

**A Framework for the Future:
CanWest and the New Regulation of Canadian Broadcasting**

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ABSTRACT

For English Canadians, the longstanding Canadian Broadcasting Corporation (CBC)/Canadian Television (CTV) duopoly has been shaken up in the last 15 years with the rise of CanWest/Global television network. This ascent was encouraged by Canada's broadcasting regulator, the Canadian Radio-Television and Telecommunications Commission (CRTC), as a way to encourage diversity in Canadian broadcasting.

Canada's regulation of television broadcasting is a fairly unique political structure. It represents an example of a modern attempt to ensure national unity through the regulation of cultural products. At the same time, the last three decades in Canadian media industries have been characterized by consolidation and concentration. For English Canadians, the longstanding Canadian Broadcasting Corporation (CBC)/Canadian Television (CTV) duopoly has been shaken up in the last 15 years with the rise of CanWest/Global television network. This ascent was encouraged by Canada's broadcasting regulator, the Canadian Radio-Television and Telecommunications Commission (CRTC), as a way to encourage diversity in Canadian broadcasting.

The history of the CanWest/Global system (CGS) can be seen as representative of the long-standing industry bias of the CRTC. Using CanWest as a case study, this paper will examine the CRTC's shift towards regulation based on market logic and industry profitability rather than the public interest. The first section of the paper will offer a brief

history of Canadian broadcast television policy. The second section will detail the rise of CanWest, particularly through its interactions with the CRTC. The concluding section will examine broadcast television regulation in the 21st Century, and the CRTC's moves towards an industry-friendly model of self-regulation.

“No Liberty Complete”: Broadcast Regulation in Canada

The regulation of broadcast communication systems in Canada has historically served to protect the public interest. As radio became more widely available in the 1920s and 1930s, the government struck the Royal Commission on Radio Broadcasting (known as the Aird commission) to examine the possibility of government intervention. While its proceedings were conflicted and distinguished by many different opinions, one of its main impacts for Canadian policy was to underscore the importance of broadcasting to Canadian nationalism (Raboy “Missed” 1990, 7)¹. Concerns of overwhelmingly American content coming into Canada led politicians to affirm the role of broadcasting in promoting Canadian culture. The second main principle of Canadian broadcast regulation was legislated in the 1932 Canadian Radio Broadcasting Act, which “established the principle that the spectrum for broadcast communication is a public resource, the exploitation of which ought to be regulated by public authorities in service of the public interest” (Barney 2005, 33). These principles, of nationalism and the public interest, would dominate the regulatory landscape into the latter half of the 20th Century. According to Skinner and Gasher, “the federal government has seen communication systems as central to the development of a shared set of ideas and values, a sense of nationhood, a Canadian culture” (Skinner and Gasher 2005, 51).

This early regulation were based on an understanding of the mass media which “focused on the capacity of media institutions to play a role in the democratization of societies, creating a public sphere” (Raboy “Making” 2006, 294). Thus regulation served to mould that public sphere into an educated, socially just, and democratic form. The Massey Commission, publishing a report in 1951, encouraged the Canadian government to make sure that this public sphere had an explicitly Canadian character. The alternative, as understood at the time, was commercialization through American cultural dominance (Skinner and Gasher 2005, 59).

After 1968, regulation of broadcasting was accomplished through the Broadcasting Act, which governs all radio and television broadcasting in Canada. This legislation sets out the requirements for broadcasters, establishes the regulatory framework for broadcasting operations, and governs the operation of the CRTC and the CBC. At the most fundamental level, the Act establishes that broadcasting is a public service taking place with a public resource (spectrum), and that this public service is “essential to the maintenance and enhancement of national identity and cultural sovereignty” (Canada I;3;1). In light of this, one of the main regulatory obligations of any broadcaster is to contribute to the development of Canadian content (Can-con). While ideally a protection for cultural diversity, Can-con must be calculated in some way: “In fact, the definition is industrial, depending solely on the national origin of the writer, director, and production crew, with Canadian-ness accumulated on a 10-point scale weighted by job description” (Murray 1999, 65). This production requirement is calculated again through the number of hours per week of original Canadian content that each station must broadcast. Because of the great expense of producing television shows,

as opposed to purchasing them from other markets, this requirement also places a significant financial burden on broadcasters in Canada.

The goals of the Broadcasting Act in the regulatory arena emphasize “flexibility” and “sensitivity” to the “burden” that regulation can impose on broadcasters (Canada II;5;2). However according to Raboy, the “protective regulatory environment put in place by the CRTC,” creates the opportunity for successful Canadian media operations through production subsidies, advertising substitution allowances, and foreign ownership protections (Raboy “Making” 2006,298). Regulation thus creates benefits as well as obligations for Canadian broadcasters. The CRTC is in charge of licensing broadcast undertakings, imposing conditions on the licensees to ensure compliance with legislation. The interpretation section of the Broadcasting Act includes the following definition of a network: “a ‘network’ includes any operation where control over all or any part of the programs or program schedules or one or more broadcasting undertakings is delegated to another undertaking or person” (Canada I;2;1). In a 1988 review of television network policy, disputes arose concerning this definition. The review was the product of two years’ work with input from the public as well as industry. The goal of the review was “to provide a more streamlined and rationalized regulatory framework” (CRTC 1986a) for network television in Canada. Network regulation had been in place since the 1920s both to protect Canadians from cheap foreign content, but also to manage licensees and ensure their accountability to local communities.

The review intended to examine the means by which the Commission defines networks. At this point in Canadian broadcasting, there was an understanding that structures in place would be changing: “Both CTV and the CAB [Canadian Association

of Broadcasters] warned of the dangers of allowing competitive national or regional television networks which did not have the same programming obligations and which could not be held accountable in the same way as existing conventional networks” (CRTC 1988). CanWest opposed this view, saying that regional affiliations and services should be encouraged. The CRTC was careful to justify the use of the word ‘includes,’ as it enlarges, rather than limits, the possible definition of a network. The use of the word implies that the Commission has discretionary power to include those licensees which do not specifically meet the criteria. As we will see, CanWest/Global spent many years benefiting from not being a network, and not having the programming obligations that CTV and the CAB were pointing to in their submission.

A Captive Regulator: The CRTC’s Industry Bias

The CRTC’s history is one of balance. As a federal regulatory body, its purpose (and the purpose of broadcast regulation more widely) is to balance the interests of the public with those of industry. As a site of cultural production, broadcasting is understood to be crucial to developing educated, proud Canadians. At the same time, it is an important business whose profits have been protected through foreign ownership restrictions and government subsidies. Much of the public interest focus of Canadian broadcasting regulation has been directed towards the CBC as the “public” sector. According to Marc Raboy, however, “with respect to the private sector, the CRTC quickly fell into the classical Canadian muddle of seeking an elusive pivot on which to balance the required mixture of private enterprise and public service” (Raboy 1990 “Missed”, 13). This feature of the regulatory landscape will become apparent when CanWest’s interactions with the CRTC are examined below.

The beginnings of the cable industry in Canada can perhaps also be described as the beginnings of the shift of the CRTC's balance towards the private sector. The CRTC's appearance amidst the sea change of the late 1960s made for a highly complex regulatory field. In the same period the Department of Communications was established, cable television distribution was becoming well-known, and the government established a public-private partnership to investigate satellite communications (Telesat Canada). While an early statement by the CRTC emphasized cable's "community programming" there was an important difference between cable and traditional over-the-air broadcasting. There were no public providers in the cable market: "In spite of the CRTC's claim to implement public policy objectives with regard to its operations, all cable undertakings in Canada were to be governed by the logic of the marketplace" (Raboy 1990 "Missed", 242). Nonetheless, the CRTC was certain that regulating cable would allow them to ensure that Canadian content would accompany American cable channels (Killingsworth 2005, 213). When the CBC attempted to expand into the cable market and offer a public alternative, the CRTC rejected its license application. Similarly, the "community programming" discussed in early CRTC statements barely materialized. Initially proposed that a set percentage of cable revenues be diverted into community access, this was diminished to an "expectation" of an unspecified contribution by the cable companies (Raboy 1990, "Missed", 242).

The CRTC's industry bias continued in the 1970s with the advent of pay-television services. The regulator's initial foray into the medium took the shape of a policy statement opposed to pay-television licenses. A year later, the CRTC put out a call for proposals with extremely high content restrictions; none of the applications were

accepted. According to Killingsworth, “this inconsistent approach may have led broadcasters to the conclusion that it was to their advantage to pay lip service rather than being candid when applying to the CRTC for licenses” (213). Once granted a license, the broadcasters attempt to change the conditions of their license, often succeeding. Indeed, they rarely faced censure when failing to meet their obligations, as will be discussed in CanWest’s case below.

Despite a lack of demand from consumers and a lack of evidence that private television services were advancing Canada’s national interests, a private, market-based option was chosen for this new form of broadcasting. The CRTC’s handling of the pay-television issue “made transparent the CRTC’s perception of its role: faced with a dilemma between public opposition and industry pressure, it would opt for the industry” (Raboy 1990, “Missed”, 274). In repeated instances, the CRTC convened studies and published reports with similar goals: ensuring Canadian content and the fulfillment of the Broadcasting Act while promoting a healthy television industry. The regulatory body’s shift between private and public solutions, managed and flexible regulation, and national and regional services indicated a lack of concrete solutions. “As the failure of this system becomes evident to the CRTC, it periodically attempts to subtly shift direction. Such a system becomes easy for broadcasters to attempt to manipulate” (Killingsworth 2005, 212). An example used by Killingsworth is Youth Television (YTV), whose managers “gradually chipped away at the unfavourable conditions contained in its original license” (216). These interventions allowed for a broader range of programming, less Canadian content, and more imported programs in primetime schedules.

According to Skinner and Gasher, the CRTC decisions of the 1970s “were decided on a ‘case by case’ basis and illustrated a clear lack of policy direction regarding concentration and cross-media ownership in general” (Skinner and Gasher 2005, 62). As Canadian television moved into the 1980s, conditions did not improve. Following a large wave of newspaper industry consolidation, the Kent commission was struck in 1980 to review policies related to media ownership and concentration. A federal directive suggested by the Kent report directed the CRTC to limit the cross-ownership of broadcast and newspaper outlets. The commission identified 17 licenses that met this description, yet after review (again on a ‘case by case’ basis), renewed all 17 (Skinner and Gasher 64). These decisions were based on worries about the financial health of media industries – the same logic which governed the mergers themselves. In 1982, CRTC chairman André Bureau said that “the CRTC attaches such great importance to the financial solvency of an undertaking that we are now disposed to foresee loosening the rules that limit mixed property” (Raboy 1990, “Missed”, 299). Through its nearly four decades of operation, the CRTC has repeatedly placed the interests of private broadcasting’s shareholders above concerns for the public.

The Mulroney government overturned the cross-ownership directive, and proceeded to revise the Broadcasting Act in 1988. These changes introduced the ability of the government to overturn CRTC decisions, as well as to offer the regulatory body general policy directives. These additions, while supported by advocates of public broadcasting, offered private broadcasters more influence over the bodies in charge of their regulation. A final watershed occurred in December 2000, when the CRTC allowed BCE Inc. (one of Canada’s largest telephone service providers), to acquire CTV, merging

two of Canada's largest telecommunications and broadcasting companies. According to Darin Barney "this clearly signaled the priority of current Canadian policy to permit unprecedented levels of consolidation, concentration and cross-ownership in communication industries" (Barney 2005, 26). This short history of regulation points to interesting changes in the form of regulation in Canada. The next section profiles CanWest's history and rise as Canada's third network. The links to this growth and the changes in Canada's regulatory structure belie both keen corporate management as well as increasing synergy between Canada's broadcasters and the bodies that regulate them.

The Birth of a Nation: The Rise of CanWest

The story of CanWest/Global starts in 1974, in two very different places: North Dakota, and southern Ontario. Israel 'Izzy' Asper bought KCND, a failing television station in North Dakota, and moved it to Winnipeg. Newly christened as CanWest CKND, the station went on the air on September 1st, 1975, as the third option behind the local CBC and CTV stations in Winnipeg (Anthony 14). Stuart Craig had already begun an independent network in Manitoba, City-TV was providing another voice in Toronto, and BCTV was operating in the West. Canadian broadcasting was taking off. The CRTC was interested in independent stations for their ability to provide diversity – another level of choice against the dominant public and private options: CBC and CTV. Twenty-five years later Asper would own the most profitable broadcasting outfit in the country.

Around the same time, a financial crisis was coming to a head in Southern Ontario. Global Communications Ltd., licensed by the CRTC in 1972, operated CIII-TV, with transmitters in or near Toronto, London, Sarnia, Windsor, Uxbridge, and Bancroft (Anthony 2002, 14). The mandate was to provide a television alternative for viewers in

Southern Ontario. Rapidly losing money, Global entered into a restructuring agreement with Global Ventures Western Ltd., controlled in part by CanWest Capital Corp., a merchant bank established by Asper. While initially only owning a small share of the bank, in 1983 Asper staked his entire fortune in order to buy out the remaining pieces. This move provided Asper with seats on the board of Global, and moved him a step closer to affiliating his stations from Ontario to Saskatchewan. While Asper controlled 45% of Global, the two arms stayed separate for the time being.

The word ‘network’ was raised early in the growth of the CanWest/Global system. In 1984, Saskwest Television Inc. submitted an application to the CRTC to operate two stations in Regina and Saskatoon. In 1985, the CRTC approved Saskwest’s application, and granted two licenses for CFRE-TV Regina, and CFSK-TV Saskatoon. Competition and market viability are chief components in the CRTC’s decision to grant new broadcast licenses. In the Saskwest application, the commission investigated and determined that there was room for more competition in these markets. Another factor in their approval was that Saskwest was a wholly-owned subsidiary of CanWest. The CRTC relied on “the business experience and financial resources of Saskwest’s principals” and “their performance in the operation of other broadcasting undertakings” (1985b) to ensure the success of these new stations. CanWest’s other operations were important to their ability to obtain new licenses. At the same time, the CRTC stressed the “autonomy” of these various independent stations. This recurrent regulatory contradiction benefited CanWest’s advancement.

In the decision, the commission noted that “while Saskwest will manage the Regina and Saskatoon stations as independent and autonomous units from a

programming standpoint, it will be able to achieve significant economies of scale in the operation of the two stations, particularly in the production of local programs” (CRTC 1985b). The understanding that ownership determines operation is implicit in these early CRTC decisions. The commission contradicts itself, saying that the stations are independent from a programming standpoint while also cooperating in the production of programming. The rhetoric of independence is undermined by the use of economies of scale to justify concentration of ownership. This is troubling to many of the interveners at the public hearings: cries of media concentration and conglomeration abound. In the rather new terrain of expanding broadcast television in Canada, the CRTC is excited about third services to compete with the juggernauts of the CBC and CTV: “One of the most important aspects of [the Commission’s] mandate is to oversee the orderly introduction of viable new sources of high-quality local Canadian programming” (1985b). Unfortunately the high capital costs associated with television ensure that established players will be in the best position to take advantage of these new opportunities.

This is the second trope in television expansion: the local. The CRTC is concerned with providing service to local communities, and it is this local market that is taken into account when expanding services. Yet these ‘third-service’ licenses overwhelmingly mimic the national network model established by existing broadcasters, public and private alike. With a station in Winnipeg, partial ownership of a station in Vancouver (CKVU), as well as a stake in the CIII stations of southern Ontario, interveners complained that “approval of Saskwest’s applications might constitute a major step towards the creation of a third national network which would have an unfair

competitive advantage over existing services across the country” (CRTC 1985b). Saskwest was given the opportunity to respond, and it did so, reiterating the independence of its various stations and the lack of formal affiliation between the Western stations and those in Ontario. While predicating the license on the financial cooperation of the two stations and their ownership group, the CRTC quietly demanded that the stations remain independent and not form a network of any sort.

While CanWest, with the CRTC’s approval, was using its ownership of multiple stations as a way of increasing profits, it was still not a network, and thus, still not subject to the increased requirements associated with a network license. What Paul Taylor calls a “carefully crafted regulatory position” enabled CanWest/Global to expand quickly and become one of the most profitable broadcast enterprises in Canada. Writing in 1993, Taylor examines the fully formed CanWest/Global System (CGS). By this time the ownership of CKVU in Vancouver has been transferred to CanWest, and the ongoing dispute amongst shareholders in Global has been resolved by the complete purchase of the stations by CanWestⁱⁱ. Upon purchase of the Global stations in Ontario, CanWest’s broadcast holdings extend from Halifax to Vancouver.

These stations share programming development costs, buy and share distribution rights to American programs, and are owned by the same person: Izzy Asper. The system had plans to establish news bureaus and share stories in order to develop its news department. CTV had much to say about the purchase: “CTV suggested that the licensee’s plans to establish an alternative national and international news service, and to make this available by subscription to other independent stations across the country, will effectively change Global’s status to that of an operator of a "de facto" network” (CRTC, 1990 3).

The CRTC did not agree, satisfied that CanWest/Global's operations did not fulfill the definition of a network as defined in the Broadcasting Act, as the stations remained autonomous. This conferred great benefits upon CanWest: in 1990-91 CGS's required expenses for program development were half those of CTV in the same period (Taylor 2). This regulatory flexibility greatly changed the financial dynamics of these broadcast outlets.

The CRTC was nonetheless satisfied with the third service provided by CanWest/Global: "Global has been one of the most consistent performers of all private English-language independent television stations" (1986b). In addition to benefiting from the lack of network status, Global also shared the cost of program development with the Broadcast Development Fund, administered by Telefilm Canadaⁱⁱⁱ. The CRTC attributed the incredible financial success to the licensee's "expertise," as well as to the "unique" circumstances under which it operated. The regulatory structures in place also ensured profitability: "Global derives a significant portion of its gross revenues from the simulcast of U.S. programs" (CRTC 1986b). Purchasing American-made programs can cost as little as one-tenth the cost of producing a Canadian program. In addition, the CRTC 'simultaneous substitution' rules allow stations to offset these costs by selling advertising for those programs in their local market.

Having to compete with the CBC and CTV, Global often purchased national rights to American programs. With the rights to a program for all of Canada, Global was free to re-sell these rights: "With more independent stations being established across the country, Global should find it easier to amortize its acquisition costs by selling programs to stations operating outside its market area" (CRTC 1986b). The fact that CanWest

owned most of these other independent stations did not alter this reality. Moreover, the CRTC noted that the disparity between money spent developing Canadian programming and that spent purchasing foreign shows only increased in Global's license term (1986b). This increase prompted the CRTC to place conditions on Global's license requiring increased expenditures on Canadian programming.

This was Global's license heading into the 1990 takeover by CanWest. Interestingly, in 1986, the Chairman of Global's Executive Committee, Seymour Epstein, submitted this comment to the CRTC: "To all of us at Global, from the very beginning, we also thought it was clear that Global was – the ambitions of all parties at the time Global was licensed, was to develop and contribute to a national programming service" (CRTC 1986b). Returning to this same subject in 1990, the Commission cited the limitation of Global's mandate to Southern Ontario: this specific mandate was the sole item up for consideration. At this point CGS operates stations across Canada. It is not subject to the increased Can-con burden of 'network' status, and is thus able to predominantly purchase inexpensive American programming. In coming years, CanWest would draw the attention of the CRTC by extending these policies so far that it failed to meet the conditions of its licenses.

Regulatory Missteps: CanWest's Failings

Global stations were first licensed in 1972. At that time, the Commission was swayed by Global's commitment to marshalling all available resources to develop programs that involved independent Canadian producers. Despite the unwillingness to undertake a larger regulatory review, the CRTC has, at certain times, attached additional conditions of license to the operations of CanWest/Global stations to encourage

performance in keeping with the intentions of the Broadcasting Act. Canadian content is most often the point of contention with the CRTC. According to Taylor: “American programming dominates the prime-time schedules of CGS stations, which tend to take full advantage of simultaneous substitution regulations to maximize audience size and revenues” (4). As a result, at certain times, the CRTC has mandated that CGS increase its production and broadcast of home-grown drama, music, and variety programming.

In 1982, at Global’s first license renewal, certain conditions of license and commitments were made to boost its domestic programming. The commission praised Global at its 1986 renewal for having met and exceeded many of its local production commitments (1986b). At this same hearing, however, Global was also criticized on several fronts. The first was public-affairs programming. The commission noted that despite high quality news programming for the local audience, Global’s “efforts in the area of public affairs specials oriented to the needs and interests of Ontario residents have not been substantial” (1986b). Despite a rise in gross revenues of 80% since 1982, only 2.4% of this revenue was spent developing and purchasing original Canadian programming. Because of this, and the numerous sources of funding available to Global (Telefilm, selling foreign programming rights), the Commission did “not consider that the licensee’s commitments with respect to the production of new Canadian programming [were] adequate or consistent with its proven capabilities” (1986b). The Commission decided to impose a condition on the license renewal. Global would have to air a minimum of 200 hours of new Canadian programming every year, and spend \$5 million on drama, music and dance, variety and children’s programs.

In 1989, two years after the transfer of control to CanWest, the license of CKVU-TV came up for renewal (CRTC 1989a). The transfer of the parent company of CKVU, Western Approaches Ltd., had been approved based on a few specific promises made by CanWest. Specifically, these promises involved increasing the programming budget, as well as opening a bureau in Victoria to enhance the station's local news programming (CRTC 1989a). Two years later, the station was not quite ready to show the Commission all it had accomplished. Many of the spending and development requirements were only half complete. While the CRTC changed the way that CanWest would make up the unused money, it essentially granted the request for more time to meet their production requirements. While not ready to grant a diminution of spending, the CRTC was "prepared to accept a delay" (1989a). CanWest also requested more "flexibility" within the program categories, allowing network stations to substitute a documentary or a variety show for a drama, according to production costs.

This request was granted: "The Commission also acknowledges that there is merit in granting some flexibility in the precise number and type of programs which CKVU-TV would produce and broadcast in any given year" (CRTC 1989a). The commission here referenced an increasingly popular term in the 'new' regulation: flexibility. The CRTC was looking for "clear improvements" from the licensee (1989b). Thus that same year when renewing CKND's license, the commission remarked that nearly a decade had passed since the station had made new programming commitments. Concerned with the economic climate in Manitoba, CanWest had submitted a renewal application predicated on a maintenance of current programming targets. This lack of ambition "concerned" the CRTC, causing it to mandate the amount that CKND was to spend on programming in

the first year of the new license. This amount, however, was the exact amount set by CKND as their “projection” of expense. The station had effectively decided upon its own programming targets.

Similar concerns for the Commission arose at the 1992 renewal of the Global CIII stations in Ontario. The CRTC granted CanWest only a four-year license, instead of the standard term of seven years. This “reflect[ed] the Commission’s concern that while Global has generally met the requirements of its conditions of license, it may not have contributed to the Canadian broadcasting system as fully as it should have, given the resources available to it” (CRTC 1992a). At the hearing for renewal, CanWest was asked about just barely meeting production targets in previous years. Asper blamed the performance on the litigation amongst Global shareholders. The CanWest takeover now approved by the CRTC, the Global stations were “free to adopt the CanWest philosophy of treating conditions of license as minimums rather than maximums” (CRTC, 1992a). Unfortunately, noted the Commission, the two years following the change in control showed no improvement.

Specifically, the CRTC took issue with Global’s scheduling policies. Global had been scheduling Canadian drama outside of primetime, with a heavy concentration on weekends. The commission directed CanWest to change these practices. At the same hearings, CanWest suggested that programming expenditure targets be tied to profits (as opposed to advertising revenues), and that licensees be given more flexibility in fulfilling their commitments. The Commission seemed inclined to agree. The same day as the decision re-licensing Global was issued, it also issued a public notice entitled New Flexibility With Regard to Canadian Program Expenditures by Canadian Television

Stations. The Canadian Association of Broadcasters (CAB), a major industry body, intervened on behalf of its members. The CAB argued that yearly targets prevented long-term spending, so the CRTC made concessions in favor of “flexibility,” allowing broadcasters to miss their spending targets by as much as 5% in any given year, so long as their cumulative spending meets their mandated requirements (CRTC “New Flexibility”).

While these instances represent just a few moments of non-compliance and regulatory impotence, they are representative of the general industry bias of the CRTC. Regulation in Canadian broadcasting, at least insofar as it has applied to the growth of the CanWest/Global system, more often takes the shape of a business consultant than an advocate of the public interest. Repeatedly in CanWest’s history requests for leniency, reductions, and flexibility, as well as outright failure to meet commitments, have been met with the explicit approval of the broadcasting industry’s sole regulatory body. One cannot help but wonder what effect this has on the public interest. While here these interactions have been examined in specific instances, they represent a more general shift in broadcasting policy, one which is specifically evidenced in CanWest/Global’s extremely rapid growth into the second major private TV network in Canada.

The Flexibility of Choice: New Regulatory Strategies

Regulation is a rather precarious balance. The rise of neo-liberal economics has initiated a change in the understanding of the relationship between government and business. The doctrine of public service, which once prevailed in Canadian broadcasting policy (as well as government regulation of industry more widely) is on the retreat (Murray 32). Industry representatives, like Izzy Asper understandably feel burdened by

the lack of a completely free market: “I feel Canadian private broadcasters are called upon to perform major social, cultural, and public services but are essentially bereft of the usual corporate incentives that are granted to shoe factories” (Davis 1990, 12). This formulation of the relationship between business and government leaves out concepts of public service, public ownership of the broadcast spectrum, and the duties of cultural producers. It also ignores the profitable protectionist climate that Canadian regulation has created.

This view, however, is being mimicked by governments everywhere, including here in Canada. Marc Raboy characterizes this shift as “the state’s retreat from public policy involvement,” saying that media policy has been moved to “the periphery of formal state concerns” (Raboy “Making” 2006, 289). One problem with government regulation, from a global trade perspective, is that it limits the free exchange of goods and ideas. The 2005 UNESCO Convention on Cultural Diversity expressed the idea that culture is not simply a commodity. Canada pushed hard for these exemptions to preserve its ability to regulate the broadcasting industry. While national governments abilities to regulate are intact for now, they are still under pressure from industry lobbyists and trade groups to lessen the demands they place on businesses.

In the early 1990s, the CRTC attempted to change Can-con spending requirements to target entertainment and children’s programming, the underserved areas of Canadian television. Unfortunately, those businesses that they oversee were not inclined to follow their suggestions, as 80% of their expenditures go to news – much cheaper to produce than either of those categories (CRTC 1995). Nonetheless, the Commission was committed to responding to the CAB’s repeated requests for regulatory

flexibility. In 1995, the CRTC decided to modify the Can-con requirements to give broadcasters what they had asked for.

The change implemented by the CRTC is perhaps the most representative of the new style of regulation for Canadian broadcasting. The commission gave broadcasters the very definition of flexibility – they gave them a choice. The choice was between Choice A (overall spending requirements on Can-con), and Choice B (a mandated number of hours of programming, rather than cost). Just six years earlier, the Commission “stated that the level of spending on Canadian Programming is a vital element in ensuring the quality of Canadian programming” (CRTC 1989c, emphasis added). At CanWest’s next license renewal, for its Saskatoon and Regina stations, it selected Choice B.

The loss of revenue conditions leaves the future of Canadian television in the hands of large media corporations. It is understandable that the broadcasters would favour a switch to a commitment of hours. Under Can-con regulations, programs rating 10 out of 10 on the scale of Canadian-ness count for 150 per cent credit, and those shows rating between 6 and 9, a credit of 125 per cent. So an “all-Canadian” show lasting an hour would count for 1.5 hours, almost a quarter of the weekly drama airing requirements (Murray 1999, 67). With the onus on the broadcasters to produce Canadian programming, and no expenditure regulations, we as the audience rely on these companies to produce a quality product. With only three over-the-air networks in Canada, however, we also have a limited amount of consumer choice with which to express any dissatisfaction. In the words of Andrée Wylie, panel co-chair at further policy reviews in 1999, the new rules represent “an astounding vote of confidence in broadcasters whom the Commission expects will use their resources wisely to maximize Canadian programming” (qtd. in

Murray 1999, 69). The question is, do they deserve our confidence? The evidence available seems to indicate that they do not. The recently released Broadcasting Policy Monitoring Report shows that from 2000 until 2006, Canadian drama and comedy programming aired in primetime by Global's flagship station dropped by 53%, from 341 to 161 hours (CRTC 85).

CanWest, however, is not waiting for government regulations to ease. It is actively working for more favourable regulation of the broadcast industry. Intent on recouping some of the losses occasioned by the takeover of the Hollinger chain, and with a mind to overtake CTV as Canada's most-watched network, CGS wants to manage their Can-con requirements in a "high-impact yet cost-effective way" (Daily News). This means maximizing their use of less costly programming, like news and public affairs, at the expense of the long and expensive process of developing Canadian drama. CGS is also legally challenging Canadian regulatory structures. Prohibitions on advertising are being challenged as limitations on free speech, and broadcasters are arguing that they should pay no more in licensing fees than the bare minimum required to keep the CRTC running (Media). At the same time, business representatives are calling for the dismantling of remaining regulatory structures (Maich 2005, 42; Chidley 2003, 8).

Conclusion

With the reduction to four major companies controlling broadcast television in Canada, the CRTC's reliance on the market to provide the competition necessary to drive quality up seems unfounded. Yet they continue to see the industry thrive, at least quantitatively, so they proceed with their hands-off approach. Market logic approves of the convergence that has taken place over the past 15 years: "through the emergence of

fewer and larger ownership groups in the television industry, most English-language stations now benefit from being part of more effective buying units that serve to facilitate the production and acquisition of quality Canadian programming for broadcast on local stations” (CRTC 1995). Unfortunately for Canadians, the evidence simply isn’t there. While broadcasters are earning profits, and a certain amount of Can-con is being produced, there has been no clear gain for consumers or citizens.

De-regulation is a deceptive term. It is not a removal of regulation, simply a shift of regulatory favour towards industry, rather than the public. Taylor (1993) describes CanWest/Global’s structure, saying that the “degree of carefully constructed and fiercely defended regulatory freedom has allowed CGS to become the most profitable television broadcasting entity in Canada” (2). This dichotomy between regulations and profits is false. It is implicitly assumed that regulations diminish the profit of private enterprise. In fact, their purpose is not to increase or reduce profits, but to safeguard the public interest, which exists outside of market rationality.

The regulatory structure laid out in the CRTC document Building on Success – A Policy Framework for Canadian Television, is one of flexibility, diversity, and choice (1999). Flexibility may be good for the broadcaster, but what does it do not only to the public, but also to the ability of the government to regulate the broadcasting industry? The Commission has abandoned expenditure requirements for the largest broadcasters. We have seen here that CanWest/Global has maximized its use of this flexibility. Whether this is beneficial to Canadian audiences or to Canada’s ability to effectively regulate its cultural industries is a topic for further discussion, but one that is vital to our society. To quote Marc Raboy: “as media are paramount social institutions, public

intervention with respect to their orientation is both legitimate and necessary” (Raboy “Making” 2006, 296). This belief should remain at the core of our broadcasting structures.

ⁱ This emphasis on nationalism did however, come at the expense of numerous commission witnesses who pushed for a more regional service. This is hardly a complete history of broadcast regulation in Canada. For a more complete understanding, see Peers, 1979, and Raboy, 1990.

ⁱⁱ Global Communications Ltd., was owned primarily by CanWest, and Seyton Ltd. There were legal battles between them for control of the company. This battle was continually referenced in CRTC documents – even though CanWest owned 60% of the shares, the CRTC, as well as a shareholder agreement, mandated that it have only 50% of the votes on the board of directors. A Manitoba court decision ended the feud by mandating an auction, and CanWest took control of Global, buying out the remaining shares for more than \$250 million. See CRTC, 1990, and Davis, 1990.

ⁱⁱⁱ Indeed, at the hearing, “Global agreed that the amount of new Canadian programs it obtains from independent producers might be significantly less were it not for the availability of funding from Telefilm Canada” (CRTC, 86, 3)

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