by the fact that the politician responsible for the response, Heritage Minister Sheila Copps, was also a candidate for the party leadership. Little concrete action was likely before the next general election and a new minister would eventually have more leeway with respect to the government response.

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